

**CITY OF FAIRMONT  
WATER REFUNDING REVENUE BONDS, SERIES 2012 D  
  
BOND TRANSCRIPT**

**Date of Closing: October 24, 2012**

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**CITY OF FAIRMONT  
(WEST VIRGINIA)**

**WATER REFUNDING REVENUE BONDS, SERIES 2012 C (BANK QUALIFIED); AND  
WATER REFUNDING REVENUE BONDS, SERIES 2012 D (NON-BANK QUALIFIED)**

**BOND ORDINANCE**

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**CITY OF FAIRMONT  
(WEST VIRGINIA)**

AN ORDINANCE AUTHORIZING THE REFUNDING OF THE ISSUER'S OUTSTANDING WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997 A; WATER REVENUE BONDS, SERIES 1998 AND A PORTION OF THE WATER REVENUE BONDS, SERIES 1999 AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, AND PAYING COSTS OF ISSUANCE AND RELATED COSTS, THROUGH THE ISSUANCE OF WATER REFUNDING REVENUE BONDS, SERIES 2012 C (BANK QUALIFIED) OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$10,000,000; AND WATER REFUNDING REVENUE BONDS, SERIES 2012 D (NON-BANK QUALIFIED) OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$30,000,000 PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TAX AND NON-ARBITRAGE CERTIFICATE, AN OFFICIAL STATEMENT, A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER DOCUMENTS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, the City of Fairmont (the "Issuer" or the "City") presently owns and operates a water system (the "System") and has heretofore financed the acquisition and construction of the System and certain additions, betterments and improvements thereto through the issuance of several series of bonds or refunding bonds, of which there are presently outstanding the Prior Bonds, as hereinafter defined;

WHEREAS, all of the Prior Bonds were issued pursuant to ordinances of the Issuer previously enacted (such ordinances, as so amended and supplemented, collectively herein called the "Prior Ordinances");

WHEREAS, under the provisions of Chapter 8, Article 19 and Chapter 13, Article 2 of the Code of West Virginia, 1931, as amended (the "Act"), the Issuer is authorized to issue refunding revenue bonds for the purpose of refunding, paying or discharging all or any part of its outstanding revenue bonds, including interest thereon;

WHEREAS, the Issuer has determined and hereby determines that present value debt service savings would result from the Issuer's current refunding of its outstanding Waterworks Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of \$10,260,000 (the "Series 1997 Bonds");

WHEREAS, the Issuer has determined and hereby determines that present value debt service savings would result from the Issuer's current refunding of its outstanding Water Revenue Bonds, Series 1998, dated December 15, 1998, issued in the original aggregate principal amount of \$9,600,000 (the "Series 1998 Bonds");

WHEREAS, the Issuer has determined and hereby determines that present value debt service savings would result from the Issuer's current refunding of a portion of its outstanding Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the "Series 1999 Bonds");

WHEREAS, the Issuer has determined that it is in the best interests of the inhabitants of the City of Fairmont and other users of the System to currently refund its outstanding Series 1997 Bonds, Series 1998 Bonds and a portion of the Series 1999 Bonds;

WHEREAS, the Issuer has determined that the aforementioned refunding of the Series 1997 Bonds, Series 1998 Bonds and a portion of the Series 1999 Bonds should be financed with the proceeds from the issuance of the Water Refunding Revenue Bonds, Series 2012 C, in the original aggregate principal amount of not more than \$10,000,000 (the "Series 2012 C Bonds (Bank Qualified)"), and Water Refunding Revenue Bonds, Series 2012 D (Non-Bank Qualified), in the original aggregate principal amount of not more than \$30,000,000 (the "Series 2012 D Bonds"), (collectively, the Series 2012 C Bonds and Series 2012 D Bonds shall be known herein as the "Refunding Bonds") such Refunding Bonds to be secured by and payable from the Gross Revenues (as hereinafter defined) of the System; and

WHEREAS, the Issuer has determined and hereby determines that it is in the best interests of the residents of the City that its Refunding Bonds be sold to the Original Purchaser (as hereinafter defined) thereof pursuant to the terms and provisions of a bond purchase agreement (the "Bond Purchase Agreement") between the Issuer and the Original Purchaser.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF FAIRMONT HEREBY ORDAINS:

**ARTICLE I**  
**DEFINITIONS; STATUTORY AUTHORITY; FINDINGS**

Section 1.01. Definitions. All capitalized terms used in this Ordinance and not otherwise defined in the recitals hereto shall have the meanings specified below, unless the context expressly requires otherwise:

"Act" means Chapter 8, Article 19 of the Code of West Virginia, 1931, as amended and in effect on the date of delivery of the Refunding Bonds.

"Authorized Newspaper" means a financial journal or newspaper of general circulation in the City of New York, New York, printed in the English language and customarily published on each business day of the Registrar, whether or not published on Saturdays, Sundays or legal holidays, and so long as so published, shall include The Bond Buyer.

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

"Bond Commission" or "Commission" means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia which succeeds to the functions of the Bond Commission.

"Bond Counsel" shall mean any law firm having a national reputation in the field of municipal law whose opinions are generally accepted by purchasers of municipal bonds, appointed by the Issuer, and shall initially mean Steptoe & Johnson PLLC, Charleston, West Virginia.

"Bondholder," "Holder," "Holder of the Bonds," "Owner of the Bonds," "Registered Owner," or any similar term means any person who shall be the registered owner of any outstanding Bond.

"Bond Insurer" means any entity, if any, which shall insure all or any portion of the payment of principal of and interest on any of the Bonds.

"Bond Register" means the books of the Issuer maintained by the Registrar for the registration and transfer of Bonds.

"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, collectively, the Refunding Bonds, the Prior Bonds remaining after the refunding, and any additional parity Bonds hereafter issued within the terms, restrictions and conditions contained herein.

"Business Day" means any day other than a Saturday, Sunday or a day on which national banking associations or West Virginia banking corporations are authorized by law to remain closed.

"Certificate of Authentication and Registration" means the Certificate of Authentication and Registration on the Refunding Bonds, substantially in the form set forth in EXHIBIT A - FORM OF SERIES 2012 C BONDS and EXHIBIT B - FORM OF SERIES 2012 D BONDS, attached hereto.

"City" or "Issuer" means the City of Fairmont, a municipal corporation and political subdivision of the State of West Virginia, in Marion County thereof, and, unless the context clearly indicates otherwise, includes the Governing Body and any other commission, board or department established by the Issuer to operate and maintain the System.

"Clerk" means the Clerk of the Issuer.

"Closing Date" means the date upon which there is an exchange of the Refunding Bonds for the proceeds representing the original purchase price thereof.

"Code" shall mean the Internal Revenue Code of 1986, as amended and supplemented from time to time, and Regulations thereunder.

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

"Consulting Engineers" means any qualified engineer or engineers or firm or firms of engineers that shall at any time now or hereafter be retained by the Issuer as Consulting Engineers for the System, or portion thereof.

"Costs" or similar terms means all those costs now or hereafter permitted by the Act to be financed with bonds issued pursuant hereto, including, without limitation, those costs described in Section 1.03E.

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

"Debt Service," with reference to a specified period, means the amount of principal, including any sinking fund payments, and interest payable with respect to the Bonds during such period.

"Depository Bank" means the bank or banks to be designated as such in the Supplemental Resolution, and any other bank or national banking association eligible under the laws of the State of West Virginia to receive deposits of state and municipal funds and insured by the FDIC that may hereafter be appointed by the Issuer as Depository Bank.

"DTC" means The Depository Trust Company, New York, New York or its successor.

"DTC-eligible" means, with respect to the Series 2012 C Bonds, meeting the qualifications prescribed by DTC.

"Event of Default" means any occurrence or event specified in Section 7.01.

"FDIC" means the Federal Deposit Insurance Corporation or any successor to the functions of the FDIC.

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

"Governing Body" means the City Council of the Issuer or any other governing body of the Issuer that succeeds to the functions of the City Council, as it may now or hereafter be constituted.

"Government Obligations" means certificates or interest-bearing notes or obligations of the United States, or those for which the full faith and credit of the United States are pledged for the payment of principal and interest.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts, and includes any proceeds from the sale or other disposition of capital assets, but does not include any increase in the value of capital assets (including Qualified Investments).

"Independent Accountants" means the West Virginia State Tax Department or any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any purpose except keeping the accounts of said System in the normal operations of its business and affairs.

"Investment Property" means any security (as said term is defined in Section 165(g)(2)(A) or (B) of the Code), obligation, annuity contract, investment-type property or residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan, excluding, however, obligations the interest on which is excluded from gross income, under Section 103 of the Code, for federal income tax purposes other than specified private activity bonds as defined in Section 57(a)(5)(C) of the Code.

"Issuer" or "City" means the City of Fairmont, a municipal corporation and political subdivision of the State of West Virginia, in Marion County thereof, and, unless the context clearly indicates otherwise, includes the Governing Body and any other commission, board or department established by the Issuer to operate and maintain the System.

"Maximum Annual Debt Service" means, at the time of computation, the greatest amount of Debt Service required to be paid on the Bonds for the then current or any succeeding Fiscal Year, assuming that the principal of any Term Bonds is deemed due on the earlier of their stated maturity date or the date on which they are required to be redeemed pursuant to mandatory sinking fund redemption.

"Mayor" means the Mayor of the Issuer.

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

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

"Nonpurpose Investment" means any Investment Property which is acquired with the gross proceeds of the Refunding Bonds and is not acquired in order to carry out the governmental purpose of the Refunding Bonds.

"Operating Expenses," unless qualified, means the current expenses, paid or accrued, of repair, operation and maintenance of the System, and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses (other than those capitalized as part of the costs of any project relating to the acquisition or construction of additions, betterments or improvements for the System), supplies, labor, wages, the cost of materials and supplies used for current operations, fees and expenses of fiscal agents and of the Depository Bank, Registrar and Paying Agent or Paying Agents, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles.

"Ordinance" regardless of whether preceded by the article "the" or "this," means this Ordinance, as it may hereafter from time to time be amended or supplemented, by ordinance or by resolution.

"Original Purchaser" means collectively, Crews & Associates, Inc., Charleston, West Virginia, and Raymond James, Charleston, West Virginia.

"Outstanding," when used with reference to Bonds and as of any particular date, describes all Bonds theretofore and thereupon being issued and delivered except (a) any Bond or Prior Bond canceled by the registrar for such Bond or Prior Bond at or prior to said date; (b) any Bond or Prior Bond for the payment of which moneys, equal to its principal amount, with interest to the date of maturity, shall be held in trust under this Ordinance and set aside for such payment (whether upon or prior to maturity); (c) any Bond deemed to have been paid as

provided by Section 9.01; and (d) with respect to determining the number or percentage of Bondholders or Bonds respectively, for the purpose of consents, notices and the like, any Bond registered to the Issuer. Notwithstanding the foregoing, in the event that a Bond Insurer has paid principal of and/or interest on any Bond, such Bond shall be deemed to be Outstanding until such time as such Bond Insurer has been reimbursed in full.

"Paying Agent" means the Bond Commission and any other paying agent for the Bonds which may be appointed by a resolution supplemental hereto, all in accordance with Section 8.12 hereof.

"Prior Bonds" means the, Series 2008 A Bonds, Series 2010 A Bonds, Series 2010 B Bonds, Series 2010 C Bonds, and Series 2010 D Bonds and, if not refunded, the Series 1997 Bonds, Series 1998 Bonds and Series 1999 Bonds.

"Prior Ordinances" means, collectively, the ordinances of the Issuer, authorizing the issuance of the Prior Bonds.

"Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and use as a member of the general public.

"Purchase Price," for the purpose of computation of the Yield of the Refunding Bonds, has the same meaning as the term "issue price" in Sections 1273(b) and 1274 of the Code, and, in general, means the initial offering price of the Refunding Bonds to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of the Bonds of each maturity is sold or, if the Refunding Bonds are privately placed, the price paid by the first buyer of the Refunding Bonds or the acquisition cost of the first buyer. "Purchase Price," for purposes of computing Yield of Nonpurpose Investments, means the fair market value of the Nonpurpose Investments on the date of use of Gross Proceeds of the Refunding Bonds for acquisition thereof, or if later, on the date that Investment Property constituting a Nonpurpose Investment becomes a Nonpurpose Investment of the Refunding Bonds.

"Qualified Investments" means and includes the investments set forth in the Supplemental Resolution and designated as such.

"Rebate Fund" means the Rebate Fund described in Section 4.01 hereof.

"Record Date" means the day of the month which shall be so stated in the Refunding Bonds, regardless of whether such day is a Saturday, Sunday or legal holiday.

"Redemption Date" means the date fixed for redemption of Bonds subject to redemption in any notice of redemption published or mailed in accordance herewith.

"Redemption Price" means the price at which the Bonds may be called for redemption and includes the principal amount of the Bonds to be redeemed, plus the premium, if any, required to be paid to effect such redemption.

"Registered Owner," "Bondholder," "Holder," "Owner" or any similar term means any person who shall be the registered owner of any outstanding Bond.

"Registrar" means the bank to be designated in the Supplemental Resolution as the registrar for the Refunding Bonds, and any successor thereto appointed in accordance with Section 8.08 hereof.

"Regulations" means temporary and permanent regulations promulgated under the Code, and includes applicable regulations promulgated under the Internal Revenue Code of 1954.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund created by the Prior Ordinances and continued by Section 4.02 hereof.

"Reserve Accounts" means, collectively, the respective reserve accounts created for the Refunding Bonds and the Prior Bonds.

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

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

"Series 1997 Bonds" means the Issuer's Waterworks Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of \$10,260,000.

"Series 1998 Bonds" means the Issuer's Water Revenue Bonds, Series 1998, dated December 15, 1998, issued in the original aggregate principal amount of \$9,600,000.

"Series 1999 Bonds" means the Issuer's Outstanding Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000.

"Series 2008 A Bonds" means the Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000.

"Series 2010 A Bonds" means the Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618.

“Series 2010 B Bonds” means the Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618.

“Series 2010 C Bonds” means the Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000.

“Series 2010 D Bonds” means the Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104.

"Series 2012 C Bonds" means the Water Refunding Revenue Bonds, Series 2012 C, of the Issuer, originally authorized to be issued pursuant to this Ordinance and the Supplemental Resolution.

"Series 2012 C Bonds Redemption Account" means the Series 2012 C Bonds Redemption Account established in the Series 2012 C Bonds Sinking Fund pursuant to Section 4.02 hereof.

"Series 2012 C Bonds Reserve Account" means the Series 2012 C Bonds Reserve Account established in the Series 2012 C Bonds Sinking Fund pursuant to Section 4.02 hereof.

"Series 2012 C Bonds Reserve Account Requirement" means an amount equal to the lesser of (i) 10% of the original principal amount of the Series 2012 C Bonds, (ii) Maximum Annual Debt Service at the time of original issuance of the Series 2012 C Bonds, or (iii) 125% of average annual Debt Service at the time of original issuance of the Series 2012 C Bonds, as determined in conjunction with the Series 2012 D Bonds.

"Series 2012 C Bonds Sinking Fund" means the Series 2012 C Bonds Sinking Fund established by Section 4.02 hereof.

"Series 2012 D Bonds" means the Water Refunding Revenue Bonds, Series 2012 D, of the Issuer, originally authorized to be issued pursuant to this Ordinance and the Supplemental Resolution.

"Series 2012 D Bonds Redemption Account" means the Series 2012 D Bonds Redemption Account established in the Series 2012 D Bonds Sinking Fund pursuant to Section 4.02 hereof.

"Series 2012 D Bonds Reserve Account" means the Series 2012 D Bonds Reserve Account established in the Series 2012 D Bonds Sinking Fund pursuant to Section 4.02 hereof.

"Series 2012 D Bonds Reserve Account Requirement" means an amount equal to the lesser of (i) 10% of the original principal amount of the Series 2012 D Bonds, (ii) Maximum

Annual Debt Service at the time of original issuance of the Series 2012 D Bonds, or (iii) 125% of average annual Debt Service at the time of original issuance of the Series 2012 D Bonds,

"Series 2012 D Bonds Sinking Fund" means the Series 2012 D Bonds Sinking Fund established by Section 4.02 hereof.

"Refunding Bonds" means, collectively, the Series 2012 C Bonds and the Series 2012 D Bonds.

"Refunding Bonds Costs of Issuance Fund" means the Costs of Issuance Fund created by Section 4.01 hereof.

"Sinking Funds" means, collectively, the respective sinking funds created for the Refunding Bonds and the Prior Bonds.

"State" means the State of West Virginia.

"Supplemental Resolution" means any ordinance or resolution amendatory hereof or supplemental hereto and, when preceded by the article "the," refers specifically to the Supplemental Resolution to be adopted by the Issuer following enactment of this Ordinance, setting forth the final amounts, maturities, interest rates and other terms of the Refunding Bonds and authorizing the sale of the Refunding Bonds to the Original Purchaser; provided, that any provision intended to be included in the Supplemental Resolution and not so included may be contained in any other Supplemental Resolution.

"Surplus Revenues" means the Gross Revenues not required by the Ordinance to be set aside and held for the payment of or security for the Bonds or any other obligations of the Issuer, including, without limitation, the funds and accounts established for the Prior Bonds or the Refunding Bonds.

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

"Term Bonds" means Refunding Bonds subject to mandatory sinking fund redemption, as described by Section 3.06 hereof.

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations and vice versa; and words importing the masculine gender shall include the feminine and neuter genders and vice versa.

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

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

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

Section 1.02.     Authority for this Ordinance. This Ordinance is enacted pursuant to the provisions of the Act and other applicable provisions of law.

Section 1.03.     Findings. The Council hereby finds and determines as follows:

A. The Issuer is a municipal corporation and political subdivision of the State of West Virginia, in Marion County of said State.

B. The Issuer now owns and operates a public waterworks system, the construction, extension and improvement of which it has financed or refinanced pursuant to the issuance of the Prior Bonds.

C. The Issuer has determined that present value debt service savings will result from the current refunding of its Outstanding Series 1997 Bonds, Series 1998 Bonds and a portion of the Series 1999 Bonds and that it is in the best interest of the residents of the Issuer and other users of the System to currently refund such Series 1997 Bonds, Series 1998 Bonds and a portion of the Series 1999 Bonds.

D. It is deemed necessary for the Issuer to issue its (i) Water Refunding Revenue Bonds, Series 2012 C, in the original aggregate principal amount of not more than \$10,000,000, (the "Series 2012 C Bonds"); and (ii) Water Refunding Revenue Bonds, Series 2012 D, in the original aggregate principal amount of not more than \$30,000,000 (the "Series 2012 D Bonds", and collectively with the Series 2012 C Bonds, the "Refunding Bonds") in order to (i) repay in full the remaining principal balance of and all accrued interest on the Series 1997 Bonds; (ii) repay in full the remaining principal balance of and all accrued interest on the Series 1998 Bonds; (iii) repay a portion of the remaining principal balance of and all accrued interest on the Series 1999 Bonds; and the proceeds of the Refunding Bonds may also be applied to funding the respective Refunding Bonds Reserve Accounts and the payment of underwriter's discount; legal expenses; expenses for estimates of costs and revenues; administrative expense; commitment fees; premiums for municipal bond insurance, reserve account insurance or reserve account surety bonds; letter of credit fees; discount; initial fees for the services of registrar's, paying agents, depositories or trustees or other costs in connection with the sale of the Refunding Bonds and such other expenses as may be necessary or incidental to the financing herein authorized; and the performance of the things herein required or permitted, in connection with any thereof, provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Refunding Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall also be permitted.

E. It is in the best interest of the Issuer that the Refunding Bonds be sold to the Original Purchaser pursuant to the terms and provisions of a Bond Purchase Agreement to be entered into by and between the Issuer and the Original Purchaser, as shall be approved by the Supplemental Resolution of the Issuer.

F. There are outstanding obligations of the Issuer which will rank on a parity with the Refunding Bonds as to liens, pledge, source of and security for payment, as follows: (1) a portion of the Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000; (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000; (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618; (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618; (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000; and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (collectively referred to herein as the "Prior Bonds").

The Refunding Bonds shall be issued on a parity with one another and with the Prior Bonds, all of which shall have a first lien position with respect to pledge and source of and security for payment and in all other respects. The Issuer has met the coverage requirements for issuance of parity bonds of the Prior Bonds and the Prior Ordinances and has substantially complied with all other parity requirements, except to the extent that noncompliance with any such other parity requirements is not of a material nature.

Prior to the issuance of the Refunding Bonds, the Issuer will obtain (i) the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met; and (ii) the written consent of the Registered Owners of the Prior Bonds to the issuance of the Refunding Bonds on a parity with such Prior Bonds if required by the Prior Ordinances.

Other than the Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

G. The Issuer derives revenues from the System which are pledged for payment of the Prior Bonds. Except for such pledge thereof to secure and pay the Prior Bonds, said revenues are not pledged or encumbered in any manner. The Issuer intends to issue the Refunding Bonds and to pledge for payment thereof, the Gross Revenues of the System. Upon issuance of the Refunding Bonds, the Refunding Bonds will be secured by a first lien on the Gross Revenues of the System, on a parity with the Prior Bonds.

H. The estimated revenues to be derived in each year after the date hereof from the operation of the System will be sufficient, to provide for repair, maintenance and operation of the System, the payment of interest on the Refunding Bonds and the Prior Bonds, and to create

sinking funds, as hereinafter provided, to pay the principal on the Refunding Bonds and the Prior Bonds as and when it becomes due and reasonable reserves therefore, to provide an adequate renewal and replacement fund, as hereinafter provided, and to make all other payments provided for in this Ordinance.

I. It is in the best interests of the Issuer, and the residents thereof, that the Issuer issue the Refunding Bonds, and secure the Refunding Bonds by a pledge and assignment of the Gross Revenues derived from the operation of the System, the monies in the Refunding Bonds Reserve Account, unexpended proceeds of the Refunding Bonds and as further set forth herein.

J. The Series 2012 C Bonds and the Certificate of Authentication and Registration to be endorsed thereon are to be in substantially the forms set forth in EXHIBIT A – FORM OF SERIES 2012 C BONDS, and the Series 2012 D Bonds and the Certificate of Authentication and Registration to be endorsed thereon are to be in substantially the forms set forth in EXHIBIT B – FORM OF SERIES 2012 D BONDS, attached hereto and incorporated herein by reference, with necessary and appropriate variations, omissions and insertions as permitted or required by this Ordinance or a Supplemental Resolution or as deemed necessary by the Registrar or the Issuer.

K. All things necessary to make the Refunding Bonds, when authenticated by the Registrar and issued as in this Ordinance provided, the valid, binding and legal special obligations of the Issuer according to the import thereof, and to validly pledge and assign those funds pledged hereby to the payment of the principal of and interest on the Refunding Bonds will be timely done and duly performed.

L. The enactment of this Ordinance, and the execution and issuance of the Refunding Bonds, subject to the terms thereof, will not result in any breach of, or constitute a default under, any instrument to which the Issuer is a party or by which it may be bound or affected.

M. The Issuer has complied with all requirements of West Virginia law relating to the operation of the System, the issuance of the Refunding Bonds and the refunding of the Series 1997 Bonds, Series 1998 Bonds and a portion of the Series 1999 Bonds or will have so complied prior to issuance of any thereof.

Section 1.04. Ordinance Constitutes Contract. In consideration of the acceptance of the Refunding Bonds by those who shall own or hold the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the Issuer and such Registered Owners and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the legal Registered Owners of any and all of such Refunding Bonds, all of which shall be of equal rank and without preference, priority or distinction between any one Series 2010 Bond and any other Series 2010 Bond, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

**ARTICLE II**  
**AUTHORIZATION OF REFUNDING**

Section 2.01. Authorization of Refunding. A. All Series 1997 Bonds Outstanding as of the date of issuance of the Refunding Bonds and all unpaid interest accrued thereon, if any, are hereby ordered to be refunded and paid in full and the pledge of Gross Revenues in favor of the Registered Owners of the Series 1997 Bonds imposed by the Prior Ordinance authorizing the issuance of the Series 1997 Bonds, the monies in the funds and accounts created by the Prior Ordinances pledged to payment of the Series 1997 Bonds, and any other funds pledged by the Prior Ordinances to payment of the Series 1997 Bonds are hereby ordered terminated, discharged and released upon such payment to the Registered Owners of the Series 1997 Bonds. Contemporaneously with the payment in full of the Series 1997 Bonds, the amounts on deposit in the sinking fund, and all other funds and accounts created and maintained on behalf of the Series 1997 Bonds, shall be released from the lien created by the Prior Ordinance authorizing the issuance of the Series 1997 Bonds. Monies held in the Series 1997 Bonds Sinking Fund and Series 1997 Bonds Reserve Fund shall be transferred as set forth in the Supplemental Parameters Resolution.

B. All Series 1998 Bonds Outstanding as of the date of issuance of the Refunding Bonds and all unpaid interest accrued thereon, if any, are hereby ordered to be refunded and paid in full and the pledge of Gross Revenues in favor of the Registered Owners of the Series 1998 Bonds imposed by the Prior Ordinance authorizing the issuance of the Series 1998 Bonds, the monies in the funds and accounts created by the Prior Ordinances pledged to payment of the Series 1998 Bonds, and any other funds pledged by the Prior Ordinances to payment of the Series 1998 Bonds are hereby ordered terminated, discharged and released upon such payment to the Registered Owners of the Series 1998 Bonds. Contemporaneously with the payment in full of the Series 1998 Bonds, the amounts on deposit in the sinking fund, and all other funds and accounts created and maintained on behalf of the Series 1998 Bonds, shall be released from the lien created by the Prior Ordinance authorizing the issuance of the Series 1998 Bonds. Monies held in the Series 1998 Bonds Sinking Fund and Series 1998 Bonds Reserve Fund shall be transferred as set forth in the Supplemental Parameters Resolution.

C. A portion of the Series 1999 Bonds Outstanding as of the date of issuance of the Refunding Bonds and the prorated unpaid interest accrued thereon, if any, are hereby ordered to be refunded and paid. At Closing, monies held in the Series 1999 Bonds Sinking Fund and Series 1999 Bonds Reserve Fund shall be transferred as set forth in the Supplemental Parameters Resolution. The Issuer covenants and agrees to transfer the monies remaining in the Series 1999 Bonds Reserve Account as provided in the Supplemental Resolution. The Issuer covenants and agrees not to use the Series 1999 Bonds Reserve Account for the final payment of the Series 1999 Bonds.

### ARTICLE III THE BONDS

Section 3.01. Form and Payment of Bonds. No Refunding Bonds shall be issued pursuant to this Ordinance except as provided in this Article III. Any Refunding Bonds issued pursuant to this Ordinance may be issued only as fully registered Refunding Bonds without coupons, in the denomination of \$5,000 or any integral multiple thereof for any year of maturity (or such other denominations as may be set forth in a Supplemental Resolution). All Refunding Bonds shall be dated as of the date provided in a Supplemental Resolution applicable to such series. All Refunding Bonds shall bear interest from the interest payment date next preceding the date of authentication or, if authenticated after the Record Date but prior to the applicable interest payment date or on such interest payment date, from such interest payment date or, if no interest on such Refunding Bonds has been paid, from the date thereof; provided however, that, if, as shown by the records of the Registrar, interest on such Refunding Bonds shall be in default, Refunding Bonds issued in exchange for Refunding Bonds surrendered for transfer or exchange shall bear interest from the date to which interest has been paid in full on the initial Refunding Bonds surrendered.

The principal of and the premium, if any, on the Refunding Bonds shall be payable in any coin or currency which, on the respective date of such payment, is legal tender for the payment of public and private debts under the laws of the United States of America upon surrender at the principal office of the Paying Agent. Interest on the Refunding Bonds shall be paid by check or draft made payable and mailed to the Registered Owner thereof at his address as it appears in the Bond Register at the close of business on the Record Date, or, if requested, in the case of a Registered Owner of \$1,000,000 or more of the Refunding Bonds, by wire transfer to a domestic bank account specified in writing at least 5 days prior to such interest payment date by such Registered Owner.

In the event any Refunding Bond is redeemed in part, such bond shall be surrendered to and canceled by the Registrar, and the Issuer shall execute, and the Registrar shall authenticate and deliver to the Registered Owner thereof, another Series 2012 Bond in the principal amount of said Refunding Bond then Outstanding.

Section 3.02. Execution of Bonds. The Refunding Bonds shall be executed in the name of the Issuer by the Mayor, by his or her manual or facsimile signatures, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Clerk by his or her manual or facsimile signature; provided, that, all such signatures and the seal may be by facsimile. In case any one or more of the officers who shall have signed or sealed any of the Refunding Bonds shall cease to be such officer of the Issuer before the Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Refunding Bonds 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 3.03. Authentication and Registration. A. No Series 2012 C Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in EXHIBIT A - FORM OF SERIES 2012 C BOND attached hereto and incorporated herein by reference with respect to such respective Series 2012 C Bond, shall have been duly manually executed by the Registrar. Any such manually executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Series 2012 C Bond has been authenticated, registered and delivered under this Ordinance. The Certificate of Authentication and Registration on any Series 2012 C Bond shall be deemed to have been executed by the Registrar if signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Series 2012 C Bonds issued hereunder.

B. No Series 2012 D Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in EXHIBIT B - FORM OF SERIES 2012 D BOND attached hereto and incorporated herein by reference with respect to such respective Series 2012 D Bond, shall have been duly manually executed by the Registrar. Any such manually executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Series 2012 D Bond has been authenticated, registered and delivered under this Ordinance. The Certificate of Authentication and Registration on any Series 2012 D Bond shall be deemed to have been executed by the Registrar if signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Series 2012 D Bonds issued hereunder.

Section 3.04. Negotiability and Registration. Subject to the requirements for transfer set forth below, the Refunding Bonds shall be, and have all of the qualities and incidents of, negotiable instruments under the Uniform Commercial Code of the State, and each successive Registered Owner, in accepting any of said Refunding Bonds, shall be conclusively deemed to have agreed that such Refunding Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State, and each successive Holder shall further be conclusively deemed to have agreed that said Refunding Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as any of the Refunding Bonds remain Outstanding, the Registrar shall keep and maintain books for the registration and transfer of the Refunding Bonds. The Refunding Bonds shall be transferable only by transfer of registration upon the Bond Register by the registered owner thereof in person or by his attorney or legal representative duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or such duly authorized attorney or legal representative. Upon transfer of a Refunding Bond, there shall be issued at the option of the Holder or the transferee another Bond or Bonds of the aggregate principal amount equal to the unpaid amount of the transferred Bond and of the same series, interest rate and maturity of said transferred Bond.

Upon surrender thereof at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar and duly executed by the registered owner or his attorney or legal representative duly authorized in writing, Refunding Bonds may at the option of the Holder thereof be exchanged for an equal aggregate principal amount of Bonds of the same series, maturity and interest rate, in any authorized denominations.

In all cases in which the privilege of transferring or exchanging a Series 2010 Bond is exercised, Refunding Bonds shall be delivered in accordance with the provisions of this Ordinance. All Refunding Bonds surrendered in any such transfer or exchange shall forthwith be canceled by the Registrar. Transfers of Refunding Bonds, the initial exchange of Refunding Bonds and exchanges of such Bonds in the event of partial redemption of fully registered Bonds shall be made by the Registrar without charge to the Holder or the transferee thereof, except as provided below. For other exchanges of Refunding Bonds, the Registrar may impose a service charge. For every such transfer or exchange of such Bonds, the Registrar may make a charge sufficient to reimburse its office for any tax or other governmental charge required to be paid with respect to such transfer or exchange, and such tax or governmental charge, and such service charge for exchange other than the initial exchange or in the event of partial redemption, shall be paid by the person requesting such transfer or exchange as a condition precedent to the exercise of the privilege of making such transfer or exchange. The Registrar shall not be obliged to make any such transfer or exchange of Refunding Bonds that have been called for redemption.

Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2010 Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may execute, in its discretion, and the Registrar shall authenticate, register and deliver any new Bond of like series, maturity and principal amount as the Bond so mutilated, destroyed, stolen or lost, in exchange and upon surrender and cancellation of, such mutilated Bond, or in lieu of and substitution for the Bond so destroyed, stolen or lost, and upon the Registered Owner furnishing the Issuer and the Registrar proof of his ownership thereof and that said Bond has been destroyed, stolen or lost and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer or the Registrar may prescribe and paying such expenses as the Issuer or the Registrar may incur. The name of the Registered Owner listed in the Bond Register shall constitute proof of ownership. All Bonds so surrendered shall be submitted to and canceled by the Registrar, and evidence of such cancellation shall be given to the Issuer. If such Bond shall have matured or be about to mature, instead of issuing a substitute Bond the Issuer, by and through the Registrar, may pay the same, upon being indemnified as aforesaid, and, if such Bond be lost, stolen or destroyed, without surrender thereof.

Any such duplicate Bonds issued pursuant to this section shall constitute original, additional contractual obligations on the part of the Issuer, whether or not the lost, stolen or destroyed Bonds be at any time found by any one, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien and source of and security for payment from the revenues pledged herein with all other Bonds issued hereunder.

Section 3.06. Term Bonds. In the event Term Bonds are issued as part of the Refunding Bonds issued pursuant to this Ordinance, the following provisions shall apply:

A. The amounts to be deposited, apportioned and set apart by the Issuer from the Revenue Fund and into the Refunding Bonds Redemption Account in accordance with Subsection 4.03(A)(2) shall include (after credit as provided below) on the first of each month, beginning on the first day of that month which is 13 months prior to the first mandatory redemption date of said Term Bonds, a sum equal to 1/12th of the amount required to redeem the principal amount of such Term Bonds which are to be redeemed as of the next ensuing mandatory redemption date, which amounts and dates, if any, with respect to a series of Bonds shall be set forth in the Supplemental Resolution relating thereto.

B. At its option, to be exercised on or before the 60th day next preceding any such mandatory redemption date, the Issuer may (a) deliver to the Registrar for cancellation such Term Bonds in any aggregate principal amount desired or (b) receive a credit in respect of its mandatory redemption obligation for any such Term Bonds which prior to said date have been redeemed (otherwise than pursuant to this section) and canceled by the Registrar and not theretofore applied as a credit against any such mandatory redemption obligation. Each Term Bond so delivered or previously redeemed shall be credited by the Registrar at 100% of the principal amount thereof against the obligation of the Issuer on such mandatory redemption date, and Term Bonds delivered in excess of such mandatory redemption obligation shall be credited against future mandatory redemption obligations in the order directed by the Issuer, and the principal amount of such Term Bonds to be redeemed pursuant to mandatory sinking fund redemption shall be accordingly reduced.

C. The Issuer shall on or before the 60th day next preceding each mandatory redemption date furnish the Registrar and the Bond Commission with its certificate indicating whether and to what extent the provisions of (a) and (b) of the preceding paragraph are to be utilized with respect to such mandatory redemption payment and stating, in the case of the credit provided for in (b) of the preceding paragraph, that such credit has not theretofore been applied against any mandatory redemption obligation.

D. After said 60th day but prior to the date on which the Registrar selects the Term Bonds to be redeemed, the Bond Commission may use the moneys in the Refunding Bonds Redemption Account to purchase Term Bonds at a price less than the par value thereof and accrued interest thereon. The Bond Commission shall advise the Issuer and the Registrar of any Term Bonds so purchased, and they shall be credited by the Registrar at 100% of the principal amount thereof against the obligation of the Issuer on such mandatory redemption date, and any excess shall be credited against future mandatory redemption obligations in the order directed by the Issuer, and the principal amount of such Term Bonds to be redeemed pursuant to mandatory sinking fund redemption shall be accordingly reduced.

E. The Registrar shall call for redemption, in the manner provided herein, an aggregate principal amount of such Term Bonds, at the principal amount thereof plus interest accrued to the redemption date (interest to be paid from the Sinking Fund), as will exhaust as nearly as practicable such Refunding Bonds Redemption Account payment designated to be made in accordance with paragraph (A) of this section. Such redemption shall be by random selection made on the 45th day preceding the mandatory redemption date, in such manner as may

be determined by the Registrar. For purposes of this section, "Term Bonds" shall include any portion of a fully registered Term Bond, in integrals of \$5,000.

Section 3.07. Notice of Redemption. Unless waived by any Registered Owner of the Bonds to be redeemed, official notice of any redemption shall be given by the Registrar on behalf of the Issuer by mailing a copy of an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the applicable Bond Insurer, if any, the Original Purchaser, and the Registered Owner of the Series 2010 Bond or Bonds, as applicable, to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such registered owner to the Bond Registrar.

All official notices of redemption shall be dated and shall state:

- (1) The Redemption Date,
- (2) The Redemption Price,
- (3) If less than all outstanding Refunding Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed,
- (4) That on the Redemption Date the Redemption Price and interest accrued will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date,
- (5) The place where such Bonds are to be surrendered for payment of the Redemption Price, which place of payment shall be the principal office of the Registrar, and
- (6) Such other information, if any, as shall be required for DTC-eligible Bonds.

Prior to any redemption date, the Issuer shall deposit with the Registrar an amount of money sufficient to pay the redemption price of all the Refunding Bonds or portions of such Bonds which are to be redeemed on that date.

Official notice of redemption having been given as aforesaid, the Refunding Bonds or portions of such Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Issuer shall default in the payment of the redemption price) such Refunding Bonds or portions of such Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Registrar at the Redemption Price. Installments of interest due on or prior to the Redemption Date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the registered owner a new Bond or Bonds of the same maturity in the amount of the unpaid principal. All Bonds which have been redeemed shall be canceled and destroyed by the Bond Registrar and shall not be reissued.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of Refunding Bonds, and failure to mail such notice shall not affect the validity of proceedings for the redemption of any portion of Bonds for which there was no such failure.

Section 3.08. Persons Treated as Owners. The Issuer, the Registrar and any agent of the Issuer or the Registrar may treat the person in whose name any Bond is registered as the owner of such Bond for the purpose of receiving payment of the principal of, and interest on, such Bond and (except as provided in Section 6.18) for all other purposes, whether or not such Bond is overdue.

Section 3.09. Temporary Bonds. Until Bonds of any series in definitive form are ready for delivery, the Issuer may execute and the Registrar shall authenticate, register, if applicable, and deliver, subject to the same provisions, limitations and conditions set forth in this Article III, one or more printed, lithographed or typewritten Bonds in temporary form, substantially in the form of the definitive Bonds of such series, with appropriate omissions, variations and insertions, and in authorized denominations. Until exchanged for Bonds in definitive form, such Bonds in temporary form shall be entitled to the lien and benefit created under this Ordinance. Upon the presentation and surrender of any Bond in temporary form, the Issuer shall, without unreasonable delay, prepare, execute and deliver to the Registrar, and the Registrar shall authenticate, register, if applicable, and deliver, in exchange therefore, a Bond or Bonds in definitive form. Such exchange shall be made by the Registrar without making any charge therefore to the Holder of such Bond in temporary form.

Section 3.10. Authorization of Bonds. A. For the purposes of (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds, and (ii) funding the Series 2012 C Bonds Reserve Account; and (iii) paying costs of issuance of the Series 2012 C Bonds and related costs, there shall be issued the Series 2012 C Bonds of the Issuer, in an aggregate principal amount of not more than \$10,000,000. The Series 2012 C Bonds shall be designated the "City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 C (Bank Qualified)" and shall be issued in fully registered form, in denominations of \$5,000 or any integral multiple thereof for any year of maturity (or such other denominations as may be set forth in the Supplemental Resolution), not exceeding the aggregate principal amount of Series 2012 C Bonds maturing in the year of maturity for which the denomination is to be specified. The Series 2012 C Bonds shall be numbered from CR-1 consecutively upward. The Series 2012 C Bonds shall be dated; shall be in such aggregate principal amount; shall bear interest at such rate or rates, not exceeding the then legally permissible rate, payable semiannually on such dates; shall mature on such dates and in such amounts; shall be subject to such mandatory and optional redemption provisions; and shall have such other terms, all as the Issuer shall prescribe herein and in the Supplemental Resolution.

B. For the purposes of (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying a portion of the outstanding principal of and the prorated accrued interest on the Series 1999 Bonds; (iii) funding the Series 2012 D Bonds Reserve Account; and (iv) paying costs of issuance of the Series 2012 C Bonds and the Series 2012 D Bonds and related costs, there shall be issued the Series 2012 D Bonds of

the Issuer, in an aggregate principal amount of not more than \$30,000,000. The Series 2012 D Bonds (Non Bank Qualified) shall be designated the "City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 D (Non Bank Qualified)" and shall be issued in fully registered form, in denominations of \$5,000 or any integral multiple thereof for any year of maturity (or such other denominations as may be set forth in the Supplemental Resolution), not exceeding the aggregate principal amount of Series 2012 D Bonds maturing in the year of maturity for which the denomination is to be specified. The Series 2012 D Bonds shall be numbered from DR-1 consecutively upward. The Series 2012 D Bonds shall be dated; shall be in such aggregate principal amount; shall bear interest at such rate or rates, not exceeding the then legally permissible rate, payable semiannually on such dates; shall mature on such dates and in such amounts; shall be subject to such mandatory and optional redemption provisions; and shall have such other terms, all as the Issuer shall prescribe herein and in the Supplemental Resolution.

Section 3.11. Book Entry System for Refunding Bonds. The Refunding Bonds (if purchased by the Original Purchaser) shall initially be issued in the form of one fully-registered bond for the aggregate principal amount of the Refunding Bonds of each maturity, and shall be registered in the name of Cede & Co., as nominee of DTC. Notwithstanding anything herein to the contrary contained, so long as the Refunding Bonds are so issued and registered, DTC (or its nominee) shall be treated as the sole Registered Owner for all purposes hereunder. Each Bond shall bear a legend substantially to the following effect "Except as otherwise provided in the Ordinance, this global bond may be transferred, in whole but not in part, only to another nominee of DTC (as defined in the Ordinance) or to a successor of DTC or to a nominee of a successor of DTC. Unless this certificate is presented by an authorized representative of DTC, to the Issuer or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the Registered Owner hereof, Cede & Co., has an interest herein."

With respect to Refunding Bonds registered in the records of the Registrar in the name of Cede & Co., as nominee of DTC, the Issuer and the Paying Agent shall have no responsibility or obligation to any other participant in DTC or to any Person on behalf of whom such a participant in DTC holds a beneficial interest in the Refunding Bonds. Without limiting the immediately preceding sentence, the Issuer and the Paying Agent shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any other participant in DTC with respect to any beneficial ownership interest in any Bond, (ii) the delivery to any other participant in DTC or any other Person, other than a Registered Owner, as shown in the records of the Registrar, of any notice with respect to any Refunding Bonds, including without limitation any notice of redemption, tender, purchase or any event which would or could give rise to a tender or purchase right or option with respect to any Bond, (iii) the payment to any other participant in DTC or any other Person, other than a Registered Owner, as shown in the records of the Registrar, of any amount with respect to principal of, premium, if any, or interest on, any Bond, or (iv) any consent given by DTC as Registered Owner. Notwithstanding any other provision of this Ordinance to the contrary, the Issuer and the Paying

Agent shall be entitled to treat and consider the Person in whose name each Bond is registered in the records of the Registrar as the absolute owner of such Bond for the purpose of payment of principal, premium, if any, and interest with respect to such Bond, for the purpose of giving notices of redemption, sale, purchase or any event which would or could give rise to a sale or purchase right or option with respect to any Bond for the purpose of making payment of any purchase price of such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Issuer and Paying Agent shall pay all principal of, premium, if any, and interest on the Refunding Bonds and the purchase price of any Bond only to or upon the order of the respective Registered Owners, as shown in the records of the Registrar as provided in this Ordinance, or their respective attorneys or legal representatives duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to payment of principal of, premium, if any, and interest on the Refunding Bonds to the extent of the sum or sums so paid. No Person other than a Registered Owner, as shown in the records of the Registrar, shall receive a Bond certificate evidencing the obligation of the Issuer to make payments of principal, premium, if any, and interest pursuant to this Ordinance.

The Registered Owners have no right to a depository for the Refunding Bonds. The Issuer may remove DTC or any successor thereto for any reason at any time. In such event or in the event DTC shall notify the Issuer that DTC is discontinuing its book-entry system for the Refunding Bonds, the Issuer shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities Exchange Act, notify DTC of the appointment of such successor securities depository and transfer one or more separate Bond certificates to such successor securities depository or (ii) notify DTC of the availability through the DTC of Bond certificates and transfer one or more separate Bond certificates to other participants or beneficial owners as DTC may direct. In such event, the Refunding Bonds shall no longer be restricted to being registered in the records of the Registrar in the name of Cede & Co., as nominee, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names other participants in DTC receiving Refunding Bonds shall designate, in accordance with the provisions of this Ordinance. The provisions of this Section applicable to DTC shall apply, mutatis mutandis, to any successor depository performing the same functions hereunder as DTC.

The Issuer represents hereby that it has executed a Letter of Representations, the terms of which are applicable to the issuance of the Refunding Bonds hereunder. Such Letter of Representations is for the purpose of effectuating the Book-Entry Only System only and shall not be deemed to amend, supersede or supplement the terms of this Ordinance which are intended to be complete without reference to the Letter of Representations. In the event of any conflict between the terms of the Letter of Representations and the terms of this Ordinance, the terms of this Ordinance shall control. DTC may exercise the rights of a Registered Owner hereunder only in accordance with the terms hereof applicable to the exercise of such rights.

Section 3.12. Delivery of Refunding Bonds. The Issuer shall execute and deliver the Refunding Bonds to the Registrar, and the Registrar shall authenticate, register and deliver the Refunding Bonds to the Original Purchaser upon receipt of the documents set forth below:

(1) If not registered in the name of DTC or its nominee, a list of the names in which the Refunding Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Registrar may reasonably require;

(2) A request and authorization to the Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Refunding Bonds to DTC for the benefit of the Original Purchaser;

(3) Copies of this Ordinance and the Supplemental Resolution certified by the Clerk;

(4) The unqualified approving opinion of Bond Counsel regarding the Refunding Bonds; and

(5) A copy of such other documents and certificates as the Original Purchaser may reasonably require.

Section 3.13. Form of Series 2012 C Bonds. A. The definitive Series 2012 C Bonds shall be in substantially the form set forth in EXHIBIT A – FORM OF SERIES 2012 C BOND attached hereto and incorporated herein by reference, with such necessary and appropriate omissions, insertions and variations as are approved by those officers executing such Series 2012 C Bonds on behalf of the Issuer and execution thereof by such officers shall constitute conclusive evidence of such approval, and the definitive Series 2012 C Bonds shall have the form of the opinion of Steptoe & Johnson PLLC, as Bond Counsel, attached thereto or printed on the reverse thereof.

B. The definitive Series 2012 D Bonds shall be in substantially the form set forth in EXHIBIT B – FORM OF SERIES 2012 D BOND attached hereto and incorporated herein by reference, with such necessary and appropriate omissions, insertions and variations as are approved by those officers executing such Series 2012 D Bonds on behalf of the Issuer and execution thereof by such officers shall constitute conclusive evidence of such approval, and the definitive Series 2012 D Bonds shall have the form of the opinion of Steptoe & Johnson PLLC, as Bond Counsel, attached thereto or printed on the reverse thereof.

Section 3.14. Disposition of Proceeds of Refunding Bonds. Upon the issuance and delivery of the Refunding Bonds, the Issuer shall forthwith deposit the proceeds thereof as follows:

1. All interest accrued on Series 2012 C Bonds from the date thereof to the date of delivery thereof shall be deposited in the Series 2012 C Bonds Sinking Fund and applied to payment of interest on the Series 2012 C Bonds at the first interest payment date.

2. All interest accrued on Series 2012 D Bonds from the date thereof to the date of delivery thereof shall be deposited in the Series 2012 D Bonds Sinking Fund and applied to payment of interest on the Series 2012 D Bonds at the first interest payment date.

3. An amount of the proceeds of the Series 2012 C Bonds equal to the amount, if any, set forth in the Supplemental Resolution shall be remitted to the Commission for deposit in the Series 2012 C Bonds Reserve Account.

4. An amount of the proceeds of the Series 2012 D Bonds equal to the amount, if any, set forth in the Supplemental Resolution shall be remitted to the Commission for deposit in the Series 2012 D Bonds Reserve Account.

5. An amount of the proceeds of the Series 2012 D Bonds equal to the entire outstanding principal of and all accrued interest on the Series 1997 Bonds, less the amounts transferred from the Series 1997 Bonds Sinking Fund and Series 1997 Bonds Reserve Fund, if any, as set forth in the Supplemental Resolution shall be remitted to the Bond Commission to pay the Series 1997 Bonds in full.

6. An amount of the proceeds of the Series 2012 C Bonds equal to the entire outstanding principal of and all accrued interest on the Series 1998 Bonds, less the amounts transferred from the Series 1998 Bonds Sinking Fund and Series 1998 Bonds Reserve Fund, if any, as set forth in the Supplemental Resolution shall be remitted to the Bond Commission to pay the Series 1998 Bonds in full.

7. An amount of the proceeds of the Series 2012 D Bonds equal to a portion of the principal of and the prorated accrued interest on the Series 1999 Bonds, less the amounts transferred from the Series 1999 Bonds Sinking Fund and Series 1999 Bonds Reserve Fund, if any, as set forth in the Supplemental Resolution shall be remitted to the Bond Commission to pay a portion of the Series 1999 Bonds.

8. An amount of Series 2012 D Bond proceeds which, together with other monies or securities deposited therein, shall be equal to the Costs of Issuance of the Series 2012 C Bonds and the Series 2012 D Bonds shall be deposited with the Depository Bank in the Costs of Issuance Fund and shall be drawn out, used and applied by the Issuer solely to pay costs of issuance of the Series 2012 C Bonds and the Series 2012 D Bonds at the written direction of the Issuer. Monies not to be applied immediately to pay such costs of issuance may be invested in accordance with this Ordinance, subject however, to applicable yield restrictions as may be in effect under the Code. If for any reason such proceeds, or any part thereof, are not necessary for, or are not applied to such purpose within 120 days following the Closing Date for the Series 2012 C Bonds and the Series 2012 D Bonds, such unapplied proceeds shall be transferred by the Issuer to the Series 2012 D Bonds Sinking Fund established in Section 4.02 hereof and applied to the next ensuing payment of interest on the Series 2012 D Bonds. All such proceeds shall constitute a trust fund for such purposes, and there hereby is created a lien upon such monies until so applied in favor of the Holders of the Series 2012 D Bonds from which such proceeds are derived.

**ARTICLE IV  
SYSTEM REVENUES; FUNDS AND ACCOUNTS**

Section 4.01. Establishment of Funds and Accounts with Depository Bank.

Pursuant to this Article IV, the following special funds are created with (or continued if previously established by the Prior Ordinances), and shall be held by, the Depository Bank, segregated from all other funds and accounts of the Depository Bank or the Issuer and from each other and used solely for the purposes provided herein:

- (1) Revenue Fund (established by the Prior Ordinances);
- (2) Renewal and Replacement Fund (established by the Prior Ordinances);
- (3) Refunding Bonds Costs of Issuance Fund; and
- (4) Rebate Fund.

Section 4.02. Establishment of Funds and Accounts with Bond Commission.

Pursuant to this Article IV, the following special funds and accounts are hereby established (or continued if previously established by the Prior Ordinances) with and shall be held by the Bond Commission, separate and apart from all other funds or accounts of the Bond Commission or the Issuer and from each other and used solely for the purposes provided herein:

- (1) Series 1999 Bonds Sinking Fund (established by Prior Ordinance);
- (2) Series 1999 Reserve Account (established by Prior Ordinance);
- (3) Series 1999 Bonds Redemption Account (established by Prior Ordinance);
- (4) Series 2008 A Bonds Sinking Fund (established by Prior Ordinance);
- (5) Series 2008 A Bonds Reserve Account (established by Prior Ordinance);
- (6) Series 2010 A Bonds Sinking Fund (established by Prior Ordinance);
- (7) Series 2010 A Bonds Reserve Account (established by Prior Ordinance);
- (8) Series 2010 B Bonds Sinking Fund (established by Prior Ordinance);
- (9) Series 2010 B Bonds Reserve Account (established by Prior Ordinance);
- (10) Series 2010 C Bonds Sinking Fund (established by Prior Ordinance);
- (11) Series 2010 C Bonds Reserve Account (established by Prior Ordinance);

- (12) Series 2010 D Bonds Sinking Fund (established by Prior Ordinance);
- (13) Series 2010 D Bonds Reserve Account (established by Prior Ordinance);
- (14) Series 2012 C Bonds Sinking Fund;
  - (a) Within the Series 2012 C Bonds Sinking Fund:
    - (i) Series 2012 C Bonds Reserve Account; and
    - (ii) Series 2012 C Bonds Redemption Account.
- (15) Series 2012 D Bonds Sinking Fund;
  - (a) Within the Series 2012 D Bonds Sinking Fund:
    - (i) Series 2012 D Bonds Reserve Account; and
    - (ii) Series 2012 D Bonds Redemption Account

Section 4.03. System Revenues and Application Thereof. So long as any of the Refunding Bonds shall be Outstanding and unpaid, the Issuer covenants as follows:

A. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited by the Issuer in the Revenue Fund. The Revenue Fund shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner herein provided. All Revenues at any time remaining on deposit in the Revenue Fund shall be disposed of only in the following manner and order of priority:

(1) The Issuer shall first, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission (i) the amounts required by the Prior Ordinances to pay the interest on the Series 2010 C Bonds and the Outstanding Series 1999 Bonds; (ii) commencing 7 months prior to the first interest payment date of the Series 2012 C Bonds, for deposit in the Series 2012 C Bonds Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on the Series 2012 C Bonds on the next ensuing semiannual interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2012 C Bonds Sinking Fund and the next ensuing semiannual interest payment date is more or less than 7 months, then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date; provided further that, the initial amount required to be transferred from the

Revenue Fund and deposited in the Series 2012 C Bonds Sinking Fund shall be reduced by the amount of accrued interest on the Series 2012 C Bonds deposited therein, and subsequent amounts required to be transferred from the Revenue Fund and deposited in the Series 2012 C Bonds Sinking Fund shall be reduced by the amount of any earnings credited to the Series 2012 C Bonds Sinking Fund; and (iii) commencing 7 months prior to the first interest payment date of the Series 2012 D Bonds, for deposit in the Series 2012 D Bonds Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on the Series 2012 D Bonds on the next ensuing semiannual interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2012 D Bonds Sinking Fund and the next ensuing semiannual interest payment date is more or less than 7 months, then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date; provided further that, the initial amount required to be transferred from the Revenue Fund and deposited in the Series 2012 D Bonds Sinking Fund shall be reduced by the amount of accrued interest on the Series 2012 D Bonds deposited therein, and subsequent amounts required to be transferred from the Revenue Fund and deposited in the Series 2012 D Bonds Sinking Fund shall be reduced by the amount of any earnings credited to the Series 2012 D Bonds Sinking Fund.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission (i) the amounts required by the Prior Ordinances to pay the principal of the Prior Bonds; (ii) commencing 13 months prior to the first principal payment date or mandatory Redemption Date of the Series 2012 C Bonds, for deposit in the Series 2012 C Bonds Sinking Fund and in the Series 2012 C Bonds Redemption Account therein in the case of the Term Bonds which are to be redeemed, a sum equal to 1/12th of the amount (or 1/6th of the amount if the Series 2012 C Bonds mature semiannually rather than annually) of principal which will mature or be redeemed and become due on the Series 2012 C Bonds on the next ensuing principal payment date or mandatory Redemption Date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2012 C Bonds Sinking Fund and the next ensuing principal payment date or mandatory Redemption Date is more or less than 13 months (or 7 months if the Series 2012 C Bonds mature semiannually rather than annually), then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next

ensuing principal payment date or mandatory Redemption Date, the required amount of principal coming due on such date, and provided further, that the amount of such deposits shall be reduced by the amount of any earnings credited to the Series 2012 C Bonds Sinking Fund and not previously credited pursuant to the preceding paragraph; and (iii) commencing 13 months prior to the first principal payment date or mandatory Redemption Date of the Series 2012 D Bonds, for deposit in the Series 2012 D Bonds Sinking Fund and in the Series 2012 D Bonds Redemption Account therein in the case of the Term Bonds which are to be redeemed, a sum equal to 1/12th of the amount (or 1/6th of the amount if the Series 2012 D Bonds mature semiannually rather than annually) of principal which will mature or be redeemed and become due on the Series 2012 D Bonds on the next ensuing principal payment date or mandatory Redemption Date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2012 D Bonds Sinking Fund and the next ensuing principal payment date or mandatory Redemption Date is more or less than 13 months (or 7 months if the Series 2012 D Bonds mature semiannually rather than annually), then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next ensuing principal payment date or mandatory Redemption Date, the required amount of principal coming due on such date, and provided further, that the amount of such deposits shall be reduced by the amount of any earnings credited to the Series 2012 D Bonds Sinking Fund and not previously credited pursuant to the preceding paragraph.

Moneys in the Series 2012 C Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2012 C Bonds, whether by maturity or redemption prior to maturity. Moneys on deposit in the Series 2012 C Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 2012 C Bonds when the funds on deposit in the Series 2012 C Bonds Sinking Fund are insufficient therefore, and for no other purpose. Pending such use, such moneys shall be invested in accordance with Article V.

Moneys in the Series 2012 D Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2012 D Bonds, whether by maturity or redemption prior to maturity. Moneys on deposit in the Series 2012 D Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 2012 D Bonds when the funds on deposit in the Series 2012 D Bonds Sinking Fund are insufficient therefore, and for no other purpose. Pending such use, such moneys shall be invested in accordance with Article V.

The Issuer shall not be required to make any further payments into the Series 2012 C Bonds Sinking Fund when the aggregate amount of funds therein, including the Series 2012 C Bonds Reserve Account therein, is at least equal to the aggregate principal amount of Series 2012 C Bonds then Outstanding, plus the amount of interest due or thereafter to become due on such Bonds then Outstanding.

The Issuer shall not be required to make any further payments into the Series 2012 D Bonds Sinking Fund when the aggregate amount of funds therein, including the Series 2012 D Bonds Reserve Account therein, is at least equal to the aggregate principal amount of Series 2012 D Bonds then Outstanding, plus the amount of interest due or thereafter to become due on such Bonds then Outstanding.

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

The payments into the Series 2012 C Bonds Sinking Fund and Series 2012 D Bonds Sinking Fund shall be made on the first day of each month, except that, when the first day of any month shall be a Saturday, Sunday or legal holiday, then such payments shall be made on the next succeeding Business Day, 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 Ordinance.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission (i) for deposit in the Reserve Accounts of the Prior Bonds the amounts required by the Prior Ordinances; (ii) commencing 13 months prior to the first date of payment of principal of the Series 2012 C Bonds, if not fully funded upon issuance of the Series 2012 C Bonds, for deposit in the Series 2012 C Bonds Reserve Account, an amount equal to 1/120th of the Series 2012 C Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2012 C Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2012 C Bonds Reserve Requirement, and thereafter the Issuer shall deposit in the Series 2012 C Bonds Reserve Account, an amount sufficient to remedy any decrease in value of the Series 2012 C Bonds Reserve Account below the Series 2012 C Bonds Reserve Requirement or any withdrawal from the Series 2012 C Bonds Reserve Account, beginning with the first full calendar month following the date on which (a) the valuation of investments in the Series 2012 C Bonds Reserve Account results in a determination that the amount of moneys and the value of the

Qualified Investments deposited to the credit of the Series 2012 C Bonds Reserve Account is less than the Series 2012 C Bonds Reserve Requirement, or (b) any amount is withdrawn from the Series 2012 C Bonds Reserve Account for deposit into the Series 2012 C Bonds Sinking Fund. To the extent Gross Revenues and any other legally available funds are available therefore, the amount so deposited shall be used to restore the amount of moneys on deposit in the Series 2012 C Bonds Reserve Account to an amount equal to the Series 2012 C Bonds Reserve Requirement to the full extent that such Gross Revenues are available; provided however, that if the shortfall in the Series 2012 C Bonds Reserve Account is due to a decrease in value of investments therein, such shortfall shall be replenished by not less than 6 equal monthly payments, and if such shortfall is due to a withdrawal from the Series 2012 C Bonds Reserve Account, such shortfall shall be replenished by not less than 12 equal monthly payments, and provided further, that no payments shall be required to be made into the Series 2012 C Bonds Reserve Account whenever and as long as the amount on deposit therein shall be equal to the Series 2012 C Bonds Reserve Requirement; and (iii) commencing 13 months prior to the first date of payment of principal of the Series 2012 D Bonds, if not fully funded upon issuance of the Series 2012 D Bonds, for deposit in the Series 2012 D Bonds Reserve Account, an amount equal to 1/120th of the Series 2012 D Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2012 D Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2012 D Bonds Reserve Requirement, and thereafter the Issuer shall deposit in the Series 2012 D Bonds Reserve Account, an amount sufficient to remedy any decrease in value of the Series 2012 D Bonds Reserve Account below the Series 2012 D Bonds Reserve Requirement or any withdrawal from the Series 2012 D Bonds Reserve Account, beginning with the first full calendar month following the date on which (a) the valuation of investments in the Series 2012 D Bonds Reserve Account results in a determination that the amount of moneys and the value of the Qualified Investments deposited to the credit of the Series 2012 D Bonds Reserve Account is less than the Series 2012 D Bonds Reserve Requirement, or (b) any amount is withdrawn from the Series 2012 D Bonds Reserve Account for deposit into the Series 2012 D Bonds Sinking Fund. To the extent Gross Revenues and any other legally available funds are available therefore, the amount so deposited shall be used to restore the amount of moneys on deposit in the Series 2012 D Bonds Reserve Account to an amount equal to the Series 2012 D Bonds Reserve Requirement to the full extent

that such Gross Revenues are available; provided however, that if the shortfall in the Series 2012 D Bonds Reserve Account is due to a decrease in value of investments therein, such shortfall shall be replenished by not less than 6 equal monthly payments, and if such shortfall is due to a withdrawal from the Series 2012 D Bonds Reserve Account, such shortfall shall be replenished by not less than 12 equal monthly payments, and provided further, that no payments shall be required to be made into the Series 2012 D Bonds Reserve Account whenever and as long as the amount on deposit therein shall be equal to the Series 2012 D Bonds Reserve Requirement.

Amounts in the Series 2012 C Bonds Reserve Account shall be used only for the purpose of making payments of principal of and interest on the Series 2012 C Bonds when due, when amounts in the Series 2012 C Bonds Sinking Fund are insufficient therefore and for no other purpose.

Amounts in the Series 2012 D Bonds Reserve Account shall be used only for the purpose of making payments of principal of and interest on the Series 2012 D Bonds when due, when amounts in the Series 2012 D Bonds Sinking Fund are insufficient therefore and for no other purpose.

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

(5) The Issuer shall next, on the first day of each month, transfer from the monies remaining in the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund (as previously set forth in the Prior Ordinances and not in addition thereto), a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of any Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Subject to the restrictions contained in the Prior Ordinances, so long as the Prior Bonds are outstanding, withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, or improvements or extensions to the System; provided, that any deficiency in any Reserve Account, except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof, shall be promptly eliminated with monies from the Renewal and Replacement Fund.

(6) If on any monthly payment date the revenues of the System are insufficient to make the required deposits in any of the funds and accounts as hereinabove provided, the deficiency shall be made up on the next ensuing payment dates by payments in addition to the payments which are otherwise required to be made into the funds on such ensuing payment dates.

(7) The Issuer may next, each month, after making the above required transfers of moneys from the Revenue Fund, apply any remaining revenues ("Surplus Revenues") to payment of debt service on any other subordinate bonds, notes, certificates or other obligations of the System. Any Surplus Revenues then remaining in the Revenue Fund may be used for any lawful purpose of the System.

B. The Bond Commission is hereby designated as the fiscal agent for the administration of the Sinking Funds created or continued hereunder, and all amounts required for said Sinking Funds shall be remitted to the Bond Commission from said Revenue Fund and from the proceeds of the sale of the Bonds, by the Issuer at the times and as otherwise provided herein. All remittances made by the Issuer to the Bond Commission shall clearly identify the fund or account into which each amount is to be deposited. Notwithstanding the foregoing, however, the Bond Commission shall deposit all remittances in the fund or account in the priority established by this Ordinance.

C. If on any monthly payment date the Gross 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 4.03 and the Gross Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

D. Principal and interest payments, and any payments made for the purpose of funding the Reserve Accounts, shall be made on a parity basis and prorated, with respect to the Prior Bonds, the Refunding Bonds and any parity Bonds hereinafter issued, in accordance with the respective principal amounts of each such series of Bonds then Outstanding, if less than the full amount required hereby.

**ARTICLE V**  
**INVESTMENTS; NON-ARBITRAGE**  
**REBATES AND CONTINUING DISCLOSURE CERTIFICATE**

Section 5.01. Investments. The Issuer shall invest and reinvest, and shall instruct the Bond Commission and the Depository Bank to invest and reinvest, any moneys held as a part of the funds and accounts created by this Ordinance in Qualified Investments to the fullest extent

possible under applicable laws, this Ordinance, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this section.

Except as provided below, any investment shall be held in and at all times deemed a part of the fund or account in which such 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 Issuer shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Issuer may make any and all investments permitted by this section through the bond department of the Depository Bank. The Depository Bank shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The following specific provisions shall apply with respect to any investments made under this section:

(A) Qualified Investments acquired for the Renewal and Replacement Fund or any Reserve Account shall mature or be subject to retirement at the option of the holder within not more than 3 years from the date of such investment.

(B) The Issuer shall, or shall cause the Bond Commission to, semiannually transfer from each Reserve Account to the corresponding Sinking Fund any earnings on the moneys deposited therein and any other funds in excess of the applicable Reserve Account Requirement; provided, however, that there shall at all times remain on deposit in each Reserve Account an amount at least equal to the applicable Reserve Account Requirement.

(C) In computing the amount in any fund or account, Qualified Investments shall be valued at the lower of the cost or the market price, exclusive of accrued interest. Valuation of all funds and accounts shall occur annually, except in the event of a withdrawal from a Reserve Account, whereupon it shall be valued immediately after such withdrawal. If amounts on deposit in a Reserve Account shall, at any time, be less than the applicable Reserve Requirement, the applicable Bond Insurer, if any, shall be notified immediately of such deficiency, and such deficiency shall be made up from the first available Gross Revenues after required deposits to the applicable Sinking Fund and otherwise in accordance with Section 4.03(3).

(D) All amounts representing accrued interest shall be held by the Bond Commission, pledged solely to the payment of interest on the Bonds and invested only in Government Obligations maturing at such times and in such amounts as are necessary to match the interest payments to which they are pledged.

(E) Notwithstanding the foregoing, all moneys deposited in any Sinking Fund may be invested by the Bond Commission in the West Virginia "consolidated fund" managed by the West Virginia Board of Treasury Investments pursuant to Chapter 12, Article 6C of the Code of West Virginia, 1931, as amended.

Section 5.02. Arbitrage. The Issuer covenants that (i) it will restrict the use of the proceeds of the Refunding Bonds in such manner and to such extent as may be necessary, so that such Refunding Bonds will not constitute "arbitrage bonds" under Section 148 of the Code and Regulations prescribed thereunder, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a Federal information return with respect to such Bonds) so that the interest on the Refunding Bonds will be and remain excluded from gross income for Federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 5.03. Tax Certificate, Rebates, and Rebate Fund. The Issuer shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of any series of Bonds. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Refunding Bonds as may be necessary in order to fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of this Ordinance.

The Issuer shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, the Issuer shall deposit, or cause to be deposited, in the Rebate Fund such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder and used only for payment of rebatable arbitrage to the United States. The Issuer shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States in the time and at the address prescribed by the Regulations as the same may be in time to time in effect with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefore. The Issuer at its expense, may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer may deem appropriate in order to assure compliance with this Section 5.03. The Issuer shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 5.03 in accordance with the requirements of Section 148(f) of the Code and such Regulations. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and other amounts, from lawfully available sources, and obtain a waiver

from the Internal Revenue Service, if necessary, in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes.

Section 5.04. Continuing Disclosure Certificate. The Issuer shall deliver a continuing disclosure certificate in form acceptable to the Original Purchaser sufficient to ensure compliance with SEC Rule 15c2-12, as it may be amended from time to time.

**ARTICLE VI**  
**ADDITIONAL COVENANTS OF THE ISSUER**

Section 6.01. Covenants Binding and Irrevocable. All the covenants, agreements and provisions of this Ordinance shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Refunding Bonds, as prescribed by Article VII. In addition to the other covenants, agreements and provisions of this Ordinance, the Issuer hereby covenants and agrees with the Holders of the Refunding Bonds as hereinafter provided in this Article VI. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Refunding Bonds or the interest thereon, are Outstanding and unpaid.

Section 6.02. Bonds Not to be Indebtedness of the Issuer. The Refunding Bonds shall not be or constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness but shall be payable solely from the Gross Revenues of the System, the moneys in the Refunding Bonds Sinking Fund and the Refunding Bonds Reserve Account therein and the unexpended proceeds of the Refunding Bonds, all as herein provided. No Holder or Holders of the Refunding Bonds issued hereunder shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Refunding Bonds or the interest thereon.

Section 6.03. Refunding Bonds Secured by Parity Pledge of Gross Revenues; Lien Position with Respect to Prior Bonds. The payment of the debt service of all of the Refunding Bonds issued hereunder shall be secured forthwith equally and ratably with each other by a first lien on the Gross Revenues derived from the operation of the System, on a parity with the lien on the Gross Revenues in favor of the Holders of the Prior Bonds. The payment of the debt service on the Refunding Bonds shall also be secured by the moneys in the Refunding Bonds Sinking Funds, including the respective Refunding Bonds Reserve Accounts therein. The Gross Revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Prior Bonds and the Refunding Bonds herein authorized, and to make the payments into the Series 2012 C Bonds Sinking Fund and Series 2012 D Bonds Sinking Fund, all moneys and securities in the Series 2012 C Bonds Sinking Fund, including the Series 2012 C Bonds Reserve Account therein, the Series 2012 D Bonds Sinking Fund, including the Series 2012 D Bonds Reserve Account therein and all other payments provided for in this Ordinance, are hereby irrevocably pledged in the manner provided in this Ordinance to the payment of the principal of and interest on the Prior Bonds and the Refunding Bonds herein authorized as the same become due and for the other purposes provided in this Ordinance.

Section 6.04. Rates. Prior to the issuance of the Refunding Bonds, rates or charges for the use of the services and facilities of the System will be fixed and established, all in the manner and form required by law, and a copy of such rates and charges so fixed and established shall at all times be kept on file in the office of the Clerk of the Issuer, which copy will be open to inspection by all interested parties. The schedule or schedules of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to make the prescribed payments into the funds and accounts created hereunder. Such schedule or schedules of rates and charges shall be revised from time to time, whenever necessary, so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule or schedules of rates or charges from time to time in effect shall be sufficient (i) to provide for all Operating Expenses of the System, (ii) so long as the Series 1999 Bonds, Series 2012 C Bonds or Series 2012 D Bonds are outstanding to leave a balance each year equal to at least 120% of the Maximum Annual Debt Service on the Refunding Bonds, and all obligations issued on a parity with the Refunding Bonds, including the Prior Bonds; and (iii) so long as the Series 2008 A Bonds, Series 2010 A Bonds, Series 2010 B Bonds, Series 2010 C Bonds or Series 2010 D Bonds are outstanding to leave a balance each year equal to at least 115% of the Maximum Annual Debt Service on the Refunding Bonds, and all obligations issued on a parity with the Refunding Bonds, including the Prior Bonds. All such rates and charges, if not paid when due, shall constitute a lien upon the premises served by the System.

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

Section 6.05. Operation and Maintenance. The Issuer will maintain the System in good condition and will operate the same as a revenue-producing enterprise in an efficient and economical manner, making such expenditures for equipment and for renewal, repair and replacement as may be proper for the economical operation and maintenance thereof from the Revenues of said System in the manner provided in this Ordinance.

Section 6.06. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of or encumber the System except as provided in the Prior Ordinances. Additionally, so long as the Refunding Bonds are Outstanding, the System may be sold, mortgaged, leased or otherwise disposed of only as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding, or to defease the pledge created by this Ordinance and the Prior Ordinances. The proceeds from such sale, mortgage, lease or other disposition of the System shall be immediately remitted to the Bond Commission for deposit in the respective Sinking Funds, and otherwise as prescribed by Section 9.01. Any balance remaining after such defeasance shall be remitted to the Issuer by the Bond Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor is not in excess of \$250,000, the Issuer shall, in writing, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Issuer may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Revenue Fund. If the amount to be received from such sale, lease or other disposition of said property shall be in excess of \$250,000, the Issuer shall first, in writing, determine with the written approval of the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Issuer may then, if it be so advised, by resolution duly adopted, approve and concur in such finding and authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds derived from any such sale, lease or other disposition of such property, in excess of \$50,000 and not in excess of \$250,000, shall be deposited by the Issuer into the Renewal and Replacement Fund. Such payments of such proceeds into the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Ordinance.

No sale, lease or other disposition of all properties of the System shall be made by the Issuer if the proceeds to be derived therefrom shall be insufficient to defease the pledge created by this Ordinance, as provided by Section 9.01.

Section 6.07. Issuance of Other Obligations Payable out of Revenues and General Covenant Against Encumbrances. The Issuer shall not issue any other obligations whatsoever, except additional parity Bonds provided for in Section 6.08 hereof, payable from the Revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from the Gross Revenues with the Refunding Bonds; and all obligations hereafter issued by the Issuer payable from the revenues of the System, except such additional Bonds, shall contain an express statement that such obligations are junior and subordinate as to lien on and source of and security for payment from such revenues and in all other respects to the Bonds.

The Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or, except with respect to such additional parity Bonds, being on a parity with the lien of the Refunding Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Refunding Bonds and the interest thereon in this Ordinance or upon the System or any part thereof.

Section 6.08. Additional Parity Bonds. So long as the Prior Bonds are Outstanding, the limitations and requirements on the issuance of parity obligations set forth in the Prior Ordinances shall be applicable. In addition, no additional parity Bonds, as in this section defined, payable out of the revenues of the System shall be issued after the issuance of any Bonds pursuant to this Ordinance, except under the conditions and in the manner herein provided.

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

So long as the Series 1999 Bonds, Series 2012 C Bonds, or Series 2012 D Bonds are outstanding, no such additional parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Clerk of the Issuer a written statement by an Independent Accountant, reciting the conclusion that the Net Revenues actually derived from the System during the Fiscal Year preceding the date of the actual issuance of such additional parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the issuance of such Parity Bonds, if any, shall not be less than 120% of the Maximum Annual Debt Service on the following:

- (1) The Prior Bonds then Outstanding;
- (2) The Refunding Bonds then Outstanding;
- (3) Any additional parity Bonds theretofore issued pursuant to the provisions contained in this Ordinance then Outstanding; and
- (4) The additional parity Bonds then proposed to be issued.

So long as the Series 2008 A Bonds, Series 2010 A Bonds, Series 2010 B Bonds, Series 2010 C Bonds or Series 2010 D Bonds are outstanding, no such additional parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Clerk of the Issuer a written statement by an Independent Accountant, reciting the conclusion that the Net Revenues actually derived from the System during any 12 consecutive months in the 18 months immediately preceding the date of the actual issuance of such additional parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall not be less than 115% of the Maximum Annual Debt Service on the following:

- (1) The Prior Bonds then Outstanding;
- (2) The Refunding Bonds then Outstanding;
- (3) Any additional parity Bonds theretofore issued pursuant to the provisions contained in this Ordinance then Outstanding; and
- (4) The additional parity Bonds then proposed to be issued.

The Net Revenues actually derived from the System during the 12-consecutive month period hereinabove referred to may be adjusted by adding to such Net Revenues such

additional Net Revenues which would have been received, in the opinion of the Independent Accountants, as stated in a certificate, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to issuance of such Parity Bonds.

The term "additional parity Bonds," as used in this section, shall be deemed to mean additional Bonds issued under the provisions and within the limitations of this section, payable from the Net Revenues of the System on a parity with the Refunding Bonds, and all the covenants and other provisions of this Ordinance (except as to details of such additional parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Refunding Bonds, the Prior Bonds and the Holders of any additional parity Bonds theretofore or subsequently issued from time to time within the limitations of and in compliance with this section. All the Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Net Revenues of the System, and their source of and security for payment from said Net Revenues, without preference of any Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Ordinance required for and on account of such additional parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Ordinance.

The term "additional parity Bonds," as used in this section, shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien on the Revenues of the System of which is subject to the prior and superior lien of the Bonds on such Revenues. Any such subordinate bonds, notes, certificates or other obligations shall be payable from Surplus Revenues. The Issuer shall not issue any obligations whatsoever payable from the Revenues of the System, or any part thereof, which rank prior to or equally, as to lien and source of and security for payment from such Revenues, with the Refunding Bonds, except in the manner and under the conditions provided in this section.

No additional parity Bonds, as in this section defined, shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in this Ordinance on account of the Bonds then Outstanding, if any (excluding the Renewal and Replacement Fund), and any other payments provided for in this Ordinance shall have been made in full as required to the date of delivery of the additional parity Bonds.

Section 6.09. Insurance and Bonds. The Issuer hereby covenants and agrees, that so long as the Refunding Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance and bonds and worker's compensation coverage with a reputable insurance carrier or carriers or bonding company or companies covering the following risks and in the following amounts:

A. FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the greater of the fair appraised value or the original cost thereof. In the time of war the Issuer will also carry and maintain insurance to the extent available against risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged and

destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund.

B. PUBLIC LIABILITY INSURANCE, with limits of not less than \$1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than \$500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

C. WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT OR COMPLETION BONDS, such bonds to be in the amounts of not less than 100% of the amount of any construction contract and to be required of each contractor dealing directly with the Issuer and such payment bonds will be filed with the Clerk of the County Commission of the County in which such work is to be performed prior to commencement of construction of any additions, extensions or improvements for the System in compliance with West Virginia Code, Section 38-2-39.

D. FLOOD INSURANCE, to extent available at reasonable cost to the Issuer.

E. BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

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

Section 6.10. Connections. To the extent permitted by the laws of the State and rules and regulations of the Public Service Commission of West Virginia, the Issuer shall require every owner, tenant or occupant of any house, dwelling, or building intended to be served by the System to connect thereto.

Section 6.11. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System; and, in the event the Issuer or any department, agency, instrumentality, officer or employee thereof shall avail himself of the facilities or services provided by the System or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. Such charges shall be paid as they accrue, and the Issuer shall transfer from its general funds sufficient sums to pay such charges for service to any of its departments or properties. The revenues so received shall be deemed to be revenues derived from the operation of the System and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 6.12. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other

charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 20 days after the same shall become due and payable, the user of the services and facilities shall be delinquent until such time as all such rates and charges are fully paid and to the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, all delinquent rates, rentals and other charges, if not paid, shall become a lien on the premises served by the System. The Issuer further covenants and agree that it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services and facilities of the System to all delinquent users of services and facilities of the System and will not restore such services of the System until all billing for charges for the services and facilities of the System, including penalties and reconnect fees, have been fully paid, or a payment agreement in compliance with the West Virginia Public Service Commission regulations has been entered.

Section 6.13. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of any franchise or permit to any person, firm, corporation or body, or agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 6.14. Books and Records. The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds shall have the right at all reasonable times to inspect the System, and all parts thereof, and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles, to the extent allowable under and in accordance with the rules and regulations of the Public Service Commission of West Virginia and the Act. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner, on the forms, in the books and along with other bookkeeping records as prescribed by the Issuer. The Issuer shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Issuer shall be reported to such agent of the Issuer as it shall direct.

The Issuer shall file with the Original Purchaser and any Bond Insurer, and shall mail to any Holder of Bonds requesting the same, an annual report within 120 days following the end of each Fiscal Year containing a balance sheet, statement of revenues, expenses, and changes in retained earnings, and statement of cash flows, as prescribed by generally accepted accounting principles.

The Issuer shall also file with the Original Purchaser and any Bond Insurer, and mail to any Holder of Bonds requesting the same, a monthly unaudited report within 30 days following the end of each month containing the following:

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

(B) A statement of account balances in the Sinking Fund accounts provided for in this Ordinance and status of said funds.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be completely audited by Independent Accountants, shall mail upon request, and make available generally, the report of said Independent Accountants, or a summary thereof, to any Holder or Holders of Bonds issued pursuant to this Ordinance and shall file said report with the Original Purchaser.

Section 6.15. Operating Budget. The Issuer shall annually, at least 30 days preceding the beginning of each Fiscal Year, or at such earlier date required by its charter, prepare and adopt by resolution a detailed budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Original Purchaser and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Original Purchaser and to any Holder of Bonds or anyone acting for and in behalf of such Holder who requests the same.

Section 6.16. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Refunding Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on such Refunding Bonds during the term thereof is, under the terms of such Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) in the event that both (A) in excess of 5% of the Net Proceeds of the Refunding Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Refunding Bonds during the terms thereof is, under the terms of such Refunding Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Refunding Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the

System, or if the Refunding Bonds are for the purpose of financing more than one project, a portion of the System, and shall not exceed the proceeds used for the governmental use of that portion of the System to which such Private Business Use is related.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of the lesser of 5% of the Net Proceeds of the Refunding Bonds or \$5,000,000 are used, directly or indirectly, to make or finance a loan to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Refunding Bonds to be directly or indirectly "federally guaranteed" within the meaning of Section 149(b) of the Code and Regulations promulgated thereunder.

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

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

Section 6.17. Statutory Mortgage Lien. For the further protection of the Holders of the Refunding Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon the issuance of the Refunding Bonds and shall be on a parity with one another and with the statutory mortgage lien in favor of the Holders of the Prior Bonds.

Section 6.18. Designation of Series 2012 C Bonds as "Qualified Tax-Exempt Obligations".

The Series 1998 Bonds were designated by the Issuer as "qualified tax-exempt obligations" for purposes of Section 265(b)(3)(B) of the Code. As the Series 2012 C Bonds are refunding the Series 1998 Bonds, the Series 2012 C Bonds are "qualified tax-exempt obligations" for purposes of Section 265(b)(3)(B) of the Code.

## **ARTICLE VII** **DEFAULTS AND REMEDIES**

Section 7.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Refunding Bonds:

(A) If default by the Issuer occurs in the due and punctual payment of the principal of or interest on any Bond;

(B) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part in this Ordinance or any Supplemental Resolution or in the Bonds contained, and such default shall have continued for a period of 30 days after written notice specifying such default and requiring the same to be remedied shall have been given to the Issuer by any Registered Owner of any Bond;

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

(D) If the Issuer defaults on the Prior Bonds or the Prior Ordinances.

Section 7.02. Enforcement. Upon the happening and continuance of any Event of Default, any Registered Owner of any Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his rights and, in particular:

(A) Bring suit for any unpaid principal or interest then due;

(B) By mandamus or other appropriate proceeding enforce all rights of the Registered Owners, including the right to require the Issuer to perform its duties under the Act and this Ordinance;

(C) Bring suit upon the Bonds;

(D) By action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Bonds; and

(E) By action or bill in equity enjoin any acts in violation of this Ordinance or the rights of the Registered Owners of the Bonds; provided that, all rights and remedies of the Registered Owners of the Refunding Bonds shall be on a parity with those of the Registered Owners of the Prior Bonds.

No remedy by the terms of this Ordinance conferred upon or reserved to the Registered Owners is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Registered Owners hereunder or now or hereafter existing at law or by statute.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or Event of Default hereunder by the Registered Owners shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereto.

Section 7.03. Appointment of Receiver. If there be any Event of Default existing and continuing, any Registered Owner shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the principal of and interest on the Bonds, the deposits into the funds and accounts hereby established as herein provided and the payment of Operating Expenses of the System and to apply such rates, rentals, fees, charges or other Revenues in conformity with the provisions of this Ordinance and the Act.

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

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

Such receiver, in the performance of the powers hereinabove conferred upon him, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby and a successor receiver appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and the Registered Owners of the Bonds issued pursuant to this Ordinance. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System, for the sole purpose of the protection of both the Issuer and the Registered Owners of the Bonds, and the curing and making good of any default under the provisions of this Ordinance, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, mortgage or otherwise dispose of any assets of the System.

Section 7.04. Restoration of Issuer and Registered Owners. In case any Registered Owner shall have proceeded to enforce any right under this Ordinance by the appointment of a

receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer and such Registered Owners shall be restored to their former positions and rights hereunder, and all rights and remedies of such Registered Owners shall continue as if no such proceedings had been taken.

## **ARTICLE VIII** **REGISTRAR, PAYING AGENT AND DEPOSITORY BANK**

Section 8.01. Appointment of Registrar, Paying Agent and Depository Bank. The Registrar, Paying Agent and Depository Bank (collectively, the "Fiduciaries") for the Refunding Bonds shall be appointed pursuant to the Supplemental Resolution. The Issuer is hereby authorized and directed to enter into an agreement with the Fiduciaries, the substantial form of which agreement is to be approved by Supplemental Resolution.

Section 8.02. Responsibilities of Fiduciaries. The recitals of fact in the Refunding Bonds shall be taken as statements of the Issuer, and the Fiduciaries shall not be responsible for their accuracy. The Fiduciaries shall not be deemed to make any representation as to, and shall not incur any liability on account of, the validity of the execution of any Refunding Bonds by the Issuer. Notwithstanding the foregoing, the Registrar shall be responsible for any representation in its Certificate of Authentication on the Refunding Bonds. The Fiduciaries and any successor thereto shall agree to perform all the duties and responsibilities spelled out in this Ordinance and any other duties and responsibilities incident thereto, all as provided by said agreement described in Section 8.01.

Section 8.03. Evidence on Which Fiduciaries May Act. Except as otherwise provided by Section 10.02, the Fiduciaries shall be protected in acting upon any notice, resolution, request, consent, order, certificate, opinion or other document believed by them to be genuine and to have been signed or presented by the proper party or parties. Whenever any Fiduciary shall deem it necessary or desirable that a fact or matter be proved or established prior to taking or suffering any action, such fact or matter, unless other evidence is specifically prescribed, may be deemed to be conclusively proved and established by a certificate of an Authorized Officer of the Issuer, but in its discretion such Fiduciary may instead accept other evidence of such fact or matter.

Section 8.04. Compensation and Expenses. The Issuer shall pay to the Fiduciaries from time to time reasonable compensation for all services, including the transfer of registration of Refunding Bonds, the first exchange of Refunding Bonds and the exchange of Refunding Bonds in the event of partial redemption, incurred in the performance of their duties hereunder.

Section 8.05. Certain Permitted Acts. The Registrar may become the owner of or may deal in Refunding Bonds as fully and with the same rights it would have if it were not Registrar. To the extent permitted by law, the Registrar may act as depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Registered Owners or effect or aid in any

reorganization growing out of the enforcement of the Refunding Bonds or this Ordinance, whether or not any such committee shall represent the Registered Owners of a majority in principal amount of the Refunding Bonds Outstanding.

Section 8.06. Resignation of Registrar. The Registrar may at any time resign and be discharged of its duties and obligations under this Ordinance by giving not less than 60 days' written notice to the Issuer and publishing in an Authorized Newspaper notice (or mailing such notice to each Registered Owner in the event all Refunding Bonds are fully registered), specifying the date when such resignation shall take effect, within 20 days after the giving of such written notice. A copy of such notice shall also be mailed to each owner of a fully registered Bond or a coupon Bond registered as to principal (other than to bearer). Such resignation shall take effect upon the day specified in such notice unless a successor shall have been previously appointed by the Issuer or bondholders, in which event such resignation shall take effect immediately.

Section 8.07. Removal. The Registrar may be removed at any time by the Issuer or by the Registered Owners of a majority in principal amount of the Refunding Bonds then Outstanding by an instrument or concurrent instruments in writing signed and duly acknowledged by the Issuer or by such Registered Owners or their attorneys duly authorized in writing and delivered to the Issuer, as the case may be. Copies of each such instrument shall be delivered by the Issuer to the Registrar.

Section 8.08. Appointment of Successor. In case at any time the Registrar shall resign or shall be removed or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or if a receiver, liquidator or conservator of the Registrar or of its property shall be appointed, or if any public officer or court shall take charge or control of the Registrar or of its property or affairs, a successor may be appointed by the Registered Owners of a majority in principal amount of the Refunding Bonds then Outstanding by an instrument or concurrent instruments in writing signed by such Registered Owners or their attorneys duly authorized in writing and delivered to the Issuer and such successor Registrar, notification thereof being given to the predecessor Registrar. Pending such appointment, the Issuer shall forthwith appoint a Registrar to fill such vacancy until a successor Registrar shall be appointed by such Registered Owners. The Issuer shall publish in an Authorized Newspaper (or mail to each Registered Owner in the event all Refunding Bonds are fully registered) notice of any such appointment within 20 days after the effective date of such appointment. A copy of such notice shall also be mailed to each owner of a fully registered Bond or a coupon Bond registered as to principal (other than to bearer). Any successor Registrar appointed by the Issuer shall, immediately and without further act, be superseded by a Registrar appointed by such Registered Owners. If in a proper case no appointment of a successor Registrar shall be made within 45 days after the Registrar shall have given to the Issuer written notice of resignation or after the occurrence of any other event requiring such appointment, the Registrar or any Registered Owner may apply to any court of competent jurisdiction to appoint a successor. Any Registrar appointed under the provisions of this section shall be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this Ordinance.

Section 8.09. Transfer of Rights and Property to Successor. Any predecessor Registrar or Paying Agent shall pay over, assign and deliver any moneys, books and records held by it and relating to the Refunding Bonds to its successor.

Section 8.10. Merger or Consolidation. Any company into which the Registrar may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party, or any company to which the Registrar or any public officer or court may sell or transfer all or substantially all of its corporate trust business, shall be the successor to such Registrar without the execution or filing of any paper or the performance of any further act; provided, however, that such company shall be a bank, trust company or national banking association meeting the requirements set forth in Section 8.08.

Section 8.11. Adoption of Authentication. In case any of the Refunding Bonds shall have been authenticated but not delivered, any successor Registrar may adopt a Certificate of Authentication and Registration executed by any predecessor Registrar and deliver such Refunding Bonds so authenticated, and, in case any Refunding Bonds shall have been prepared but not authenticated, any successor Registrar may authenticate such Refunding Bonds in the name of the predecessor Registrar or in its own name.

Section 8.12. Paying Agent and Depository Bank. The Paying Agent shall be appointed pursuant to the Supplemental Resolution. The Paying Agent must be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this Ordinance. Such alternate Paying Agent shall signify its acceptance of the duties and obligations imposed upon it pursuant hereto by executing and delivering to the Issuer a written acceptance thereof. Any successor Paying Agent shall take such actions as may be necessary to ensure that the Refunding Bonds shall be and remain DTC-eligible.

Each Paying Agent shall be entitled to payment and reimbursement for reasonable fees for its services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by such Paying Agent in connection with such services solely from moneys available therefore.

Any bank, trust company or national banking association with or into which any Paying Agent may be merged or consolidated, or to which the assets and business of such Paying Agent may be sold, shall be deemed the successor of such Paying Agent for the purposes of this Ordinance. If the position of Paying Agent shall become vacant for any reason, the Issuer shall, within 30 days thereafter, appoint a bank, trust company or national banking association located in the same city as such Paying Agent to fill such vacancy; provided, however, that, if the Issuer shall fail to appoint such Paying Agent within said period, the Bond Commission, a court of competent jurisdiction or a majority of the Registered Owners may make such appointment.

The Paying Agents shall enjoy the same protective provisions in the performance of their duties hereunder as are specified in this Article VIII with respect to the Registrar, insofar as such provisions may be applicable.

Notice of the appointment of successor or additional Paying Agents or fiscal agents shall be given in the same manner as provided by Section 8.08 hereof with respect to the appointment of a successor Registrar.

All moneys received by the Paying Agents shall, until used or applied as provided in this Ordinance, be held in trust for the purposes for which they were received.

**ARTICLE IX**  
**DEFEASANCE; DISCHARGE OF PLEDGE OF ORDINANCE**

Section 9.01. Defeasance; Discharge of Pledge of Ordinance. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Registered Owners of all Refunding Bonds the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Ordinance, then this Ordinance and the pledges of the Gross Revenues and other moneys and securities pledged hereunder, and all covenants, agreements and other obligations of the Issuer on behalf of the Registered Owners of the Refunding Bonds made hereunder, shall thereupon cease, terminate and become void and be discharged and satisfied.

Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due the respective principal of and interest on such Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Refunding Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Bond Commission or an escrow trustee either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Bond Commission or said escrow trustee at the same or earlier time shall be sufficient, to pay when due the principal of, any redemption premium on and interest due and to become due on said Refunding Bonds on and prior to the maturity date thereof, or if the Issuer irrevocably determines to redeem any of said Refunding Bonds prior to the maturity thereof, on and prior to said redemption date. Neither securities nor moneys deposited with the Bond Commission or an escrow trustee pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and interest on said Refunding Bonds; provided, that any cash received from such principal, redemption premium, if any, and interest payments on such securities deposited with the Bond Commission or said escrow trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal of and redemption premium, if any, and interest to become due on said Bonds on and prior to such maturity or redemption dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the

Bond Commission or said escrow trustee, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

## **ARTICLE X** **MISCELLANEOUS**

Section 10.01. Amendment of Ordinance. This Ordinance and any Supplemental Resolution may be amended or modified without the consent of any Registered Owner or other person, solely for the purpose of maintaining the tax-exempt status of the Refunding Bonds, provided that, in the event any of the Refunding Bonds are insured, no such amendment or modification which adversely affects the security for such Refunding Bonds or the rights of the applicable Bond Insurer for such Refunding Bonds may be effected without the written consent of such Bond Insurer. Otherwise, no materially adverse amendment or modification to this Ordinance, or of any Supplemental Resolution, may be made without the written consent of the Registered Owners of 60% in aggregate principal amount of the Refunding Bonds then Outstanding and affected thereby and the Bond Insurer, which must be filed with the Clerk of the Issuer before any such modification or amendment may be made. No such modification or amendment shall extend the maturity of or reduce the interest rate on, or otherwise alter the terms of payment of the principal of or interest on, any Series 2010 Bond without the express written consent of the Registered Owner of such Bond, nor reduce the percentage of Refunding Bonds required for consent to any such modification or amendment.

Section 10.02. Evidence of Signatures of Registered Owners and Ownership of Refunding Bonds. Any request, consent, revocation of consent or other instrument which this Ordinance may require or permit to be signed and executed by Registered Owners may be in one or more instruments of similar tenor, and shall be signed or executed by such Registered Owners in person or by their attorneys duly authorized in writing. Proof of the execution of any such instrument, or of an instrument appointing or authorizing any such attorney, shall be sufficient for any purpose of this Ordinance if made in the following manner, or in any other manner satisfactory to the Issuer or the Registrar, as the case may be, which may nevertheless in its discretion require further or other proof in cases where it deems the same desirable:

A. The fact and date of the execution by any Registered Owner or his attorney of any such instrument may be proved (i) by the certificate of a notary public or other officer authorized to take acknowledgments of deeds to be recorded in the jurisdiction in which he purports to act that the person signing such instrument acknowledged to him the execution thereof, or by the affidavit of a witness of such execution, duly sworn to before such a notary public or other officer or (ii) by the certificate, which need not be acknowledged or verified, of an officer of a bank, a trust company or a financial firm or corporation satisfactory to the Issuer or the Registrar, as the case may be, that the person signing such instrument acknowledged to such bank, trust company, firm or corporation the execution thereof.

B. The authority of a person or persons to execute any such instrument on behalf of a corporate Holder may be established without further proof if such instrument is signed by a person purporting to be the president or treasurer or a vice-president or an assistant treasurer of

such corporation with a corporate seal affixed, and is attested by a person purporting to be its secretary or assistant secretary.

C. The amount of fully registered Refunding Bonds held by a person executing any instrument as a Registered Owner, the date of his holding such Refunding Bonds and the numbers and other identification thereof, shall be confirmed by the Bond Register.

Any request, consent or other instrument executed by the Registered Owner of any Bond shall bind all future Registered Owners of such Bond in respect of anything done or suffered to be done hereunder by the Issuer or the Registrar in accordance therewith.

Section 10.03. Preservation and Inspection of Documents. To the extent allowable under law, all reports, certificates, statements and other documents received by the Registrar under the provisions of this Ordinance shall be retained in its possession and shall be available at all reasonable times for the inspection of the Issuer or any Registered Owner, and their agents and their representatives, but any such reports, certificates, statements or other documents may, at the election of the Registrar, be destroyed or otherwise disposed of at any time after such date as the pledge created by this Ordinance shall be discharged as provided in Section 9.01.

Section 10.04. Cancellation of Refunding Bonds. All Refunding Bonds purchased or paid shall, if surrendered to the Issuer, be canceled and delivered to the Registrar, or, if surrendered to the Registrar, be canceled by it. No such Refunding Bonds shall be deemed Outstanding under this Ordinance and no Refunding Bonds shall be issued in lieu thereof. All such Refunding Bonds shall be canceled and upon order of the Issuer shall be destroyed, and a certificate evidencing such destruction shall be delivered to the Issuer.

Section 10.05. Failure to Present Refunding Bonds. Anything in this Ordinance to the contrary notwithstanding, any moneys held by the Bond Commission or a Paying Agent in trust for the payment and discharge of any of the Refunding Bonds which remain unclaimed for 1 year after the date on which such Refunding Bonds have become due and payable, whether by maturity or upon call for redemption, shall at the written request of the Issuer be paid by the Bond Commission or said Paying Agent to the Issuer as its absolute property and free from trust, and the Bond Commission or said Paying Agent shall thereupon be released and discharged with respect thereto, and the Registered Owners of such Refunding Bonds shall look only to the Issuer for the payment of such Refunding Bonds; provided, however, that, before making any such payment to the Issuer, the Registrar, if so advised by the Bond Commission, or said Paying Agent shall send to the Registered Owner, at the address listed on the Bond Register, by certified mail, a notice that such moneys remain unclaimed and that, after a date named in said notice, which date shall be not less than 30 days after the date of such notice is mailed, the balance of such moneys then unclaimed will be returned to the Issuer.

Section 10.06. Notices, Demands and Requests. Unless otherwise expressly provided, all notices, demands and requests to be given or made hereunder to or by the Issuer, the Registrar, the Depository Bank, or the Original Purchaser shall be in writing and shall be properly made if sent by United States mail, postage prepaid, and addressed as follows or if

hand-delivered to the individual to whom such notice, demand or request is required to be directed as indicated below:

CITY:

City of Fairmont  
500 Quincy Street  
Fairmont, West Virginia 26554  
Attention: Mayor

REGISTRAR:

[Name and address to be set forth in the Supplemental Resolution]

PAYING AGENT:

[Name and address to be set forth in the Supplemental Resolution]

DEPOSITORY BANK:

[Name and address to be set forth in the Supplemental Resolution]

ORIGINAL PURCHASERS:

Crews & Associates, Inc.  
300 Summers Street  
Suite 930  
Charleston, West Virginia 25301

Raymond James Financial Services  
#10 Hale Street, Suite 410  
Charleston, West Virginia 25301

Any party listed above may change such address listed for it at any time upon written notice of change sent by United States mail, postage prepaid, to the other parties.

Section 10.07. No Personal Liability. No member of the Council or officer or employee of the Issuer shall be individually or personally liable for the payment of the principal of or the interest on any Series 2010 Bond, but nothing herein contained shall relieve any such member, official or employee from the performance of any official duty provided by law or this Ordinance.

Section 10.08. Law Applicable. The laws of the State shall govern the construction of this Ordinance and of all Refunding Bonds issued hereunder.

Section 10.09. Parties Interested Herein. Nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon, or give to, any person or corporation, other than the Issuer, the Registrar, the Paying Agent, the Registered Owners of the Refunding Bonds and the Original Purchaser, any right, remedy or claim under or by reason of this Ordinance. All the covenants, stipulations, promises and agreements contained in this Ordinance by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the

Registrar, the Paying Agent, the Registered Owners of the Refunding Bonds and the Original Purchaser.

Section 10.10. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Ordinance.

Section 10.11. Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 10.12. Conflicting Provisions Repealed. All ordinances, orders, resolutions or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed, provided however, that the Prior Ordinances shall remain in full force and effect so long as any of the Prior Bonds are Outstanding.

Section 10.13. 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, Clerk and members of the Council 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 10.14. Procedure on Enactment of Ordinance; Public Hearing. Upon adoption of this Ordinance, the Clerk is hereby authorized and directed to have an abstract of this Ordinance, which abstract has been determined by the Council to contain sufficient information to give notice of the contents of such Ordinance, published once each week for 2 successive weeks, with not less than six full days between each publication, the first such publication to be not less than 10 days before the date stated below for the public hearing, in the *Times West Virginia*, a newspaper published and having a general circulation in the City of Fairmont, together with a notice to all persons concerned, stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Bonds described in this Ordinance and that any person interested may appear before the Council of the Issuer at the public hearing to be had at a public meeting of the Council on March 27, 2012, at 7:00 p.m., and present protests, and that a certified copy of this Ordinance is on file with the Clerk for review by interested parties during the office hours of the Clerk. At such hearing all protests and suggestions shall be heard by the Council and it shall then take such action as it shall deem proper in the premises.

First Reading:	February 28, 2012
Second Reading:	March 13, 2012
Passed on Final Reading	
Following Public	
Hearing:	March 27, 2012

Section 10.15. Effective Date. This Ordinance shall take effect on April 26, 2012 (30 days from enactment).

Enacted the 27th day of March, 2012.

A handwritten signature in cursive script, appearing to read "William H. Budetti", is written over a horizontal line.

Mayor

CERTIFICATION

Certified a true, correct and complete copy of an Ordinance duly enacted by the Council of the CITY OF FAIRMONT at a regular meeting of the Council held on March 27, 2012, pursuant to proper notice, at which meeting a quorum was present and acting throughout, and which Ordinance was enacted following a public hearing thereon, notice of which public hearing was published once a week for two successive weeks in a newspaper published and having a general circulation in the City of Fairmont, the first publication having been not less than 10 days prior to such public hearing.

Dated: October 24, 2012

[SEAL]

  
\_\_\_\_\_  
Clerk

EXHIBIT A – FORM OF SERIES 2012 C BOND

Except as otherwise provided in the Ordinance, this global bond may be transferred, in whole but not in part, only to another nominee of DTC (as defined in the Ordinance) or to a successor of DTC or to a nominee of a successor of DTC. Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. CR- \_\_\_\_\_

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

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT (WEST VIRGINIA)  
WATER REFUNDING REVENUE BOND, SERIES 2012 C

INTEREST RATE      MATURITY DATE      BOND DATE      CUSIP NO.

REGISTERED OWNER:                      CEDE & CO.

PRINCIPAL AMOUNT:                      \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefore, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date specified above, or, if and to the extent that the City shall default in the payment of interest on any Interest Payment Date, then this Bond shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Bond surrendered for transfer or exchange shall be dated as

of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per annum specified above, semiannually, on \_\_\_\_\_ 1 and \_\_\_\_\_ 1, in each year, beginning \_\_\_\_\_ 1, 20\_\_\_\_ (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Ordinance.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by \_\_\_\_\_, \_\_\_\_\_, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each \_\_\_\_\_ 15 and \_\_\_\_\_ 15) or, in the event of a default in the payment of Bonds, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by \_\_\_\_\_, \_\_\_\_\_, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal office of the Paying Agent, in \_\_\_\_\_, West Virginia.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of \$\_\_\_\_\_ designated the "City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 C (Bank Qualified)" (the "Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated \_\_\_\_\_, 2012, the proceeds of which are to be used, along with other available funds, for the purpose of (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds, (ii) funding the Series 2012 D Bonds Reserve Account; and (iii) paying costs of issuance of the Series 2012 D Bonds and related costs. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 of the Code of West Virginia, 1931, as amended (the "Act"), and an ordinance duly enacted by the Council of the Issuer on \_\_\_\_\_, 2012, and supplemented by supplemental resolution adopted by said Council on \_\_\_\_\_, 2012, (hereinafter collectively referred to as the "Ordinance"), and is subject to all the terms and conditions of said Ordinance. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the Issuer, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the Clerk in the City of Fairmont, West Virginia.

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Ordinance and as set forth in the following lettered paragraphs:

(A) Optional Redemption. The Bonds maturing on or after \_\_\_\_\_, \_\_\_\_\_ are subject to redemption prior to maturity at the option of the Issuer on and after \_\_\_\_\_, \_\_\_\_\_, in whole or in part at any time, in such order of maturity as shall be designated to the Registrar by the Issuer and by lot within a maturity, at the following redemption prices (expressed as percentages of the principal amount of Bonds to be redeemed), plus interest accrued thereon to the date fixed for redemption:

<u>Period During Which Redeemed</u> <u>(Dates Inclusive)</u>	<u>Redemption</u> <u>Price</u>
_____ to _____	\$ _____
_____ to _____	\$ _____
_____ to _____	\$ _____

(B) Mandatory Sinking Fund Redemption. The Bonds maturing on \_\_\_\_\_, are subject to annual mandatory redemption prior to maturity by random selection on \_\_\_\_\_ of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

Bonds Maturing

\_\_\_\_\_ Year ( ) \_\_\_\_\_ Principal Amount

Bonds Maturing

\_\_\_\_\_ Year ( ) \_\_\_\_\_ Principal Amount

\_\_\_\_\_  
\* Final Maturity

If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and Maturity Dates.

Notice of any redemption of this Bond, unless waived, shall be given by the Registrar on behalf of the Issuer by mailing an official redemption notice by registered or

certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Registrar. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the redemption price therein specified, and from and after such date (unless the Issuer shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of this Bond.

There are outstanding obligations of the Issuer which will rank on a parity with the Series 2012 C Bonds as to liens, pledge, source of and security for payment, as follows: (1) a portion of the Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the "Series 1999 Bonds"); (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000 (the "Series 2008 A Bonds"); (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (Series 2010 A Bonds"); (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (the "Series 2010 B Bonds"); (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000 (the "Series 2010 C Bonds"); and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (the "Series 2010 D Bonds") (collectively, the "Prior Bonds").

The Bonds and the interest thereon are payable only from and are secured by the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Prior Bonds and from moneys in the Series 2012 C Bonds Sinking Fund and the Series 2012 C Bonds Reserve Account established under the Ordinance, and the unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose and to make the other payments required by the Ordinance. This Bond does not constitute an indebtedness of the Issuer within any constitutional or statutory provision or limitation, nor shall the Issuer be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 2012 C Bonds Sinking Fund and the Series 2012 C Bonds Reserve Account and unexpended proceeds of the Bonds. Under the Ordinance, the Issuer has covenanted and agreed to fix, establish and collect just and equitable rates or charges for the use of the services and facilities of the System and to revise the same from time to time as will always be sufficient to pay all operating expenses of the System and to leave a balance each year equal to at least 120% of the maximum amount payable in any year for principal of and interest on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds, including the Series 2012 D Bonds and the Prior 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 Ordinance. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds except for accrued interest thereon shall be applied solely to (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds, (ii) funding the Series 2012 D Bonds Reserve Account; and (iii) paying costs of issuance of the Series 2012 D Bonds and related costs, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the Registered Owners of the Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by said Issuer for the prompt payment of the principal of and interest on the Bonds of which this Bond is one.

This Bond, under the provisions of the Act is and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the Ordinance.

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

This Bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

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

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the CITY OF FAIRMONT has caused this Bond to be signed by its Mayor and, and its corporate seal to be imprinted hereon and attested by its Clerk, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

(Manual or Facsimile Signature)  
Mayor

ATTEST:

(Manual or Facsimile Signature)  
Clerk

CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION

This Bond is one of the fully registered Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto is the complete text of the opinion of Steptoe & Johnson PLLC, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Bonds.

Dated: \_\_\_\_\_, 2012.

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

By \_\_\_\_\_  
Its Authorized Officer

ASSIGNMENT

Social Security or Other Identifying Number of Assignee \_\_\_\_\_  
\_\_\_\_\_

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

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

\_\_\_\_\_

SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

EXHIBIT B – FORM OF SERIES 2012 D BOND

Except as otherwise provided in the Ordinance, this global bond may be transferred, in whole but not in part, only to another nominee of DTC (as defined in the Ordinance) or to a successor of DTC or to a nominee of a successor of DTC. Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. DR- \_\_\_\_\_

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

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT (WEST VIRGINIA)  
WATER REFUNDING REVENUE BOND, SERIES 2012 D

INTEREST RATE      MATURITY DATE      BOND DATE      CUSIP NO.

REGISTERED OWNER:                      CEDE & CO.

PRINCIPAL AMOUNT: \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefore, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date specified above, or, if and to the extent that the City shall default in the payment of interest on any Interest Payment Date, then this Bond shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Bond surrendered for transfer or exchange shall be dated as

of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per annum specified above, semiannually, on \_\_\_\_\_ 1 and \_\_\_\_\_ 1, in each year, beginning \_\_\_\_\_ 1, 20\_\_\_\_ (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Ordinance.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by \_\_\_\_\_, \_\_\_\_\_, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each \_\_\_\_\_ 15 and \_\_\_\_\_ 15) or, in the event of a default in the payment of Bonds, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by \_\_\_\_\_, \_\_\_\_\_, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal office of the Paying Agent, in \_\_\_\_\_, West Virginia.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of \$ \_\_\_\_\_ designated the "City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 D" (the "Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated \_\_\_\_\_, 2012, the proceeds of which are to be used, along with other available funds, for the purpose of (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds, (ii) paying a portion of the outstanding principal of and the prorated accrued interest on the Series 1999 Bonds; (iii) funding the Series 2012 C Bonds Reserve Account; and (iv) paying costs of issuance of the Series 2012 C Bonds and the Series 2012 D Bonds and related costs. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 of the Code of West Virginia, 1931, as amended (the "Act"), and an ordinance duly enacted by the Council of the Issuer on \_\_\_\_\_, 2012, and supplemented by supplemental resolution adopted by said Council on \_\_\_\_\_, 2012, (hereinafter collectively referred to as the "Ordinance"), and is subject to all the terms and conditions of said Ordinance. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the Issuer, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the Clerk in the City of Fairmont, West Virginia.

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Ordinance and as set forth in the following lettered paragraphs:

(A) Optional Redemption. The Bonds maturing on or after \_\_\_\_\_, \_\_\_\_\_ are subject to redemption prior to maturity at the option of the Issuer on and after \_\_\_\_\_, \_\_\_\_\_, in whole or in part at any time, in such order of maturity as shall be designated to the Registrar by the Issuer and by lot within a maturity, at the following redemption prices (expressed as percentages of the principal amount of Bonds to be redeemed), plus interest accrued thereon to the date fixed for redemption:

Period During Which Redeemed (Dates Inclusive)	Redemption Price
_____ to _____	\$ _____
_____ to _____	\$ _____
_____ to _____	\$ _____

(B) Mandatory Sinking Fund Redemption. The Bonds maturing on \_\_\_\_\_, are subject to annual mandatory redemption prior to maturity by random selection on \_\_\_\_\_ of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

Bonds Maturing

Year ( )	<u>Principal Amount</u>
----------	-------------------------

Bonds Maturing

Year ( )	<u>Principal Amount</u>
----------	-------------------------

\* Final Maturity

If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and Maturity Dates.

Notice of any redemption of this Bond, unless waived, shall be given by the Registrar on behalf of the Issuer by mailing an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Registrar. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the redemption price therein specified, and from and after such date (unless the Issuer shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of this Bond.

There are outstanding obligations of the Issuer which will rank on a parity with the Series 2012 C Bonds as to liens, pledge, source of and security for payment, as follows: (1) a portion of Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the "Series 1999 Bonds"); (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000 (the "Series 2008 A Bonds"); (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (Series 2010 A Bonds"); (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (the "Series 2010 B Bonds"); (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000 (the "Series 2010 C Bonds"); and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (the "Series 2010 D Bonds") (collectively, the "Prior Bonds"); and (7) Water Refunding Revenue Bonds, Series 2012 C, dated \_\_\_\_\_, 2012, issued simultaneously herewith in the original aggregate principal amount of \$ \_\_\_\_\_ (the "Series 2012 C Bonds")

The Bonds and the interest thereon are payable only from and are secured by the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Prior Bonds and the Series 2012 C Bonds and from moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account established under the Ordinance, and the unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose and to make the other payments required by the Ordinance. This Bond does not constitute an indebtedness of the Issuer within any constitutional or statutory provision or limitation, nor shall the Issuer be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account and unexpended proceeds of the Bonds. Under the Ordinance, the Issuer has covenanted and agreed to fix, establish and collect just and equitable rates or charges for the use of the services and facilities of the System and to

revise the same from time to time as will always be sufficient to pay all operating expenses of the System and to leave a balance each year equal to at least 120% of the maximum amount payable in any year for principal of and interest on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds, including the Series 2012 C Bonds and the Prior 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 Ordinance. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds except for accrued interest thereon shall be applied solely to (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds, (ii) paying a portion of the outstanding principal of and all accrued interest on the Series 1999 Bonds; (iii) funding the Series 2012 C Bonds Reserve Account; and (iv) paying costs of issuance of the Series 2012 C Bonds and the Series 2012 D Bonds and related costs, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the Registered Owners of the Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by said Issuer for the prompt payment of the principal of and interest on the Bonds of which this Bond is one.

This Bond, under the provisions of the Act is and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the Ordinance.

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

This Bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

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

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the CITY OF FAIRMONT has caused this Bond to be signed by its Mayor and, and its corporate seal to be imprinted hereon and attested by its Clerk, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

(Manual or Facsimile Signature)  
Mayor

ATTEST:

(Manual or Facsimile Signature)  
Clerk

CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION

This Bond is one of the fully registered Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto is the complete text of the opinion of Steptoe & Johnson PLLC, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Bonds.

Dated: \_\_\_\_\_, 2012.

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

By \_\_\_\_\_  
Its Authorized Officer

ASSIGNMENT

Social Security or Other Identifying Number of Assignee \_\_\_\_\_  
\_\_\_\_\_

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

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

\_\_\_\_\_

SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

City of Fairmont, West Virginia  
Water Refunding Revenue Bonds, Series 2012 D

**SUPPLEMENTAL PARAMETERS RESOLUTION**

SUPPLEMENTAL RESOLUTION PROVIDING PARAMETERS AS TO THE PRINCIPAL AMOUNTS, DATES, MATURITY DATES, INTEREST RATES, INTEREST AND PRINCIPAL PAYMENT DATES AND OTHER TERMS OF THE WATER REFUNDING REVENUE BONDS, SERIES 2012 D; AUTHORIZING AND APPROVING A BOND PURCHASE AGREEMENT; A COMMITMENT FOR MUNICIPAL BOND INSURANCE; THE SALE AND DELIVERY OF SUCH BONDS TO THE ORIGINAL PURCHASER; APPOINTING A REGISTRAR AND PAYING AGENT FOR SUCH BONDS; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

**WHEREAS**, the City of Fairmont (the “Issuer”) in the County of Marion, State of West Virginia, is a municipal corporation and political subdivision of said State, the governing body of which is its Council (the “Governing Body”);

**WHEREAS**, the Governing Body has duly and officially enacted on March 27, 2012 which became effective on April 26, 2012, an Ordinance (the “Ordinance”) entitled:

AN ORDINANCE AUTHORIZING THE REFUNDING OF THE ISSUER’S OUTSTANDING WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997 A; WATER REVENUE BONDS, SERIES 1998 AND A PORTION OF THE WATER REVENUE BONDS, SERIES 1999 AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, AND PAYING COSTS OF ISSUANCE AND RELATED COSTS, THROUGH THE ISSUANCE OF WATER REFUNDING REVENUE BONDS, SERIES 2012 C (BANK QUALIFIED) OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$10,000,000; AND WATER REFUNDING REVENUE BONDS, SERIES 2012 D (NON-BANK QUALIFIED) OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$30,000,000 PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TAX AND NON-ARBITRAGE CERTIFICATE, AN OFFICIAL STATEMENT, A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER DOCUMENTS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

**WHEREAS**, capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Ordinance (the “Bond Legislation”) when used herein;

**WHEREAS**, the Ordinance provides for the issuance by the Issuer of its Water Refunding Revenue Bonds, Series 2012 C in an aggregate principal amount not to exceed \$10,000,000 (the “Series 2012 C Bonds”) and Water Refunding Revenue Bonds, Series 2012 D in an aggregate principal amount not to exceed \$30,000,000 (the “Series 2012 D Bonds”), in accordance with Chapter 8, Article 19 and Chapter 13, Article 2 of the West Virginia Code of 1931, as amended (the “Act”);

**WHEREAS**, the Issuer is advised that current market conditions are such that interest savings would be realized from the current refunding of its outstanding Water Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of \$10,260,000 (the “Series 1997 Bonds”) and the Issuer has determined that it is currently in the best interest of its residents to currently refund the Series 1997 Bonds pursuant to the issuance of the Series 2012 D Bonds;

**WHEREAS**, the Issuer is advised that current market conditions are such that interest savings would be realized from the current partial refunding of its outstanding Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the “Series 1999 Bonds”) and the Issuer has determined that it is currently in the best interest of its residents to currently partially refund the Series 1999 Bonds pursuant to the issuance of the Series 2012 D Bonds;

**WHEREAS**, the Issuer is advised that current market conditions are such that interest savings would be realized from the current refunding of its outstanding Water Revenue Bonds, Series 1998, dated December 15, 1998, issued in the original aggregate principal amount of \$9,600,000 (the “Series 1998 Bonds”) and the Issuer has determined that it is currently in the best interest of its residents to currently refund the Series 1998 Bonds pursuant to the issuance of its Series 2012 D Bonds;

**WHEREAS**, the Ordinance further provided that the exact dates, amounts, maturities, interest rates, redemption provisions, purchase price and other terms of the Series 2012 D Bonds should be established by Supplemental Resolution or by Certificate of Determinations, that a Registrar, Paying Agent and Depository Bank be designated, that Bond Purchase Agreement, a Continuing Disclosure Agreement, Registrar Agreement and an Official Statement be approved and that other matters pertaining to the Series 2012 D Bonds be provided for by a Supplemental Resolution of the Governing Body or pursuant to a Certificate of Determinations, that additional covenants and provisions relating to the Series 2012 D Bonds be provided therein, and that other matters pertaining to the Series 2012 D Bonds be provided for by a supplemental resolution of this Governing Body or by Certificate of Determinations;

**WHEREAS**, the Series 2012 D Bonds are proposed to be purchased by Crews & Associates, Inc., Charleston, West Virginia and Piper Jaffray & Co., Charleston, West Virginia (collectively, the “Original Purchaser”), pursuant to a bond purchase agreement between the Original Purchaser and the Issuer, to be dated the date of execution thereof (the “Bond Purchase Agreement”);

**WHEREAS**, the Governing Body has determined that, in order to obtain the best possible savings for the City in the current interest rate environment, the Mayor shall be empowered and authorized to execute the Bond Purchase Agreement, within the parameters set forth herein, at such time as the Mayor shall determine most advantageous to the Issuer, or not at all; and

**WHEREAS**, the Governing Body deems it essential and desirable that this supplemental parameters resolution (the “Supplemental Parameters Resolution”) be adopted, that the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Tax and Non-Arbitrage Certificate and the Registrar Agreement hereinafter provided for be entered into by the Issuer, that the Official Statement relating to the Series 2012 D Bonds, hereinafter described, be approved, that the Mayor be authorized to enter into the Bond Purchase Agreement within the parameters hereby approved by the Governing Body, and that other matters relating to the Series 2012 D Bonds be herein provided for all in accordance with the Ordinance;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAIRMONT:**

SECTION 1. The Issuer hereby approves the substitution of Piper Jaffray & Co. for Raymond James Financials, Inc. as one of the purchasers of the Series 2012 D Bonds, along with Crews & Associates, Inc.

SECTION 2. For the purposes of (i) paying the entire outstanding principal balance of and all accrued interest on the Issuer’s outstanding Series 1997 Bonds; (ii) paying the entire outstanding principal balance of and all accrued interest on the Issuer’s outstanding Series 1998 Bonds; (iii) paying a portion of the outstanding principal balance of and all accrued interest on such principal, the Issuer’s outstanding Series 1999 Bonds; (iv) funding a debt service reserve account for the Series 2012 D Bonds; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs, the Governing Body of the Issuer hereby authorizes and orders the issuance of the Series 2012 D Bonds in an aggregate principal amount not to exceed \$30,000,000, provided that the Net Present Value of the savings of such refunding shall not be less than 4.0%.

SECTION 3. The Issuer instructs the Commission to transfer moneys in the Series 1999 Bonds Reserve Account to the Series 2012 D Bonds Reserve Account when the Series 1999 Bonds are paid in full. The Issuer covenants and agrees not to use the Series 1999 Bonds Reserve Account for the final payment of the Series 1999 Bonds.

SECTION 4. Pursuant to the Ordinance and the Act, this Supplemental Parameters Resolution is adopted and there are hereby authorized and ordered to be issued the Series 2012 D Bonds. The Series 2012 D Bonds shall be issued in the aggregate principal amount not to exceed \$30,000,000, bear interest at a rate not to exceed 6.0%, payable semiannually on January 1 and July 1 of each year, and shall mature on July 1 in such years, shall be dated such date, upon original issuance, shall mature in such principal amounts on such dates (with final maturity no later than July 1, 2029) shall be subject to such redemption provisions, all as shall subsequently be approved by the Mayor pursuant to the execution and delivery by the Mayor of a Certificate of Determinations with respect to the Series 2012 D Bonds, dated the date of the Bond Purchase Agreement, the form of which is attached hereto as EXHIBIT A and approved hereby (the “Certificate of Determinations”); and shall be substantially in the form set forth in the Ordinance, provided however, that the specific terms of the Series 2012 D Bonds shall be as determined by the Mayor at the time of the execution of the Bond Purchase Agreement and as approved by the Mayor in the Certificate of Determinations. All other provisions relating to the Series 2012 D Bonds shall be as provided in the Ordinance.

SECTION 5. The Bond Purchase Agreement by and between the Original Purchaser and the Issuer, substantially in the forms to be approved pursuant to the execution and delivery by the Mayor of the Certificate of Determinations, and the execution and delivery (in multiple counterparts) by the Mayor thereof shall be and the same are hereby authorized, approved, and directed. The Mayor shall execute and deliver the Bond Purchase Agreement with such changes, insertions and omissions as may be approved

by the Mayor. The execution of the Bond Purchase Agreement by the Mayor shall be conclusive evidence of any approval required by this Section, and authorization of any action required by the Bond Purchase Agreement relating to the issuance and sale of the Series 2012 D Bonds, including the payment of all necessary fees and expenses in connection therewith.

SECTION 6. Proceeds of the Series 2012 D Bonds shall be expended solely for the purposes set forth herein.

SECTION 7. The Issuer is advised and hereby finds that based upon the assumed principal amount, maturity schedule and interest rates for the Series 2012 D Bonds presented to the Issuer by the Original Purchaser, the Series 2012 D Bonds show a net present value debt service savings to the Issuer after deducting all expenses of the refunding of the Series 1997 Bonds, the Series 1998 Bonds and a portion of the Series 1999 Bonds and the costs of issuing the Series 2012 D Bonds.

SECTION 8. The Tax and Non-Arbitrage Certificate, to be dated the date of execution and delivery of the Series 2012 D Bonds (the "Tax Certificate"), and executed and delivered by the Issuer, substantially in the form to be approved pursuant to the execution and delivery by the Mayor of the Certificate of Determinations, and the execution and delivery (in multiple counterparts) by the Mayor thereof shall be and the same are hereby authorized, approved and directed. The Mayor shall execute and deliver the Tax Certificate with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Tax Certificate by the Mayor shall be conclusive evidence of any approval required by this Section.

SECTION 9. The Continuing Disclosure Agreement, to be dated the date of execution and delivery of the Series 2012 D Bonds (the "Disclosure Agreement"), by and between the Issuer and the Dissemination Agent named therein, substantially in the form to be approved pursuant to the execution and delivery by the Mayor of the Certificate of Determinations, and the execution and delivery (in multiple counterparts) by the Mayor thereof shall be and the same are hereby authorized, approved and directed. The Mayor shall execute and deliver the Disclosure Agreement with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Disclosure Agreement by the Mayor shall be conclusive evidence of any approval required by this Section.

SECTION 10. The distribution by the Original Purchaser of a Preliminary Official Statement (which is a "deemed final" official statement in accordance with SEC Rule 15c2-12), substantially in the form submitted to this meeting is hereby ratified and approved. The certificate of the Issuer relating to compliance with SEC Rule 15c2-12 and the execution and delivery thereof by the Mayor is hereby approved. The Official Statement to be substantially in the form of the Preliminary Official Statement, (with such changes, insertions and omissions as may be necessary or advisable in the opinion of the Mayor) and the distribution of counterparts or copies thereof by the Original Purchaser are hereby approved. The Mayor shall execute and deliver the Official Statement with such changes, insertions and omissions as may be approved. The execution of the Official Statement by the Mayor shall be conclusive evidence of any approval required by this Section.

SECTION 11. The Registrar Agreement by and between the Issuer and the Registrar designated herein, substantially in the form to be approved pursuant to the execution and delivery by the Mayor of the Certificate of Determinations, and the execution and delivery (in multiple counterparts) by the Mayor thereof shall be and the same are hereby authorized, approved and directed. The Mayor shall execute and deliver the Registrar Agreement with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Registrar Agreement by the Mayor shall be conclusive evidence of any approval required by this Section.

SECTION 12. The firm of Steptoe & Johnson PLLC, Charleston, West Virginia, is hereby appointed bond counsel to the Issuer in connection with the issuance of the Series 2012 D Bonds.

SECTION 13. The Issuer hereby appoints and designates the West Virginia Municipal Bond Commission, Charleston, West Virginia, as the Paying Agent for the Series 2012 D Bonds.

SECTION 14. The Issuer hereby appoints and designates WesBanco Bank, Inc., Wheeling, West Virginia, as the Depository Bank for the Series 2012 D Bonds.

SECTION 15. The Issuer hereby appoints and designates WesBanco Bank, Inc., Wheeling, West Virginia, as the Registrar.

SECTION 16. Upon approval by the Mayor, the Issuer may purchase insurance and in such case the covenants and provisions to be required by the Bond Insurer as a condition precedent to issuance of its Insurance Policy for the Bonds and shall be set forth in Exhibit A to the Certificate of Determinations.

SECTION 17. The Mayor and Clerk are hereby authorized and directed to execute and deliver such other documents and certificates, required or desirable in connection with the Series 2012 D Bonds to the end that the Series 2012 D Bonds may be delivered on a timely basis to the Original Purchaser pursuant to the Bond Purchase Agreement.

SECTION 18. The notice addresses for the Depository Bank, Paying Agent, Registrar and Original Purchaser shall be as follows:

PAYING AGENT

West Virginia Municipal Bond Commission  
1207 Quarrier Street, Suite 401  
Charleston, West Virginia 25301  
Attention: Executive Director

REGISTRAR/DEPOSITORY BANK

WesBanco Bank, Inc.  
One Bank Plaza  
Wheeling, West Virginia 26003  
Attention: Trust Department

ORIGINAL PURCHASER

Crews & Associates, Inc.  
300 Summers Street, Suite 930  
Charleston, West Virginia 25301-1631

Piper Jaffray & Co.  
405 Capitol Street, Suite 613  
Charleston, West Virginia 25301

SECTION 19. The issuance of the Series 2012 D Bonds is in the public interest, serves a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

SECTION 20. The Issuer hereby covenants and agrees that it will not permit at any time or times any of the proceeds of the Series 2012 D Bonds or any other funds of the Issuer to be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause any of the Series 2012 D Bonds or Prior Bonds to be an "arbitrage bond" as defined in Section 148 of the Code, and the regulations promulgated pursuant thereto. The Mayor of the Issuer is authorized and directed to execute and deliver such further instruments or agreements as shall be required to provide further assurances of the Issuer's compliance with this covenant.

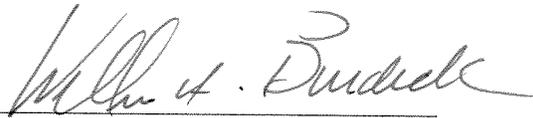
SECTION 21. The Mayor and Clerk, and all other appropriate officers and employees of the Issuer are hereby authorized, empowered and directed to do any and all things proper and necessary to cause the Series 2012 D Bonds to be duly and properly issued by the Issuer and delivered to the Original Purchaser as herein authorized and to otherwise facilitate the transaction contemplated by this Supplemental Parameters Resolution, and no further authority shall be necessary to authorize any such officers or employees to give such further assurance and do such further acts as may be legally required.

SECTION 22. This Supplemental Parameters Resolution shall be effective immediately following adoption hereof.

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Adopted this 12th day of June, 2012.

CITY OF FAIRMONT

By:   
Its: Mayor

CERTIFICATION

Certified a true copy of a Supplemental Parameters Resolution duly adopted by the Council of the CITY OF FAIRMONT on the 12th day of June, 2012.

Dated: October 24, 2012

[SEAL]

By: Janet L. Keller  
Clerk

**EXHIBIT A**  
**BOND INSURANCE COVENANTS**

## EXHIBIT B

### FORM OF CERTIFICATE OF DETERMINATIONS

City of Fairmont, West Virginia  
Water Refunding Revenue Bonds, Series 2012 D

### CERTIFICATE OF DETERMINATIONS

The undersigned, William Burdick, Mayor of the City of Fairmont (the "Issuer"), in accordance with the Supplemental Parameters Resolution adopted by the Governing Body of the Issuer on June 12, 2012 (the "Supplemental Parameters Resolution"), with respect to the Issuer's Water Refunding Revenue Bonds, Series 2012 D (the "Series 2012 D Bonds") hereby finds and determines this \_\_\_\_\_ day of \_\_\_\_\_, 2012 Ds follows:

1. The Series 2012 D Bonds shall be dated \_\_\_\_\_, 2012 shall bear interest on January 1 and July 1 of each year commencing \_\_\_\_\_ 1, 20\_\_\_\_\_.
2. The Series 2012 D Bonds shall be issued in the aggregate principal amount of \$\_\_\_\_\_. The interest rates on the Series 2012 D Bonds do not exceed 6.0%, being the maximum interest rate authorized by the Supplemental Parameters Resolution. The Net Present Value of the savings realized from such refunding is not less than 4.0%.
3. The Series 2012 D Bonds shall mature in the amounts and on the dates and shall be subject to mandatory sinking fund redemption in the amounts and on the dates set forth on Schedule 1 attached hereto and incorporated herein.
4. The Series 2012 D Bonds shall bear interest at the rates and produce the yields set forth on Schedule 1 attached hereto and incorporated herein.
5. The Series 2012 D Bonds shall be subject to optional and mandatory redemption as set forth on Schedule 3 attached hereto and incorporated herein.
6. The Series 2012 D Bonds shall be sold to Crews & Associates, Inc. and Piper Jaffray & Co. (collectively, the "Underwriter"), pursuant to the terms of the Bond Purchase Agreement by and between the Underwriter and the Issuer, at an aggregate purchase price of \$\_\_\_\_\_ (representing par value less an Underwriter's discount of \$\_\_\_\_\_ and a net original issue discount of \$\_\_\_\_\_).
7. The forms of the Bond Purchase Agreement, the Tax Certificate, the Continuing Disclosure Agreement, the Official Statement, the Rule 15c2-12 Certificate and the Registrar Agreement attached hereto are hereby approved.
8. The covenants and provisions to be required by the Bond Insurer as a condition precedent to issuance of its Insurance Policy for the Bonds set forth in Exhibit A, and incorporated herein by reference as part hereof, such covenants and provisions to be supplemental and amendatory of, and controlling with respect to the Bond Legislation and applicable to the Bonds.

The undersigned hereby certifies that the foregoing terms and conditions of the Series 2012 D Bonds are within the parameters prescribed by the Supplemental Parameters Resolution, and the Series 2012 D Bonds may be issued with such terms and conditions as authorized by the Supplemental Parameters Resolution.

WITNESS my signature on the day and year first written above.

CITY OF FAIRMONT

By: \_\_\_\_\_  
Its: Mayor

268460.00017

**SCHEDULE 1**

**SERIES 2012 D BOND TERMS**

<u>Bond No.</u>	<u>Maturity Date</u> (December 1)	<u>Principal</u> <u>Amount</u> (thousands)	<u>Interest</u> <u>Rate</u>	<u>Price or</u> <u>Yield</u>
AR-1	20__	\$ ____	____.____%	____.____%

**SCHEDULE 2**

**SERIES 2012 D BONDS REDEMPTION PROVISIONS:**

[to be inserted after pricing]

City of Fairmont, West Virginia  
Water Refunding Revenue Bonds, Series 2012 D

**SECOND SUPPLEMENTAL RESOLUTION**

SECOND SUPPLEMENTAL RESOLUTION PROVIDING TERMS AND OTHER PROVISIONS RELATING TO A COMMITMENT FOR MUNICIPAL BOND INSURANCE FOR THE WATER REFUNDING REVENUE BONDS, SERIES 2012 D; APPROVING THE FORM OF THE PRELIMINARY OFFICIAL STATEMENT AND MAKING OTHER PROVISIONS AS TO THE BONDS.

**WHEREAS**, the City of Fairmont (the “Issuer”) in the County of Marion, State of West Virginia, is a municipal corporation and political subdivision of said State, the governing body of which is its Council (the “Governing Body”);

**WHEREAS**, the Governing Body has duly and officially enacted on March 27, 2012 which became effective on April 26, 2012, an Ordinance (the “Ordinance”) entitled:

AN ORDINANCE AUTHORIZING THE REFUNDING OF THE ISSUER’S OUTSTANDING WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997 A; WATER REVENUE BONDS, SERIES 1998 AND A PORTION OF THE WATER REVENUE BONDS, SERIES 1999 AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, AND PAYING COSTS OF ISSUANCE AND RELATED COSTS, THROUGH THE ISSUANCE OF WATER REFUNDING REVENUE BONDS, SERIES 2012 C (BANK QUALIFIED) OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$10,000,000; AND WATER REFUNDING REVENUE BONDS, SERIES 2012 D (NON-BANK QUALIFIED) OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$30,000,000 PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TAX AND NON-ARBITRAGE CERTIFICATE, AN OFFICIAL STATEMENT, A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER DOCUMENTS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

**WHEREAS**, the Governing Body has duly and officially adopted on June 12, 2012, a Supplemental Parameters Resolution (the “Supplemental Parameters Resolution”) entitled:

SUPPLEMENTAL RESOLUTION PROVIDING PARAMETERS AS TO THE PRINCIPAL AMOUNTS, DATES, MATURITY DATES,

INTEREST RATES, INTEREST AND PRINCIPAL PAYMENT DATES AND OTHER TERMS OF THE WATER REFUNDING REVENUE BONDS, SERIES 2012 D; AUTHORIZING AND APPROVING A BOND PURCHASE AGREEMENT; A COMMITMENT FOR MUNICIPAL BOND INSURANCE; THE SALE AND DELIVERY OF SUCH BONDS TO THE ORIGINAL PURCHASER; APPOINTING A REGISTRAR AND PAYING AGENT FOR SUCH BONDS; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

**WHEREAS**, capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Ordinance, as supplemented (collectively, the “Bond Legislation”) when used herein;

**WHEREAS**, the Bond Legislation provides for the purchase of insurance and the covenants and provisions to be required by the Bond Insurer as a condition precedent to issuance of its Insurance Policy for the Bonds and be set forth in an exhibit to the Certificate of Determinations, attached to the Supplemental Parameters Resolution;

**WHEREAS**, the covenants and provisions required by the Bond Insurer were not available at the adoption of the Supplemental Parameters Resolution and are now available and attached hereto as Exhibit A;

**WHEREAS**, the Governing Body has been provided the form of the Preliminary Official Statement for approval; attached hereto as Exhibit B and incorporated herein by reference; and

**WHEREAS**, the Governing Body deems it essential and desirable that this second supplemental resolution (the “Second Supplemental Resolution”) be adopted, that the covenants and provisions required by the Bond Insurer are hereby approved by the Governing Body, that the Preliminary Official Statement be approved and that other matters relating to the Series 2012 D Bonds herein provided for all in accordance with the Bond Legislation;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAIRMONT:**

SECTION 1. The Issuer hereby approves the purchase of insurance and the covenants and provisions to be required by the Bond Insurer as a condition precedent to issuance of its Insurance Policy for the Bonds as shall be set forth in Exhibit A attached hereto.

SECTION 2. The Issuer hereby approves the Preliminary Official Statement as set forth in Exhibit B attached hereto.

SECTION 3. This Second Supplemental Resolution shall be effective immediately following adoption hereof.

[Remainder of Page Intentionally Left Blank]

Adopted this 12th day of September, 2012.

CITY OF FAIRMONT

By: William H. Zwick  
Its: Mayor

CERTIFICATION

Certified a true copy of a Second Supplemental Resolution duly adopted by the Council of the CITY OF FAIRMONT on the 12th day of September, 2012.

Dated: October 24, 2012

[SEAL]

By: Janet L. Keller  
Clerk

**EXHIBIT A**  
**BOND INSURANCE COVENANTS**

**ORDINANCE REQUIREMENTS**

The Ordinance shall incorporate the following requirements either in one section or article entitled "Provisions Relating to Bond Insurance" (or the like), **the provisions of which section or article shall be stated in the Ordinance to govern, notwithstanding anything to the contrary set forth in the Ordinance**, or individually in the appropriate sections:

- (a) "Insurance Policy" shall be defined as follows: "the insurance policy issued by the Insurer guaranteeing the scheduled payment of principal of and interest on the Bonds when due". "Insurer" shall be defined as follows: "Assured Guaranty Municipal Corp. , a New York stock insurance company, or any successor thereto or assignee thereof".
- (b) The prior written consent of the Insurer shall be a condition precedent to the deposit of any credit instrument provided in lieu of a cash deposit into the Debt Service Reserve Fund, if any. Notwithstanding anything to the contrary set forth in the Ordinance, amounts on deposit in the Debt Service Reserve Fund shall be applied solely to the payment of debt service due on the Bonds.
- (c) The Insurer shall be deemed to be the sole holder of the Insured Bonds for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the holders of the Bonds insured by it are entitled to take pursuant to the Ordinance pertaining to (i) defaults and remedies and (ii) the duties and obligations of the Paying Agent. Remedies granted to the Bondholders shall expressly include mandamus.
- (d) The security for the Bonds shall include a pledge of any agreement with any underlying obligor that is a source of payment for the Bonds and a default under any such agreement shall constitute an Event of Default under the Ordinance.
- (e) If acceleration is permitted under the Ordinance, the maturity of Bonds insured by the Insurer shall not be accelerated without the consent of the Insurer and in the event the maturity of the Bonds is accelerated, the Insurer may elect, in its sole discretion, to pay accelerated principal and interest accrued on such principal to the date of acceleration (to the extent unpaid by the Issuer) and the Paying Agent shall be required to accept such amounts. Upon payment of such accelerated principal and interest accrued to the acceleration date as provided above, the Insurer's obligations under the Insurance Policy with respect to such Bonds shall be fully discharged.
- (f) No grace period for a covenant default shall exceed 30 days or be extended for more than 60 days, without the prior written consent of the Insurer. No grace period shall be permitted for payment defaults.
- (g) The Insurer shall be included as a third party beneficiary to the Ordinance.

- (h) Upon the occurrence of an extraordinary optional, special or extraordinary mandatory redemption in part, the selection of Bonds to be redeemed shall be subject to the approval of the Insurer. The exercise of any provision of the Ordinance which permits the purchase of Bonds in lieu of redemption shall require the prior written approval of the Insurer if any Bond so purchased is not cancelled upon purchase.
- (i) Any amendment, supplement, modification to, or waiver of, the Ordinance or any other transaction document, including any underlying security agreement (each a "Related Document"), that requires the consent of Bondowners or adversely affects the rights and interests of the Insurer shall be subject to the prior written consent of the Insurer.
- (j) Unless the Insurer otherwise directs, upon the occurrence and continuance of an Event of Default or an event which with notice or lapse of time would constitute an Event of Default, amounts on deposit in the Construction Fund shall not be disbursed, but shall instead be applied to the payment of debt service or redemption price of the Bonds.
- (k) The rights granted to the Insurer under the Ordinance or any other Related Document to request, consent to or direct any action are rights granted to the Insurer in consideration of its issuance of the Insurance Policy. Any exercise by the Insurer of such rights is merely an exercise of the Insurer's contractual rights and shall not be construed or deemed to be taken for the benefit, or on behalf, of the Bondholders and such action does not evidence any position of the Insurer, affirmative or negative, as to whether the consent of the Bondowners or any other person is required in addition to the consent of the Insurer.
- (l) Only (1) cash, (2) non-callable direct obligations of the United States of America ("Treasuries"), (3) evidences of ownership of proportionate interests in future interest and principal payments on Treasuries held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying Treasuries are not available to any person claiming through the custodian or to whom the custodian may be obligated, (4) subject to the prior written consent of the Insurer, pre-refunded municipal obligations rated "AAA" and "Aaa" by S&P and Moody's, respectively, or (5) subject to the prior written consent of the Insurer, securities eligible for "AAA" defeasance under then existing criteria of S & P or any combination thereof, shall be used to effect defeasance of the Bonds unless the Insurer otherwise approves.

To accomplish defeasance, the Issuer shall cause to be delivered (i) a report of an independent firm of nationally recognized certified public accountants or such other accountant as shall be acceptable to the Insurer ("Accountant") verifying the sufficiency of the escrow established to pay the Bonds in full on the maturity or redemption date ("Verification"), (ii) an Escrow Deposit Agreement (which shall be acceptable in form and substance to the Insurer), (iii) an opinion of nationally recognized bond counsel to the effect that the Bonds are no longer "Outstanding" under the Ordinance and (iv) a certificate of discharge of the Paying Agent with respect to the Bonds; each Verification and defeasance opinion shall be acceptable in form and substance, and addressed, to the

Issuer, Paying Agent and Insurer. The Insurer shall be provided with final drafts of the above-referenced documentation not less than five business days prior to the funding of the escrow.

Bonds shall be deemed "Outstanding" under the Ordinance unless and until they are in fact paid and retired or the above criteria are met.

- (m) Amounts paid by the Insurer under the Insurance Policy shall not be deemed paid for purposes of the Ordinance and the Bonds relating to such payments shall remain Outstanding and continue to be due and owing until paid by the Issuer in accordance with the Ordinance. The Ordinance shall not be discharged unless all amounts due or to become due to the Insurer have been paid in full or duly provided for.
- (n) Each of the Issuer and Paying Agent covenant and agree to take such action (including, as applicable, filing of UCC financing statements and continuations thereof) as is necessary from time to time to preserve the priority of the pledge of the Trust Estate under applicable law.
- (o) Claims Upon the Insurance Policy and Payments by and to the Insurer.

If, on the third Business Day prior to the related scheduled interest payment date or principal payment date ("Payment Date") there is not on deposit with the Paying Agent, after making all transfers and deposits required under the Ordinance, moneys sufficient to pay the principal of and interest on the Bonds due on such Payment Date, the Paying Agent shall give notice to the Insurer and to its designated agent (if any) (the "Insurer's Fiscal Agent") by telephone or telecopy of the amount of such deficiency by 12:00 noon, New York City time, on such Business Day. If, on the second Business Day prior to the related Payment Date, there continues to be a deficiency in the amount available to pay the principal of and interest on the Bonds due on such Payment Date, the Paying Agent shall make a claim under the Insurance Policy and give notice to the Insurer and the Insurer's Fiscal Agent (if any) by telephone of the amount of such deficiency, and the allocation of such deficiency between the amount required to pay interest on the Bonds and the amount required to pay principal of the Bonds, confirmed in writing to the Insurer and the Insurer's Fiscal Agent by 12:00 noon, New York City time, on such second Business Day by filling in the form of Notice of Claim and Certificate delivered with the Insurance Policy.

The Paying Agent shall designate any portion of payment of principal on Bonds paid by the Insurer, whether by virtue of mandatory sinking fund redemption, maturity or other advancement of maturity, on its books as a reduction in the principal amount of Bonds registered to the then current Bondholder, whether DTC or its nominee or otherwise, and shall issue a replacement Bond to the Insurer, registered in the name of Assured Guaranty Municipal Corp., in a principal amount equal to the amount of principal so paid (without regard to authorized denominations); provided that the Paying Agent's failure to so designate any payment or issue any replacement Bond shall have no effect on the amount

of principal or interest payable by the Issuer on any Bond or the subrogation rights of the Insurer.

The Paying Agent shall keep a complete and accurate record of all funds deposited by the Insurer into the Policy Payments Account (defined below) and the allocation of such funds to payment of interest on and principal of any Bond. The Insurer shall have the right to inspect such records at reasonable times upon reasonable notice to the Paying Agent.

Upon payment of a claim under the Insurance Policy, the Paying Agent shall establish a separate special purpose trust account for the benefit of Bondholders referred to herein as the "Policy Payments Account" and over which the Paying Agent shall have exclusive control and sole right of withdrawal. The Paying Agent shall receive any amount paid under the Insurance Policy in trust on behalf of Bondholders and shall deposit any such amount in the Policy Payments Account and distribute such amount only for purposes of making the payments for which a claim was made. Such amounts shall be disbursed by the Paying Agent to Bondholders in the same manner as principal and interest payments are to be made with respect to the Bonds under the sections hereof regarding payment of Bonds. It shall not be necessary for such payments to be made by checks or wire transfers separate from the check or wire transfer used to pay debt service with other funds available to make such payments. Notwithstanding anything herein to the contrary, the Issuer agrees to pay to the Insurer (i) a sum equal to the total of all amounts paid by the Insurer under the Insurance Policy (the "Insurer Advances"); and (ii) interest on such Insurer Advances from the date paid by the Insurer until payment thereof in full, payable to the Insurer at the Late Payment Rate per annum (collectively, the "Insurer Reimbursement Amounts"). "Late Payment Rate" means the lesser of (a) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank at its principal office in The City of New York, as its prime or base lending rate (any change in such rate of interest to be effective on the date such change is announced by JPMorgan Chase Bank) plus 3%, and (ii) the then applicable highest rate of interest on the Bonds and (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Late Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. The Issuer hereby covenants and agrees that the Insurer Reimbursement Amounts are secured by a lien on and pledge of the Gross Revenues and payable from such Gross Revenues on a parity with debt service due on the Bonds.

Funds held in the Policy Payments Account shall not be invested by the Paying Agent and may not be applied to satisfy any costs, expenses or liabilities of the Paying Agent. Any funds remaining in the Policy Payments Account following a Bond payment date shall promptly be remitted to the Insurer.

- (p) The Insurer shall, to the extent it makes any payment of principal of or interest on the Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Insurance Policy. Each obligation of the Issuer to the Insurer under

the Related Documents shall survive discharge or termination of such Related Documents.

- (q) The Issuer shall pay or reimburse the Insurer any and all charges, fees, costs and expenses that the Insurer may reasonably pay or incur in connection with (i) the administration, enforcement, defense or preservation of any rights or security in any Related Document; (ii) the pursuit of any remedies under the Ordinance or any other Related Document or otherwise afforded by law or equity, (iii) any amendment, waiver or other action with respect to, or related to, the Ordinance or any other Related Document whether or not executed or completed, or (iv) any litigation or other dispute in connection with the Ordinance or any other Related Document or the transactions contemplated thereby, other than costs resulting from the failure of the Insurer to honor its obligations under the Insurance Policy. The Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect of the Ordinance or any other Related Document.
- (r) After payment of reasonable expenses of the Paying Agent, the application of funds realized upon default shall be applied to the payment of expenses of the Issuer or rebate only after the payment of past due and current debt service on the Bonds and amounts required to restore the Debt Service Reserve Fund to the Debt Service Reserve Requirement.
- (s) The Insurer shall be entitled to pay principal or interest on the Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Issuer (as such terms are defined in the Insurance Policy) and any amounts due on the Bonds as a result of acceleration of the maturity thereof in accordance with the Ordinance, whether or not the Insurer has received a Notice of Nonpayment (as such terms are defined in the Insurance Policy) or a claim upon the Insurance Policy.
- (t) The notice address of the Insurer is: Assured Guaranty Municipal Corp., 31 West 52nd Street, New York, New York 10019, Attention: Managing Director – Surveillance, Re: Policy No. \_\_\_\_, Telephone: (212) 826-0100; Telecopier: (212) 339-3556. In each case in which notice or other communication refers to an Event of Default, then a copy of such notice or other communication shall also be sent to the attention of the General Counsel and shall be marked to indicate "URGENT MATERIAL ENCLOSED."
- (u) The Insurer shall be provided with the following information by the Issuer or Paying Agent, as the case may be:
  - (i) Annual audited financial statements within 150 days after the end of the Issuer's fiscal year (together with a certification of the Issuer that it is not aware of any default or Event of Default under the Ordinance), and the Issuer's annual budget within 30 days after the approval thereof together with such other information, data or reports as the Insurer shall reasonably request from time to time;

- (ii) Notice of any draw upon the Debt Service Reserve Fund within two Business Days after knowledge thereof other than (i) withdrawals of amounts in excess of the Debt Service Reserve Requirement and (ii) withdrawals in connection with a refunding of Bonds;
- (iii) Notice of any default known to the Paying Agent or Issuer within five Business Days after knowledge thereof;
- (iv) Prior notice of the advance refunding or redemption of any of the Bonds, including the principal amount, maturities and CUSIP numbers thereof;
- (v) Notice of the resignation or removal of the Paying Agent and Bond Registrar and the appointment of, and acceptance of duties by, any successor thereto;
- (vi) Notice of the commencement of any proceeding by or against the Issuer commenced under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an "Insolvency Proceeding");
- (vii) Notice of the making of any claim in connection with any Insolvency Proceeding seeking the avoidance as a preferential transfer of any payment of principal of, or interest on, the Bonds;
- (viii) A full original transcript of all proceedings relating to the execution of any amendment, supplement, or waiver to the Related Documents; and
- (ix) All reports, notices and correspondence to be delivered to Bondholders under the terms of the Related Documents.

In addition, to the extent that the Issuer has entered into a continuing disclosure agreement, covenant or undertaking with respect to the Bonds, all information furnished pursuant to such agreements shall also be provided to the Insurer, simultaneously with the furnishing of such information.

- (v) The Insurer shall have the right to receive such additional information as it may reasonably request.
- (w) The Issuer will permit the Insurer to discuss the affairs, finances and accounts of the Issuer or any information the Insurer may reasonably request regarding the security for the Bonds with appropriate officers of the Issuer and will use commercially reasonable efforts to enable the Insurer to have access to the facilities, books and records of the Issuer on any business day upon reasonable prior notice.

- (x) The Issuer shall notify the Insurer of any failure of the Issuer to provide notices, certificates and other information under the transaction documents.
- (y) Notwithstanding satisfaction of the other conditions to the issuance of Additional Bonds set forth in the Ordinance, no such issuance may occur (1) if an Event of Default (or any event which, once all notice or grace periods have passed, would constitute an Event of Default) exists unless such default shall be cured upon such issuance and (2) unless the Debt Service Reserve Fund is fully funded at the Debt Service Reserve Requirement (including the proposed issue) upon the issuance of such Additional Bonds, in either case unless otherwise permitted by the Insurer.
- (z) In determining whether any amendment, consent, waiver or other action to be taken, or any failure to take action, under the Ordinance would adversely affect the security for the Bonds or the rights of the Bondholders, the Paying Agent shall consider the effect of any such amendment, consent, waiver, action or inaction as if there were no Insurance Policy.
- (aa) No contract shall be entered into or any action taken by which the rights of the Insurer or security for or sources of payment of the Bonds may be impaired or prejudiced in any material respect except upon obtaining the prior written consent of the Insurer.
- (bb) If the Bonds are issued for refunding purposes, there shall be delivered an opinion of Bond Counsel addressed to the Insurer (or a reliance letter relating thereto), or a certificate of discharge of the Paying Agent for the Refunded Bonds, to the effect that, upon the making of the required deposit to the escrow, the legal defeasance of the Refunded Bonds shall have occurred. If the Refunded Bonds are insured by Assured Guaranty Municipal Corp., at least three business days prior to the proposed date for delivery of the Policy with respect to the Refunding Bonds, the Insurer shall also receive (i) the verification letter, of which the Insurer shall be an addressee, by an independent firm of certified public accountants which is either nationally recognized or otherwise acceptable to the Insurer, of the adequacy of the escrow established to provide for the payment of the Refunded Bonds in accordance with the terms and provisions of the Escrow Deposit Agreement, and (ii) the form of an opinion of Bond Counsel addressed to the Insurer (or a reliance letter relating thereto) to the effect that the Escrow Deposit Agreement is a valid and binding obligation of the parties thereto, enforceable in accordance with its terms (such Escrow Deposit Agreement shall provide that no amendments are permitted without the prior written consent of the Insurer). An executed copy of each of such opinion and reliance letter, if applicable, or Paying Agent's discharge certificate, as the case may be, shall be forwarded to the Insurer prior to delivery of the Bonds.
- (cc) Any interest rate exchange agreement ("Swap Agreement") entered into by the Issuer shall meet the following conditions: (i) the Swap Agreement must be entered into to manage interest costs related to, or a hedge against (a) assets then held, or (b) debt then outstanding, or (iii) debt reasonably expected to be issued within the next twelve (12) months, and (ii) the Swap Agreement shall not contain any leverage element or multiplier component greater than 1.0x unless there is a matching hedge arrangement which

effectively off-sets the exposure from any such element or component. Unless otherwise consented to in writing by the Insurer, any uninsured net settlement, breakage or other termination amount then in effect shall be subordinate to debt service on the Bonds and on any debt on parity with the Bonds. The Issuer shall not terminate a Swap Agreement unless it demonstrates to the satisfaction of the Insurer prior to the payment of any such termination amount that such payment will not cause the Issuer to be in default under the Related Documents, including but not limited to, any monetary obligations thereunder. All counterparties or guarantors to any Swap Agreement must have a rating of at least "A-" and "A3" by Standard & Poor's ("S&P") and Moody's Investors Service ("Moody's"). If the counterparty or guarantor's rating falls below "A-" or "A3" by either S&P or Moody's, the counterparty or guarantor shall execute a credit support annex to the Swap Agreement, which credit support annex shall be acceptable to the Insurer. If the counterparty or the guarantor's long term unsecured rating falls below "Baa1" or "BBB+" by either Moody's or S&P, a replacement counterparty or guarantor, acceptable to the Insurer, shall be required.

**EXHIBIT B**  
**PRELIMINARY OFFICIAL STATEMENT**

City of Fairmont  
Water Refunding Revenue Bonds, Series 2012 D

Dated: October 24, 2012

Delivery Date: October 24, 2012

TAX AND NON-ARBITRAGE CERTIFICATE

The undersigned is the Mayor of the City of Fairmont, West Virginia (the "City").

This Tax and Non-Arbitrage Certificate (the "*Tax and Non-Arbitrage Certificate*") is executed as of October 24, 2012 for the purpose of establishing the reasonable expectations of the City as to future events regarding the \$25,555,000 Water Refunding Revenue Bonds, Series 2012 D (the "*Refunding Bonds*") and the use of the proceeds of the Refunding Bonds. The certifications and representations made herein are intended, and may be relied upon, as a certification described in Section 1.148-2(b)(2) of the Treasury Regulations. The Refunding Bonds are authorized to be executed and delivered by the Mayor of the City pursuant to an Ordinance enacted by the Council of the City on March 27, 2012, as supplemented by a Supplemental Parameters Resolution adopted by the Council of the City on June 12, 2012 and Second Supplemental Resolution adopted by the Council of the City on September 12, 2012 (collectively, the "*Ordinance*").

This Tax and Non-Arbitrage Certificate also sets forth certain terms and conditions relating to the restrictions on the use and investment of the proceeds of the Refunding Bonds in order that the interest received by the owners of the Refunding Bonds will be excluded from gross income for federal income tax purposes.

NOW, THEREFORE, the City hereby certifies, covenants, represents and agrees as follows:

**ARTICLE I**

**GENERAL**

Section 1.1 Authorization. The Refunding Bonds are being executed and delivered by the Mayor pursuant to the Ordinance and such execution and delivery was authorized by the Ordinance.

Section 1.2 Definitions. Capitalized terms used herein which are not otherwise defined herein shall have the respective meanings set forth in the Ordinance or, if not defined in the Ordinance, in Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended (the "*Code*"), and related Treasury Regulations.

“Combined Measurement Period” means the period beginning on June 19, 1997 [the date of issuance of the City’s Waterworks Refunding Revenue Bonds, Series 1997] and ending on July 1, 2029 (the maturity date of the Refunding Bonds).

Section 1.3 Purpose of the Refunding Bonds. The Refunding Bonds are being executed and delivered for and on behalf of the City for the following purposes:

- (i) to refund within 90 days of the issue date of the Refunding Bonds, all of the City’s outstanding Waterworks Refunding Revenue Bonds, Series 1997 and Water Revenue Bonds, Series 1998 and a portion of the Water Revenue Bonds, Series 1999 (collectively, the “*Bonds to be Refunded*”);
- (ii) to fund a debt service reserve account for the Refunding Bonds; and
- (iii) to pay the costs of issuing the Refunding Bonds.

Section 1.4 Reliance on Other Parties. The expectations of the City concerning certain uses of the proceeds of the Refunding Bonds and other matters are based in whole or in part on representations and certifications of other parties set forth in this Tax and Non-Arbitrage Certificate and accompanying certificates. The City is not aware of any facts or circumstances that would cause it to question the accuracy or reasonableness of any representation or certification made in this Tax and Non-Arbitrage Certificate and accompanying certificates.

Section 1.5 Private Activity Bond Representations. For purposes of determining whether the Refunding Bonds are private activity bonds, the City makes the following representations. For this purpose, the proceeds of the Refunding Bonds used for refunding purposes are treated in the same manner as the Bonds to be Refunded.

(i) Not more than five percent (5%) of the proceeds of the Refunding Bonds will be used, directly or indirectly, to replace funds which were used in any business carried on by any person other than a state or local governmental unit.

(ii) Not more than ten percent (10%) of the payment of principal of or interest on the Refunding Bonds and the Bonds to be Refunded will, during the Combined Measurement Period, be, directly or indirectly, (A) secured by any interest in (1) property used or to be used for a private business use by any person other than a state or local governmental unit, or (2) payments in respect of such property, or (B) derived from payments (whether or not to the City), in respect of property, or borrowed money, used or to be used for a private business use by any person other than a state or local governmental unit.

(iii) Not more than ten percent (10%) of the proceeds of the Refunding Bonds will be used, directly or indirectly, to make or finance loans to persons other than a state or local governmental unit.

(iv) The facilities financed with the Bonds to be Refunded will not over the Combined Measurement Period be used in such a manner that more than ten percent (10%) of the proceeds of the Refunding Bonds will be used in the trade or business of a nongovernmental person. No user of the facilities that were financed with the Bonds to be Refunded other than a state or local governmental unit has or will during the Combined Measurement Period use more than ten percent (10%) of such facilities on any basis other than the same basis as the general public, and no person other than a state or local governmental unit will be a user of more than ten

percent (10%) of such facilities as a result of (A) ownership, (B) actual or beneficial use pursuant to a lease or a management or incentive payment contract, or (C) any other similar arrangement.

Section 1.6 Single Issue for Certain Tax Purposes. No obligations are (i) being sold at substantially the same time (i.e., within fifteen (15) days) as the Refunding Bonds, (ii) being sold pursuant to the same plan of financing as the Refunding Bonds, and (iii) reasonably expected to be paid from substantially the same source of funds as the Refunding Bonds, determined without regard to guarantees from unrelated parties.

Section 1.7 Refunding Bonds not Hedge Bonds. The City reasonably expected at the time the Bonds to be Refunded were issued, to spend at least eighty-five percent (85%) of the spendable proceeds of such issue to carry out the governmental purposes for which such issue was being issued within three (3) years of the date such issue was issued. Not more than fifty percent (50%) of the Bonds to be Refunded have been or are expected to be, invested in investments having a substantially guaranteed yield for four (4) years or more.

## ARTICLE II

### ARBITRAGE

Section 2.1 Reasonable Expectations. This Article II states the reasonable expectations, statements of facts and estimates of the City with respect to the amount and use of the proceeds of the Refunding Bonds and certain other funds. On the basis of the following, it is not expected that the Refunding Bonds will be “*arbitrage bonds*” within the meaning of Section 148 of the Code.

Section 2.2 Sale Proceeds.

(a) Sources of Proceeds of the Series 2012 D Bonds. Sale proceeds of the Series 2012 D Bonds, net of accrued interest, are as follows:

Par Amount	\$25,555,000.00
Plus Original Issue Premium	<u>\$242,973.90</u>
Sale Proceeds	<u>\$25,797,973.90</u>

(b) Uses of Proceeds of the Series 2012 D Bonds and Sinking Funds and Reserve Funds from the Prior Bonds. The sale proceeds of the Series 2012 D Bonds, minus underwriters' discount (\$459,990), together with funds currently on deposit with the paying agent for the Series 1997 Bonds, Series 1998 Bonds and Series 1999 Bonds in (i) the Series 1997 Bonds Debt Service Reserve Fund in the amount of \$2,436.82, (ii) the Series 1997 Bonds Sinking Fund in the amount of \$344,225, (iii) the Series 1998 Bonds Debt Service Reserve Fund in the amount of \$1,204,542.55, (iv) the Series 1998 Bonds Sinking Fund in the amount of \$178,125.92; (v) the Series 1999 Bonds Debt Service Reserve Fund in the amount of \$1,841,696.91 (leaving a balance of \$300,000, which will fully fund the Series 1999 Bonds Debt Service Reserve Fund); and (vi) the Series 1999 Bonds Sinking Fund in the amount of \$281,454.16 (leaving a balance of \$52,500) are expected to be needed and fully expended as follows:

(i) An amount of \$171,500 will be deposited in the Refunding Bonds Costs of Issuance Fund established under the Ordinance and used to pay the costs of issuance of the Series 2012 D Bonds;

(ii) An amount of \$171,301.99 will be wired directly to Assured Guaranty to pay the bond insurance premium for the Series 2012 D Bonds;

(iii) An amount of \$459,990 will be withheld by the Underwriter to pay the Underwriter's Discount for the Series 2012 B Bonds;

(iv) Series 2012 D Bond proceeds in the amount of \$650,018.60 will be deposited on the Closing Date with the paying agent for the Series 1997 Bonds and, together with funds currently on deposit with the paying agent for the Series 1997 Bonds in the Series 1997 Bonds Debt Service Reserve Fund in the amount of \$2,436.82 and in the Series 1997 Bonds Sinking Fund in the amount of \$344,225, shall be transferred on or before October 25, 2012 for the Series 1997 Bonds to be applied on October 25, 2012 to the payment of the principal of, redemption premium and interest on the Series 1997 Bonds;

(iii) Series 2012 D Bond proceeds in the amount of \$7,012,993.57 will be deposited on the Closing Date with the paying agent for the Series 1998 Bonds and, together with funds currently on deposit with the paying agent for the Series 1998 Bonds in the Series 1998 Bonds Debt Service Reserve Fund in the amount of \$1,204,542.55 and in the Series 1998 Bonds Sinking Fund in the amount of \$178,125.92, shall be transferred on or before October 25, 2012 for the Series 1998 Bonds to be applied on October 25, 2012 to the payment of the principal of, redemption premium and interest on the Series 1998 Bonds;

(iv) Series 2012 D Bond proceeds in the amount of \$15,089,230.39 will be deposited on the Closing Date with the paying agent for the Series 1999 Bonds and, together with funds currently on deposit with the paying agent for the Series 1999 Bonds in the Series 1999 Bonds Debt Service Reserve Fund in the amount of \$1,841,696.91 and in the Series 1999 Bonds Sinking Fund in the amount of \$281,454.16, shall be transferred on or before October 25, 2012 for the Series 1999 Bonds to be applied on October 25, 2012 to the partial payment of the principal of, redemption premium and prorated interest on the Series 1999 Bonds; and

(v) An amount of \$2,240,900 will be deposited into the Series 2012 D Bonds Debt Service Reserve Fund established under the Ordinance for the Series 2012 D Bonds.

Section 2.3 No Overissuance. The total proceeds to be received from the sale of the Refunding Bonds and anticipated investment earnings thereon do not exceed the total of the amount necessary to finance the governmental purposes for which the Refunding Bonds are issued as described above.

Section 2.4 Investment of Proceeds. No portion of the Refunding Bonds is being issued solely for the purpose of investing the proceeds at a yield higher than the yield on the Refunding Bonds or to replace funds which were used, directly or indirectly, to acquire investments with a yield higher than the yield on the Refunding Bonds.

Section 2.5 Funds and Accounts.

(a) General. The following funds and accounts are created and established or continued under the Ordinance:

- (i) Revenue Fund;
- (ii) Renewal and Replacement Fund;
- (iii) Refunding Bonds Costs of Issuance Fund;
- (iv) Rebate Fund;
- (v) Series 2012 D Bonds Sinking Fund; and
- (vi) Within the Series 2012 D Bonds Sinking Fund, the Series 2012 D Bonds Reserve Account (the "Debt Service Reserve Fund"); and the Series 2012 D Bonds Redemption Account.

The City certifies that the following subsections accurately reflect various matters relating to these funds and accounts.

(b) Revenue Fund. All monies received from time to time by the City from the operation of the water system of the City are deposited into the Revenue Fund. From the Revenue Fund such monies are disbursed pursuant to Section 4.03A of the Ordinance. At no time were any proceeds of the Bonds to be Refunded on deposit in the Revenue Fund and no proceeds of the Refunding Bonds shall be deposited in the Revenue Fund.

(c) Renewal and Replacement Fund. A Renewal and Replacement Fund is created under the Ordinance, to be funded through monthly deposits of Gross Revenues. Absent an Event of Default on the Refunding Bonds, and depletion in full of the Series 2012 Bonds Reserve Accounts, the Renewal and Replacement Fund is not expected to be used for the purpose of paying debt service on the Refunding Bonds. The City is required to deposit 2 1/2% of the Gross Revenues each month into the Renewal and Replacement Fund. Disbursements may be made from the Renewal and Replacement Fund at any time to pay for replacements, repairs or improvements of the System. In the event the City experiences financial difficulties with respect to the System, it is not expected that the Renewal and Replacement Fund or any portion thereof will be available to pay debt service on the Refunding Bonds. Such monies will be invested without restriction as to yield and are not subject to rebate.

(d) Refunding Bonds Costs of Issuance Fund. As described in Section 2.2(b)(ii) hereof, a Refunding Bonds Costs of Issuance Fund is created under the Ordinance to be funded from proceeds of the Refunding Bonds in the amount of \$344,841.34, to pay costs of issuance of the Refunding Bonds. Proceeds of the Refunding Bonds deposited in the Refunding Bonds Costs of Issuance Fund generally may be invested at an unrestricted yield for a period of thirteen (13) months from the date hereof, and, thereafter, at a yield not materially higher than the yield on the Refunding Bonds. For investments of amounts described in the preceding sentence, the term "*materially higher*" means one-thousandth of one percentage point (0.001%).

(e) Rebate Fund. The City has covenanted not to use moneys of any fund or account in connection with the Refunding Bonds in a manner which will cause the Refunding Bonds to be arbitrage bonds within the meaning of Section 148 of the Code. To that end, the Rebate Fund created under the Ordinance and will be funded to the extent required either from transfers from the other funds or accounts or from the City's general funds. The Paying Agent shall deposit into the Rebate Fund any payments received in accordance with this Tax and Non-Arbitrage Certificate for purposes of paying rebate to the United States Treasury Department and so identified. The amount required to be held in the Rebate Fund at any point in time is determined pursuant to the requirements of the Code, including particularly Section

148(f) of the Code and the Treasury Regulations promulgated thereunder. Moneys in the Rebate Fund are neither pledged to nor expected to be used to pay debt service on the Refunding Bonds.

(f) Series 2012 D Bonds Sinking Fund. The Series 2012 D Bonds Sinking Fund will be used primarily to achieve a proper matching of revenues and debt service within each bond year. To the extent the Series 2012 D Bonds Sinking Fund will be used to pay debt service on the Refunding Bonds, it is expected to be depleted at least once each bond year except for a reasonable carryover amount not to exceed the greater of (i) the earnings on investment of the moneys in these accounts for the immediately preceding bond year, or (ii) one-twelfth (1/12th) of the debt service on the Refunding Bonds for the immediately preceding bond year. Amounts deposited in the Series 2012 D Bonds Sinking Fund will be expended to pay debt service on the Refunding Bonds within thirteen (13) months from the date of deposit therein pursuant to the Ordinance. The Series 2012 D Bonds Sinking Fund is expected to constitute a “*bona fide debt service fund*” within the meaning of the Treasury Regulations.

Amounts deposited into the Series 2012 D Bonds Sinking Fund for the purpose of paying current debt service on the Refunding Bonds may be invested at an unrestricted yield for a period not exceeding thirteen (13) months from the date of the first deposit of such amounts to such fund and, thereafter, at a yield not materially higher than the yield on the Refunding Bonds. For investments of amounts described in the preceding sentence, the term “*materially higher*” means one-thousandth of one percentage point (.001%). As long as the Series 2012 D Bonds Sinking Fund qualifies as bona fide debt service funds, amounts therein will not be subject to the arbitrage rebate requirements of Section 148(f) of the Code.

(g) Series 2012 D Bonds Debt Service Reserve Fund. As described in Section 2.2(b)(iii) hereof, \$2,240,900 of the proceeds of the Refunding Bonds will be deposited in the Series 2012 D Bonds Debt Service Reserve Fund to secure the Refunding Bonds. The Underwriter has certified, in Exhibit A attached hereto, that the establishment and maintenance of the Series 2012 D Bonds Debt Service Reserve Fund is a vital factor in the marketing of the Refunding Bonds. The Series 2012 D Bonds Debt Service Reserve Fund does not exceed the lesser of (i) 10% of the proceeds of the Refunding Bonds, (ii) 125% of average annual debt service on the Refunding Bonds or (iii) maximum annual debt service on the Refunding Bonds. The Series 2012 D Bonds Debt Service Reserve Fund may be invested at an unrestricted yield throughout the term of the Refunding Bonds and is subject to rebate.

(h) Series 2012 D Redemption Account. The Series 2012 D Redemption Account is created under the Ordinance. In the event moneys are deposited into the Series 2012 D Redemption Account, to the extent they are not part of a “*bona fide debt service fund*” within the meaning of the Treasury Regulations, they will, to the extent the yield thereon exceeds the yield on the Refunding Bonds, be subject to rebate. Otherwise, they will be invested without restriction as to yield and are not subject to rebate.

Section 2.6 No Replacement. Other than proceeds of the Refunding Bonds, neither the City nor any person related to it within the meaning of Section 147(a) of the Code (a “*Related Person*”) has on hand any funds which could legally and practically be used for the purposes for which the Refunding Bonds are being issued which are not pledged, budgeted, earmarked or otherwise necessary to be used for other purposes. Accordingly, no portion of the proceeds of the Refunding Bonds will be used (i) directly or indirectly to replace funds of the City or any Related Person that could be used for the purpose for which the Refunding Bonds are being issued, or (ii) to replace any proceeds of any prior issuance of obligations by the City or any Related Person.

Section 2.7 No Other Sinking or Pledged Funds. Except for the Series 2012 D Bonds Sinking Fund, no other funds or accounts have been or are expected to be established, and no moneys or property have been or are expected to be available or pledged (no matter where held or the source thereof)

which are expected to be used or available to pay, directly or indirectly, principal or interest on the Refunding Bonds, or restricted so as to give reasonable assurance of their availability for such purposes.

Section 2.8 No Abusive Arbitrage Device. The City certifies, warrants and covenants that the Refunding Bonds are not and will not be part of a transaction or series of transactions that (i) attempts to circumvent the provisions of Section 148 of the Code and related Treasury Regulations, thereby enabling the City to exploit the difference between tax-exempt and taxable interest rates to obtain a material financial advantage, and (ii) overburdens the tax-exempt bond market in any manner, including, without limitation, issuing more bonds, issuing bonds earlier, or allowing them to remain outstanding longer than is otherwise reasonably necessary to accomplish the governmental purpose of the Refunding Bonds.

Section 2.9 Temporary Period and Transferred Proceeds. The City acknowledges that pursuant to Section 149(d)(3)(A)(iv)(II) of the Code, any temporary period under Section 148(c) of the Code for the proceeds of the Bonds to be Refunded will end on the date hereof, and thus the yield on such proceeds will be restricted to a yield not materially higher than the yield on the Bonds to be Refunded.

Proceeds of each issue of the Bonds to be Refunded will become transferred proceeds of the Refunding Bonds when proceeds of the Refunding Bonds discharge the Bonds to be Refunded on October 25, 2012. When proceeds of the Bonds to be Refunded become transferred proceeds of the Refunding Bonds, the yield on such proceeds will be restricted to a yield not materially higher than the yield on the Refunding Bonds or the City will make timely yield reduction payments to reduce the yield on such proceeds to a yield not materially higher than the yield on the Refunding Bonds.

### ARTICLE III

#### CALCULATION OF YIELD

Section 3.1 Yield. For purposes of this Tax and Non-Arbitrage Certificate, yield is calculated as set forth in Section 148(h) of the Code and Sections 1.148-4 and 1.148-5 of the Treasury Regulations. Thus, yield generally means that discount rate which, when used in computing the present value of all unconditionally payable payments of principal and interest with respect to an obligation and the cost of qualified guarantees (in this case the premium paid to Assured Guaranty for its municipal bond insurance policy) paid and to be paid with respect to such obligation, produces an amount equal to the issue price of the obligation. The premium for the municipal bond insurance policy for the Refunding Bonds in the amount of \$171,301.99 will be paid directly to Assured Guaranty. The insurance policy is being treated as a "qualified guarantee," as defined in Treasury Regulations section 1.148-4(f).

The City certifies, based upon representations of the Underwriters shown in Exhibit A hereto, that the aggregate reoffering price of the Refunding Bonds is \$25,797,973.90, which represents the price at which the Refunding Bonds were sold to the public (excluding bond houses, brokers and other intermediaries) plus accrued interest. For purposes hereof, yield shall be calculated on a 360-day year basis with interest compounded semiannually. The yield on the Refunding Bonds on an aggregate basis as computed by Crews & Associates, Inc., the underwriter of the Refunding Bonds is at least 2.9079872%.

## ARTICLE IV

### REBATE

Section 4.1     Undertakings. The City has covenanted to comply with certain requirements of the Code. The City covenants that it shall retain an arbitrage consultant to determine any rebate due with respect to the Bonds to be Refunded and any rebate or yield reduction payments required to be made with respect to the Refunding Bonds. The City acknowledges that the United States Department of the Treasury has issued Treasury Regulations with respect to these undertakings, including the proper method for computing whether any rebate amount is due the United States under Section 148(f) of the Code (i.e., Sections 1.148-0 through 1.148-11, 1.149(d)-1, 1.149(g)-1, 1.150-1 and 1.150-2 of the Treasury Regulations). The City covenants that it will undertake to determine (or have determined on its behalf) what is required with respect to the rebate provisions contained in Section 148(f) of the Code from time to time and will undertake to comply with any requirements that may be applicable to the Refunding Bonds. The City will undertake the methodology described in this Article IV of this Tax and Non-Arbitrage Certificate, except to the extent inconsistent with any requirements of present or future law, regulations or future guidance issued by the United States Department of the Treasury or if the City receives an opinion of Bond Counsel.

Section 4.2     Rebate Fund. A special fund designated the "*Rebate Fund*" has been continued pursuant to the Ordinance. The City shall keep the Rebate Fund separate and apart from all other funds and moneys held by it.

Section 4.3     Recordkeeping. Detailed records with respect to each and every Nonpurpose Investment attributable to Gross Proceeds (within the meaning of Section 1.148-1(b) of the Treasury Regulations) of the Refunding Bonds must be maintained by the City, including (i) purchase date, (ii) purchase price, (iii) any accrued interest paid, (iv) face amount, (v) coupon rate, (vi) frequency of interest payments, (vii) disposition price, (viii) any accrued interest received, (ix) disposition date, and (x) broker's fees. Such detailed record keeping is required for the calculation of the rebate amount (within the meaning of Section 1.148-3 of the Treasury Regulations) which, in part, will require a determination of the difference between the actual aggregate earnings of all Nonpurpose Investments and the amount of such earnings assuming a rate of return equal to the yield on the Refunding Bonds.

Section 4.4     Rebate Amount Calculation and Payment.

(a)     The City represents, warrants and covenants that it will prepare or cause to be prepared a calculation of the rebate amount with respect to the Refunding Bonds consistent with the rules described in this Section 4.4. The City will prepare the calculation of the rebate amount (i) within fifty-five (55) days after the close of the fifth Bond Year and each fifth Bond Year thereafter so long as any Refunding Bonds remain unpaid, and (ii) within fifty-five (55) days after the first date on which there are no unpaid Refunding Bonds. Not later than fifty-five (55) days after the end of the fifth Bond Year and each fifth Bond Year thereafter so long as any Refunding Bond remains unpaid, and within fifty-five (55) days after the last Refunding Bond is paid, the City shall deposit an amount necessary to increase or decrease the sum held in the Rebate Fund to the rebate amount.

(b)     For purposes of calculating the rebate amount (i) the aggregate amount earned with respect to a Nonpurpose Investment shall be determined by assuming that the Nonpurpose Investment was acquired for an amount equal to its value at the time it becomes a Nonpurpose Investment, and (ii) the aggregate amount earned with respect to any Nonpurpose Investment shall include any unrealized gain or loss with respect to the Nonpurpose Investment on the first date when there are no unpaid Refunding Bonds or when the investment ceases to be a Nonpurpose Investment.

(c) The Paying Agent shall pay to the United States Department of the Treasury, pursuant to instructions from the City, out of designated funds (i) not later than sixty (60) days after the end of each fifth Bond Year, a payment equal to at least ninety percent (90%) of the rebate amount with respect to the Refunding Bonds, calculated as of the end of such fifth Bond Year, and (ii) not later than sixty (60) days after the first date when there are no unpaid Refunding Bonds, an amount equal to one hundred percent (100%) of the rebate amount (determined as of the first date when there are no unpaid Refunding Bonds) plus any actual or imputed earnings on such rebate amount, all as set forth in Sections 1.148-1 through 1.148-11 of the Treasury Regulations and as determined by or on behalf of the City.

(d) Each payment required to be made pursuant hereto and relating to the Refunding Bonds shall be filed with the Internal Revenue Service Center designated in the then-applicable Internal Revenue Service forms and instructions, on or before the date such payment is due and shall be accompanied by Internal Revenue Service Form 8038-T or successor form. The City must retain records of the calculations required by this Section 4.4 until six (6) years after the retirement of the last obligation of the Refunding Bonds.

#### Section 4.5 Valuation of Investments.

(a) General Rule. Except as otherwise provided in this Section 4.5, for all purposes of Section 148 of the Code, the value of an investment allocated to the Refunding Bonds (including a payment or receipt on the investment) on a date must be determined using one of the following valuation methods:

(i) Outstanding Principal Amount Method. A plain par investment (as defined in Section 1.148-1(b) of the Treasury Regulations) may be valued at its outstanding stated principal amount, plus any accrued unpaid interest on that date.

(ii) Present Value Method. An investment whose yield is fixed and determinable on the issue date (a "*fixed rate investment*") may be valued at its present value on that date. Present value of an investment is computed under the economic accrual method, using the same compounding interval and financial conventions used to compute the yield on the Refunding Bonds (*i.e.*, 360-day year basis with interest compounded semiannually). The present value of an investment on a date is equal to the present value of all unconditionally payable receipts to be received from and payments to be paid for the investment after that date, using the yield on the investment as the discount rate.

(iii) Fair Market Value Method. An investment may be valued at its fair market value on that date. The fair market value of an investment is the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's-length transaction. Fair market value generally is determined on the date on which a contract to purchase or sell the nonpurpose investment becomes binding (*i.e.*, the trade date rather than the settlement date). Except as otherwise provided in Subsections 4.5(e), (f) and (g) hereof, an investment that is not of a type traded on an established securities market, within the meaning of Section 1273 of the Code, is rebuttably presumed to be acquired or disposed of for a price that is not equal to its fair market value.

(b) Mandatory Valuation of Certain Investments at Fair Market Value. Except as provided in Subsections 4.5(c) and (d), an investment must be valued at fair market value on the date that it is first allocated to the Refunding Bonds or first ceases to be allocated to the Refunding Bonds as a consequence of a deemed acquisition or deemed disposition.

(c) Mandatory Valuation of Yield Restricted Investments at Present Value. Any yield restricted investment must be valued at present value.

(d) Transferred Proceeds Allocations, Universal Cap Allocations and Commingled Funds. Notwithstanding Subsection 4.5(b) hereof, an investment need not be valued at fair market value if it is allocated to the Refunding Bonds or ceases to be allocated to the Refunding Bonds as a result of the transferred proceeds allocation rule under Section 1.148-9(b) of the Treasury Regulations or the universal cap rule under Section 1.148-6(b)(2) of the Treasury Regulations. In addition, investments in a commingled fund (other than a bona fide debt service fund) need not be valued at fair market value unless it is a commingled fund described in Section 1.148-6(e)(5)(iii) of the Treasury Regulations.

(e) Certificates of Deposit. The purchase price of a certificate of deposit that has a fixed interest rate, a fixed payment schedule and a substantial penalty for early withdrawal will be treated as its fair market value on the purchase date if:

(i) the yield on the certificate of deposit is not less than the yield on reasonably comparable direct obligations of the United States; and

(ii) the yield on the certificate of deposit is not less than the highest yield that is published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public.

(f) Guaranteed Investment Contracts. The purchase price of a guaranteed investment contract will be treated as its fair market value on the purchase date if:

(i) the City has made (or had made on its behalf) a bona fide solicitation for a specified guaranteed investment contract and received at least three (3) bona fide bids from providers that have no material financial interest in the Refunding Bonds;

(ii) the City purchased (or had purchased on its behalf) the highest-yielding guaranteed investment contract for which a qualifying bid is made (determined net of broker's fees);

(iii) the yield on the guaranteed investment contract (determined net of broker's fees) is not less than the yield then available from the provider on reasonably comparable guaranteed investment contract, if any, offered to other persons from a source of funds other than gross proceeds of tax-exempt bonds;

(iv) the determination of the terms of the guaranteed investment contract took into account as a significant factor the City's reasonably expected drawdown schedule for the amounts to be invested, exclusive of amounts deposited in debt service funds and reasonably required reserve or replacement funds;

(v) the terms of the guaranteed investment contract, including collateral security requirements, are reasonable; and

(vi) the provider of the guaranteed investment contract certified the administrative costs that it paid (or expects to pay) to third parties in connection with the guaranteed investment contract.

(g) United States Treasury Obligations. The fair market value of a United States Treasury obligation that is purchased directly from the United States Treasury is its purchase price.

Section 4.6 Segregation of Proceeds. In order to perform the calculations required by the Code, it is necessary to track separately all of the Gross Proceeds. To that end, the City hereby agrees to establish separate funds, accounts or subaccounts or take other accounting measures in order to account fully for all Gross Proceeds.

Section 4.7 Filing Requirements. The City shall file or cause to be filed such reports or other documents with the Internal Revenue Service as may be required by the Code from time to time (e.g., Form 8038-G and Form 8038-T). The City agrees to monitor compliance with the requirements for maintaining the tax exemption of the interest on the Refunding Bonds and monitor the requirements of Section 148 of the Code in accordance with Exhibit B hereto.

## ARTICLE V

### OTHER MATTERS

Section 5.1 Authority. The undersigned are authorized representatives of the City and are acting for and on behalf of the City in executing this Tax and Non-Arbitrage Certificate. To the best of the knowledge and belief of the undersigned representatives of the City, there are no other facts, estimates or circumstances that would materially change the expectations as set forth herein, and said expectations are reasonable.

Section 5.2 Amendment and Supplementation.

(a) Notwithstanding any other provision herein, the parties hereby agree to amend, supplement or modify this Tax and Non-Arbitrage Certificate to the extent necessary to maintain the exclusion of interest on the Refunding Bonds from gross income for federal tax purposes as required pursuant to an opinion of Bond Counsel.

(b) Notwithstanding any other provision herein, if the parties request an amendment, supplementation or modification hereto, this Tax and Non-Arbitrage Certificate shall be so amended, supplemented or modified only if accompanied by an opinion of Bond Counsel.

Section 5.3 Severability. If any provision of this Tax and Non-Arbitrage Certificate (including all accompanying certificates) shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

Section 5.4 Multiple Counterparts. This Tax and Non-Arbitrage Certificate may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

Section 5.5 Survival of Defeasance. Notwithstanding anything in this Tax and Non-Arbitrage Certificate or any other provisions of the Ordinance to the contrary, the obligation to remit the rebate amount to the United States Department of the Treasury and to comply with all other requirements contained in this Tax and Non-Arbitrage Certificate shall survive the defeasance or payment in full of the Refunding Bonds.

Section 5.6 Permitted Changes; Opinion of Bond Counsel. The yield restrictions contained in Section 2.5 or any other restriction or covenant contained herein need not be observed or may be

changed if the City receives an opinion of Bond Counsel to the effect that such noncompliance or change will not adversely affect the exclusion of interest on the Refunding Bonds for federal income tax purposes.

Section 5.7 Successors and Assigns. The terms, provisions, covenants and conditions of this Tax and Non-Arbitrage Certificate shall bind and inure to the benefit of the respective successors and assigns of the City.

Section 5.8 Headings. The headings of this Tax and Non-Arbitrage Certificate are inserted for convenience only and shall not be deemed to constitute a part of this Tax and Non-Arbitrage Certificate.

DATED as of the day and year first above written.

CITY OF FAIRMONT  
WEST VIRGINIA

By: Wilbur H. Funderick  
Its: Mayor

**EXHIBIT A**

**CERTIFICATE OF UNDERWRITER**

See Transcript No. 25

## TAX COMPLIANCE POLICIES

### City of Fairmont

#### **Purpose**

Issuers of tax-exempt bonds must comply with federal tax rules pertaining to expenditure of proceeds for qualified costs, rate of expenditure, use of bond financed property, investment of proceeds in compliance with arbitrage rules, and retention of records. The following policies are intended to establish compliance by the City of Fairmont (the "*Issuer*") with these rules in connection with the issuance of the Issuer's Water Refunding Revenue Bonds, Series 2012 D (the "*Tax-Exempt Bonds*").

#### **Tax Requirements Associated with Sale and Issuance of Bonds**

Review and retention of tax documents related to the sale and issuance of Bonds will be supervised by the Mayor of the Issuer or his/her designee (the "*Oversight Officer*").

- Form 8038-G (tax exempt bonds) will be reviewed and filed not later than the 15<sup>th</sup> day of the 2nd calendar month following the quarter in which the bonds were issued. Filing of appropriate version or versions of Form 8038-G will be confirmed with bond counsel.

#### **Expenditure of Proceeds for Qualified Costs**

Expenditure of bond proceeds will be reviewed by the Oversight Officer.

- Bond proceeds will be disbursed pursuant to an approved form of requisition stating the date, amount and purpose of the disbursement.
- Requisitions must identify the financed property and certify as to the character and average economic life of the bond-financed property.
- Requisitions for costs that were paid prior to the issuance of the bonds are, in general, limited to costs paid subsequent to, or not more than 60 days prior to, the date a "declaration of intent" to reimburse the costs was adopted by the Issuer. If proceeds are used for reimbursement, a copy of the declaration will be obtained and included in the records for the Tax-Exempt Bonds, if not already part of the bond transcript.
- Requisitions will be summarized in a "final allocation" of proceeds to uses not later than 18 months after the in-service date of the financed property (and in any event not later than 5 years and 60 days after the issuance of the Tax-Exempt Bonds).

- Expenditure of proceeds will be monitored against the expectations to spend or commit 5% of net sale proceeds within 6 months, to spend 85% of net sale proceeds within 3 years, and to proceed with due diligence to complete the project and fully spend the net sale proceeds. Expected expenditure schedules, project timelines, and plans and specifications will be maintained to support expectations. Reasons for failure to meet the expected schedule will be documented and retained in the records for the Tax-Exempt Bonds.
- If the 18-month spending exception to rebate applies, expenditure of gross proceeds will be monitored against the following schedule for the arbitrage rebate exception for the issue, if applicable:
  - 15% within 6 months
  - 60% within 12 months
  - 100% within 18 months
- If the 2-year spending exception to rebate applies, expenditure of “available proceeds” will be monitored against the following schedule for the arbitrage rebate exception for construction issues if applicable:
  - 10% within 6 months
  - 45% within 12 months
  - 75% within 18 months
  - 100% within 24 months

### **Expenditure of Proceeds**

In addition to the general review of expenditures described above, expenditure of proceeds of the Tax-Exempt Bonds will be reviewed by the Oversight Officer.

- Only a small portion (5%) of the proceeds of Tax-Exempt Bonds can be used for operating expenses or other “working capital” costs. Requisitions for costs of the Project will accordingly be monitored to confirm that they are for capital costs of the Project.
- Investment earnings on sale proceeds of the Tax-Exempt Bonds will be tracked and will be requisitioned only for appropriate expenditures.

### **Use of Bond-Financed Property**

Use of bond-financed property when completed and placed in service will be reviewed by the Oversight Officer.

- Average nonexempt use of bond-financed property over the life of the issue cannot exceed 10% of the proceeds.

- Agreements with business users or non-profit organizations for lease or management or services contracts, sponsored research, naming rights or any other potential nonexempt use of bond-financed property will be reviewed prior to execution of any contract to determine if property is bond-financed.
- Agreements with business users or other non-profit organizations for lease or management or services contracts or other private business use involving bond-financed property will be tracked and aggregated with other private business uses for compliance with the 10% limit.
- No item of bond-financed property will be sold or transferred to a nonexempt party without advance arrangement of a “remedial action” under the applicable Income Tax Regulations.

### **Investments and IRS Filings**

Investment of bond proceeds in compliance with the arbitrage bond rules and rebate of arbitrage will be supervised by the Oversight Officer.

- Guaranteed investment contracts (“GIC”) will be purchased only using the three-bid “safe harbor” of applicable Income Tax Regulations, in compliance with fee limitations on GIC brokers in the Income Tax Regulations.
- Other investments will be purchased only in market transactions.
- Calculations of rebate liability will be performed annually by outside consultants.
- Rebate payments will be made with Form 8038-T no later than 60 days after (a) each fifth anniversary of the date of issuance and (b) the final retirement of the issue. Compliance with rebate requirements will be reported to the bond trustee and the issuer.
- Identify date for first rebate payment at time of issuance. Enter in records for the issue.

### **Records**

Management and retention of records related to tax-exempt bond issues will be supervised by the Oversight Officer.

- Records will be retained for the life of the bonds plus any refunding bonds plus three years. Records may be in the form of documents or electronic copies of documents, appropriately indexed to specific bond issues and compliance functions.
- Retainable records pertaining to the Tax-Exempt Bonds include transcript of documents executed in connection with the issuance of the bonds (including

authorizing resolutions, and Form 8038-G) and any amendments, and copies of rebate calculations and records of payments, including Forms 8038-T.

- Retainable records pertaining to expenditures of bond proceeds include requisitions, trustee statements and final allocation of proceeds.
- Retainable records pertaining to use of property include all agreements reviewed for nonexempt use.
- Retainable records pertaining to investments include GIC documents under the Income Tax Regulations, records of purchase and sale of other investments, and records of investment activity sufficient to permit calculation of arbitrage rebate or demonstration that no rebate is due.

### **Overall Responsibility**

Overall administration and coordination of this policy is the responsibility of the Oversight Officer.

City of Fairmont, West Virginia  
Water Refunding Revenue Bonds, Series 2012 D

**CERTIFICATE OF DETERMINATIONS**

The undersigned, William Burdick, Mayor of the City of Fairmont (the "Issuer"), in accordance with the Supplemental Parameters Resolution adopted by the Governing Body of the Issuer on June 12, 2012 (the "Supplemental Parameters Resolution"), with respect to the Issuer's Water Refunding Revenue Bonds, Series 2012 D (the "Series 2012 D Bonds") hereby finds and determines this 25th day of September, 2012 follows:

1. The Series 2012 D Bonds shall be dated October 24, 2012 and shall bear interest on January 1 and July 1 of each year commencing January 1, 2013.
2. The Series 2012 D Bonds shall be issued in the aggregate principal amount of \$25,555,000. The interest rates on the Series 2012 D Bonds do not exceed 6.0%, being the maximum interest rate authorized by the Supplemental Parameters Resolution. The Net Present Value of the savings realized from such refunding is not less than 4.0%.
3. The Series 2012 D Bonds shall mature in the amounts and on the dates and shall be subject to mandatory sinking fund redemption in the amounts and on the dates set forth on Schedule 1 attached hereto and incorporated herein.
4. The Series 2012 D Bonds shall bear interest at the rates and produce the yields set forth on Schedule 1 attached hereto and incorporated herein.
5. The Series 2012 D Bonds shall be subject to optional and mandatory redemption as set forth on Schedule 2 attached hereto and incorporated herein.
6. The Series 2012 D Bonds shall be sold to Crews & Associates, Inc. and Piper Jaffray & Co. (collectively, the "Underwriter"), pursuant to the terms of the Bond Purchase Agreement by and between the Underwriter and the Issuer, at an aggregate purchase price of \$25,337,983.90 (representing par value of \$25,555,000 less an Underwriter's discount of \$459,990 and a net original issue premium of \$242,973.90).
7. The forms of the Bond Purchase Agreement, the Tax Certificate, the Continuing Disclosure Agreement, the Official Statement, the Rule 15c2-12 Certificate and the Registrar Agreement attached hereto are hereby approved.
8. The covenants and provisions to be required by the Bond Insurer as a condition precedent to issuance of its Insurance Policy for the Bonds set forth in Exhibit A, and incorporated herein by reference as part hereof, such covenants and provisions to be supplemental and amendatory of, and controlling with respect to the Bond Legislation and applicable to the Bonds.

The undersigned hereby certifies that the foregoing terms and conditions of the Series 2012 D Bonds are within the parameters prescribed by the Supplemental Parameters Resolution, and the Series 2012 D Bonds may be issued with such terms and conditions as authorized by the Supplemental Parameters Resolution.

[Remainder of Page Intentionally Blank]

WITNESS my signature on the day and year first written above.

CITY OF FAIRMONT

By: William A. Bredenkamp  
Its: Mayor

**SCHEDULE 1**

**SERIES 2012 D BOND TERMS**

<u>Bond No.</u>	<u>Maturity Date</u> (July 1)	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Price or</u> <u>Yield</u>
DR-1	2013	\$910,000	2.00%	101.094%
DR-2	2014	\$1,400,000	2.00%	102.344%
DR-3	2015	\$1,425,000	2.00%	103.047%
DR-4	2016	\$1,455,000	2.00%	103.609%
DR-5	2017	\$1,485,000	2.00%	103.171%
DR-6	2018	\$1,510,000	3.00%	107.578%
DR-7	2019	\$1,560,000	2.00%	100.000%
DR-8	2020	\$690,000	2.25%	100.000%
DR-9	2021	\$655,000	2.50%	99.610%
DR-10	2022	\$620,000	2.70%	99.154%
DR-11	2023	\$1,795,000	2.75%	98.627%
DR-12	2024	\$1,845,000	4.00%	107.267%*
DR-13	2025	\$1,920,000	3.00%	98.954%
DR-14	2026	\$1,975,000	3.10%	98.895%
DR-15	2027	\$2,040,000	3.15%	98.262%
DR-16	2029	\$4,270,000	3.20%	98.091%

\* Priced to the optional redemption date of July 1, 2019.

## SCHEDULE 2

### SERIES 2012 D BONDS REDEMPTION PROVISIONS:

#### **Optional Redemption**

The Series 2012 D Bonds are subject to optional redemption prior to their stated maturity on or after July 1, 2019, at the option of the City at par plus accrued interest thereon to the date set for redemption.

#### **Mandatory Sinking Fund Redemption**

The Series 2012 D Bonds maturing on July 1, 2029, are subject to annual mandatory redemption prior to maturity by random selection on July 1 of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

#### Bonds Maturing 2029

Year (July 1)	Principal Amount
2028	\$2,100,000
2029*	\$2,170,000

If less than all the Series 2012 D Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and Maturity Dates.

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\*Final Maturity.

**EXHIBIT A**  
**BOND INSURANCE COVENANTS**

- (a) "Insurance Policy" shall be defined as follows: "the insurance policy issued by the Insurer guaranteeing the scheduled payment of principal of and interest on the Bonds when due". "Insurer" shall be defined as follows: "Assured Guaranty Municipal Corp., a New York stock insurance company, or any successor thereto or assignee thereof".
- (b) The prior written consent of the Insurer shall be a condition precedent to the deposit of any credit instrument provided in lieu of a cash deposit into the Debt Service Reserve Fund, if any. Notwithstanding anything to the contrary set forth in the Ordinance, amounts on deposit in the Debt Service Reserve Fund shall be applied solely to the payment of debt service due on the Bonds.
- (c) The Insurer shall be deemed to be the sole holder of the Insured Bonds for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the holders of the Bonds insured by it are entitled to take pursuant to the Ordinance pertaining to (i) defaults and remedies and (ii) the duties and obligations of the Paying Agent. Remedies granted to the Bondholders shall expressly include mandamus.
- (d) The security for the Bonds shall include a pledge of any agreement with any underlying obligor that is a source of payment for the Bonds and a default under any such agreement shall constitute an Event of Default under the Ordinance.
- (e) If acceleration is permitted under the Ordinance, the maturity of Bonds insured by the Insurer shall not be accelerated without the consent of the Insurer and in the event the maturity of the Bonds is accelerated, the Insurer may elect, in its sole discretion, to pay accelerated principal and interest accrued on such principal to the date of acceleration (to the extent unpaid by the Issuer) and the Paying Agent shall be required to accept such amounts. Upon payment of such accelerated principal and interest accrued to the acceleration date as provided above, the Insurer's obligations under the Insurance Policy with respect to such Bonds shall be fully discharged.
- (f) No grace period for a covenant default shall exceed 30 days or be extended for more than 60 days, without the prior written consent of the Insurer. No grace period shall be permitted for payment defaults.
- (g) The Insurer shall be included as a third party beneficiary to the Ordinance.
- (h) Upon the occurrence of an extraordinary optional, special or extraordinary mandatory redemption in part, the selection of Bonds to be redeemed shall be subject to the approval of the Insurer. The exercise of any provision of the Ordinance which permits the purchase of Bonds in lieu of redemption shall require the prior written approval of the Insurer if any Bond so purchased is not cancelled upon purchase.

- (i) Any amendment, supplement, modification to, or waiver of, the Ordinance or any other transaction document, including any underlying security agreement (each a "Related Document"), that requires the consent of Bondowners or adversely affects the rights and interests of the Insurer shall be subject to the prior written consent of the Insurer.
- (j) Unless the Insurer otherwise directs, upon the occurrence and continuance of an Event of Default or an event which with notice or lapse of time would constitute an Event of Default, amounts on deposit in the Construction Fund shall not be disbursed, but shall instead be applied to the payment of debt service or redemption price of the Bonds.
- (k) The rights granted to the Insurer under the Ordinance or any other Related Document to request, consent to or direct any action are rights granted to the Insurer in consideration of its issuance of the Insurance Policy. Any exercise by the Insurer of such rights is merely an exercise of the Insurer's contractual rights and shall not be construed or deemed to be taken for the benefit, or on behalf, of the Bondholders and such action does not evidence any position of the Insurer, affirmative or negative, as to whether the consent of the Bondowners or any other person is required in addition to the consent of the Insurer.
- (l) Only (1) cash, (2) non-callable direct obligations of the United States of America ("Treasuries"), (3) evidences of ownership of proportionate interests in future interest and principal payments on Treasuries held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying Treasuries are not available to any person claiming through the custodian or to whom the custodian may be obligated, (4) subject to the prior written consent of the Insurer, pre-refunded municipal obligations rated "AAA" and "Aaa" by S&P and Moody's, respectively, or (5) subject to the prior written consent of the Insurer, securities eligible for "AAA" defeasance under then existing criteria of S & P or any combination thereof, shall be used to effect defeasance of the Bonds unless the Insurer otherwise approves.

To accomplish defeasance, the Issuer shall cause to be delivered (i) a report of an independent firm of nationally recognized certified public accountants or such other accountant as shall be acceptable to the Insurer ("Accountant") verifying the sufficiency of the escrow established to pay the Bonds in full on the maturity or redemption date ("Verification"), (ii) an Escrow Deposit Agreement (which shall be acceptable in form and substance to the Insurer), (iii) an opinion of nationally recognized bond counsel to the effect that the Bonds are no longer "Outstanding" under the Ordinance and (iv) a certificate of discharge of the Paying Agent with respect to the Bonds; each Verification and defeasance opinion shall be acceptable in form and substance, and addressed, to the Issuer, Paying Agent and Insurer. The Insurer shall be provided with final drafts of the above-referenced documentation not less than five business days prior to the funding of the escrow.

Bonds shall be deemed "Outstanding" under the Ordinance unless and until they are in fact paid and retired or the above criteria are met.

- (m) Amounts paid by the Insurer under the Insurance Policy shall not be deemed paid for purposes of the Ordinance and the Bonds relating to such payments shall remain Outstanding and continue to be due and owing until paid by the Issuer in accordance with the Ordinance. The Ordinance shall not be discharged unless all amounts due or to become due to the Insurer have been paid in full or duly provided for.
- (n) Each of the Issuer and Paying Agent covenant and agree to take such action (including, as applicable, filing of UCC financing statements and continuations thereof) as is necessary from time to time to preserve the priority of the pledge of the Trust Estate under applicable law.
- (o) Claims Upon the Insurance Policy and Payments by and to the Insurer.

If, on the third Business Day prior to the related scheduled interest payment date or principal payment date ("Payment Date") there is not on deposit with the Paying Agent, after making all transfers and deposits required under the Ordinance, moneys sufficient to pay the principal of and interest on the Bonds due on such Payment Date, the Paying Agent shall give notice to the Insurer and to its designated agent (if any) (the "Insurer's Fiscal Agent") by telephone or teletype of the amount of such deficiency by 12:00 noon, New York City time, on such Business Day. If, on the second Business Day prior to the related Payment Date, there continues to be a deficiency in the amount available to pay the principal of and interest on the Bonds due on such Payment Date, the Paying Agent shall make a claim under the Insurance Policy and give notice to the Insurer and the Insurer's Fiscal Agent (if any) by telephone of the amount of such deficiency, and the allocation of such deficiency between the amount required to pay interest on the Bonds and the amount required to pay principal of the Bonds, confirmed in writing to the Insurer and the Insurer's Fiscal Agent by 12:00 noon, New York City time, on such second Business Day by filling in the form of Notice of Claim and Certificate delivered with the Insurance Policy.

The Paying Agent shall designate any portion of payment of principal on Bonds paid by the Insurer, whether by virtue of mandatory sinking fund redemption, maturity or other advancement of maturity, on its books as a reduction in the principal amount of Bonds registered to the then current Bondholder, whether DTC or its nominee or otherwise, and shall issue a replacement Bond to the Insurer, registered in the name of Assured Guaranty Municipal Corp., in a principal amount equal to the amount of principal so paid (without regard to authorized denominations); provided that the Paying Agent's failure to so designate any payment or issue any replacement Bond shall have no effect on the amount of principal or interest payable by the Issuer on any Bond or the subrogation rights of the Insurer.

The Paying Agent shall keep a complete and accurate record of all funds deposited by the Insurer into the Policy Payments Account (defined below) and the allocation of such funds to payment of interest on and principal of any Bond. The Insurer shall have the

right to inspect such records at reasonable times upon reasonable notice to the Paying Agent.

Upon payment of a claim under the Insurance Policy, the Paying Agent shall establish a separate special purpose trust account for the benefit of Bondholders referred to herein as the "Policy Payments Account" and over which the Paying Agent shall have exclusive control and sole right of withdrawal. The Paying Agent shall receive any amount paid under the Insurance Policy in trust on behalf of Bondholders and shall deposit any such amount in the Policy Payments Account and distribute such amount only for purposes of making the payments for which a claim was made. Such amounts shall be disbursed by the Paying Agent to Bondholders in the same manner as principal and interest payments are to be made with respect to the Bonds under the sections hereof regarding payment of Bonds. It shall not be necessary for such payments to be made by checks or wire transfers separate from the check or wire transfer used to pay debt service with other funds available to make such payments. Notwithstanding anything herein to the contrary, the Issuer agrees to pay to the Insurer (i) a sum equal to the total of all amounts paid by the Insurer under the Insurance Policy (the "Insurer Advances"); and (ii) interest on such Insurer Advances from the date paid by the Insurer until payment thereof in full, payable to the Insurer at the Late Payment Rate per annum (collectively, the "Insurer Reimbursement Amounts"). "Late Payment Rate" means the lesser of (a) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank at its principal office in The City of New York, as its prime or base lending rate (any change in such rate of interest to be effective on the date such change is announced by JPMorgan Chase Bank) plus 3%, and (ii) the then applicable highest rate of interest on the Bonds and (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Late Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. The Issuer hereby covenants and agrees that the Insurer Reimbursement Amounts are secured by a lien on and pledge of the Gross Revenues and payable from such Gross Revenues on a parity with debt service due on the Bonds.

Funds held in the Policy Payments Account shall not be invested by the Paying Agent and may not be applied to satisfy any costs, expenses or liabilities of the Paying Agent. Any funds remaining in the Policy Payments Account following a Bond payment date shall promptly be remitted to the Insurer.

- (p) The Insurer shall, to the extent it makes any payment of principal of or interest on the Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Insurance Policy. Each obligation of the Issuer to the Insurer under the Related Documents shall survive discharge or termination of such Related Documents.
- (q) The Issuer shall pay or reimburse the Insurer any and all charges, fees, costs and expenses that the Insurer may reasonably pay or incur in connection with (i) the administration, enforcement, defense or preservation of any rights or security in any Related Document; (ii) the pursuit of any remedies under the Ordinance or any other

Related Document or otherwise afforded by law or equity, (iii) any amendment, waiver or other action with respect to, or related to, the Ordinance or any other Related Document whether or not executed or completed, or (iv) any litigation or other dispute in connection with the Ordinance or any other Related Document or the transactions contemplated thereby, other than costs resulting from the failure of the Insurer to honor its obligations under the Insurance Policy. The Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect of the Ordinance or any other Related Document.

- (r) After payment of reasonable expenses of the Paying Agent, the application of funds realized upon default shall be applied to the payment of expenses of the Issuer or rebate only after the payment of past due and current debt service on the Bonds and amounts required to restore the Debt Service Reserve Fund to the Debt Service Reserve Requirement.
- (s) The Insurer shall be entitled to pay principal or interest on the Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Issuer (as such terms are defined in the Insurance Policy) and any amounts due on the Bonds as a result of acceleration of the maturity thereof in accordance with the Ordinance, whether or not the Insurer has received a Notice of Nonpayment (as such terms are defined in the Insurance Policy) or a claim upon the Insurance Policy.
- (t) The notice address of the Insurer is: Assured Guaranty Municipal Corp., 31 West 52nd Street, New York, New York 10019, Attention: Managing Director – Surveillance, Re: Policy No. \_\_\_\_, Telephone: (212) 826-0100; Telecopier: (212) 339-3556. In each case in which notice or other communication refers to an Event of Default, then a copy of such notice or other communication shall also be sent to the attention of the General Counsel and shall be marked to indicate "URGENT MATERIAL ENCLOSED."
- (u) The Insurer shall be provided with the following information by the Issuer or Paying Agent, as the case may be:
  - (i) Annual audited financial statements within 150 days after the end of the Issuer's fiscal year (together with a certification of the Issuer that it is not aware of any default or Event of Default under the Ordinance), and the Issuer's annual budget within 30 days after the approval thereof together with such other information, data or reports as the Insurer shall reasonably request from time to time;
  - (ii) Notice of any draw upon the Debt Service Reserve Fund within two Business Days after knowledge thereof other than (i) withdrawals of amounts in excess of the Debt Service Reserve Requirement and (ii) withdrawals in connection with a refunding of Bonds;
  - (iii) Notice of any default known to the Paying Agent or Issuer within five Business Days after knowledge thereof;

- (iv) Prior notice of the advance refunding or redemption of any of the Bonds, including the principal amount, maturities and CUSIP numbers thereof;
- (v) Notice of the resignation or removal of the Paying Agent and Bond Registrar and the appointment of, and acceptance of duties by, any successor thereto;
- (vi) Notice of the commencement of any proceeding by or against the Issuer commenced under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an "Insolvency Proceeding");
- (vii) Notice of the making of any claim in connection with any Insolvency Proceeding seeking the avoidance as a preferential transfer of any payment of principal of, or interest on, the Bonds;
- (viii) A full original transcript of all proceedings relating to the execution of any amendment, supplement, or waiver to the Related Documents; and
- (ix) All reports, notices and correspondence to be delivered to Bondholders under the terms of the Related Documents.

In addition, to the extent that the Issuer has entered into a continuing disclosure agreement, covenant or undertaking with respect to the Bonds, all information furnished pursuant to such agreements shall also be provided to the Insurer, simultaneously with the furnishing of such information.

- (v) The Insurer shall have the right to receive such additional information as it may reasonably request.
- (w) The Issuer will permit the Insurer to discuss the affairs, finances and accounts of the Issuer or any information the Insurer may reasonably request regarding the security for the Bonds with appropriate officers of the Issuer and will use commercially reasonable efforts to enable the Insurer to have access to the facilities, books and records of the Issuer on any business day upon reasonable prior notice.
- (x) The Issuer shall notify the Insurer of any failure of the Issuer to provide notices, certificates and other information under the transaction documents.
- (y) Notwithstanding satisfaction of the other conditions to the issuance of Additional Bonds set forth in the Ordinance, no such issuance may occur (1) if an Event of Default (or any event which, once all notice or grace periods have passed, would constitute an Event of Default) exists unless such default shall be cured upon such issuance and (2) unless the Debt Service Reserve Fund is fully funded at the Debt Service Reserve Requirement

(including the proposed issue) upon the issuance of such Additional Bonds, in either case unless otherwise permitted by the Insurer.

- (z) In determining whether any amendment, consent, waiver or other action to be taken, or any failure to take action, under the Ordinance would adversely affect the security for the Bonds or the rights of the Bondholders, the Paying Agent shall consider the effect of any such amendment, consent, waiver, action or inaction as if there were no Insurance Policy.
- (aa) No contract shall be entered into or any action taken by which the rights of the Insurer or security for or sources of payment of the Bonds may be impaired or prejudiced in any material respect except upon obtaining the prior written consent of the Insurer.
- (bb) If the Bonds are issued for refunding purposes, there shall be delivered an opinion of Bond Counsel addressed to the Insurer (or a reliance letter relating thereto), or a certificate of discharge of the Paying Agent for the Refunded Bonds, to the effect that, upon the making of the required deposit to the escrow, the legal defeasance of the Refunded Bonds shall have occurred. If the Refunded Bonds are insured by Assured Guaranty Municipal Corp., at least three business days prior to the proposed date for delivery of the Policy with respect to the Refunding Bonds, the Insurer shall also receive (i) the verification letter, of which the Insurer shall be an addressee, by an independent firm of certified public accountants which is either nationally recognized or otherwise acceptable to the Insurer, of the adequacy of the escrow established to provide for the payment of the Refunded Bonds in accordance with the terms and provisions of the Escrow Deposit Agreement, and (ii) the form of an opinion of Bond Counsel addressed to the Insurer (or a reliance letter relating thereto) to the effect that the Escrow Deposit Agreement is a valid and binding obligation of the parties thereto, enforceable in accordance with its terms (such Escrow Deposit Agreement shall provide that no amendments are permitted without the prior written consent of the Insurer). An executed copy of each of such opinion and reliance letter, if applicable, or Paying Agent's discharge certificate, as the case may be, shall be forwarded to the Insurer prior to delivery of the Bonds.
- (cc) Any interest rate exchange agreement ("Swap Agreement") entered into by the Issuer shall meet the following conditions: (i) the Swap Agreement must be entered into to manage interest costs related to, or a hedge against (a) assets then held, or (b) debt then outstanding, or (iii) debt reasonably expected to be issued within the next twelve (12) months, and (ii) the Swap Agreement shall not contain any leverage element or multiplier component greater than 1.0x unless there is a matching hedge arrangement which effectively off-sets the exposure from any such element or component. Unless otherwise consented to in writing by the Insurer, any uninsured net settlement, breakage or other termination amount then in effect shall be subordinate to debt service on the Bonds and on any debt on parity with the Bonds. The Issuer shall not terminate a Swap Agreement unless it demonstrates to the satisfaction of the Insurer prior to the payment of any such termination amount that such payment will not cause the Issuer to be in default under the Related Documents, including but not limited to, any monetary obligations thereunder. All counterparties or guarantors to any Swap Agreement must have a rating of at least

“A-” and “A3” by Standard & Poor’s (“S&P”) and Moody’s Investors Service (“Moody’s”). If the counterparty or guarantor’s rating falls below “A-“ or “A3” by either S&P or Moody’s, the counterparty or guarantor shall execute a credit support annex to the Swap Agreement, which credit support annex shall be acceptable to the Insurer. If the counterparty or the guarantor’s long term unsecured rating falls below “Baa1” or “BBB+” by either Moody’s or S&P, a replacement counterparty or guarantor, acceptable to the Insurer, shall be required.

City of Fairmont  
Water Refunding Revenue Bonds, Series 2012 D

CROSS-RECEIPT FOR BONDS AND BOND PROCEEDS

The undersigned Gregory B. Isaacs, Senior Managing Director of CREWS & ASSOCIATES, INC. (the "Underwriter") and William Burdick, Mayor of the City of Fairmont (the "Issuer"), for and on behalf of the Issuer, hereby certify this 24th day of October, 2012 as follows:

1. On the 24th day of October, 2012, in New York, New York, the Underwriter received the entire original issue of \$25,555,000 in aggregate principal amount of the City of Fairmont Water Refunding Revenue Bonds, Series 2012 D (the "Series 2012 D Bonds"). The Series 2012 D Bonds, as so received on original issuance, are dated October 24, 2012, are in fully registered form, are numbered from DR-1 upward in order of maturity and are registered in the name of "CEDE & CO."

2. At the time of such receipt of the Series 2012 D Bonds, they had been executed by William Burdick as Mayor of the Issuer by their manual signatures, and the official seal of the Issuer had been impressed upon each Series 2012 D Bond and attested by Janet Keller as Clerk of the Issuer by his manual signature, and had been authenticated by an authorized officer of WesBanco Bank, Inc., Wheeling, West Virginia, as Registrar.

3. The Issuer has received and hereby acknowledges receipt from the Underwriter, as the original purchaser of the Series 2012 D Bonds, of the proceeds of the Series 2012 D Bonds, as follows:

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Uses	Total	2012 D Bonds	1997 Debt Service Fund	1997 DSR Fund	1998 Debt Service Fund	1998 DSR Fund	1999 Debt Service Fund	1999 DSR Fund & GIC Termination Payment
1 Pay 1997, 1998 & portion of 1999 Bonds	26,604,723.92	22,752,242.56	344,225.00	2,436.82	178,125.92	1,204,542.55	281,454.16	1,841,696.91
2 2012 D Reserve Account	2,240,900.00	2,240,900.00	0.00	0.00	0.00	0.00	0.00	0.00
3 Underwriter's Discount	459,990.00	459,990.00	0.00	0.00	0.00	0.00	0.00	0.00
4 Costs of Issuance	173,539.35	173,539.35	0.00	0.00	0.00	0.00	0.00	0.00
5 Gross Bond Insurance Premium	171,301.99	171,301.99	0.00	0.00	0.00	0.00	0.00	0.00
6 Total Uses (lines 1 through 5)	29,650,455.26	25,797,973.90	344,225.00	2,436.82	178,125.92	1,204,542.55	281,454.16	1,841,696.91
7 Sources of Funds								
8 1997 Debt Service Fund	344,225.00	0.00	344,225.00	0.00	0.00	0.00	0.00	0.00
9 1997 DSR Fund	2,436.82	0.00	0.00	2,436.82	0.00	0.00	0.00	0.00
10 1998 Debt Service Fund	178,125.92	0.00	0.00	0.00	178,125.92	0.00	0.00	0.00
11 1998 DSR Fund	1,204,542.55	0.00	0.00	0.00	0.00	1,204,542.55	0.00	0.00
12 1999 Debt Service Fund	281,454.16	0.00	0.00	0.00	0.00	0.00	281,454.16	0.00
13 1999 DSR Fund & GIC Termination Payment	1,841,696.91	0.00	0.00	0.00	0.00	0.00	0.00	1,841,696.91
14 Reoffering Premium	242,973.90	242,973.90	0.00	0.00	0.00	0.00	0.00	0.00
15 Total Non Bond Funds (lines 8 through 14)	4,095,455.26	242,973.90	344,225.00	2,436.82	178,125.92	1,204,542.55	281,454.16	1,841,696.91
16 Par Amount of Bonds (line 6 minus line 15)	25,555,000.00							

Payment for the Series 2012 D Bonds was made in immediately available funds (federal funds wire) in the amount of \$25,797,973.90.

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WITNESS our signatures on the day and year first written above.

CREWS & ASSOCIATES, INC.

By:   
Its: Senior Managing Director

CITY OF FAIRMONT

By:   
Its: Mayor

City of Fairmont  
Water Refunding Revenue Bonds, Series 2012 D

**DIRECTION TO AUTHENTICATE AND DELIVER BONDS**

WesBanco Bank, Inc., as Registrar  
One Bank Plaza  
Wheeling, West Virginia 26003

Ladies and Gentlemen:

There are delivered to you herewith (or have previously been delivered to you) as Registrar for the above-captioned Bonds on this 24th day of October, 2012:

1. Bonds No. DR-1 through DR-16 constituting the entire original issue of the City of Fairmont Water Refunding Revenue Bonds, Series 2012 D dated October 24, 2012, in the aggregate principal amount of \$25,555,000, (the "Series 2012 D Bonds"), executed by the Mayor, and Clerk of the City of Fairmont (the "Issuer") and bearing the official seal of the Issuer. The Series 2012 D Bonds are authorized to be issued under and pursuant to an Ordinance enacted by the Issuer on March 27, 2012, as supplemented by a Supplemental Parameters Resolution adopted by the Issuer on June 12, 2012 and Second Supplemental Resolution adopted by the Issuer on September 12, 2012 (collectively, the "Ordinance") and will be registered in the name of DTC.
2. A copy of the Ordinance duly certified by the Clerk.
3. Signed, unqualified approving opinions of Steptoe & Johnson PLLC, as bond counsel with respect to the Series 2012 D Bonds.
4. A duly certified copy of the Bond Ordinance;
5. The approving legal opinion of Bond Counsel;
6. Copies of such other documents, certificates and verifications as required by the Original Purchaser.

You are hereby requested and authorized, pursuant to Section 3.12 of the Ordinance, to authenticate, register and deliver the Series 2012 D Bonds to the Depository Trust Company, New York, New York, for the account of Crews & Associates, Inc. as the Original Purchaser thereof.

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Dated the day and year first written above.

CITY OF FAIRMONT

By: William H. Rudell  
Its: Mayor

SPECIMEN

Except as otherwise provided in the Ordinance, this global bond may be transferred, in whole but not in part, only to another nominee of DTC (as defined in the Ordinance) or to a successor of DTC or to a nominee of a successor of DTC. Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. DR-1

\$910,000

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT (WEST VIRGINIA)  
WATER REFUNDING REVENUE BOND, SERIES 2012 D

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>BOND DATE</u>	<u>CUSIP NO.</u>
2.000%	07/01/2013	10/24/2012	305459 EU9

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: NINE HUNDRED TEN THOUSAND DOLLARS

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefore, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date specified above, or, if and to the extent that the City shall default in the payment of interest on any Interest Payment Date, then this Bond shall bear

interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Bond surrendered for transfer or exchange shall be dated as of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per annum specified above, semiannually, on January 1 and July 1, in each year, beginning January 1, 2013 (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Ordinance.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by the West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each December 15 and June 15) or, in the event of a default in the payment of Bonds, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by WesBanco Bank, Inc., Wheeling, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal office of the Paying Agent, in Charleston, West Virginia.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of \$25,555,000 designated the "City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 D" (the "Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated October 24, 2012, the proceeds of which are to be used, along with other available funds, for the purpose of (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and the prorated accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 and Chapter 13, Article 2 of the Code of West Virginia, 1931, as amended (the "Act"), and an ordinance duly enacted by the Council of the City on March 27, 2012, and supplemented by supplemental resolution adopted by said Council on June 12, 2012 and second supplemental resolution adopted on September 12, 2012, (hereinafter collectively referred to as the "Ordinance"), and is subject to all the terms and conditions of said Ordinance. The Ordinance provides for the issuance of additional bonds under certain conditions, and such

bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the City, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the Clerk in the City of Fairmont, West Virginia.

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Ordinance and as set forth in the following lettered paragraphs:

(A) Optional Redemption. The Series 2012 D Bonds are subject to optional redemption prior to their stated maturity on or after July 1, 2019, at the option of the City at par plus accrued interest thereon to the date set for redemption.

(B) Mandatory Sinking Fund Redemption. The Series 2012 D Bonds maturing on July 1, 2029, are subject to annual mandatory redemption prior to maturity by random selection on July 1 of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

Bonds Maturing 2029

Year (July 1)	Principal Amount
2028	\$2,100,000
2029*	\$2,170,000

\*Final Maturity.

If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and Maturity Dates.

Notice of any redemption of this Bond, unless waived, shall be given by the Registrar on behalf of the City by mailing an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Registrar. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the redemption

price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of this Bond.

There are outstanding obligations of the City which will rank on a parity with the Series 2012 D Bonds as to liens, pledge, source of and security for payment, as follows: (1) a portion of Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the "Series 1999 Bonds"); (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000 (the "Series 2008 A Bonds"); (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (Series 2010 A Bonds"); (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (the "Series 2010 B Bonds"); (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000 (the "Series 2010 C Bonds"); and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (the "Series 2010 D Bonds") (collectively, the "Prior Bonds").

The Bonds and the interest thereon are payable only from and are secured by the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Prior Bonds and from moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account established under the Ordinance, and the unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose and to make the other payments required by the Ordinance. This Bond does not constitute an indebtedness of the City within any constitutional or statutory provision or limitation, nor shall the City be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account and unexpended proceeds of the Bonds. Under the Ordinance, the City has covenanted and agreed to fix, establish and collect just and equitable rates or charges for the use of the services and facilities of the System and to revise the same from time to time as will always be sufficient: (i) to provide for all Operating Expenses of the System; (ii) so long as the Series 1999 Bonds or Series 2012 D Bonds are outstanding to leave a balance each year equal to at least 120% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds; and (iii) so long as the Series 2008 A Bonds, Series 2010 A Bonds, Series 2010 B

Bonds, Series 2010 C Bonds or Series 2010 D Bonds are outstanding to leave a balance each year equal to at least 115% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds. The City has entered into certain further covenants with the Registered Owners of the Bonds, for the terms of which reference is made to the Ordinance. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds shall be applied solely to (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and all accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the Registered Owners of the Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by said City for the prompt payment of the principal of and interest on the Bonds of which this Bond is one.

This Bond, under the provisions of the Act is and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the Ordinance.

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

This Bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

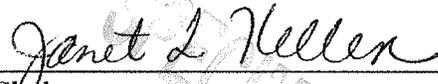
All provisions of the Ordinance, and the statutes under which this Bond is issued, shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, the CITY OF FAIRMONT has caused this Bond to be signed by its Mayor and, and its corporate seal to be imprinted hereon and attested by its Clerk, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
Clerk



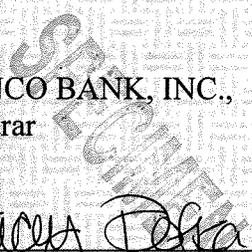
**CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION**

**This Bond is one of the fully registered Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto is the complete text of the opinion of Steptoe & Johnson PLLC, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Bonds.**

**Dated: October 24, 2012.**

**WESBANCO BANK, INC.,  
as Registrar**

By *Sandy Pella*  
**Its Authorized Officer**



(FORM OF)  
ASSIGNMENT

Social Security or Other Identifying Number of Assignee \_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_ the within Bond and does hereby irrevocably constitute and appoint

\_\_\_\_\_ to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

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

\_\_\_\_\_  
SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

SPECIMEN

Except as otherwise provided in the Ordinance, this global bond may be transferred, in whole but not in part, only to another nominee of DTC (as defined in the Ordinance) or to a successor of DTC or to a nominee of a successor of DTC. Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. DR-2

\$1,400,000

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT (WEST VIRGINIA)  
WATER REFUNDING REVENUE BOND, SERIES 2012 D

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>BOND DATE</u>	<u>CUSIP NO.</u>
2.000%	07/01/2014	10/24/2012	305459 EV7

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: ONE MILLION FOUR HUNDRED THOUSAND DOLLARS

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefore, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date specified above, or, if and to the extent that the City shall default in the payment of interest on any Interest Payment Date, then this Bond shall bear

interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Bond surrendered for transfer or exchange shall be dated as of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per annum specified above, semiannually, on January 1 and July 1, in each year, beginning January 1, 2013 (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Ordinance.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by the West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each December 15 and June 15) or, in the event of a default in the payment of Bonds, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by WesBanco Bank, Inc., Wheeling, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal office of the Paying Agent, in Charleston, West Virginia.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of \$25,555,000 designated the "City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 D" (the "Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated October 24, 2012, the proceeds of which are to be used, along with other available funds, for the purpose of (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and the prorated accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 and Chapter 13, Article 2 of the Code of West Virginia, 1931, as amended (the "Act"), and an ordinance duly enacted by the Council of the City on March 27, 2012, and supplemented by supplemental resolution adopted by said Council on June 12, 2012 and second supplemental resolution adopted on September 12, 2012, (hereinafter collectively referred to as the "Ordinance"), and is subject to all the terms and conditions of said Ordinance. The Ordinance provides for the issuance of additional bonds under certain conditions, and such

bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the City, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the Clerk in the City of Fairmont, West Virginia.

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Ordinance and as set forth in the following lettered paragraphs:

(A) Optional Redemption. The Series 2012 D Bonds are subject to optional redemption prior to their stated maturity on or after July 1, 2019, at the option of the City at par plus accrued interest thereon to the date set for redemption.

(B) Mandatory Sinking Fund Redemption. The Series 2012 D Bonds maturing on July 1, 2029, are subject to annual mandatory redemption prior to maturity by random selection on July 1 of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

Bonds Maturing 2029

Year (July 1)	Principal Amount
2028	\$2,100,000
2029*	\$2,170,000

\*Final Maturity.

If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and Maturity Dates.

Notice of any redemption of this Bond, unless waived, shall be given by the Registrar on behalf of the City by mailing an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Registrar. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the redemption

price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of this Bond.

There are outstanding obligations of the City which will rank on a parity with the Series 2012 D Bonds as to liens, pledge, source of and security for payment, as follows: (1) a portion of Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the "Series 1999 Bonds"); (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000 (the "Series 2008 A Bonds"); (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (Series 2010 A Bonds"); (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (the "Series 2010 B Bonds"); (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000 (the "Series 2010 C Bonds"); and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (the "Series 2010 D Bonds") (collectively, the "Prior Bonds").

The Bonds and the interest thereon are payable only from and are secured by the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Prior Bonds and from moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account established under the Ordinance, and the unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose and to make the other payments required by the Ordinance. This Bond does not constitute an indebtedness of the City within any constitutional or statutory provision or limitation, nor shall the City be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account and unexpended proceeds of the Bonds. Under the Ordinance, the City has covenanted and agreed to fix, establish and collect just and equitable rates or charges for the use of the services and facilities of the System and to revise the same from time to time as will always be sufficient: (i) to provide for all Operating Expenses of the System; (ii) so long as the Series 1999 Bonds or Series 2012 D Bonds are outstanding to leave a balance each year equal to at least 120% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds; and (iii) so long as the Series 2008 A Bonds, Series 2010 A Bonds, Series 2010 B

Bonds, Series 2010 C Bonds or Series 2010 D Bonds are outstanding to leave a balance each year equal to at least 115% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds. The City has entered into certain further covenants with the Registered Owners of the Bonds, for the terms of which reference is made to the Ordinance. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds shall be applied solely to (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and all accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the Registered Owners of the Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by said City for the prompt payment of the principal of and interest on the Bonds of which this Bond is one.

This Bond, under the provisions of the Act is and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the Ordinance.

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

This Bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

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

IN WITNESS WHEREOF, the CITY OF FAIRMONT has caused this Bond to be signed by its Mayor and, and its corporate seal to be imprinted hereon and attested by its Clerk, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

*William Budick*  
\_\_\_\_\_  
SPECIMEN

Mayor

ATTEST:

*Janet Keller*  
\_\_\_\_\_  
Clerk  
SPECIMEN



CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION

This Bond is one of the fully registered Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto is the complete text of the opinion of Steptoe & Johnson PLLC, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Bonds.

Dated: October 24, 2012.

WESBANCO BANK, INC.,  
as Registrar

By *Suzanne Dolka*  
Its Authorized Officer



(FORM OF)  
ASSIGNMENT

Social Security or Other Identifying Number of Assignee \_\_\_\_\_  
\_\_\_\_\_

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

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

\_\_\_\_\_  
SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

SPECIMEN

Except as otherwise provided in the Ordinance, this global bond may be transferred, in whole but not in part, only to another nominee of DTC (as defined in the Ordinance) or to a successor of DTC or to a nominee of a successor of DTC. Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. DR-3

\$1,425,000

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT (WEST VIRGINIA)  
WATER REFUNDING REVENUE BOND, SERIES 2012 D

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>BOND DATE</u>	<u>CUSIP NO.</u>
2.000%	07/01/2015	10/24/2012	305459 EW5

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: ONE MILLION FOUR HUNDRED TWENTY-FIVE THOUSAND DOLLARS

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefore, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date specified above, or, if and to the extent that the City

shall default in the payment of interest on any Interest Payment Date, then this Bond shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Bond surrendered for transfer or exchange shall be dated as of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per annum specified above, semiannually, on January 1 and July 1, in each year, beginning January 1, 2013 (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Ordinance.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by the West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each December 15 and June 15) or, in the event of a default in the payment of Bonds, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by WesBanco Bank, Inc., Wheeling, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal office of the Paying Agent, in Charleston, West Virginia.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of \$25,555,000 designated the "City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 D" (the "Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated October 24, 2012, the proceeds of which are to be used, along with other available funds, for the purpose of (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and the prorated accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 and Chapter 13, Article 2 of the Code of West Virginia, 1931, as amended (the "Act"), and an ordinance duly enacted by the Council of the City on March 27, 2012, and supplemented by supplemental resolution adopted by said Council on June 12, 2012 and second supplemental resolution adopted on September 12, 2012, (hereinafter collectively referred to as the "Ordinance"), and is subject to all the terms and conditions of said Ordinance.

The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the City, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the Clerk in the City of Fairmont, West Virginia.

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Ordinance and as set forth in the following lettered paragraphs:

(A) Optional Redemption. The Series 2012 D Bonds are subject to optional redemption prior to their stated maturity on or after July 1, 2019, at the option of the City at par plus accrued interest thereon to the date set for redemption.

(B) Mandatory Sinking Fund Redemption. The Series 2012 D Bonds maturing on July 1, 2029, are subject to annual mandatory redemption prior to maturity by random selection on July 1 of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

Bonds Maturing 2029

Year (July 1)	Principal Amount
2028	\$2,100,000
2029*	\$2,170,000

\*Final Maturity.

If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and Maturity Dates.

Notice of any redemption of this Bond, unless waived, shall be given by the Registrar on behalf of the City by mailing an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Registrar. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the redemption

price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of this Bond.

There are outstanding obligations of the City which will rank on a parity with the Series 2012 D Bonds as to liens, pledge, source of and security for payment, as follows: (1) a portion of Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the "Series 1999 Bonds"); (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000 (the "Series 2008 A Bonds"); (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (Series 2010 A Bonds"); (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (the "Series 2010 B Bonds"); (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000 (the "Series 2010 C Bonds"); and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (the "Series 2010 D Bonds") (collectively, the "Prior Bonds").

The Bonds and the interest thereon are payable only from and are secured by the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Prior Bonds and from moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account established under the Ordinance, and the unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose and to make the other payments required by the Ordinance. This Bond does not constitute an indebtedness of the City within any constitutional or statutory provision or limitation, nor shall the City be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account and unexpended proceeds of the Bonds. Under the Ordinance, the City has covenanted and agreed to fix, establish and collect just and equitable rates or charges for the use of the services and facilities of the System and to revise the same from time to time as will always be sufficient: (i) to provide for all Operating Expenses of the System; (ii) so long as the Series 1999 Bonds or Series 2012 D Bonds are outstanding to leave a balance each year equal to at least 120% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds; and (iii) so long as the Series 2008 A Bonds, Series 2010 A Bonds, Series 2010 B

Bonds, Series 2010 C Bonds or Series 2010 D Bonds are outstanding to leave a balance each year equal to at least 115% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds. The City has entered into certain further covenants with the Registered Owners of the Bonds, for the terms of which reference is made to the Ordinance. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds shall be applied solely to (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and all accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the Registered Owners of the Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by said City for the prompt payment of the principal of and interest on the Bonds of which this Bond is one.

This Bond, under the provisions of the Act is and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the Ordinance.

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

This Bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

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

IN WITNESS WHEREOF, the CITY OF FAIRMONT has caused this Bond to be signed by its Mayor and, and its corporate seal to be imprinted hereon and attested by its Clerk, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

*William H. Dwyer*  
\_\_\_\_\_  
Mayor

ATTEST:

*Amit K. Keller*  
\_\_\_\_\_  
Clerk



**CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION**

**This Bond is one of the fully registered Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto is the complete text of the opinion of Steptoe & Johnson PLLC, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Bonds.**

**Dated: October 24, 2012.**

**WESBANCO BANK, INC.,  
as Registrar**

By   
**Its Authorized Officer**

(FORM OF)  
ASSIGNMENT

Social Security or Other Identifying Number of Assignee \_\_\_\_\_  
\_\_\_\_\_

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

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

\_\_\_\_\_  
SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

SPECIMEN

Except as otherwise provided in the Ordinance, this global bond may be transferred, in whole but not in part, only to another nominee of DTC (as defined in the Ordinance) or to a successor of DTC or to a nominee of a successor of DTC. Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. DR-4

\$1,455,000

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT (WEST VIRGINIA)  
WATER REFUNDING REVENUE BOND, SERIES 2012 D

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>BOND DATE</u>	<u>CUSIP NO.</u>
2.000%	07/01/2016	10/24/2012	305459 EX3

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: ONE MILLION FOUR HUNDRED FIFTY-FIVE THOUSAND DOLLARS

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefore, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date specified above, or, if and to the extent that the City

shall default in the payment of interest on any Interest Payment Date, then this Bond shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Bond surrendered for transfer or exchange shall be dated as of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per annum specified above, semiannually, on January 1 and July 1, in each year, beginning January 1, 2013 (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Ordinance.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by the West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each December 15 and June 15) or, in the event of a default in the payment of Bonds, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by WesBanco Bank, Inc., Wheeling, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal office of the Paying Agent, in Charleston, West Virginia.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of \$25,555,000 designated the "City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 D" (the "Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated October 24, 2012, the proceeds of which are to be used, along with other available funds, for the purpose of (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and the prorated accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 and Chapter 13, Article 2 of the Code of West Virginia, 1931, as amended (the "Act"), and an ordinance duly enacted by the Council of the City on March 27, 2012, and supplemented by supplemental resolution adopted by said Council on June 12, 2012 and second supplemental resolution adopted on September 12, 2012, (hereinafter collectively referred to as the "Ordinance"), and is subject to all the terms and conditions of said Ordinance.

The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the City, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the Clerk in the City of Fairmont, West Virginia.

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Ordinance and as set forth in the following lettered paragraphs:

(A) Optional Redemption. The Series 2012 D Bonds are subject to optional redemption prior to their stated maturity on or after July 1, 2019, at the option of the City at par plus accrued interest thereon to the date set for redemption.

(B) Mandatory Sinking Fund Redemption. The Series 2012 D Bonds maturing on July 1, 2029, are subject to annual mandatory redemption prior to maturity by random selection on July 1 of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

Bonds Maturing 2029

Year (July 1)	Principal Amount
2028	\$2,100,000
2029*	\$2,170,000

\*Final Maturity.

If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and Maturity Dates.

Notice of any redemption of this Bond, unless waived, shall be given by the Registrar on behalf of the City by mailing an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Registrar. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the redemption

price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of this Bond.

There are outstanding obligations of the City which will rank on a parity with the Series 2012 D Bonds as to liens, pledge, source of and security for payment, as follows: (1) a portion of Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the "Series 1999 Bonds"); (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000 (the "Series 2008 A Bonds"); (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (Series 2010 A Bonds"); (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (the "Series 2010 B Bonds"); (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000 (the "Series 2010 C Bonds"); and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (the "Series 2010 D Bonds") (collectively, the "Prior Bonds").

The Bonds and the interest thereon are payable only from and are secured by the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Prior Bonds and from moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account established under the Ordinance, and the unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose and to make the other payments required by the Ordinance. This Bond does not constitute an indebtedness of the City within any constitutional or statutory provision or limitation, nor shall the City be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account and unexpended proceeds of the Bonds. Under the Ordinance, the City has covenanted and agreed to fix, establish and collect just and equitable rates or charges for the use of the services and facilities of the System and to revise the same from time to time as will always be sufficient: (i) to provide for all Operating Expenses of the System; (ii) so long as the Series 1999 Bonds or Series 2012 D Bonds are outstanding to leave a balance each year equal to at least 120% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds; and (iii) so long as the Series 2008 A Bonds, Series 2010 A Bonds, Series 2010 B

Bonds, Series 2010 C Bonds or Series 2010 D Bonds are outstanding to leave a balance each year equal to at least 115% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds. The City has entered into certain further covenants with the Registered Owners of the Bonds, for the terms of which reference is made to the Ordinance. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds shall be applied solely to (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and all accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the Registered Owners of the Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by said City for the prompt payment of the principal of and interest on the Bonds of which this Bond is one.

This Bond, under the provisions of the Act is and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the Ordinance.

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

This Bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

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

IN WITNESS WHEREOF, the CITY OF FAIRMONT has caused this Bond to be signed by its Mayor and, and its corporate seal to be imprinted hereon and attested by its Clerk, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

*William E. Budick*  
\_\_\_\_\_  
Mayor

ATTEST:

*Janet L. Keller*  
\_\_\_\_\_  
Clerk

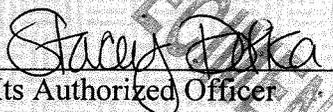


**CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION**

**This Bond is one of the fully registered Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto is the complete text of the opinion of Steptoe & Johnson PLLC, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Bonds.**

**Dated: October 24, 2012.**

**WESBANCO BANK, INC.,  
as Registrar**

By   
Its Authorized Officer

*TRACY DEROSA*

(FORM OF)  
ASSIGNMENT

Social Security or Other Identifying Number of Assignee \_\_\_\_\_  
\_\_\_\_\_

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

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

\_\_\_\_\_  
SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

SPECIMEN

Except as otherwise provided in the Ordinance, this global bond may be transferred, in whole but not in part, only to another nominee of DTC (as defined in the Ordinance) or to a successor of DTC or to a nominee of a successor of DTC. Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. DR-5

\$1,485,000

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT (WEST VIRGINIA)  
WATER REFUNDING REVENUE BOND, SERIES 2012 D

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>BOND DATE</u>	<u>CUSIP NO.</u>
2.000%	07/01/2017	10/24/2012	305459 EY1

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: ONE MILLION FOUR HUNDRED EIGHTY-FIVE THOUSAND DOLLARS

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefore, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date specified above, or, if and to the extent that the City

shall default in the payment of interest on any Interest Payment Date, then this Bond shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Bond surrendered for transfer or exchange shall be dated as of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per annum specified above, semiannually, on January 1 and July 1, in each year, beginning January 1, 2013 (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Ordinance.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by the West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each December 15 and June 15) or, in the event of a default in the payment of Bonds, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by WesBanco Bank, Inc., Wheeling, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal office of the Paying Agent, in Charleston, West Virginia.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of \$25,555,000 designated the "City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 D" (the "Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated October 24, 2012, the proceeds of which are to be used, along with other available funds, for the purpose of (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and the prorated accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 and Chapter 13, Article 2 of the Code of West Virginia, 1931, as amended (the "Act"), and an ordinance duly enacted by the Council of the City on March 27, 2012, and supplemented by supplemental resolution adopted by said Council on June 12, 2012 and second supplemental resolution adopted on September 12, 2012, (hereinafter collectively referred to as the "Ordinance"), and is subject to all the terms and conditions of said Ordinance.

The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the City, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the Clerk in the City of Fairmont, West Virginia.

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Ordinance and as set forth in the following lettered paragraphs:

(A) Optional Redemption. The Series 2012 D Bonds are subject to optional redemption prior to their stated maturity on or after July 1, 2019, at the option of the City at par plus accrued interest thereon to the date set for redemption.

(B) Mandatory Sinking Fund Redemption. The Series 2012 D Bonds maturing on July 1, 2029, are subject to annual mandatory redemption prior to maturity by random selection on July 1 of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

<u>Bonds Maturing 2029</u>	
Year (July 1)	Principal Amount
2028	\$2,100,000
2029*	\$2,170,000

\*Final Maturity.

If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and Maturity Dates.

Notice of any redemption of this Bond, unless waived, shall be given by the Registrar on behalf of the City by mailing an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Registrar. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the redemption

price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of this Bond.

There are outstanding obligations of the City which will rank on a parity with the Series 2012 D Bonds as to liens, pledge, source of and security for payment, as follows: (1) a portion of Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the "Series 1999 Bonds"); (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000 (the "Series 2008 A Bonds"); (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (Series 2010 A Bonds"); (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (the "Series 2010 B Bonds"); (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000 (the "Series 2010 C Bonds"); and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (the "Series 2010 D Bonds") (collectively, the "Prior Bonds").

The Bonds and the interest thereon are payable only from and are secured by the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Prior Bonds and from moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account established under the Ordinance, and the unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose and to make the other payments required by the Ordinance. This Bond does not constitute an indebtedness of the City within any constitutional or statutory provision or limitation, nor shall the City be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account and unexpended proceeds of the Bonds. Under the Ordinance, the City has covenanted and agreed to fix, establish and collect just and equitable rates or charges for the use of the services and facilities of the System and to revise the same from time to time as will always be sufficient: (i) to provide for all Operating Expenses of the System; (ii) so long as the Series 1999 Bonds or Series 2012 D Bonds are outstanding to leave a balance each year equal to at least 120% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds; and (iii) so long as the Series 2008 A Bonds, Series 2010 A Bonds, Series 2010 B

Bonds, Series 2010 C Bonds or Series 2010 D Bonds are outstanding to leave a balance each year equal to at least 115% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds. The City has entered into certain further covenants with the Registered Owners of the Bonds, for the terms of which reference is made to the Ordinance. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds shall be applied solely to (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and all accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the Registered Owners of the Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by said City for the prompt payment of the principal of and interest on the Bonds of which this Bond is one.

This Bond, under the provisions of the Act is and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the Ordinance.

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

This Bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

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

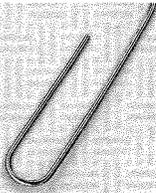
IN WITNESS WHEREOF, the CITY OF FAIRMONT has caused this Bond to be signed by its Mayor and, and its corporate seal to be imprinted hereon and attested by its Clerk, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

*William H. Rusk*  
\_\_\_\_\_  
Mayor

ATTEST:

*Janet L. Keller*  
\_\_\_\_\_  
Clerk



**CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION**

This Bond is one of the fully registered Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto is the complete text of the opinion of Steptoe & Johnson PLLC, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Bonds.

Dated: October 24, 2012.

**WESBANCO BANK, INC.,  
as Registrar**

By *Sandy Debra*  
Its Authorized Officer

(FORM OF)  
ASSIGNMENT

Social Security or Other Identifying Number of Assignee \_\_\_\_\_  
\_\_\_\_\_

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

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

\_\_\_\_\_  
SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

# SPECIMEN

Except as otherwise provided in the Ordinance, this global bond may be transferred, in whole but not in part, only to another nominee of DTC (as defined in the Ordinance) or to a successor of DTC or to a nominee of a successor of DTC. Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. DR-6

\$1,510,000

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT (WEST VIRGINIA)  
WATER REFUNDING REVENUE BOND, SERIES 2012 D

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>BOND DATE</u>	<u>CUSIP NO.</u>
3.000%	07/01/2018	10/24/2012	305459 EZ8

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: ONE MILLION FIVE HUNDRED TEN THOUSAND DOLLARS

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefore, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date specified above, or, if and to the extent that the City

shall default in the payment of interest on any Interest Payment Date, then this Bond shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Bond surrendered for transfer or exchange shall be dated as of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per annum specified above, semiannually, on January 1 and July 1, in each year, beginning January 1, 2013 (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Ordinance.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by the West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each December 15 and June 15) or, in the event of a default in the payment of Bonds, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by WesBanco Bank, Inc., Wheeling, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal office of the Paying Agent, in Charleston, West Virginia.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of \$25,555,000 designated the "City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 D" (the "Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated October 24, 2012, the proceeds of which are to be used, along with other available funds, for the purpose of (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and the prorated accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 and Chapter 13, Article 2 of the Code of West Virginia, 1931, as amended (the "Act"), and an ordinance duly enacted by the Council of the City on March 27, 2012, and supplemented by supplemental resolution adopted by said Council on June 12, 2012 and second supplemental resolution adopted on September 12, 2012, (hereinafter collectively referred to as the "Ordinance"), and is subject to all the terms and conditions of said Ordinance.

The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the City, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the Clerk in the City of Fairmont, West Virginia.

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Ordinance and as set forth in the following lettered paragraphs:

(A) Optional Redemption. The Series 2012 D Bonds are subject to optional redemption prior to their stated maturity on or after July 1, 2019, at the option of the City at par plus accrued interest thereon to the date set for redemption.

(B) Mandatory Sinking Fund Redemption. The Series 2012 D Bonds maturing on July 1, 2029, are subject to annual mandatory redemption prior to maturity by random selection on July 1 of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

Bonds Maturing 2029

Year (July 1)	Principal Amount
2028	\$2,100,000
2029*	\$2,170,000

\*Final Maturity.

If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and Maturity Dates.

Notice of any redemption of this Bond, unless waived, shall be given by the Registrar on behalf of the City by mailing an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Registrar. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the redemption

price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of this Bond.

There are outstanding obligations of the City which will rank on a parity with the Series 2012 D Bonds as to liens, pledge, source of and security for payment, as follows: (1) a portion of Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the "Series 1999 Bonds"); (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000 (the "Series 2008 A Bonds"); (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (Series 2010 A Bonds"); (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (the "Series 2010 B Bonds"); (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000 (the "Series 2010 C Bonds"); and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (the "Series 2010 D Bonds") (collectively, the "Prior Bonds").

The Bonds and the interest thereon are payable only from and are secured by the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Prior Bonds and from moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account established under the Ordinance, and the unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose and to make the other payments required by the Ordinance. This Bond does not constitute an indebtedness of the City within any constitutional or statutory provision or limitation, nor shall the City be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account and unexpended proceeds of the Bonds. Under the Ordinance, the City has covenanted and agreed to fix, establish and collect just and equitable rates or charges for the use of the services and facilities of the System and to revise the same from time to time as will always be sufficient: (i) to provide for all Operating Expenses of the System; (ii) so long as the Series 1999 Bonds or Series 2012 D Bonds are outstanding to leave a balance each year equal to at least 120% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds; and (iii) so long as the Series 2008 A Bonds, Series 2010 A Bonds, Series 2010 B

Bonds, Series 2010 C Bonds or Series 2010 D Bonds are outstanding to leave a balance each year equal to at least 115% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds. The City has entered into certain further covenants with the Registered Owners of the Bonds, for the terms of which reference is made to the Ordinance. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds shall be applied solely to (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and all accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the Registered Owners of the Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by said City for the prompt payment of the principal of and interest on the Bonds of which this Bond is one.

This Bond, under the provisions of the Act is and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the Ordinance.

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

This Bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

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

IN WITNESS WHEREOF, the CITY OF FAIRMONT has caused this Bond to be signed by its Mayor and, and its corporate seal to be imprinted hereon and attested by its Clerk, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

*William H. Boudick*  
\_\_\_\_\_  
Mayor

ATTEST:

*Janet L. Keller*  
\_\_\_\_\_  
Clerk

**CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION**

This Bond is one of the fully registered Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto is the complete text of the opinion of Steptoe & Johnson PLLC, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Bonds.

Dated: October 24, 2012.

**WESBANCO BANK, INC.,  
as Registrar**

By *Stacy Polka*  
Its Authorized Officer

(FORM OF)  
ASSIGNMENT

Social Security or Other Identifying Number of Assignee \_\_\_\_\_  
\_\_\_\_\_

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

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

\_\_\_\_\_  
SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

SPECIMEN

Except as otherwise provided in the Ordinance, this global bond may be transferred, in whole but not in part, only to another nominee of DTC (as defined in the Ordinance) or to a successor of DTC or to a nominee of a successor of DTC. Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. DR-7

\$1,560,000

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT (WEST VIRGINIA)  
WATER REFUNDING REVENUE BOND, SERIES 2012 D

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>BOND DATE</u>	<u>CUSIP NO.</u>
2.000%	07/01/2019	10/24/2012	305459 FA2

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: ONE MILLION FIVE HUNDRED SIXTY THOUSAND DOLLARS

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefore, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date specified above, or, if and to the extent that the City

shall default in the payment of interest on any Interest Payment Date, then this Bond shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Bond surrendered for transfer or exchange shall be dated as of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per annum specified above, semiannually, on January 1 and July 1, in each year, beginning January 1, 2013 (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Ordinance.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by the West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each December 15 and June 15) or, in the event of a default in the payment of Bonds, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by WesBanco Bank, Inc., Wheeling, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal office of the Paying Agent, in Charleston, West Virginia.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of \$25,555,000 designated the "City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 D" (the "Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated October 24, 2012, the proceeds of which are to be used, along with other available funds, for the purpose of (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and the prorated accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 and Chapter 13, Article 2 of the Code of West Virginia, 1931, as amended (the "Act"), and an ordinance duly enacted by the Council of the City on March 27, 2012, and supplemented by supplemental resolution adopted by said Council on June 12, 2012 and second supplemental resolution adopted on September 12, 2012, (hereinafter collectively referred to as the "Ordinance"), and is subject to all the terms and conditions of said Ordinance.

The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the City, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the Clerk in the City of Fairmont, West Virginia.

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Ordinance and as set forth in the following lettered paragraphs:

(A) Optional Redemption. The Series 2012 D Bonds are subject to optional redemption prior to their stated maturity on or after July 1, 2019, at the option of the City at par plus accrued interest thereon to the date set for redemption.

(B) Mandatory Sinking Fund Redemption. The Series 2012 D Bonds maturing on July 1, 2029, are subject to annual mandatory redemption prior to maturity by random selection on July 1 of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

<u>Bonds Maturing 2029</u>	
Year (July 1)	Principal Amount
2028	\$2,100,000
2029*	\$2,170,000

\*Final Maturity.

If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and Maturity Dates.

Notice of any redemption of this Bond, unless waived, shall be given by the Registrar on behalf of the City by mailing an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Registrar. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the redemption

price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of this Bond.

There are outstanding obligations of the City which will rank on a parity with the Series 2012 D Bonds as to liens, pledge, source of and security for payment, as follows: (1) a portion of Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the "Series 1999 Bonds"); (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000 (the "Series 2008 A Bonds"); (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (Series 2010 A Bonds"); (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (the "Series 2010 B Bonds"); (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000 (the "Series 2010 C Bonds"); and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (the "Series 2010 D Bonds") (collectively, the "Prior Bonds").

The Bonds and the interest thereon are payable only from and are secured by the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Prior Bonds and from moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account established under the Ordinance, and the unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose and to make the other payments required by the Ordinance. This Bond does not constitute an indebtedness of the City within any constitutional or statutory provision or limitation, nor shall the City be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account and unexpended proceeds of the Bonds. Under the Ordinance, the City has covenanted and agreed to fix, establish and collect just and equitable rates or charges for the use of the services and facilities of the System and to revise the same from time to time as will always be sufficient: (i) to provide for all Operating Expenses of the System; (ii) so long as the Series 1999 Bonds or Series 2012 D Bonds are outstanding to leave a balance each year equal to at least 120% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds; and (iii) so long as the Series 2008 A Bonds, Series 2010 A Bonds, Series 2010 B

Bonds, Series 2010 C Bonds or Series 2010 D Bonds are outstanding to leave a balance each year equal to at least 115% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds. The City has entered into certain further covenants with the Registered Owners of the Bonds, for the terms of which reference is made to the Ordinance. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds shall be applied solely to (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and all accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the Registered Owners of the Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by said City for the prompt payment of the principal of and interest on the Bonds of which this Bond is one.

This Bond, under the provisions of the Act is and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the Ordinance.

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

This Bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

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

IN WITNESS WHEREOF, the CITY OF FAIRMONT has caused this Bond to be signed by its Mayor and, and its corporate seal to be imprinted hereon and attested by its Clerk, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

William H. [Signature]  
Mayor

ATTEST

Janet A. Heller  
Clerk

**CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION**

This Bond is one of the fully registered Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto is the complete text of the opinion of Steptoe & Johnson PLLC, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Bonds.

Dated: October 24, 2012.

**WESBANCO BANK, INC.,  
as Registrar**

By *Stacy Dalka*  
Its Authorized Officer

(FORM OF)  
ASSIGNMENT

Social Security or Other Identifying Number of Assignee \_\_\_\_\_  
\_\_\_\_\_

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

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

\_\_\_\_\_  
SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

# SPECIMEN

Except as otherwise provided in the Ordinance, this global bond may be transferred, in whole but not in part, only to another nominee of DTC (as defined in the Ordinance) or to a successor of DTC or to a nominee of a successor of DTC. Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. DR-8

\$690,000

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT (WEST VIRGINIA)  
WATER REFUNDING REVENUE BOND, SERIES 2012 D

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>BOND DATE</u>	<u>CUSIP NO.</u>
2.250%	07/01/2020	10/24/2012	305459 FB0

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: SIX HUNDRED NINETY THOUSAND DOLLARS

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefore, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date specified above, or, if and to the extent that the City shall default in the payment of interest on any Interest Payment Date, then this Bond shall bear

interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Bond surrendered for transfer or exchange shall be dated as of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per annum specified above, semiannually, on January 1 and July 1, in each year, beginning January 1, 2013 (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Ordinance.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by the West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each December 15 and June 15) or, in the event of a default in the payment of Bonds, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by WesBanco Bank, Inc., Wheeling, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal office of the Paying Agent, in Charleston, West Virginia.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of \$25,555,000 designated the "City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 D" (the "Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated October 24, 2012, the proceeds of which are to be used, along with other available funds, for the purpose of (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and the prorated accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 and Chapter 13, Article 2 of the Code of West Virginia, 1931, as amended (the "Act"), and an ordinance duly enacted by the Council of the City on March 27, 2012, and supplemented by supplemental resolution adopted by said Council on June 12, 2012 and second supplemental resolution adopted on September 12, 2012, (hereinafter collectively referred to as the "Ordinance"), and is subject to all the terms and conditions of said Ordinance. The Ordinance provides for the issuance of additional bonds under certain conditions, and such

bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the City, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the Clerk in the City of Fairmont, West Virginia.

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Ordinance and as set forth in the following lettered paragraphs:

(A) Optional Redemption. The Series 2012 D Bonds are subject to optional redemption prior to their stated maturity on or after July 1, 2019, at the option of the City at par plus accrued interest thereon to the date set for redemption.

(B) Mandatory Sinking Fund Redemption. The Series 2012 D Bonds maturing on July 1, 2029, are subject to annual mandatory redemption prior to maturity by random selection on July 1 of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

Bonds Maturing 2029

Year (July 1)	Principal Amount
2028	\$2,100,000
2029*	\$2,170,000

\*Final Maturity.

If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and Maturity Dates.

Notice of any redemption of this Bond, unless waived, shall be given by the Registrar on behalf of the City by mailing an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Registrar. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the redemption

price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of this Bond.

There are outstanding obligations of the City which will rank on a parity with the Series 2012 D Bonds as to liens, pledge, source of and security for payment, as follows: (1) a portion of Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the "Series 1999 Bonds"); (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000 (the "Series 2008 A Bonds"); (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (Series 2010 A Bonds"); (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (the "Series 2010 B Bonds"); (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000 (the "Series 2010 C Bonds"); and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (the "Series 2010 D Bonds") (collectively, the "Prior Bonds").

The Bonds and the interest thereon are payable only from and are secured by the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Prior Bonds and from moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account established under the Ordinance, and the unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose and to make the other payments required by the Ordinance. This Bond does not constitute an indebtedness of the City within any constitutional or statutory provision or limitation, nor shall the City be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account and unexpended proceeds of the Bonds. Under the Ordinance, the City has covenanted and agreed to fix, establish and collect just and equitable rates or charges for the use of the services and facilities of the System and to revise the same from time to time as will always be sufficient: (i) to provide for all Operating Expenses of the System; (ii) so long as the Series 1999 Bonds or Series 2012 D Bonds are outstanding to leave a balance each year equal to at least 120% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds; and (iii) so long as the Series 2008 A Bonds, Series 2010 A Bonds, Series 2010 B

Bonds, Series 2010 C Bonds or Series 2010 D Bonds are outstanding to leave a balance each year equal to at least 115% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds. The City has entered into certain further covenants with the Registered Owners of the Bonds, for the terms of which reference is made to the Ordinance. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds shall be applied solely to (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and all accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the Registered Owners of the Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by said City for the prompt payment of the principal of and interest on the Bonds of which this Bond is one.

This Bond, under the provisions of the Act is and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the Ordinance.

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

This Bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

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

IN WITNESS WHEREOF, the CITY OF FAIRMONT has caused this Bond to be signed by its Mayor and, and its corporate seal to be imprinted hereon and attested by its Clerk, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

*William H. Dunder*  
\_\_\_\_\_  
Mayor

ATTEST

*Janet L. Heller*  
\_\_\_\_\_  
Clerk

**CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION**

This Bond is one of the fully registered Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto is the complete text of the opinion of Steptoe & Johnson PLLC, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Bonds.

Dated: October 24, 2012.

**WESBANCO BANK, INC.,  
as Registrar**

By *Jacqui Doka*  
Its Authorized Officer

(FORM OF)  
ASSIGNMENT

Social Security or Other Identifying Number of Assignee \_\_\_\_\_  
\_\_\_\_\_

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

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

\_\_\_\_\_  
SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

SPECIMEN

Except as otherwise provided in the Ordinance, this global bond may be transferred, in whole but not in part, only to another nominee of DTC (as defined in the Ordinance) or to a successor of DTC or to a nominee of a successor of DTC. Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. DR-9

\$655,000

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT (WEST VIRGINIA)  
WATER REFUNDING REVENUE BOND, SERIES 2012 D

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>BOND DATE</u>	<u>CUSIP NO.</u>
2.500%	07/01/2021	10/24/2012	305459 FC8

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: SIX HUNDRED FIFTY-FIVE THOUSAND DOLLARS

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefore, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date specified above, or, if and to the extent that the City shall default in the payment of interest on any Interest Payment Date, then this Bond shall bear

interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Bond surrendered for transfer or exchange shall be dated as of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per annum specified above, semiannually, on January 1 and July 1, in each year, beginning January 1, 2013 (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Ordinance.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by the West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each December 15 and June 15) or, in the event of a default in the payment of Bonds, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by WesBanco Bank, Inc., Wheeling, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal office of the Paying Agent, in Charleston, West Virginia.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of \$25,555,000 designated the "City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 D" (the "Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated October 24, 2012, the proceeds of which are to be used, along with other available funds, for the purpose of (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and the prorated accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 and Chapter 13, Article 2 of the Code of West Virginia, 1931, as amended (the "Act"), and an ordinance duly enacted by the Council of the City on March 27, 2012, and supplemented by supplemental resolution adopted by said Council on June 12, 2012 and second supplemental resolution adopted on September 12, 2012, (hereinafter collectively referred to as the "Ordinance"), and is subject to all the terms and conditions of said Ordinance. The Ordinance provides for the issuance of additional bonds under certain conditions, and such

bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the City, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the Clerk in the City of Fairmont, West Virginia.

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Ordinance and as set forth in the following lettered paragraphs:

(A) Optional Redemption. The Series 2012 D Bonds are subject to optional redemption prior to their stated maturity on or after July 1, 2019, at the option of the City at par plus accrued interest thereon to the date set for redemption.

(B) Mandatory Sinking Fund Redemption. The Series 2012 D Bonds maturing on July 1, 2029, are subject to annual mandatory redemption prior to maturity by random selection on July 1 of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

Bonds Maturing 2029

Year (July 1)	Principal Amount
2028	\$2,100,000
2029*	\$2,170,000

\*Final Maturity.

If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and Maturity Dates.

Notice of any redemption of this Bond, unless waived, shall be given by the Registrar on behalf of the City by mailing an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Registrar. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the redemption

price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of this Bond.

There are outstanding obligations of the City which will rank on a parity with the Series 2012 D Bonds as to liens, pledge, source of and security for payment, as follows: (1) a portion of Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the "Series 1999 Bonds"); (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000 (the "Series 2008 A Bonds"); (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (Series 2010 A Bonds"); (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (the "Series 2010 B Bonds"); (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000 (the "Series 2010 C Bonds"); and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (the "Series 2010 D Bonds") (collectively, the "Prior Bonds").

The Bonds and the interest thereon are payable only from and are secured by the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Prior Bonds and from moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account established under the Ordinance, and the unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose and to make the other payments required by the Ordinance. This Bond does not constitute an indebtedness of the City within any constitutional or statutory provision or limitation, nor shall the City be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account and unexpended proceeds of the Bonds. Under the Ordinance, the City has covenanted and agreed to fix, establish and collect just and equitable rates or charges for the use of the services and facilities of the System and to revise the same from time to time as will always be sufficient: (i) to provide for all Operating Expenses of the System; (ii) so long as the Series 1999 Bonds or Series 2012 D Bonds are outstanding to leave a balance each year equal to at least 120% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds; and (iii) so long as the Series 2008 A Bonds, Series 2010 A Bonds, Series 2010 B

Bonds, Series 2010 C Bonds or Series 2010 D Bonds are outstanding to leave a balance each year equal to at least 115% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds. The City has entered into certain further covenants with the Registered Owners of the Bonds, for the terms of which reference is made to the Ordinance. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds shall be applied solely to (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and all accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the Registered Owners of the Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by said City for the prompt payment of the principal of and interest on the Bonds of which this Bond is one.

This Bond, under the provisions of the Act is and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the Ordinance.

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

This Bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

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

IN WITNESS WHEREOF, the CITY OF FAIRMONT has caused this Bond to be signed by its Mayor and, and its corporate seal to be imprinted hereon and attested by its Clerk, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

*William H. Gaudet*  
\_\_\_\_\_  
Mayor

ATTEST:

*Janet D. Keller*  
\_\_\_\_\_  
Clerk

**CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION**

**This Bond is one of the fully registered Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto is the complete text of the opinion of Steptoe & Johnson PLLC, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Bonds.**

**Dated: October 24, 2012.**

**WESBANCO BANK, INC.,  
as Registrar**

By *Sarah A. Dolka*  
**Its Authorized Officer**

(FORM OF)  
ASSIGNMENT

Social Security or Other Identifying Number of Assignee \_\_\_\_\_  
\_\_\_\_\_

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

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

\_\_\_\_\_  
SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

SPECIMEN

Except as otherwise provided in the Ordinance, this global bond may be transferred, in whole but not in part, only to another nominee of DTC (as defined in the Ordinance) or to a successor of DTC or to a nominee of a successor of DTC. Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. DR-10

\$620,000

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT (WEST VIRGINIA)  
WATER REFUNDING REVENUE BOND, SERIES 2012 D

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>BOND DATE</u>	<u>CUSIP NO.</u>
2.700%	07/01/2022	10/24/2012	305459 FD6

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: SIX HUNDRED TWENTY THOUSAND DOLLARS

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefore, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date specified above, or, if and to the extent that the City shall default in the payment of interest on any Interest Payment Date, then this Bond shall bear

interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Bond surrendered for transfer or exchange shall be dated as of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per annum specified above, semiannually, on January 1 and July 1, in each year, beginning January 1, 2013 (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Ordinance.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by the West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each December 15 and June 15) or, in the event of a default in the payment of Bonds, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by WesBanco Bank, Inc., Wheeling, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal office of the Paying Agent, in Charleston, West Virginia.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of \$25,555,000 designated the "City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 D" (the "Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated October 24, 2012, the proceeds of which are to be used, along with other available funds, for the purpose of (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and the prorated accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 and Chapter 13, Article 2 of the Code of West Virginia, 1931, as amended (the "Act"), and an ordinance duly enacted by the Council of the City on March 27, 2012, and supplemented by supplemental resolution adopted by said Council on June 12, 2012 and second supplemental resolution adopted on September 12, 2012, (hereinafter collectively referred to as the "Ordinance"), and is subject to all the terms and conditions of said Ordinance. The Ordinance provides for the issuance of additional bonds under certain conditions, and such

bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the City, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the Clerk in the City of Fairmont, West Virginia.

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Ordinance and as set forth in the following lettered paragraphs:

(A) Optional Redemption. The Series 2012 D Bonds are subject to optional redemption prior to their stated maturity on or after July 1, 2019, at the option of the City at par plus accrued interest thereon to the date set for redemption.

(B) Mandatory Sinking Fund Redemption. The Series 2012 D Bonds maturing on July 1, 2029, are subject to annual mandatory redemption prior to maturity by random selection on July 1 of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

Bonds Maturing 2029

Year (July 1)	Principal Amount
2028	\$2,100,000
2029*	\$2,170,000

\*Final Maturity.

If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and Maturity Dates.

Notice of any redemption of this Bond, unless waived, shall be given by the Registrar on behalf of the City by mailing an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Registrar. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the redemption

price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of this Bond.

There are outstanding obligations of the City which will rank on a parity with the Series 2012 D Bonds as to liens, pledge, source of and security for payment, as follows: (1) a portion of Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the "Series 1999 Bonds"); (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000 (the "Series 2008 A Bonds"); (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (Series 2010 A Bonds"); (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (the "Series 2010 B Bonds"); (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000 (the "Series 2010 C Bonds"); and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (the "Series 2010 D Bonds") (collectively, the "Prior Bonds").

The Bonds and the interest thereon are payable only from and are secured by the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Prior Bonds and from moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account established under the Ordinance, and the unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose and to make the other payments required by the Ordinance. This Bond does not constitute an indebtedness of the City within any constitutional or statutory provision or limitation, nor shall the City be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account and unexpended proceeds of the Bonds. Under the Ordinance, the City has covenanted and agreed to fix, establish and collect just and equitable rates or charges for the use of the services and facilities of the System and to revise the same from time to time as will always be sufficient: (i) to provide for all Operating Expenses of the System; (ii) so long as the Series 1999 Bonds or Series 2012 D Bonds are outstanding to leave a balance each year equal to at least 120% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds; and (iii) so long as the Series 2008 A Bonds, Series 2010 A Bonds, Series 2010 B

Bonds, Series 2010 C Bonds or Series 2010 D Bonds are outstanding to leave a balance each year equal to at least 115% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds. The City has entered into certain further covenants with the Registered Owners of the Bonds, for the terms of which reference is made to the Ordinance. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds shall be applied solely to (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and all accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the Registered Owners of the Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by said City for the prompt payment of the principal of and interest on the Bonds of which this Bond is one.

This Bond, under the provisions of the Act is and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the Ordinance.

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

This Bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

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

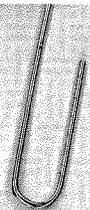
IN WITNESS WHEREOF, the CITY OF FAIRMONT has caused this Bond to be signed by its Mayor and, and its corporate seal to be imprinted hereon and attested by its Clerk, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
Clerk



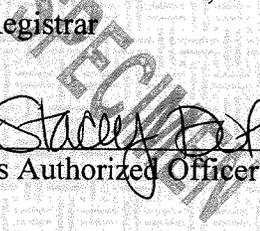
**CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION**

This Bond is one of the fully registered Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto is the complete text of the opinion of Steptoe & Johnson PLLC, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Bonds.

Dated: October 24, 2012.

**WESBANCO BANK, INC.,  
as Registrar**

By Stacey Dolka  
Its Authorized Officer



(FORM OF)  
ASSIGNMENT

Social Security or Other Identifying Number of Assignee \_\_\_\_\_  
\_\_\_\_\_

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

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

\_\_\_\_\_  
SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

SPECIMEN

Except as otherwise provided in the Ordinance, this global bond may be transferred, in whole but not in part, only to another nominee of DTC (as defined in the Ordinance) or to a successor of DTC or to a nominee of a successor of DTC. Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. DR-11

\$1,795,000

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT (WEST VIRGINIA)  
WATER REFUNDING REVENUE BOND, SERIES 2012 D

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>BOND DATE</u>	<u>CUSIP NO.</u>
2.750%	07/01/2023	10/24/2012	305459 FE4

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: ONE MILLION SEVEN HUNDRED NINETY-FIVE THOUSAND DOLLARS

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefore, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date specified above, or, if and to the extent that the City

shall default in the payment of interest on any Interest Payment Date, then this Bond shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Bond surrendered for transfer or exchange shall be dated as of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per annum specified above, semiannually, on January 1 and July 1, in each year, beginning January 1, 2013 (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Ordinance.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by the West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each December 15 and June 15) or, in the event of a default in the payment of Bonds, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by WesBanco Bank, Inc., Wheeling, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal office of the Paying Agent, in Charleston, West Virginia.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of \$25,555,000 designated the "City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 D" (the "Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated October 24, 2012, the proceeds of which are to be used, along with other available funds, for the purpose of (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and the prorated accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 and Chapter 13, Article 2 of the Code of West Virginia, 1931, as amended (the "Act"), and an ordinance duly enacted by the Council of the City on March 27, 2012, and supplemented by supplemental resolution adopted by said Council on June 12, 2012 and second supplemental resolution adopted on September 12, 2012, (hereinafter collectively referred to as the "Ordinance"), and is subject to all the terms and conditions of said Ordinance.

The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the City, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the Clerk in the City of Fairmont, West Virginia.

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Ordinance and as set forth in the following lettered paragraphs:

(A) Optional Redemption. The Series 2012 D Bonds are subject to optional redemption prior to their stated maturity on or after July 1, 2019, at the option of the City at par plus accrued interest thereon to the date set for redemption.

(B) Mandatory Sinking Fund Redemption. The Series 2012 D Bonds maturing on July 1, 2029, are subject to annual mandatory redemption prior to maturity by random selection on July 1 of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

<u>Bonds Maturing 2029</u>	
Year (July 1)	Principal Amount
2028	\$2,100,000
2029*	\$2,170,000

\*Final Maturity.

If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and Maturity Dates.

Notice of any redemption of this Bond, unless waived, shall be given by the Registrar on behalf of the City by mailing an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Registrar. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the redemption

price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of this Bond.

There are outstanding obligations of the City which will rank on a parity with the Series 2012 D Bonds as to liens, pledge, source of and security for payment, as follows: (1) a portion of Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the "Series 1999 Bonds"); (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000 (the "Series 2008 A Bonds"); (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (Series 2010 A Bonds"); (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (the "Series 2010 B Bonds"); (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000 (the "Series 2010 C Bonds"); and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (the "Series 2010 D Bonds") (collectively, the "Prior Bonds").

The Bonds and the interest thereon are payable only from and are secured by the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Prior Bonds and from moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account established under the Ordinance, and the unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose and to make the other payments required by the Ordinance. This Bond does not constitute an indebtedness of the City within any constitutional or statutory provision or limitation, nor shall the City be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account and unexpended proceeds of the Bonds. Under the Ordinance, the City has covenanted and agreed to fix, establish and collect just and equitable rates or charges for the use of the services and facilities of the System and to revise the same from time to time as will always be sufficient: (i) to provide for all Operating Expenses of the System; (ii) so long as the Series 1999 Bonds or Series 2012 D Bonds are outstanding to leave a balance each year equal to at least 120% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds; and (iii) so long as the Series 2008 A Bonds, Series 2010 A Bonds, Series 2010 B

Bonds, Series 2010 C Bonds or Series 2010 D Bonds are outstanding to leave a balance each year equal to at least 115% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds. The City has entered into certain further covenants with the Registered Owners of the Bonds, for the terms of which reference is made to the Ordinance. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds shall be applied solely to (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and all accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the Registered Owners of the Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by said City for the prompt payment of the principal of and interest on the Bonds of which this Bond is one.

This Bond, under the provisions of the Act is and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the Ordinance.

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

This Bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

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

IN WITNESS WHEREOF, the CITY OF FAIRMONT has caused this Bond to be signed by its Mayor and, and its corporate seal to be imprinted hereon and attested by its Clerk, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

*William H. Brudick*  
\_\_\_\_\_  
Mayor

ATTEST:

*Adnet L. Miller*  
\_\_\_\_\_  
Clerk



CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION

This Bond is one of the fully registered Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto is the complete text of the opinion of Steptoe & Johnson PLLC, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Bonds.

Dated: October 24, 2012.

WESBANCO BANK, INC.,  
as Registrar

By Stacey DeJka  
Its Authorized Officer

(FORM OF)  
ASSIGNMENT

Social Security or Other Identifying Number of Assignee \_\_\_\_\_  
\_\_\_\_\_

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

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

\_\_\_\_\_

SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

SPECIMEN

Except as otherwise provided in the Ordinance, this global bond may be transferred, in whole but not in part, only to another nominee of DTC (as defined in the Ordinance) or to a successor of DTC or to a nominee of a successor of DTC. Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. DR-12

\$1,845,000

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT (WEST VIRGINIA)  
WATER REFUNDING REVENUE BOND, SERIES 2012 D

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>BOND DATE</u>	<u>CUSIP NO.</u>
4.000%	07/01/2024	10/24/2012	305459 FF1

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: ONE MILLION EIGHT HUNDRED FORTY-FIVE  
THOUSAND DOLLARS

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefore, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date specified above, or, if and to the extent that the City

shall default in the payment of interest on any Interest Payment Date, then this Bond shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Bond surrendered for transfer or exchange shall be dated as of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per annum specified above, semiannually, on January 1 and July 1, in each year, beginning January 1, 2013 (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Ordinance.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by the West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each December 15 and June 15) or, in the event of a default in the payment of Bonds, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by WesBanco Bank, Inc., Wheeling, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal office of the Paying Agent, in Charleston, West Virginia.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of \$25,555,000 designated the "City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 D" (the "Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated October 24, 2012, the proceeds of which are to be used, along with other available funds, for the purpose of (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and the prorated accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 and Chapter 13, Article 2 of the Code of West Virginia, 1931, as amended (the "Act"), and an ordinance duly enacted by the Council of the City on March 27, 2012, and supplemented by supplemental resolution adopted by said Council on June 12, 2012 and second supplemental resolution adopted on September 12, 2012, (hereinafter collectively referred to as the "Ordinance"), and is subject to all the terms and conditions of said Ordinance.

The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the City, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the Clerk in the City of Fairmont, West Virginia.

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Ordinance and as set forth in the following lettered paragraphs:

(A) Optional Redemption. The Series 2012 D Bonds are subject to optional redemption prior to their stated maturity on or after July 1, 2019, at the option of the City at par plus accrued interest thereon to the date set for redemption.

(B) Mandatory Sinking Fund Redemption. The Series 2012 D Bonds maturing on July 1, 2029, are subject to annual mandatory redemption prior to maturity by random selection on July 1 of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

Bonds Maturing 2029

Year (July 1)	Principal Amount
2028	\$2,100,000
2029*	\$2,170,000

\*Final Maturity.

If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and Maturity Dates.

Notice of any redemption of this Bond, unless waived, shall be given by the Registrar on behalf of the City by mailing an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Registrar. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the redemption

price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of this Bond.

There are outstanding obligations of the City which will rank on a parity with the Series 2012 D Bonds as to liens, pledge, source of and security for payment, as follows: (1) a portion of Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the "Series 1999 Bonds"); (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000 (the "Series 2008 A Bonds"); (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (Series 2010 A Bonds"); (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (the "Series 2010 B Bonds"); (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000 (the "Series 2010 C Bonds"); and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (the "Series 2010 D Bonds") (collectively, the "Prior Bonds").

The Bonds and the interest thereon are payable only from and are secured by the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Prior Bonds and from moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account established under the Ordinance, and the unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose and to make the other payments required by the Ordinance. This Bond does not constitute an indebtedness of the City within any constitutional or statutory provision or limitation, nor shall the City be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account and unexpended proceeds of the Bonds. Under the Ordinance, the City has covenanted and agreed to fix, establish and collect just and equitable rates or charges for the use of the services and facilities of the System and to revise the same from time to time as will always be sufficient: (i) to provide for all Operating Expenses of the System; (ii) so long as the Series 1999 Bonds or Series 2012 D Bonds are outstanding to leave a balance each year equal to at least 120% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds; and (iii) so long as the Series 2008 A Bonds, Series 2010 A Bonds, Series 2010 B

Bonds, Series 2010 C Bonds or Series 2010 D Bonds are outstanding to leave a balance each year equal to at least 115% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds. The City has entered into certain further covenants with the Registered Owners of the Bonds, for the terms of which reference is made to the Ordinance. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds shall be applied solely to (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and all accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the Registered Owners of the Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by said City for the prompt payment of the principal of and interest on the Bonds of which this Bond is one.

This Bond, under the provisions of the Act is and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the Ordinance.

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

This Bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

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

IN WITNESS WHEREOF, the CITY OF FAIRMONT has caused this Bond to be signed by its Mayor and, and its corporate seal to be imprinted hereon and attested by its Clerk, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

*William Budick*  
\_\_\_\_\_  
Mayor

ATTEST:

*Janet L. Keller*  
\_\_\_\_\_  
Clerk

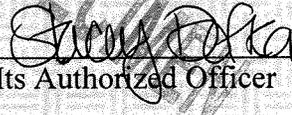


**CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION**

**This Bond is one of the fully registered Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto is the complete text of the opinion of Steptoe & Johnson PLLC, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Bonds.**

**Dated: October 24, 2012.**

**WESBANCO BANK, INC.,  
as Registrar**

By   
Its Authorized Officer

(FORM OF)  
ASSIGNMENT

Social Security or Other Identifying Number of Assignee \_\_\_\_\_  
\_\_\_\_\_

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

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

\_\_\_\_\_  
SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

SPECIMEN

Except as otherwise provided in the Ordinance, this global bond may be transferred, in whole but not in part, only to another nominee of DTC (as defined in the Ordinance) or to a successor of DTC or to a nominee of a successor of DTC. Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. DR-13

\$1,920,000

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT (WEST VIRGINIA)  
WATER REFUNDING REVENUE BOND, SERIES 2012 D

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>BOND DATE</u>	<u>CUSIP NO.</u>
3.000%	07/01/2025	10/24/2012	305459 FG9

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: ONE MILLION NINE HUNDRED TWENTY THOUSAND DOLLARS

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefore, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date specified above, or, if and to the extent that the City

shall default in the payment of interest on any Interest Payment Date, then this Bond shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Bond surrendered for transfer or exchange shall be dated as of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per annum specified above, semiannually, on January 1 and July 1, in each year, beginning January 1, 2013 (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Ordinance.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by the West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each December 15 and June 15) or, in the event of a default in the payment of Bonds, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by WesBanco Bank, Inc., Wheeling, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal office of the Paying Agent, in Charleston, West Virginia.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of \$25,555,000 designated the "City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 D" (the "Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated October 24, 2012, the proceeds of which are to be used, along with other available funds, for the purpose of (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and the prorated accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 and Chapter 13, Article 2 of the Code of West Virginia, 1931, as amended (the "Act"), and an ordinance duly enacted by the Council of the City on March 27, 2012, and supplemented by supplemental resolution adopted by said Council on June 12, 2012 and second supplemental resolution adopted on September 12, 2012, (hereinafter collectively referred to as the "Ordinance"), and is subject to all the terms and conditions of said Ordinance.

The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the City, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the Clerk in the City of Fairmont, West Virginia.

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Ordinance and as set forth in the following lettered paragraphs:

(A) Optional Redemption. The Series 2012 D Bonds are subject to optional redemption prior to their stated maturity on or after July 1, 2019, at the option of the City at par plus accrued interest thereon to the date set for redemption.

(B) Mandatory Sinking Fund Redemption. The Series 2012 D Bonds maturing on July 1, 2029, are subject to annual mandatory redemption prior to maturity by random selection on July 1 of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

Bonds Maturing 2029

Year (July 1)	Principal Amount
2028	\$2,100,000
2029*	\$2,170,000

\*Final Maturity.

If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and Maturity Dates.

Notice of any redemption of this Bond, unless waived, shall be given by the Registrar on behalf of the City by mailing an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Registrar. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the redemption

price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of this Bond.

There are outstanding obligations of the City which will rank on a parity with the Series 2012 D Bonds as to liens, pledge, source of and security for payment, as follows: (1) a portion of Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the "Series 1999 Bonds"); (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000 (the "Series 2008 A Bonds"); (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (Series 2010 A Bonds"); (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (the "Series 2010 B Bonds"); (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000 (the "Series 2010 C Bonds"); and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (the "Series 2010 D Bonds") (collectively, the "Prior Bonds").

The Bonds and the interest thereon are payable only from and are secured by the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Prior Bonds and from moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account established under the Ordinance, and the unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose and to make the other payments required by the Ordinance. This Bond does not constitute an indebtedness of the City within any constitutional or statutory provision or limitation, nor shall the City be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account and unexpended proceeds of the Bonds. Under the Ordinance, the City has covenanted and agreed to fix, establish and collect just and equitable rates or charges for the use of the services and facilities of the System and to revise the same from time to time as will always be sufficient: (i) to provide for all Operating Expenses of the System; (ii) so long as the Series 1999 Bonds or Series 2012 D Bonds are outstanding to leave a balance each year equal to at least 120% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds; and (iii) so long as the Series 2008 A Bonds, Series 2010 A Bonds, Series 2010 B

Bonds, Series 2010 C Bonds or Series 2010 D Bonds are outstanding to leave a balance each year equal to at least 115% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds. The City has entered into certain further covenants with the Registered Owners of the Bonds, for the terms of which reference is made to the Ordinance. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds shall be applied solely to (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and all accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the Registered Owners of the Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by said City for the prompt payment of the principal of and interest on the Bonds of which this Bond is one.

This Bond, under the provisions of the Act is and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the Ordinance.

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

This Bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

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

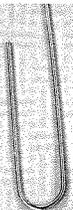
IN WITNESS WHEREOF, the CITY OF FAIRMONT has caused this Bond to be signed by its Mayor and, and its corporate seal to be imprinted hereon and attested by its Clerk, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

*William H. Bueck*  
\_\_\_\_\_  
Mayor

ATTEST:

*Janet A. Miller*  
\_\_\_\_\_  
Clerk



**CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION**

This Bond is one of the fully registered Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto is the complete text of the opinion of Steptoe & Johnson PLLC, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Bonds.

Dated: October 24, 2012.

**WESBANCO BANK, INC.,  
as Registrar**

By   
Its Authorized Officer

---

(FORM OF)  
ASSIGNMENT

Social Security or Other Identifying Number of Assignee \_\_\_\_\_  
\_\_\_\_\_

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

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

\_\_\_\_\_  
SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

# SPECIMEN

Except as otherwise provided in the Ordinance, this global bond may be transferred, in whole but not in part, only to another nominee of DTC (as defined in the Ordinance) or to a successor of DTC or to a nominee of a successor of DTC. Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. DR-14

\$1,975,000

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT (WEST VIRGINIA)  
WATER REFUNDING REVENUE BOND, SERIES 2012 D

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>BOND DATE</u>	<u>CUSIP NO.</u>
3.100%	07/01/2026	10/24/2012	305459 FH7

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: ONE MILLION NINE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefore, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date specified above, or, if and to the extent that the City

shall default in the payment of interest on any Interest Payment Date, then this Bond shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Bond surrendered for transfer or exchange shall be dated as of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per annum specified above, semiannually, on January 1 and July 1, in each year, beginning January 1, 2013 (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Ordinance.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by the West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each December 15 and June 15) or, in the event of a default in the payment of Bonds, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by WesBanco Bank, Inc., Wheeling, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal office of the Paying Agent, in Charleston, West Virginia.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of \$25,555,000 designated the "City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 D" (the "Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated October 24, 2012, the proceeds of which are to be used, along with other available funds, for the purpose of (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and the prorated accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 and Chapter 13, Article 2 of the Code of West Virginia, 1931, as amended (the "Act"), and an ordinance duly enacted by the Council of the City on March 27, 2012, and supplemented by supplemental resolution adopted by said Council on June 12, 2012 and second supplemental resolution adopted on September 12, 2012, (hereinafter collectively referred to as the "Ordinance"), and is subject to all the terms and conditions of said Ordinance.

The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the City, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the Clerk in the City of Fairmont, West Virginia.

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Ordinance and as set forth in the following lettered paragraphs:

(A) Optional Redemption. The Series 2012 D Bonds are subject to optional redemption prior to their stated maturity on or after July 1, 2019, at the option of the City at par plus accrued interest thereon to the date set for redemption.

(B) Mandatory Sinking Fund Redemption. The Series 2012 D Bonds maturing on July 1, 2029, are subject to annual mandatory redemption prior to maturity by random selection on July 1 of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

Bonds Maturing 2029

Year (July 1)	Principal Amount
2028	\$2,100,000
2029*	\$2,170,000

\*Final Maturity.

If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and Maturity Dates.

Notice of any redemption of this Bond, unless waived, shall be given by the Registrar on behalf of the City by mailing an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Registrar. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the redemption

price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of this Bond.

There are outstanding obligations of the City which will rank on a parity with the Series 2012 D Bonds as to liens, pledge, source of and security for payment, as follows: (1) a portion of Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the "Series 1999 Bonds"); (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000 (the "Series 2008 A Bonds"); (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (Series 2010 A Bonds"); (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (the "Series 2010 B Bonds"); (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000 (the "Series 2010 C Bonds"); and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (the "Series 2010 D Bonds") (collectively, the "Prior Bonds").

The Bonds and the interest thereon are payable only from and are secured by the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Prior Bonds and from moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account established under the Ordinance, and the unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose and to make the other payments required by the Ordinance. This Bond does not constitute an indebtedness of the City within any constitutional or statutory provision or limitation, nor shall the City be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account and unexpended proceeds of the Bonds. Under the Ordinance, the City has covenanted and agreed to fix, establish and collect just and equitable rates or charges for the use of the services and facilities of the System and to revise the same from time to time as will always be sufficient: (i) to provide for all Operating Expenses of the System; (ii) so long as the Series 1999 Bonds or Series 2012 D Bonds are outstanding to leave a balance each year equal to at least 120% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds; and (iii) so long as the Series 2008 A Bonds, Series 2010 A Bonds, Series 2010 B

Bonds, Series 2010 C Bonds or Series 2010 D Bonds are outstanding to leave a balance each year equal to at least 115% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds. The City has entered into certain further covenants with the Registered Owners of the Bonds, for the terms of which reference is made to the Ordinance. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds shall be applied solely to (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and all accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the Registered Owners of the Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by said City for the prompt payment of the principal of and interest on the Bonds of which this Bond is one.

This Bond, under the provisions of the Act is and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the Ordinance.

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

This Bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

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

IN WITNESS WHEREOF, the CITY OF FAIRMONT has caused this Bond to be signed by its Mayor and, and its corporate seal to be imprinted hereon and attested by its Clerk, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

*William H. Brubaker*  
\_\_\_\_\_  
Mayor

ATTEST:

*Janet D. Keller*  
\_\_\_\_\_  
Clerk

**CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION**

This Bond is one of the fully registered Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto is the complete text of the opinion of Steptoe & Johnson PLLC, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Bonds.

Dated: October 24, 2012.

**WESBANCO BANK, INC.,  
as Registrar**

By *Jenny Polka*  
Its Authorized Officer

(FORM OF)  
ASSIGNMENT

Social Security or Other Identifying Number of Assignee \_\_\_\_\_  
\_\_\_\_\_

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

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

\_\_\_\_\_  
SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

# SPECIMEN

Except as otherwise provided in the Ordinance, this global bond may be transferred, in whole but not in part, only to another nominee of DTC (as defined in the Ordinance) or to a successor of DTC or to a nominee of a successor of DTC. Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. DR-15

\$2,040,000

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT (WEST VIRGINIA)  
WATER REFUNDING REVENUE BOND, SERIES 2012 D

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>BOND DATE</u>	<u>CUSIP NO.</u>
3.150%	07/01/2027	10/24/2012	305459 FJ3

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: TWO MILLION FORTY THOUSAND DOLLARS

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefore, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date specified above, or, if and to the extent that the City shall default in the payment of interest on any Interest Payment Date, then this Bond shall bear

interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Bond surrendered for transfer or exchange shall be dated as of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per annum specified above, semiannually, on January 1 and July 1, in each year, beginning January 1, 2013 (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Ordinance.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by the West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each December 15 and June 15) or, in the event of a default in the payment of Bonds, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by WesBanco Bank, Inc., Wheeling, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal office of the Paying Agent, in Charleston, West Virginia.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of \$25,555,000 designated the "City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 D" (the "Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated October 24, 2012, the proceeds of which are to be used, along with other available funds, for the purpose of (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and the prorated accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 and Chapter 13, Article 2 of the Code of West Virginia, 1931, as amended (the "Act"), and an ordinance duly enacted by the Council of the City on March 27, 2012, and supplemented by supplemental resolution adopted by said Council on June 12, 2012 and second supplemental resolution adopted on September 12, 2012, (hereinafter collectively referred to as the "Ordinance"), and is subject to all the terms and conditions of said Ordinance. The Ordinance provides for the issuance of additional bonds under certain conditions, and such

bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the City, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the Clerk in the City of Fairmont, West Virginia.

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Ordinance and as set forth in the following lettered paragraphs:

(A) Optional Redemption. The Series 2012 D Bonds are subject to optional redemption prior to their stated maturity on or after July 1, 2019, at the option of the City at par plus accrued interest thereon to the date set for redemption.

(B) Mandatory Sinking Fund Redemption. The Series 2012 D Bonds maturing on July 1, 2029, are subject to annual mandatory redemption prior to maturity by random selection on July 1 of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

<u>Bonds Maturing 2029</u>	
Year (July 1)	Principal Amount
2028	\$2,100,000
2029*	\$2,170,000

\*Final Maturity.

If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and Maturity Dates.

Notice of any redemption of this Bond, unless waived, shall be given by the Registrar on behalf of the City by mailing an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Registrar. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the redemption

price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of this Bond.

There are outstanding obligations of the City which will rank on a parity with the Series 2012 D Bonds as to liens, pledge, source of and security for payment, as follows: (1) a portion of Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the "Series 1999 Bonds"); (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000 (the "Series 2008 A Bonds"); (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (Series 2010 A Bonds"); (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (the "Series 2010 B Bonds"); (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000 (the "Series 2010 C Bonds"); and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (the "Series 2010 D Bonds") (collectively, the "Prior Bonds").

The Bonds and the interest thereon are payable only from and are secured by the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Prior Bonds and from moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account established under the Ordinance, and the unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose and to make the other payments required by the Ordinance. This Bond does not constitute an indebtedness of the City within any constitutional or statutory provision or limitation, nor shall the City be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account and unexpended proceeds of the Bonds. Under the Ordinance, the City has covenanted and agreed to fix, establish and collect just and equitable rates or charges for the use of the services and facilities of the System and to revise the same from time to time as will always be sufficient: (i) to provide for all Operating Expenses of the System; (ii) so long as the Series 1999 Bonds or Series 2012 D Bonds are outstanding to leave a balance each year equal to at least 120% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds; and (iii) so long as the Series 2008 A Bonds, Series 2010 A Bonds, Series 2010 B

Bonds, Series 2010 C Bonds or Series 2010 D Bonds are outstanding to leave a balance each year equal to at least 115% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds. The City has entered into certain further covenants with the Registered Owners of the Bonds, for the terms of which reference is made to the Ordinance. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds shall be applied solely to (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and all accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the Registered Owners of the Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by said City for the prompt payment of the principal of and interest on the Bonds of which this Bond is one.

This Bond, under the provisions of the Act is and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the Ordinance.

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

This Bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

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

IN WITNESS WHEREOF, the CITY OF FAIRMONT has caused this Bond to be signed by its Mayor and, and its corporate seal to be imprinted hereon and attested by its Clerk, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

*William H. Spindel*  
\_\_\_\_\_  
Mayor

ATTEST:

*Janet L. Heller*  
\_\_\_\_\_  
Clerk

CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION

This Bond is one of the fully registered Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto is the complete text of the opinion of Steptoe & Johnson PLLC, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Bonds.

Dated: October 24, 2012.

WESBANCO BANK, INC.,  
as Registrar

By

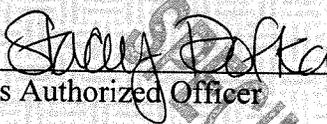
  
Its Authorized Officer

EXHIBIT  
SPECIMEN

(FORM OF)  
ASSIGNMENT

Social Security or Other Identifying Number of Assignee \_\_\_\_\_  
\_\_\_\_\_

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

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

\_\_\_\_\_  
SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

SPECIMEN

Except as otherwise provided in the Ordinance, this global bond may be transferred, in whole but not in part, only to another nominee of DTC (as defined in the Ordinance) or to a successor of DTC or to a nominee of a successor of DTC. Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. DR-16

\$4,270,000

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT (WEST VIRGINIA)  
WATER REFUNDING REVENUE BOND, SERIES 2012 D

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>BOND DATE</u>	<u>CUSIP NO.</u>
3.200%	07/01/2029	10/24/2012	305459 FK0

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: FOUR MILLION TWO HUNDRED SEVENTY THOUSAND DOLLARS

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefore, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date specified above, or, if and to the extent that the City

shall default in the payment of interest on any Interest Payment Date, then this Bond shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Bond surrendered for transfer or exchange shall be dated as of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per annum specified above, semiannually, on January 1 and July 1, in each year, beginning January 1, 2013 (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Ordinance.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by the West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each December 15 and June 15) or, in the event of a default in the payment of Bonds, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by WesBanco Bank, Inc., Wheeling, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal office of the Paying Agent, in Charleston, West Virginia.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of \$25,555,000 designated the "City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 D" (the "Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated October 24, 2012, the proceeds of which are to be used, along with other available funds, for the purpose of (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and the prorated accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 and Chapter 13, Article 2 of the Code of West Virginia, 1931, as amended (the "Act"), and an ordinance duly enacted by the Council of the City on March 27, 2012, and supplemented by supplemental resolution adopted by said Council on June 12, 2012 and second supplemental resolution adopted on September 12, 2012, (hereinafter collectively referred to as the "Ordinance"), and is subject to all the terms and conditions of said Ordinance.

The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the City, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the Clerk in the City of Fairmont, West Virginia.

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Ordinance and as set forth in the following lettered paragraphs:

(A) Optional Redemption. The Series 2012 D Bonds are subject to optional redemption prior to their stated maturity on or after July 1, 2019, at the option of the City at par plus accrued interest thereon to the date set for redemption.

(B) Mandatory Sinking Fund Redemption. The Series 2012 D Bonds maturing on July 1, 2029, are subject to annual mandatory redemption prior to maturity by random selection on July 1 of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

Bonds Maturing 2029

Year (July 1)	Principal Amount
2028	\$2,100,000
2029*	\$2,170,000

\*Final Maturity.

If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and Maturity Dates.

Notice of any redemption of this Bond, unless waived, shall be given by the Registrar on behalf of the City by mailing an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Registrar. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the redemption

price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of this Bond.

There are outstanding obligations of the City which will rank on a parity with the Series 2012 D Bonds as to liens, pledge, source of and security for payment, as follows: (1) a portion of Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the "Series 1999 Bonds"); (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000 (the "Series 2008 A Bonds"); (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (Series 2010 A Bonds"); (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (the "Series 2010 B Bonds"); (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000 (the "Series 2010 C Bonds"); and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (the "Series 2010 D Bonds") (collectively, the "Prior Bonds").

The Bonds and the interest thereon are payable only from and are secured by the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Prior Bonds and from moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account established under the Ordinance, and the unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose and to make the other payments required by the Ordinance. This Bond does not constitute an indebtedness of the City within any constitutional or statutory provision or limitation, nor shall the City be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account and unexpended proceeds of the Bonds. Under the Ordinance, the City has covenanted and agreed to fix, establish and collect just and equitable rates or charges for the use of the services and facilities of the System and to revise the same from time to time as will always be sufficient: (i) to provide for all Operating Expenses of the System; (ii) so long as the Series 1999 Bonds or Series 2012 D Bonds are outstanding to leave a balance each year equal to at least 120% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds; and (iii) so long as the Series 2008 A Bonds, Series 2010 A Bonds, Series 2010 B

Bonds, Series 2010 C Bonds or Series 2010 D Bonds are outstanding to leave a balance each year equal to at least 115% of the Maximum Annual Debt Service on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds. The City has entered into certain further covenants with the Registered Owners of the Bonds, for the terms of which reference is made to the Ordinance. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds shall be applied solely to (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds; (iii) paying a portion of the outstanding principal of and all accrued interest on the Series 1999 Bonds; (iv) funding the Series 2012 D Bonds Reserve Account; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the Registered Owners of the Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by said City for the prompt payment of the principal of and interest on the Bonds of which this Bond is one.

This Bond, under the provisions of the Act is and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the Ordinance.

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

This Bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

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

IN WITNESS WHEREOF, the CITY OF FAIRMONT has caused this Bond to be signed by its Mayor and, and its corporate seal to be imprinted hereon and attested by its Clerk, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

  
Mayor

ATTEST

  
Clerk



**CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION**

This Bond is one of the fully registered Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto is the complete text of the opinion of Steptoe & Johnson PLLC, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Bonds.

Dated: October 24, 2012.

**WESBANCO BANK, INC.,  
as Registrar**

By *Shirley A. [Signature]*  
Its Authorized Officer

(FORM OF)  
ASSIGNMENT

Social Security or Other Identifying Number of Assignee \_\_\_\_\_  
\_\_\_\_\_

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

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

\_\_\_\_\_  
SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

City of Fairmont  
Water Refunding Revenue Bonds, Series 2012 D

**REGISTRAR AGREEMENT**

THIS AGREEMENT, dated as of the 24th day of October, 2012, by and between the CITY OF FAIRMONT, a municipal corporation and political subdivision of the State of West Virginia (the "Issuer"), and WESBANCO BANK, INC., Wheeling, West Virginia, a state banking corporation (the "Bank").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its \$25,555,000 aggregate principal amount of Water Refunding Revenue Bonds, Series 2012 D (the "Series 2012 D Bonds") (the "Bonds"), in fully registered form pursuant to a Bond Ordinance enacted March 27, 2012, as supplemented by a Supplemental Parameters Resolution adopted June 12, 2012 and Second Supplemental Resolution adopted September 12, 2012 (collectively, the "Bond Legislation");

WHEREAS, capitalized words and terms used in this Agreement and not otherwise defined herein shall have the respective meanings given them in the Bond Legislation, a copy of which is attached as Exhibit A hereto and incorporated herein by reference;

WHEREAS, the Bond Legislation provides for an appointment by the Issuer of a Registrar for the Bonds; and

WHEREAS, the Issuer desires to appoint, and by the Bond Legislation and this Agreement does appoint the Bank to act as Registrar under the Bond Legislation and to take certain other actions hereinafter set forth;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Upon the execution of this Agreement by the Issuer and the Bank and during the term hereof, the Bank does accept and shall have and agrees to perform all of the powers and duties of Registrar, as set forth in the Bond Legislation, such duties including, among other things, the duties to authenticate, register and deliver Bonds upon original issuance and when properly presented for exchange or transfer, and shall do so with the intention of maintaining the excludability from gross income of interest on the Series 2012 D Bonds for purposes of federal income taxation, in accordance with any rules and regulations promulgated by the United States Treasury Department or by the Municipal Securities Rulemaking Board or similar regulatory bodies as the Issuer advises it of and with generally accepted industry standards.

2. The Bank 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 Bank'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 Bank shall have no responsibility or liability for any action taken by it at the specific direction of the Issuer.

4. As compensation for acting as Registrar pursuant to this Agreement, the Issuer hereby agrees to pay to the Bank, the compensation for services rendered as provided in the annexed fee schedule and reimbursement for reasonable expenses incurred in connection therewith.

5. It is intended that this Agreement shall carry out and implement provisions of the Bond Legislation with respect to the Registrar. In the event of any conflict between the terms of this Agreement and the Bond Legislation, the terms of the Bond Legislation shall govern.

6. The Issuer and the Bank each warrants and represents that it is duly authorized and empowered to execute and enter into this Agreement and that neither such execution nor the performance of its duties hereunder or under the Bond Legislation will violate any order, decree or agreement to which it is a party or by which it is bound.

7. This 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 Fairmont  
Post Office Box 1428  
Fairmont, West Virginia 26554  
Attention: City Manager

REGISTRAR:

Wesbanco Bank, Inc.  
One Bank Plaza  
Wheeling, West Virginia 26003  
Attention: Trust Department

8. The Bank is hereby requested and authorized to authenticate and deliver the Bonds in accordance with the Bond Legislation.

9. If any one or more of the covenants or agreements provided in this Agreement to be performed on the part of any of the parties hereto shall be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

10. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed in their respective names and on their behalf, all as of the day and year first above-written.

CITY OF FAIRMONT

By: William G. Budnik  
Its: Mayor

WESBANCO BANK, INC.

By: Jacely DeRosa  
Its: Authorized Officer

EXHIBIT A

Bond Legislation

[See Transcript at Tab No. 1, Tab No. 2 and Tab No. 3]

FEE SCHEDULE

(On File with Issuer)

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CHARTER  
OF THE CITY OF  
FAIRMONT, WEST VIRGINIA

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EDITOR'S NOTE: The Fairmont Charter was approved by voters on August 17, 1976. Dates appearing in parentheses following section headings indicate that those provisions were subsequently amended, added or repealed on the date given.

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CHARTER  
OF THE  
CITY OF FAIRMONT, WEST VIRGINIA

ARTICLE I - Incorporation; Form of Government; Powers

Section 1.01 Incorporation.

The inhabitants of the City of Fairmont, Marion County, West Virginia, within the corporate limits as now established or as hereafter established in the manner provided by law, shall continue to be a municipal body politic and corporate in perpetuity, under the name of the City of Fairmont.

Section 1.02 Form of Government.

There is established by this Charter the Council-Manager form of municipal government, as prescribed in section two, article three, chapter eight of the official code of West Virginia, as amended. Except as otherwise provided in this Charter, the Council shall be the governing authority of the City, and shall appoint the City Manager who shall execute the laws and administer the government of the City, except as otherwise provided herein.

Section 1.03 Powers of City.

The City shall have all the powers specifically provided for in this Charter, and shall also have all the powers now hereafter granted to municipal corporations and to cities of its class by the constitution and general laws of the State, together with all the implied powers necessary and proper to carry into execution the powers so granted. The enumeration herein of particular powers shall not be deemed exclusive, but the City shall have and may exercise all the powers which under the Constitution and laws of the State might properly be specifically enumerated in this Charter.

Section 1.04 Intergovernmental Relations.

The City may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with any one or more states in civil divisions or subdivisions or agencies thereof, or the United States of America or any agencies thereof.

ARTICLE II - The Council

Section 2.01 Composition, Eligibility, Election and Terms.

(a) Composition. There shall be nine councilmembers. The councilmembers shall be elected by the voters of the City at large. The City shall be divided into nine voting districts, which districts shall be established by Council by ordinance and changed from time to time by Council to reflect population changes.

(b) Eligibility and Qualifications. Only qualified voters of the City shall be eligible to hold the office of councilman or councilwoman. Each councilmember shall have been a resident of the City for at least two years immediately preceding his election and shall, at the time of his announcement for office and during his term of office, reside within the district from which elected or appointed to office; provided, however, that no redistricting of the City shall affect the term of any incumbent councilmember during his then existing term of office. If a councilmember shall cease to possess any of these qualifications or shall be convicted of a crime involving moral turpitude, his office shall immediately become vacant. The terms of councilmembers shall be four years except as otherwise provided in this Charter respecting the first election under this Charter.

Section 2.02 Mayor.

The Council shall elect, at the first meeting of a new Council one of its members to serve at the pleasure of the Council as Mayor, and it shall also elect from among its members a Deputy Mayor who shall at the pleasure of the Council act as Mayor during the absence or disability of the Mayor. The Mayor shall preside at all meetings of the Council, shall be recognized as head of the City government for all ceremonial purposes and by the Governor for purposes of military law but shall have no administrative duties. If the Deputy Mayor acts as Mayor, he shall be compensated as such as set out in Section 2.03.

Section 2.03 Compensation; Expenses.

The salary of the Mayor shall be sixty dollars for each regular meeting of the Council attended by him, not to exceed \$1440 dollars in any fiscal year. The salary of each of the other councilmembers shall be fifty dollars for each regular meeting of the Council attended by him, not to exceed \$1200 in any fiscal year. Until the maximum limit is reached, the salary of the Mayor and each of the councilmembers shall be paid monthly as earned. Councilmembers shall receive their actual and necessary expenses incurred in the performance of their duties of office as approved by the Council.

Section 2.04 Powers.

All powers of the City shall be vested in the Council, except as otherwise provided by law or this Charter, and the Council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the City by law.

Section 2.05 Prohibitions.

(a) During his term of office no councilmember shall hold any other elected public office, nor shall be employed by the City in any other capacity and no former councilmember shall hold any compensated appointive City office or employment until one year after the expiration of the term for which he was elected to the Council. However, any member of any political executive committee shall not be deemed to hold an elected public office within the meaning of this section.

(b) Appointments and Removals. Neither the Council nor any of its members shall in any manner dictate the appointment or removal of any City administrative officer or employee whom the Manager or any of his subordinates are empowered to appoint, but the Council may express its views and fully and freely discuss with the Manager anything pertaining to the appointment or the removal of such officer or employee.

(c) Interference with Administration. Except for the purpose of inquiries and investigations under Section 2.09, the Council or its members shall deal with City officers and employees who are subject to the direction and supervision of the Manager solely through the Manager, and neither the Council nor its members shall give orders to any such officers or employees, either publicly or privately. Violation of this provision shall provide grounds for removal from office.

Section 2.06 Vacancies, Forfeiture of Office, Filling of Vacancies.

(a) Vacancies. The office of a councilmember shall become vacant upon his death, resignation or removal from office in any manner authorized by law or forfeiture of his office.

(b) Forfeiture of Office. A councilmember shall forfeit his office 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.

(c) Filling of Vacancies. A vacancy in the Council shall be filled for the remainder of the unexpired term, if any, at the next regular election following not less than 60 days upon the occurrence of the vacancy, but the Council by a majority vote of all its remaining members shall appoint a qualified person from the same political party or independent as the case may be to fill the vacancy until the person elected to serve the remainder of the unexpired term takes office. If the Council fails to do so within 30 days following the occurrence of the vacancy, the election authorities shall call a special election to fill the vacancy, to be held not sooner than 90 days and not later than 120 days following the occurrence of the vacancy and to be otherwise governed by the provisions of Article VII. Notwithstanding the requirement in Section 2.11 that a quorum of the Council consists of five members, if at any time the membership of the Council is reduced to less than five, the remaining members may by majority action appoint additional members to raise the membership to five.

Section 2.07 Judge of Qualifications.

The Council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of their office and for that purpose shall have power to subpoena witnesses, administer oaths and require the production of evidence. A member charged with conduct constituting grounds for forfeiture of his office shall be entitled to a public hearing on demand, and notice of such hearings shall be published in one or more newspapers of general circulation in the City at least one week in advance of the hearing. Decisions made by the Council under this section shall be subject to review by the courts.

Section 2.08 City Clerk.

The Council shall appoint upon recommendation of the City Manager a resident of the City to serve as City Clerk at the will and pleasure of the Council. Except as otherwise provided in this Charter and subject to the supervision of the City Manager, the Clerk shall have the power, and it shall be his or her duty to:

- (1) Give notice of and attend all meetings of the Council, keep the journal of its proceedings, authenticate by his or her signature and record in full in a book kept for the purpose the Council's proceedings and keep up to date an index of

(2) Make and certify copies of any ordinance, resolution or order of the Council whenever required to do so, and affix the corporate seal of the City to any paper required to be sealed and to any certified copy of any paper, order or proceeding which he may make.

(3) Prepare and cause to be served all notices required to be given to any person, firm or corporation, and after the proper service and return of any notice he shall file and preserve the same.

(4) Have custody of and keep available for public inspection the permanent records of the City and file and properly index all records of such City officers and departments as the City Manager may direct.

(5) Perform such other duties as may be required of him or her by this Charter, by general law, or by City ordinance or order of the City Manager not inconsistent with this Charter or with general law.

#### Section 2.09 Investigations.

The Council may make investigations into the affairs of the City and the conduct of any City department, office or agency and for this purpose may subpoena witnesses, administer oaths, take testimony and require the production of evidence. Any person who fails or refuses to obey a lawful order issued in the exercise of these powers by the Council shall be guilty of a misdemeanor and punishable by a fine of not less than \$50 or more than \$500.

#### Section 2.10 Independent Audit.

The Council shall provide for an independent annual audit of all City accounts including Fairmont General Hospital and other such boards or commissions, and may provide for such more frequent audits as it deems necessary. Such audits shall be made by a certified public accountant or firm of such accountants who have no personal interest, direct or indirect, in the fiscal affairs of the City government or any of its officers. The Council may, without requiring competitive bids, designate such accountant or firm annually or for a period not exceeding three years, provided that the designation for any particular fiscal year shall be made no later than 30 days after the beginning of such fiscal year. If the State makes such an audit, the Council may accept it as satisfying the requirements of this section.

#### Section 2.11 Procedure. \* see Resolution 5-3-83 - (48 hrs. notice)

(a) Meetings. The Council shall meet regularly at least twice every month at such time and place as the Council may prescribe by rule. Special meetings may be held on the call of the Mayor or of five or more members and, whenever practicable, upon no less than ~~twenty-four hours~~ notice to each member. All meetings shall be public; however, the Council may recess for the purpose of discussing in a closed executive session limited to its own membership, any matter which would tend to defame or prejudice the character or reputation of any person, or for the purpose of discussing purchases of real estate, provided that the general subject matter for consideration is expressed in the motion calling for such session and that final action thereon shall not be taken by the Council until the matter is placed on the agenda.

(b) Rules and Journal. The Council shall determine its own rules and order of business.

The Council shall also determine the journal of its proceedings. This journal shall be a public

(c) Voting. Voting, except on procedural motions, shall be by roll call and the yeas and noes shall be recorded in the journal. Five members of the Council shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the Council. No action of the Council, except as otherwise provided in the preceding sentence and in Section 2.06, shall be valid or binding unless adopted by the affirmative vote of five or more members of the Council. (Passed by Council 9-20-83).

#### Section 2.12 Action Requiring an Ordinance.

In addition to other acts required by law or by specific provision of this Charter to be done by ordinance, those acts of the City Council shall be by ordinance which:

- (1) Adopt or amend an administrative code or establish, alter or abolish any City department, office or agency;
- (2) Provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed;
- (3) Grant, renew or extend a franchise;
- (4) Regulate the rate charged for its services by a public utility;
- (5) Authorize the borrowing of money;
- (6) Convey or lease or authorize the conveyance or lease of any lands of the City;
- (7) Adopt with or without amendment ordinances proposed under the initiative power; and
- (8) Amend or repeal any ordinance previously adopted, except as otherwise provided in Article VIII with respect to repeal of ordinances reconsidered under the referendum power.

#### Section 2.13 Ordinances in General.

(a) Form. Every proposed ordinance shall be introduced in writing and the form required for final adoption. No ordinance shall contain more than one subject which shall be clearly expressed in its title. The enacting clause shall be "the City of Fairmont hereby ordains....." Any ordinance which repeals or amends an existing ordinance or part of the City Code shall set out in full the ordinance, sections, or subsections to be repealed or amended, and shall include the matter to be omitted by enclosing it in brackets or by strikeout type and shall indicate new matter by underlining or by italics.

(b) Procedure. An ordinance may be introduced by any member at any regular or special meeting of the Council. Upon introduction of any ordinance, the City Clerk shall read fully and distinctly the proposed ordinance in its entirety. When the introducer of an ordinance considers it to be of such technical nature, or of such length that the intent will be more fully understood in synopsis form the Council member may request the Clerk to read the synopsis in lieu of the entire ordinance. Provided however, the ordinance will be read in its entirety instead of in synopsis upon request of the majority of the Council members present. The City Clerk shall distribute a copy to

each Council member and to the Manager, shall file a reasonable number of copies in the office of the City Clerk, and shall publish the ordinance together with a notice setting out the time and place for a public hearing thereon and for its consideration by the Council. At the commencement of the public hearing the Clerk shall read the title only of the proposed ordinance, unless a request is made by any person present at the public hearing that the proposed ordinance be read, upon which request the Clerk shall read fully and distinctly the proposed ordinance in its entirety. Copies of the proposed ordinance shall be made available to those in attendance at the public hearing. The public hearing shall follow the publication by at least seven days, may be held separately or in connection with a regular or special Council meeting and may be adjourned from time to time; all persons interested shall have an opportunity to be heard. After the hearing, the Council may adopt the ordinance with or without amendment or reject it, but if it is amended as to any matter of substance, the Council may not adopt it until the ordinance or its amended sections have been subjected to all the procedures hereinbefore required in the case of a newly introduced ordinance.  
(Passed by Council 6-17-80; 11-15-83; 5-23-89) *Ord. # 908*

(c) Effective Date. Except as otherwise provided in this Charter, every adopted ordinance shall become effective at the expiration of 30 days after adoption or at any later date specified therein.

(d) "Published" Defined. As used in this section, the term "publish" means to print in one or more newspapers of general circulation in the City: (1) the title of the ordinance and a brief summary thereof, and (2) the places where copies of it have been filed and the times when they are available for public inspection.

#### Section 2.14 Emergency Ordinances.

To meet a public emergency affecting life, health, property or the public peace, the Council may adopt one or more emergency ordinances but such ordinances may not levy taxes, grant, renew or extend a franchise, regulate the rate charged by any public utility for its services or authorize the borrowing of money except as provided in subsection 5.09(b). An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but the affirmative vote of at least six members shall be required for adoption. After its adoption the ordinance shall be published and printed as prescribed for other adopted ordinances. It shall become effective upon adoption or at such later time as it may specify. Every emergency ordinance except one made pursuant to subsection 5.09(b) shall automatically stand repealed as of the 61st day following the date on which it was adopted, but this shall not prevent re-enactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

**Section 2. 15 Codes of Technical Regulations.**

The Council may adopt any standard code of technical regulations by reference thereto in an adopting ordinance. The procedure and requirements governing such an adopting ordinance shall be as prescribed for ordinances generally, except that:

- (1) The requirements of Section 2. 13 for distribution and filing of copies of the ordinance shall be construed to include copies of the code of technical regulations as well as of the adopting ordinance, and
- (2) A copy of each adopted code of technical regulations as well as of the adopting ordinance shall be authenticated and recorded by the City Clerk pursuant to subsection 2. 16(a).

Copies of any adopted code of technical regulations shall be made available by the City Clerk for distribution or for purchase at a reasonable price.

**Section 2. 16 Authentication and Recording; Codification; Printing.**

(a) Authentication and Recording. The City Clerk shall authenticate by his signature and record in full in a properly indexed book kept for the purpose all ordinances and resolutions adopted by the Council.

(b) Codification. Within three years after adoption of this Charter and at least every ten years thereafter, the Council shall provide for the preparation of a general codification of all City ordinances and resolutions having the force and effect of law. The general codification shall be adopted by the Council by ordinance and shall be published promptly in bound or loose-leaf form, together with this Charter and any amendments thereto, pertinent provisions of the Constitution and other laws of the State of West Virginia and such codes of technical regulations and other rules and regulations as the Council may specify. This compilation shall be known and cited officially as the Fairmont City Code. Copies of the Code shall be furnished to City officers, placed in libraries and public offices for free public reference and made available for purchase by the public at a reasonable price fixed by the Council.

(c) Printing of Ordinances and Resolutions. The Council shall cause each ordinance and resolution having the force and effect of law and each amendment to this Charter to be copied promptly following its adoption, and the said copies of the ordinances, resolutions and Charter amendments shall be distributed or sold to the public at reasonable prices to be fixed by the Council. Following publication of the first Fairmont City Code and at all times thereafter, the ordinances, resolutions and Charter amendments shall be reproduced in substantially the same style as the Code currently in effect and shall be suitable in form for integration therein. The Council shall make such further arrangements as it deems desirable with respect to reproduction and distribution of any current changes in or additions to the provisions of the Constitution and other laws of the State of West Virginia, or the codes of technical regulations and other rules and regulations included in the Code.

## ARTICLE III - City Manager

## Section 3. 01 Appointment; Qualifications; Compensation.

The Council shall appoint a City Manager for an indefinite term and fix his compensation. The Manager shall be appointed solely on the basis of his executive and administrative qualifications with particular emphasis on education and experience in City government. He need not be a resident of the City or State at the time of his appointment but must reside within the City while in office.

## Section 3. 02 Removal.

The Council may remove the Manager from office in accordance with the following procedures:

- (1) The Council shall adopt by affirmative vote of a majority of all its members a preliminary resolution which must state the reasons for removal and may suspend the Manager from duty for a period not to exceed 45 days. A copy of the resolution shall be delivered promptly to the Manager.
- (2) Within five days after a copy of the resolution is delivered to the Manager, he may file with the Council a written request for a public hearing. This hearing shall be held at a Council meeting not earlier than fifteen days nor later than thirty days after the request is filed. The Manager may file with the Council a written reply not later than five days before the hearing.
- (3) The Council may adopt a final resolution of removal, which may be made effective immediately, by affirmative vote of a majority of all its members at any time after five days from the date when a copy of the preliminary resolution was delivered to the Manager, if he has not requested a public hearing, or at any time after the public hearing if he has requested one.

The Manager shall continue to receive his salary until the effective date of a final resolution of removal. The action of the Council in suspending or removing the Manager shall not be subject to review by any court or agency.

## Section 3. 03 Acting City Manager.

By letter filed with the City Clerk the Manager shall designate, subject to approval of the Council, a qualified City administrative officer to exercise the powers and perform the duties of Manager during his temporary absence or disability. During such absence or disability the Council may revoke such designation at any time and appoint another officer of the City to serve until the Manager shall return or his disability shall cease; however, in the event that the Manager has failed to designate an Acting Manager, the Council may by resolution appoint an officer of the City to perform the duties of the Manager until he shall return or his disability shall cease.

Section 3.04 Powers and Duties of the City Manager.

The City Manager shall be the chief administrative officer of the City. He shall be responsible to the Council for the administration of all City affairs placed in his charge by or under this Charter. He shall have the following powers and duties:

- (1) He shall appoint and, when he deems it necessary for the good of the service, suspend or remove all City employees and appointive administrative officers provided for by or under this Charter, except as otherwise provided by law, this Charter or personnel rules adopted pursuant to this Charter. He may authorize any administrative officer who is subject to his direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency.
- (2) He shall direct and supervise the administration of all departments, offices and agencies of the City, except as otherwise provided by this Charter or by law.
- (3) He shall attend all Council meetings and shall have the right to take part in discussion but may not vote.
- (4) He shall see that all laws, provisions of this Charter and acts of the Council, subject to enforcement by him or by officers subject to his direction and supervision are faithfully executed.
- (5) He shall prepare and submit the annual budget and capital program to the Council.
- (6) He shall propose personnel rules, and the Council may by ordinance adopt them with or without amendment.
- (7) He shall submit to the Council and make available to the public a complete report on the finances and administrative activities of the City as of the end of each fiscal year.
- (8) He shall make such other reports as the Council may require concerning the operations of City departments, offices and agencies subject to his direction and supervision.
- (9) He shall keep the Council fully advised as to the financial condition and future needs of the City and make such recommendations to the Council concerning the affairs of the City as he deems desirable.
- (10) He shall prepare and mail to each councilmember a proposed agenda of the next regular Council meeting at least three days prior to the meeting.
- (11) He shall perform such other duties as are specified in this Charter or may be required by the Council.

## ARTICLE IV - Administrative Departments, Boards and Commissions

## Section 4.01 Administrative Offices and Departments.

There shall be in the City government a Police Department, a Fire Department, a Department of Public Works, a Department of Finance, and such other administrative departments as may by ordinance be created by the Council. The City Manager shall appoint as the head of each department a chief, supervisor or director, who shall be responsible for the efficient administration of the department, subject to the supervision and control of the Manager. With the consent of Council, the Manager may serve as the head of one or more such departments, offices or agencies or may appoint one person as the head of two or more of them.

The Council may by ordinance create, combine, change or abolish offices, boards, commissions, departments or agencies, other than those established by this Charter. Except as otherwise provided in this Charter, the Council may assign additional functions or duties to any office, department or agency created by it or by this Charter, but may not discontinue or transfer any function or duty assigned by this Charter to any particular office, department or agency.

## Section 4.02 City Attorney.

(a) There shall be a City Attorney who shall be a member in good standing of the Marion County Bar, appointed by the Manager with the approval of the Council to serve at the pleasure of Council. He shall serve as chief legal advisor to the Council, the Manager and all City departments, offices and agencies, shall represent the City in all legal proceedings and shall perform any other duties prescribed by this Charter or by ordinance.

(b) Whenever the exigencies of the business of the City require such action, the City Manager shall have right to employ special counsel to assist the City Attorney.

## Section 4.03 Municipal Court.

There shall be a police court, to be known as the "Fairmont Municipal Court", which shall have criminal jurisdiction over violations of City ordinances and the criminal jurisdiction of a magistrate of the State of West Virginia with respect to offenses committed within any territory in or beyond the City over which the City has police jurisdiction under provisions of general law. (Passed by Council 6-17-80)

There shall be a police court judge, to be known as the "Municipal Judge", who shall be appointed by the Council and who shall serve for a term of four years and who shall be subject to removal for cause only. The Municipal Judge shall be an attorney in good standing of the Marion County Bar. He may succeed in office.

In the event of the temporary absence or disability of the Municipal Judge, the City Manager shall appoint a person similarly qualified to serve as Municipal Judge during such absence or disability. Salary shall be transferred from the regular judge in the temporary judge for the time serving.

In the event of the death, resignation, removal or permanent disability of the Municipal Judge, the Council shall appoint a person similarly qualified to serve as Municipal Judge for the unexpired term within fifteen days.

The Municipal Judge shall preside over the Municipal Court and with respect to offenses over which the Municipal Court has jurisdiction. The Municipal Judge shall have power to issue warrants upon complaint under oath of any person or officer for the arrest of anyone charged with any offense within the jurisdiction of the Court. The Municipal Judge shall try and determine all cases over which the Court has jurisdiction, and within the limits prescribed by ordinance or by general law shall have the power to punish by fine or imprisonment, or both. The Municipal Judge shall have power to summons persons or subpoena witnesses for the trial of any case before him, to compel the attendance of police officers of the City, to require the Chief of Police to enforce all judgments or orders entered by him in the exercise of his powers as Municipal Judge, and to issue executions for all fines, penalties and costs imposed by him.

#### Section 4.04 City Planning Commission.

The Council shall provide for the establishment and financial support of a City Planning Commission as provided by general law. The Commission shall consist of no fewer than 9 nor more than 13 members who shall be appointed by the Council and who shall serve without compensation. Members of the Commission shall meet the qualifications as delineated by law, and the Commission shall have the powers and shall perform the duties presented by the West Virginia Code. These duties shall include recommendations to the City Manager and Council on all matters related to the physical development of the City, shall be consulted on the comprehensive plan and the implementation thereof. The Planning Director will act as secretary to the Commission and will attend all meetings.

#### Section 4.05 Board of Adjustment.

The Council shall by ordinance establish a Board of Adjustment whose members shall serve without compensation. The Council shall provide standards and procedures for such Board to hear and determine appeals from administrative decisions, petitions for variances in the case of peculiar and unusual circumstances which would prevent the reasonable use of land and such other matters as may be required by the Council or by law.

#### Section 4.06 Hospital Board.

(a) Management. The management, maintenance, administration, operation, custody and control of the Municipal hospital and all the appurtenances thereof and grounds and site thereof, is hereby committed to a board of directors to be known as the "Fairmont Hospital Board".

(b) The Board shall consist of eleven members to be nominated and appointed by the Council. It shall be composed of two members of Council, and forty percent of the remainder shall be composed of an equal portion of consumer representatives from each of the following four categories: small businesses, organized labor, elderly persons and persons whose income is less than the national median income. Special consideration shall be made to select women, racial minorities and handicapped persons. The terms of the consumer members shall be six years, and members shall be eligible for reappointment. The Board shall at its first meeting of each calendar year elect from its members a president, vice-president, secretary and treasurer. The Board shall serve without compensation. All vacancies shall be filled by the City Council within fifteen (15) days. The Board members may be removed at any time by City Council for cause. (Passed by Council 4-3-84.) O.P.D. 636

(c) Fiscal Matters. The Hospital Board shall cause accurate and proper books of accounts to be maintained in accordance with acceptable accounting practices. The Hospital Board shall submit to the Council a monthly statement of income and expenses. An annual independent audit will be provided as per Section 2.10.

(d) First Board. The lay members of the initial Board under this Charter shall be composed of the present lay members of the Hospital Board. Terms of office will be determined by the Hospital Board using the following guidelines: Three members will serve for three years; two members will serve for two years; and two members will serve for one year.

The Board will provide the City Council with the names and terms of its lay members within fifteen days after this Charter is in effect; otherwise, the Council will designate terms of office.

(e) Any other municipal hospitals must be governed in the same manner with a separate board as prescribed in this section.

### ARTICLE V - Financial Procedures

#### Section 5.01 Fiscal Year.

The fiscal year of the City shall begin on the first day of July and end on the last day of June.

**Section 5.02 Submission of Budget and Budget Message.**

On or before the 15th day of February of each year, the Manager shall submit to the Council a budget for the ensuing fiscal year and an accompanying message.

**Section 5.03 Budget Message.**

The Manager's message shall explain the budget both in fiscal terms and in terms of the work programs. It shall outline the proposed financial policies of the City for the ensuing fiscal year, describe the important features of the budget, indicate any major changes from the current year in financial policies, expenditures, and revenues together with the reasons for such changes, summarize the City's debt position and include such other material as the Manager deems desirable.

**Section 5.04 Budget.**

The budget shall provide a complete financial plan of all City funds and activities for the ensuing fiscal year and, except as required by law or this Charter, shall be in such form as the Manager deems desirable or the Council may require. In organizing the budget the Manager shall utilize the most feasible combination of expenditure classification by fund, organization unit, program, purpose of activity, and object. It shall begin with a clear general summary of its contents; shall show in detail all estimated income, indicating the proposed property tax levy, and all proposed expenditures, including debt service, for the ensuing fiscal year shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. It shall indicate in separate sections:

- (a) Proposed expenditures for current operations during the ensuing fiscal year, detailed by offices, departments and agencies in terms of their respective work programs, and the method of financing such expenditures;
- (b) Proposed capital expenditures during the ensuing fiscal year, detailed by offices, departments and agencies when practicable, and the proposed method of financing each such capital expenditure.

The total of proposed expenditures shall not exceed the total of estimated income.

**Section 5.05 Capital Program.**

(a) Submission to Council. The Manager shall prepare and submit to the Council a five-year capital program prior to the final date for submission of the budget.

- (b) Contents. The capital program shall include:
- (1) A clear general summary of its contents;

- (2) A list of all capital improvements which are proposed to be undertaken during the five fiscal years next ensuing, with appropriate supporting information as to the necessity for such improvements;
- (3) Cost estimates, method of financing and recommended time schedule for each such improvement; and
- (4) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.

The above information shall be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.

#### Section 5.06 Council Action on Budget.

(a) Notice and Hearing. At the meeting of the Council at which the budget is submitted, the Council shall determine the time and place of a public hearing. The Council shall publish in one or more newspapers of general circulation in the City a notice stating:

- (1) The times and places where copies of the message and budget are available for inspection by the public, and
- (2) The time and place for a public hearing on the budget.

(b) Amendment Before Adoption. After the public hearing, the Council may adopt the budget with or without amendment.

(c) Adoption. The Council shall adopt the budget on or before the 28th day of March of the fiscal year currently ending. Adoption of the budget shall constitute appropriations of the amounts specified therein as expenditures from the funds indicated.

#### Section 5.07 Council Action on Capital Program.

(a) The Council shall make known, no less than one month prior to adoption of the capital program, the times and places where copies of the capital program are available for inspection by the public.

(b) Adoption. The Council by resolution shall adopt the capital program with or without amendment on or before the 28th day of March of the current fiscal year.

#### Section 5.08 Public Records.

Copies of the budget and the capital program as adopted shall be public records and shall be made available to the public at suitable places in the City.

#### Section 5.09 Amendments After Adoption.

(a) Supplemental Appropriations. If during the fiscal year the Manager certifies that there are available for appropriation revenues in excess of those estimated in the budget, the Council by ordinance may make supplemental appropriations for the year up to the amount of such excess.

(b) Emergency Appropriations. To meet a public emergency affecting life, health, property or the public peace, the Council may make emergency appropriations. Such appropriations may be made by emergency ordinance in accordance with the provisions of Section 2.14. To the extent that there are no available unappropriated revenues to meet such appropriations, the Council may by such emergency ordinance authorize the issuance of emergency notes, which may be renewed from time to time, but the emergency notes and renewals of any fiscal year shall be paid not later than the last day of the fiscal year out succeeding that in which the emergency appropriation was made.

(c) Reduction of Appropriations. If at any time during the fiscal year it appears probable to the Manager that the revenues available will be insufficient to meet the amount appropriated, he shall report to the Council without delay, indicating the estimated amount of the deficit, any remedial action taken by him and his recommendations as to any other steps to be taken. The Council shall then take such further action as it deems necessary to prevent or minimize any deficit, and for that purpose it may by ordinance reduce one or more appropriations.

(d) Transfer of Appropriations. At any time during the fiscal year the Manager may transfer part or all of any unencumbered appropriation balance among programs within a department, office or agency and, upon written request by the Manager, the Council may by ordinance transfer part or all of any unencumbered appropriation balance from one department, office or agency to another.

(e) Limitations; Effective Date. No appropriation for debt service may be reduced or transferred, and no appropriation may be reduced below any amount required by law to be appropriated or by more than the amount of the unencumbered balance thereof. The supplemental and emergency appropriations and reduction or transfer of appropriations authorized by this section may be made effective immediately upon adoption.

#### Section 5.10 Lapse of Appropriations.

Every appropriation, except an appropriation for a capital expenditure, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered. An appropriation for a capital expenditure shall continue in force until the purpose for which it was made has been accomplished or abandoned; the purpose of any such appropriation shall be deemed abandoned if three years pass without any disbursement from or encumbrance of the appropriation.

#### Section 5.11 Administration of Budget.

(a) Work Programs and Allotments. At such time as the Manager shall specify, each department, office or agency shall submit work programs for the ensuing fiscal year showing the requested allotments of its appropriation by periods within the year. The Manager shall review and authorize such allotments with or without revision as early as possible in the fiscal year. He may revise such allotments during the year if he deems it desirable and shall revise them to accord with any supplemental, emergency, reduced or transferred appropriations made pursuant to Section 5.09.

(b) Payments and Obligations Prohibited. No payment shall be made or obligation incurred against any allotment or appropriation except in accordance with appropriations duly made, and unless the Manager or his designee first certifies that there is a sufficient unencumbered balance in such allotment or appropriation and that sufficient funds therefrom are or will be available to cover the claim or meet the obligation when it becomes due and payable. Any authorization of payment or incurring of obligation in violation of the provisions of this Charter shall be void, any payment so made illegal; such action shall be cause for removal of any officer who knowingly authorized or made such payment or incurred such obligation, and he shall also be liable to the City for any amount so paid. However, except where prohibited by law, nothing in this Charter shall be construed to prevent the making or authorizing of payments or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds or to prevent the making of

## ARTICLE VI-Planning

## Section 6.01 Planning Director.

There shall be a Planning Director who shall be appointed by the Manager as provided in Section 4.01. The Planning Director will act as secretary to the Commission and attend all meetings and shall have the following responsibilities:

- (1) To advise the City Manager on any matter affecting the physical development of the City,
- (2) To maintain and recommend to the City Manager a comprehensive plan and modifications thereof,
- (3) To review and make recommendations regarding proposed Council action implementing the comprehensive plan pursuant to Section 6.03,
- (4) To participate in the preparation and revision of the capital program provided for in Section 5.05,
- (5) To advise the City Planning Board in the exercise of its responsibilities and in connection therewith to provide necessary staff assistance,
- (6) To assist in the preparation of grants and/or other established funding program, and
- (7) To cooperate with other units of government and public agencies by planning as provided in Section 1.04.

## Section 6.02 Comprehensive Plan.

(a) Content. The Council shall adopt and may, from time to time, modify a comprehensive plan setting forth in graphic and textual form policies to govern the future physical development of the City. Such plan may cover the entire City and all of its functions and services or may consist of a combination of plans governing specific functions and services or specific geographic areas which together cover the entire City and all of its functions and services.

(b) Adoption. Upon receipt from the City Manager of a proposed comprehensive plan or proposed modification of the existing plan, the Council shall refer such proposal to the City Planning Commission, which shall within a time specified by the Council report its recommendations thereon.

(c) Effect. The comprehensive plan shall serve as a guide to all future Council action concerning land use and development regulations, urban renewal programs and expenditures for capital improvements.

## Section 6.03 Implementation of the Comprehensive Plan.

(a) Land Use and Development Regulations. The Council may by ordinance adopt land use and development regulations, including but not limited to an official map and zoning and subdivision regulations.

(b) Urban Renewal. The Council may by ordinance provide for redevelopment, rehabilitation, conservation and renewal programs for: (1) The alleviation or prevention of slums, obsolescence, blight or other conditions of deterioration, and (2) the achievement of the most appropriate use of land.

(c) Council Action. Before acting on any proposed ordinance concerning land use and development regulations, urban renewal or expenditures for capital improvements, where

by the Council and prior to the public hearing on the proposed ordinance report its recommendations thereon. Upon adopting any such ordinance, the Council shall make findings and report on the relationship between the ordinance and the comprehensive plan and, in the event that the ordinance does not accord with the comprehensive plan, the plan shall be deemed to be amended in accordance with such findings and report.

ARTICLE VII - Elections

Section 7.01 Time of Elections.

The regular municipal elections shall be held at the voting places in each of the election districts of the City on the first Tuesday after the first Monday in November in each even numbered year. (Approved by Voters 11-4-80)

Section 7.02 General Election Laws to Control.

Except as otherwise provided by this Charter, the provisions of the general election laws of the State of West Virginia shall apply to the elections held under this Charter. To the extent that it has not already done so, the Council shall adopt by ordinance all regulations which it considers desirable, consistent with law and this Charter. (Approved by Voters 11-4-80)

Section 7.03 Filing.

(a) Fees. There shall be a filing fee of fifteen dollars (\$15.00) to be accompanied by an announcement of candidacy for the office of Council to be submitted to the City Clerk, which fee is to be deposited in the General Fund. Forms for announcement of candidacy will be provided by the City Clerk as follows:

ANNOUNCEMENT OF CANDIDACY

I, \_\_\_\_\_, hereby certify that I am a candidate for a non-partisan election to membership on the Council of the City of Fairmont, West Virginia, and desire my name printed on the ballot to be voted at the regular municipal election to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_; that I am a legally qualified voter of the City of Fairmont, West Virginia; that my residence is \_\_\_\_\_, in said City, which is in District Number \_\_\_\_\_; that I am a candidate for said office in good faith; and that I am eligible to hold the office.

\_\_\_\_\_  
Candidate

STATE OF WEST VIRGINIA,  
COUNTY OF MARION, TO-WIT:

Signed and acknowledged before me the undersigned authority this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

\_\_\_\_\_  
Notary Public

(b) Time for Filing. The announcement of candidacy and filing fee shall be filed with the City Clerk not earlier than 90 days nor later than 60 days prior to the regular municipal election in which the candidate seeks election. The City Clerk shall make a record of the exact time when each announcement is filed.  
(Approved by Voters 11-4-80)

Section 7.04 Voting.

(a) All citizens qualified by the Constitution and the laws of the State of West Virginia to vote in the City and who satisfy the requirements for registration prescribed by law shall be qualified voters of the City within the meaning of this Charter.

(b) Every qualified voter shall be entitled to vote for as many candidates as there are districts - but for only one candidate from each district.  
(Approved by Voters 11-4-80)

Section 7.05 Council Ballots.

(a) The full names of all candidates seeking membership in the City Council, except those who have withdrawn, died, or become ineligible, shall be placed on the official ballots without party designation or symbol under a heading reading: "Candidates for Councilmember" and also stating the district in which the candidate resides. If there are two or more candidates from the same district, the voter shall be instructed to vote for only one of them. The failure of a voter to cast a ballot for any candidate from one or more districts shall not invalidate his votes cast for candidates from any other districts.

(b) If two or more candidates for the same office have the same surnames or surnames so similar as to be likely to cause confusion, their residence addresses shall be placed with their names on the ballot.

(c) The names on the ballots shall be listed in the numerical order of the districts, and the ballots shall otherwise be in accordance with the requirements of general law. (Approved by Voters 11-4-80)

Section 7.06 Determination of Election Results.

(a) Every voter shall be entitled to cast one vote for one candidate seeking office from each of the nine districts in the City.

(b) The candidate in each district who receives the greatest number of the total votes cast by the qualified voters of the City at large shall be declared elected. All ties between two candidates receiving the highest number of votes cast for that office shall be decided by lot in the presence of the candidates concerned by the persons under whom the supervision of the election is held.  
(Approved by Voters 11-4-80)

Section 7.07 Terms.

(a) The terms of councilmembers shall be four (4) years.

(b) At the election to be held in November of 1980, councilmembers will be elected from Districts Numbers 2, 4, 6, and 7. At the election to be held in November of 1982, councilmembers will be elected from Districts Numbers 1,

(c) The councilmembers elected at each regular municipal election shall assume office at the first regular meeting of Council in January of the year immediately following their election, and the term of each shall expire as soon as his successor has assumed office. (Approved by Voters 11-4-80)

#### ARTICLE VIII-Initiative and Referendum

##### Section 8.01 General Authority.

(a) Initiative. The qualified voters of the City shall have power to propose ordinances to the Council and, if the Council fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a City election, provided that such power shall not extend to the budget or capital program or any ordinance relating to appropriation of money, levy of taxes or salaries of City officers or employees.

(b) Referendum. The qualified voters of the City shall have power to require reconsideration by the Council of any adopted ordinance and, if the Council fails to repeal an ordinance so reconsidered, to approve or reject it at a City election, provided that such power shall not extend to the budget or capital program or any emergency ordinance or ordinance relating to appropriation of money or levy of taxes.

Section 8.02. Commencement of Proceedings; Petitioners' Committee; Affidavit.  
Any five qualified voters may commence initiative or referendum proceedings by filing with the City Clerk an affidavit stating that they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed initiative ordinance or citing the ordinance sought to be reconsidered.

Promptly after the affidavit of the petitioners' committee is filed, the Clerk shall issue the appropriate petition blanks to the petitioners' committee.

##### Section 8.03 Petitions.

(a) Number of Signatures. Initiative and referendum petitions must be signed by qualified voters of the City equal in number to at least 15 percent of the total number of qualified voters registered to vote at the last regular City election.

(b) Form and Content. All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall be executed in ink or indelible pencil and shall be followed by the address of the person signing. Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered.

(c) Affidavit of Circulator. Each paper of a petition shall have attached to it when filed an affidavit executed by the circulator thereof stating that he personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in his presence, that he believes them to be genuine signatures of the persons whose names

they purport to be and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.

(d) Time for Filing Referendum Petitions. Referendum petitions must be filed within 30 days after adoption by the Council of the ordinance sought to be reconsidered.

#### Section 8.04 Procedure After Filing.

(a) Certificate of Clerk; Amendment. Within twenty days after the petition is filed, the City Clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the petitioners' committee by registered mail. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the Clerk within two days after receiving the copy of his certificate and files a supplementary petition upon additional papers within ten days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of subsections (b) and (c) of Section 8.03, and within five days after it is filed, the Clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the petitioners' committee by registered mail as in the case of an original petition. If a petition or amended petition is certified insufficient and the petitioners' committee does not elect to amend or request Council review under subsection (b) of this section within the time required, the Clerk shall promptly present his certificate to the Council and the certificate shall then be a final determination as to the sufficiency of the petition.

(b) Council Review. If a petition has been certified insufficient and the petitioners' committee does not file notice of intention to amend it or if an amended petition has been certified insufficient, the committee may, within two days after receiving the copy of such certificate, file a request that it be reviewed by the Council. The Council shall review the certificate at its next meeting following the filing of such request and approve or disapprove it, and the Council's determination shall then be a final determination as to the sufficiency of the petition.

(c) Court Review, New Petition. A final determination as to the sufficiency of a petition shall be subject to court review. A final determination of insufficiency, even if sustained upon court review, shall not prejudice the filing of a new petition for the same purpose.

#### Section 8.05 Referendum Petitions; Suspension of Effect of Ordinance.

When a referendum petition is filed with the City Clerk, the ordinance sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:

- (1) There is a final determination of insufficiency of the petition, or
- (2) The petitioners' committee withdraws the petition, or
- (3) The Council repeals the ordinance, or
- (4) Thirty days have elapsed after a vote of the City on the ordinance.

#### Section 8.06 Action on Petitions.

(a) Action by Council. When an initiative or referendum petition has been finally determined sufficient, the Council shall promptly consider the proposed initiative ordinance in the manner provided in Article II or reconsider the referred ordinance by voting its repeal. If the Council fails to adopt a proposed initiative ordinance without any change in

(b) Submission to Voters. The vote of the City on a proposed or referred ordinance shall be held not less than 30 days and not later than one year from the date of the final Council vote thereon. If no regular City election is to be held within the period prescribed in this subsection, the Council shall provide for a special election; otherwise, the vote shall be held at the same time as such regular election, except that the Council may in its discretion provide for a special election at an earlier date within the prescribed period. Copies of the proposed or referred ordinance shall be made available at the polls.

(c) Withdrawal of Petitions. An initiative or referendum petition may be withdrawn at any time prior to the fifteenth day preceding the day scheduled for a vote of the City by filing with the City Clerk a request for withdrawal signed by at least four members of the petitioners' committee. Upon the filing of such request the petition shall have no further force or effect and all proceedings thereon shall be terminated.

#### Section 8.07 Results of Election.

(a) Initiative. If a majority of the qualified electors voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances of the same kind adopted by the Council. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

(b) Referendum. If a majority of the qualified electors voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election results.

### ARTICLE IX--General Provisions

#### Section 9.01 Personal Financial Interest.

Any City officer or employee who has a substantial financial interest, direct or indirect or by reason of ownership of stock in any corporation, in any contract with the City or in the sale of any land, material, supplies or services to the City or to a contractor supplying the City, shall make known that interest and shall refrain from voting upon or otherwise participating in his capacity as a City officer or employee in the making of such sale or in the making or performance of such contract. Any City officer or employee who willfully conceals such a substantial financial interest or willfully violates the requirements of this section shall be guilty of malfeasance in office or position and shall forfeit his office or position. Violation of this section with the knowledge expressed or implied of the person or corporation contracting with or making a sale to the City shall render the contract or sale voidable by the City Manager or the City Council.

#### Section 9.02 Prohibitions.

##### (a) Activities Prohibited.

- (1) No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any City position or appointive City administrative office because of race, sex, political or religious opinions or affiliations.
- (2) No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification or appointment under the provisions of this Charter or the rules and regulations made there-

- (3) No person who seeks appointment or promotion with respect to any City position or appointive City administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with his test, appointment, proposed appointment, promotion or proposed promotion.
  - (4) No person, group, organization or corporation shall orally, by letter or otherwise solicit or assist in soliciting any assessment, subscription or contribution for any City election from any person holding any compensated appointive City position.
  - (5) No person who holds any compensated appointive City position shall make, solicit or receive any contribution to the campaign funds for City elections of any political party or any candidate for City office or take any part in management, affairs or political campaign for City elections of any political party, but he may exercise his rights as a citizen to express his opinions and to cast his vote.
- (b) Penalties.
- (1) Any person who by himself or with others willfully and/or knowingly violates any of the provisions of paragraphs (1) through (4) shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars (\$500) or less than fifty dollars (\$50).
  - (2) Any person who by himself or with others willfully and/or knowingly violates any of the provisions of paragraph (5) shall be guilty of an offense and upon conviction thereof shall be punishable by a fine of not less than fifty dollars (\$50) or more than five hundred dollars (\$500).
  - (3) Any person convicted under this section (9.02) shall be ineligible for a period of five years thereafter to hold any City office or position and, if an officer or employee of the City, shall immediately forfeit his office or position.

#### Section 9.03 Separability.

If any provision of this Charter is held invalid, the other provisions of the Charter shall not be affected thereby. If the application of the Charter or any of its provisions to any person or circumstance is held invalid, the application of the Charter and its provisions to other persons or circumstances shall not be affected thereby.

### ARTICLE X-Transitional Provisions

#### Section 10.01 Officers and Employees.

- (a) Rights and Privileges Preserved. Except as otherwise specifically provided in this Charter, nothing shall impair the rights or privileges of persons who are City officers or employees at the time of its adoption.
- (b) Continuance of Office or Employment. Except as specifically provided by this Charter, if at the time this Charter takes full effect a City administrative officer or employee holds any office or position which is or can be abolished by or under this Charter, he shall continue in such office or position until the taking effect of some specific provision under this Charter directing that he vacate the office or position.
- (c) Personnel System. An employee holding a City position at the time this Charter takes

Section 10.02 Departments, Offices and Agencies.

(a) Transfer of Powers. If a City department, office or agency is abolished by this Charter, the powers and duties given it by law shall be transferred to the City department, office or agency designated in this Charter or, if the Charter makes no provision, designated by the City Council.

(b) Property and Records. All property, records and equipment of any department, office or agency existing when this Charter is adopted shall be transferred to the department, office or agency assuming its powers and duties, but, in the event that the powers or duties are to be discontinued or divided between units or in the event that any conflict arises regarding a transfer, such property, records or equipment shall be transferred to one or more departments, offices or agencies designated by the Council in accordance with this Charter.

Section 10.03 Pending Matters.

All rights, claims, actions, orders, contracts and legal or administrative proceedings shall continue except as modified pursuant to the provisions of this Charter and in each case shall be maintained, carried on or dealt with by the City department, office or agency appropriate under this Charter.

## RESOLUTION

### RESOLUTION AMENDING THE RULES OF ORDER AND PROCEDURE OF THE CITY COUNCIL OF THE CITY OF FAIRMONT IN ORDER TO PROVIDE APPROPRIATE NOTICE OF CITY COUNCIL MEETINGS AND NOTICE OF THE MATTERS TO BE CONSIDERED BY COUNCIL AT SUCH MEETINGS SO AS TO COMPLY WITH APPLICABLE PROVISIONS OF THE WEST VIRGINIA OPEN GOVERNMENTAL PROCEEDING ACT

WHEREAS, the City Council of the City of Fairmont has heretofore adopted Rules of Order and Procedure dated March, 1995;

WHEREAS, Section 1.3 (Regular Meetings), Section 1.4 (Special Meetings), Section 3.4 (Preparation of Agenda) and Section 3.6 (Copies of Agenda) of the aforementioned Rules of Order and Procedure set forth provisions relating to the providing of notice of Council's meetings and notice of the business which may be transacted at such meetings;

WHEREAS, said provisions of the aforementioned Rules of Order and Procedure need to be updated in order to comply with the provisions of Chapter 6, Article 9A of the West Virginia Code of 1931, as amended (hereinafter, the "Open Governmental Proceedings Act" or the "Act") as such Act has been interpreted by the West Virginia Ethics Commission (the "Commission"); and

WHEREAS, the City Council for the City of Fairmont hereby adopts this resolution in order to effect the changes to its Rules of Order and Procedure which appear necessary to comply with the recommendations of the Commission.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FAIRMONT HEREBY RESOLVES THAT: SECTION 1.3, 1.4, 3.4 AND 3.6 OF THE RULES OF ORDER AND PROCEDURE OF THE CITY OF FAIRMONT BE AND ARE AMENDED AS FOLLOWS: (New matter underlined; matter to be deleted bracketed):

Section 1.3 Regular Meetings (City Charter Sec. 2.11(a)). The Council shall meet in regular session on the second and fourth Tuesday of each month at 7:00 p.m. prevailing time unless another day and hour be fixed by resolution of the Council. When the meeting falls on a national or legal holiday, the regular meeting shall be held at the same hours on the next succeeding secular day not a holiday. On the first Tuesday in January of each year, the City Clerk shall prepare and post, and leave posted throughout the year to which it applies, at a conspicuous place in the City Hall, a notice setting forth the times and places of the Council's regularly scheduled meetings for the ensuing year. Such notice shall be of size and style sufficient to give notice and shall be of quality sufficient to withstand deterioration throughout the year to which it applies.

Concurrently with the posting of such notice, the City Clerk shall mail or otherwise distribute, by any means reasonably calculated to provide notice, to all newspapers of general local distribution and to other available news media customarily covering news of the City notices identical to that posted.

In the event of any modification in the time or place of a regularly scheduled meeting of the Council, notice of such modification shall be given to the public and news media by posting at the place and distributing to the news media in the manner set forth above, not less than [forty-eight (48)] seventy-two (72) hours prior to the time of such regularly scheduled meeting, or, if such regularly scheduled meeting has been rescheduled for an earlier time, prior to the time of such rescheduled meeting, notices setting forth such modification in the time or place of such regularly scheduled meeting.

Section 1.4 Special Meetings (City Charter Sec. 2.11 (a)). Special meetings may be called by written request of five or more members of the Council, or by the Mayor. The City Clerk shall prepare a notice of the special session stating the date, time, place, and purpose of the special meeting, and this notice shall be served personally upon each member of the Council and the City Manager, or left at their usual place of residence at least [forty-eight (48)] seventy-two (72) hours before the time of the meeting. It shall also be the duty of the City Clerk, immediately upon receipt of written request, to make every diligent effort to notify each member of the Council in person, either by telephone or otherwise, of such special session. Concurrently, with notifying the members of Council, the City Clerk shall also post the notice of the special meeting in a conspicuous place in the City Hall and shall mail or otherwise distribute to all newspapers of general local distribution and to other available news media customarily covering news of the City notices identical to that posted.

Only matters set forth in the notice of the meeting shall be discussed and/or acted upon. This provision of this rule may not be suspended.

Section 3.4 Preparation of Agenda. The City Manager shall arrange or cause to be arranged a list of all matters to come before the Council according to the Order of Business. The City Manager shall deliver to each member of the Council, the City Clerk and the City Attorney a copy of the agenda at least [sixteen (16)] seventy-two (72) business hours prior to the Council meeting, or as far in advance of the meeting as time for preparation will permit.

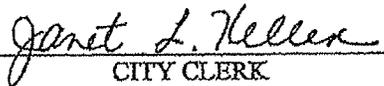
Section 3.6 Copies of the Agenda. [Copies of the agenda shall be made available to the media and the public after its delivery to the members of the City Council] For each regular or special meeting of the Council, the City Clerk shall, at least seventy-two (72) hours in advance of each regular or special meeting, post at a conspicuous place in the City Hall and mail or otherwise distribute by any means reasonably calculated to provide notice, to all newspapers published and of general circulation and to other available news media customarily covering news of the City, an agenda for the business to be conducted at each such meeting. The agenda listing the matters requiring official action that may be addressed at the meeting may be amended up to forty-eight (48) hours prior to the meeting. A sufficient number of copies of the agenda shall also be available to the public at Council's meetings.

This Resolution shall be effective upon passage.

Passed this the 26th day of June, 2007

  
MAYOR

ATTEST:

  
CITY CLERK

ORDINANCE NO. 1112

AN ORDINANCE AMENDING AND REVISING ARTICLE II OF THE FAIRMONT CITY CHARTER- "THE COUNCIL", PARTICULARLY THAT PORTION OF SECTION 2.11 PROCEDURE SUBPART (a) MEETINGS WHICH PROVIDES THE CIRCUMSTANCES UNDER WHICH COUNCIL MAY RECESS AND MEET IN EXECUTIVE SESSION

WHEREAS, the Fairmont City Charter §2.11(a) defines or establishes the circumstances under which Council may recess and meet in executive session;

WHEREAS, City Charter §2.11(a) particularly provides that "All meetings shall be public; however, the Council may recess for the purpose of discussing in a closed executive session limited to its own membership, any matter which would tend to defame or prejudice the character or reputation of any person, or for the purpose of discussing in a closed executive session limited to its own membership, any matter which would tend to defame or prejudice the character or reputation of any person, or for the purpose of discussing purchases of real estate, provided the general subject matter for consideration is expressed in the motion calling for such session and that final action thereon shall be taken by the Council until the matter is placed on the agenda;"

WHEREAS, it appears that said charter provision was patterned after the provisions of West Virginia Code §6-9A-1 et seq., "Open Governmental Proceedings";

WHEREAS, the West Virginia Legislature at its 1999 session amended the provisions of West Virginia Code §6-9A-1 et seq., and particularly the provisions of §6-9A-4 which describes the circumstances under which a governing body of a public agency may recess and meet in executive session;

WHEREAS, the 1999 amendments to West Virginia Code §6-9A-1 et seq., have an effective date of June 21, 1999;

WHEREAS, the Council for the City of Fairmont constitutes a governing body of a public agency under the Act and its meetings are subject to its provisions [See West Virginia Code §6-9A-2(3), (4) and (6)];

WHEREAS, the City of Fairmont deems it necessary to amend Article II of the Fairmont City Charter, particularly Section 2.11 Procedure subpart (a) Meetings which provides the circumstances under which council may recess and meet in executive session so as to cause it to be consistent with the provisions of West Virginia Code §6-9A-4, as amended;

WHEREAS, although the provisions of West Virginia Code §6-9A-4, as amended provide broad circumstances under which a governmental body may recess and meet in executive session,

the City Charter has historically been much more restrictive by its terms and by application. This amendment retains the historical restrictions imposed upon Council by the Framers of the original City Charter;

WHEREAS, West Virginia Code §8-4-8 provides that an amendment to the City Charter under the alternate plan must be by ordinance;

NOW, THEREFORE, THE CITY OF FAIRMONT HEREBY ORDAINS THAT:

Article II The Council, Section 2.11 Procedure, Part (a) Meetings of the Charter of the City of Fairmont, West Virginia be and is hereby amended as follows: (New Matters Double Underlined, Matters To Be Deleted Bracketed)

Section 2.11 Procedure

(a) Meetings. The Council shall meet regularly at least twice every month at such time and place as the Council may prescribe by rule. Special meetings may be held on the call of the Mayor or of five or more members and, whenever, practicable, upon no less than twenty-four hours notice to each member. All meetings shall be open to the public; however, the Council may [recess for the purpose of discussing in a closed executive session limited to its own membership, any matter which would tend to defame or prejudice the character or reputation of any person, or for the purpose of discussing in a closed executive session limited to its own membership, any matter which would tend to defame or prejudice the character or reputation of any person, or for the purpose of discussing purchases of real estate, provided the general subject matter for consideration is expressed in the motion calling for such session and that final action thereon shall not be taken by the Council until the matter is placed on the agenda] hold an executive session during a regular, special or emergency meeting, in accordance with the provisions of this section. During the open portion of the meeting, prior to convening an executive session, the mayor, or in the absence of the mayor, the presiding member of council, shall identify the authorization under this section for holding the executive session and present it to the council and to the general public, but no decision may be made in the executive session and no final action thereon shall be taken by Council until the matter is placed on the agenda.

An executive session may be held only upon a majority affirmative vote of the council members present. Council may hold an executive session and exclude the public only when a closed session is required for any of the following actions:

(1) To consider

(A) Matters arising from appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation of a City officer or employee, or prospective officer or employee unless the officer or employee or prospective officer or employee requests an open meeting; or

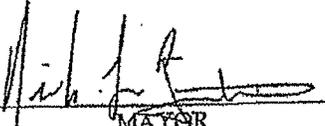
(B) For the purpose of conducting a hearing on a complaint, charge or grievance against a City officer or employee, unless the public officer or employee requests an open meeting. General personnel policy issues may not be discussed or considered in a closed meeting. Final action by the council for the appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation shall be taken in an open meeting.

(2) To develop security personnel or devices.

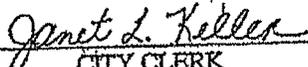
(3) To consider matters involving or affecting the purchase, sale or lease of property, advance construction planning, the investment of public funds or other matters involving commercial competition, which if made public, might adversely affect the financial or other interest of the City. Provided, that information relied on during the course of deliberations on matters involving commercial competition are exempt from disclosure under the open meeting requirements of this section only until the commercial competition has been finalized and completed. Provided, however, that information not subject to release pursuant to the West Virginia freedom of information act does not become subject to disclosure as a result of executive session.

The effective date of this amendment shall be July 1, 1999, or thirty (30) days from adoption which ever is the latter.

Adopted this the 14th day of September, 1999.

  
MAYOR

ATTEST:

  
CITY CLERK

WE, the undersigned officials of the City of Fairmont, West Virginia, do hereby certify that Ordinance No. 1112 entitled:

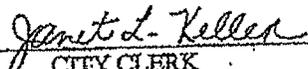
**AN ORDINANCE AMENDING AND REVISING ARTICLE II OF THE FAIRMONT CITY CHARTER - "THE COUNCIL", PARTICULARLY THAT PORTION OF SECTION 2.11 PROCEDURE SUBPART (a) MEETINGS WHICH PROVIDES THE CIRCUMSTANCES UNDER WHICH COUNCIL MAY RECESS AND MEET IN EXECUTIVE SESSION.**

was introduced and publicly read in its entirety at the Regular Meeting of Council held July 27, 1999 and was published in the Times West Virginian on August 2, 1999 and August 9, 1999 pursuant to Charter provisions Section 2.13(d); a public hearing was held on September 14, 1999. There being no request that the proposed Ordinance be read in its entirety for a second time, the Clerk read the title only and copies were available to the public as required by Ordinance No. 499. The Ordinance was duly adopted pursuant to the Charter of the City of Fairmont and West Virginia Code; signed by the undersigned officials and filed in the office of the City Clerk.

Adopted by Council of the City of Fairmont, West Virginia, this the 14th day of September, 1999.

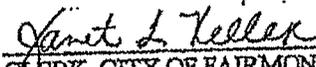
  
\_\_\_\_\_  
MAYOR

ATTEST:

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

A TRUE COPY:

  
\_\_\_\_\_  
MAYOR, CITY OF FAIRMONT, WEST VIRGINIA

  
\_\_\_\_\_  
CLERK, CITY OF FAIRMONT, WEST VIRGINIA

APPROVED AS TO FORM:

\_\_\_\_\_  
ATTORNEY, CITY OF FAIRMONT, WEST VIRGINIA

## ORGANIZATIONAL MEETING

January 11, 2011

Pursuant to Section 1.2 of the Rules of Order and Procedure, adopted by the Council of the City of Fairmont on February 6, 1978, and amended at the regular meeting of Council held February 6, 1979, the Bi-Ennial Organizational Meeting of Council of the City of Fairmont was convened this 11<sup>th</sup> day of January, 2011, at 7:00 p.m., in the Council Chambers, at the Public Safety Building, 500 Quincy Street, Fairmont, West Virginia.

As per West Virginia Code §8-9-1 and Rule 2.2 of Council's Rules of Order and Procedure, Deputy Mayor Bill Burdick presided over the meeting for the purpose of administering the oath of office to the Councilmembers elected at the Municipal General Election held November 2, 2010 and for the purpose of conducting the election of Mayor.

Deputy Mayor Burdick called the meeting to order.

### **IN RE: OATH OF OFFICE – COUNCILMEMBERS GRIBBEN, WARNER, SMITH AND STRAIGHT**

The City Clerk administered the Oath of Office of Councilmember to Robert D. Gribben, Charles “Chuck” Warner, Robin W. Smith, and Ronald J. Straight, Sr. the members elected to serve on Council for the City of Fairmont at the Municipal Non-Partisan General Election held November 2, 2010.

For the record, Councilmember Seifrit was absent from the meeting due to the weather.

- ✓ Robert D. Gribben, a resident of 326 Cole Street, representing the First District, elected for a term of four years, commencing January 1, 2011 and expiring December 31, 2014.
- ✓ Charles “Chuck” Warner, a resident of 307 First Street, representing the Fifth District, elected for a term of four years, commencing January 1, 2011 and expiring December 31, 2014.
- ✓ Robin W. Smith, a resident of 64 Jo Harry Road, representing the Eighth District, elected for a term of four years, commencing January 1, 2011 and expiring December 31, 2014.
- ✓ Ronald J. Straight, Sr., a resident of 101 Shirlane Avenue, representing the Ninth District, elected for a term of four years, commencing January 1, 2011 and expiring December 31, 2014.

The Clerk administered the Oath of Office, to-wit: “Do you, and each of you, having been duly elected to serve as a Councilmember of the City of Fairmont, solemnly swear, that you will support the Constitution of the United States, the Constitution of the State of West Virginia, and the Charter of the City of Fairmont, and that you will faithfully and impartially perform the duties of a Councilmember of the City of Fairmont, so long as you shall continue therein, to the best of your skill and judgment, so help you God?”

Councilmember-Elect Gribben, Warner, Smith and Straight replied “I do”.

Thereupon, the City Clerk declared Robert D. Gribben, Charles “Chuck” Warner, Robin W. Smith, and Ronald J. Straight, Sr. duly sworn in as members of the Council of the City of Fairmont and extended congratulations to them.

The City Clerk called the roll of Councilmembers present to determine the representation of the Council Districts:

First District	Robert D. Gribben
Second District	Robert F. Sapp
Fourth District	William H. Burdick
Fifth District	Charles E. (Chuck) Warner
Sixth District	Daniel K. Weber
Seventh District	Robert Garcia
Eighth District	Robin W. Smith
Ninth District	Ronald J. Straight, Sr.

Absent:

Third District	Deborah D. Seifrit
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Also present were:

City Manager	Jay Rogers
City Clerk	Janet L. Keller
City Attorney	Kevin V. Sansalone
Finance Director	Eileen Layman
City Planner	Kathy Wyrosdick
Police Chief	Kelley Moran
Fire Chief	Roger Wilson
City Controller	Mark Moore

**IN RE: ELECTION OF MAYOR**

Deputy Mayor Burdick called for nominations for the Office of Mayor.

Councilmember Gribben nominated Deputy Mayor Burdick to serve as Mayor.

Councilmember Warner moved that nominations be closed.

Councilmember Straight stated that he had a question realizing that Councilmember Gribben had already made a motion; however, he talked to Councilmember Seifrit today, who is unable to make it to the meeting tonight, and she asked him to ask Council to hold up this appointment until the next meeting. He noted that was her desire.

Deputy Mayor Burdick stated that we have a motion to close nominations on the floor and unless that would be withdrawn then we would be able to discuss Councilmember Straight's concern.

The Deputy Mayor asked again for a second on the motion to close the nominations.

Councilmember Sapp asked if that was generally out of the question if a Councilmember is absent to hold the appointment until the next meeting.

Mr. Rogers stated that, contemplating the weather, and having discussions with Councilmember Seifrit this week knowing that this storm was coming, we did a little research and found out that in 1987 that the Organizational Meeting then of Council that Council did postpone the vote. He explained that they had a Councilmember that was out of town for the month of January and postponed the vote after they did take nominations and tried to elect a Mayor but they declared themselves deadlocked four to four and, at that point, there was a motion to postpone the meeting and it was not held until February because the Councilmember was out of town for the entire month of January.

Deputy Mayor Burdick asked again for a second on the motion to close the nominations.

Mr. Rogers said that if you do not have a second to the original motion to close the nominations, then the motion will die and then we will have to move forward with a new motion after Councilmember Warner would withdraw his original motion.

Councilmember Sapp said that it was always best when all Councilmembers are present and he did not know why Councilmember Seifrit could not make the meeting.

The City Manager explained that she was at work and it is because of the weather.

Deputy Mayor Burdick seconded the motion to close the nominations.

There were no objections to the closure.

Deputy Mayor Burdick then asked the Clerk to call the roll on the person nominated for Mayor.

Councilmember Sapp asked what would happen if this person did not get the five (5) votes.

The Deputy Mayor said that we would open nominations again.

Roll call was taken on the nomination of Deputy Mayor Burdick as Mayor and the following votes were recorded:

Councilmember Smith	Yes	Councilmember Garcia	Yes
Councilmember Weber	No	Councilmember Sapp	Yes
Councilmember Straight	No	Councilmember Gribben	Yes
Councilmember Warner	Yes	Councilmember Burdick	Yes

Thereupon, Deputy Mayor Burdick declared himself elected as Mayor of the City of Fairmont by majority vote of those Councilmembers present.

**IN RE: OATH OF OFFICE – MAYOR BURDICK**

The Clerk administered the Oath of Office of Mayor, to-wit: “Do you, William H. Burdick, having been duly elected to serve as Mayor of the City of Fairmont, solemnly swear, that you will support the Constitution of the United States, the Constitution of the State of West Virginia, and the Charter of the City of Fairmont, and that you will faithfully and impartially perform the duties of the office of Mayor of the City of Fairmont, to the best of your skill and judgment, so help you God?”

Mayor Burdick replied “I will”.

Thereupon Mayor Burdick formally took the presiding Chair.

**IN RE: ELECTION OF DEPUTY MAYOR**

Mayor Burdick entertained nominations for the Office of Deputy Mayor.

Councilmember Smith nominated Councilmember Robert Garcia to serve as Deputy Mayor.

Mayor Burdick nominated Councilmember Chuck Warner.

Councilmember Smith moved that nominations be closed. The motion was seconded by Councilmember Straight.

There were no objections to the closure.

Roll call was taken on the nomination of Councilmember Robert Garcia as Deputy Mayor and the following votes were recorded:

Councilmember Sapp	No	Councilmember Straight	Yes
Councilmember Weber	Yes	Councilmember Gribben	Yes
Councilmember Smith	Yes	Councilmember Warner	Abstain
Councilmember Garcia	Yes	Mayor Burdick	No

The Mayor declared Councilmember Robert Garcia duly elected as Deputy Mayor for the City of Fairmont by majority vote of Council. He then asked the City Clerk to administer the Oath of Office to Deputy Mayor Garcia.

**IN RE: OATH OF OFFICE – DEPUTY MAYOR GARCIA**

The Clerk administered the Oath of Office of Deputy Mayor, to-wit: “Do you, Robert Garcia, having been duly elected to serve as Deputy Mayor of the City of Fairmont, solemnly swear, that you will support the Constitution of the United States, the Constitution of the State of West

Virginia, and the Charter of the City of Fairmont, and that you will faithfully and impartially perform the duties of the office of Deputy Mayor of the City of Fairmont, to the best of your skill and judgment, so help you God?"

Deputy Mayor Garcia replied "I will".

**IN RE:        ADOPT COUNCIL'S RULES OF ORDER AND PROCEDURE**

Mayor Burdick stated that the Council's Rules of Order and Procedure need to be adopted as mandated by both the Charter and Council's current Rules of Order and Procedure.

Mayor Burdick then entertained a motion to adopt the Council's Rules of Order and Procedure.

Motion:

Councilmember Sapp moved to adopt the current Council's Rules of Order and Procedure. The motion was seconded by Councilmember Smith.

Roll call was taken by the Clerk.

The Mayor declared the City Council's Rules of Order and Procedure officially re-adopted by unanimous vote of those Councilmembers present.

**ADJOURNMENT**

Mayor Burdick entertained a motion for the adjournment of the Organizational Meeting.

Motion:

Councilmember Smith moved to adjourn the meeting. Councilmember Weber seconded the motion.

Mayor Burdick declared the Organizational Meeting adjourned by voice vote of Council at 7:13 p.m.

**ORGANIZATIONAL MEETING**

**January 13, 2009**

Pursuant to Section 1.2 of the Rules of Order and Procedure, adopted by the Council of the City of Fairmont on February 6, 1978, and amended at the regular meeting of Council held February 6, 1979, the Bi-Ennial Organizational Meeting of Council of the City of Fairmont was convened this 13<sup>th</sup> day of January, 2009, at 7:00 p.m., in the Council Chambers, at the Public Safety Building, 500 Quincy Street, Fairmont, West Virginia.

As per West Virginia Code §8-9-1 and Rule 2.2 of Council's Rules of Order and Procedure, City Clerk, Janet L. Keller, presided over the meeting for the purpose of administering the oath of office to the Councilmembers elected at the Municipal General Election held November 4, 2008 and for the purpose of conducting the election of Mayor.

City Clerk, Janet L. Keller, called the meeting to order.

**IN RE: OATH OF OFFICE – COUNCILMEMBERS SAPP, BURDICK, WEBER, AND GARCIA**

The City Clerk administered the Oath of Office of Councilmember to Robert F. Sapp, William H. Burdick, Daniel K. Weber, and Robert Garcia, the members elected to serve on Council for the City of Fairmont at the Municipal Non-Partisan General Election held November 4, 2008.

- ✓ Robert F. Sapp, a resident of 1645B Speedway, representing the Second District, elected for a term of four years, commencing January 1, 2009 and expiring December 31, 2012.
- ✓ William H. Burdick, a resident of 305 Home Street, representing the Fourth District, elected for a term of four years, commencing January 1, 2009 and expiring December 31, 2012.
- ✓ Daniel K. Weber, a resident of 1290 Hillcrest Road, representing the Sixth District, elected for a term of four years, commencing January 1, 2009 and expiring December 31, 2012.
- ✓ Robert Garcia, a resident of 1125 South Park Drive, representing the Seventh District, elected for a term of four years, commencing January 1, 2009 and expiring December 31, 2012.

The Clerk administered the Oath of Office, to-wit: "Do you, and each of you, having been duly elected to serve as a Councilmember of the City of Fairmont, solemnly swear, that you will support the Constitution of the United States, the Constitution of the State of West Virginia, and the Charter of the City of Fairmont, and that you will faithfully and impartially perform the duties of a Councilmember of the City of Fairmont, so long as you shall continue therein, to the best of your skill and judgment, so help you God?"

Councilmember-Elect Sapp, Burdick, Weber, and Garcia replied "I do".

Thereupon, the City Clerk declared Robert F. Sapp, William H. Burdick, Daniel K. Weber, and Robert Garcia duly sworn in as members of the Council of the City of Fairmont, and extended congratulations to them.

The City Clerk called the roll of Councilmembers present to determine the representation of the Council Districts:

Second District	Robert F. Sapp
Third District	Deborah D. Seifrit
Fourth District	William H. Burdick
Fifth District	Charles E. (Chuck) Warner
Sixth District	Daniel K. Weber
Seventh District	Robert Garcia
Eighth District	Robin W. Smith
Ninth District	Matthew S. (Matt) Delligatti

Also present were:

City Manager	James W. Snider
City Clerk	Janet L. Keller
City Attorney	Kevin V. Sansalone
City Planner	Jay Rogers
Finance Director	Eileen Layman

**IN RE: REVIEW PROCEDURES FOR THE ELECTION OF MAYOR**

The City Clerk asked the City Manager, Jim Snider, to review the rules and procedures for the Election of Mayor before accepting nominations.

The City Manager explained that on January 6, 2009, City Attorney, Kevin Sansalone prepared a memorandum to the City Manager explaining step by step through the process of the election of Mayor. Mr. Snider then went over that memorandum and asked if there were any questions.

There were no questions for the City Manager on the process for the election of Mayor.

**IN RE: ELECTION OF MAYOR**

The City Clerk called for nominations for the Office of Mayor.

Councilmember Seifrit nominated Matt Delligatti to serve as Mayor.

Councilmember Weber nominated Chuck Warner to serve as Mayor.

Councilmember Smith nominated Bill Burdick to serve as Mayor.

There being no other nominations, the Clerk entertained a motion to close nominations.

Motion:

Councilmember Seifrit moved that nominations be closed. The motion was seconded by Councilmember Burdick.

Roll call was taken by the Clerk to close the nominations.

The Clerk declared the nominations closed by unanimous vote of Council.

Roll call was taken on the nomination of Matt Delligatti as Mayor and the following votes were recorded:

Councilmember Warner	No	Councilmember Sapp	Yes
Councilmember Smith	No	Councilmember Seifrit	Yes
Councilmember Weber	No	Councilmember Garcia	Yes
Councilmember Delligatti	Yes	Councilmember Burdick	No

Thereupon, the City Clerk declared Matt Delligatti not elected as Mayor by a 4 to 4 vote.

Roll call was taken on the nomination of Chuck Warner as Mayor and the following votes were recorded:

Councilmember Sapp	Yes	Councilmember Seifrit	No
Councilmember Burdick	No	Councilmember Smith	No
Councilmember Warner	Yes	Councilmember Weber	Yes
Councilmember Garcia	No	Councilmember Delligatti	No

Thereupon, the City Clerk declared Chuck Warner not elected as Mayor by a 3 to 5 vote.

Roll call was taken on the nomination of Bill Burdick as Mayor and the following votes were recorded:

Councilmember Delligatti	No	Councilmember Smith	Yes
Councilmember Warner	No	Councilmember Weber	No
Councilmember Burdick	Yes	Councilmember Sapp	No
Councilmember Seifrit	Yes	Councilmember Garcia	No

Thereupon, the City Clerk declared Bill Burdick not elected as Mayor by a 3 to 5 vote.

The City Clerk called for nominations for the Office of Mayor.

Councilmember Seifrit nominated Matt Delligatti to serve as Mayor.

Councilmember Weber nominated Chuck Warner to serve as Mayor.

~~Councilmember Smith nominated Bill Burdick to serve as Mayor.~~

There being no other nominations, the City Clerk entertained a motion to close nominations.

Motion:

Councilmember Seifrit moved that nominations be closed. The motion was seconded by Councilmember Garcia.

Roll call was taken by the City Clerk to close the nominations.

The Clerk declared the nominations closed by unanimous vote of Council.

Roll call was taken on the nomination of Matt Delligatti as Mayor and the following votes were recorded:

Councilmember Seifrit	Yes	Councilmember Garcia	Yes
Councilmember Sapp	Yes	Councilmember Burdick	No
Councilmember Weber	No	Councilmember Warner	No
Councilmember Smith	No	Councilmember Delligatti	Yes

Thereupon, the City Clerk declared Matt Delligatti not elected as Mayor by a 4 to 4 vote.

Roll call was taken on the nomination of Chuck Warner as Mayor and the following votes were recorded:

Councilmember Weber	Yes	Councilmember Sapp	Yes
Councilmember Seifrit	No	Councilmember Garcia	No
Councilmember Burdick	No	Councilmember Warner	Yes
Councilmember Delligatti	No	Councilmember Smith	No

Thereupon, the City Clerk declared Chuck Warner not elected as Mayor by a 3 to 5 vote.

Roll call was taken on the nomination of Bill Burdick as Mayor and the following votes were recorded:

Councilmember Delligatti	No	Councilmember Smith	Yes
Councilmember Warner	Yes	Councilmember Weber	No
Councilmember Burdick	Yes	Councilmember Sapp	No
Councilmember Seifrit	No	Councilmember Garcia	No

Thereupon, the City Clerk declared Bill Burdick not elected as Mayor by a 3 to 5 vote.

Councilmember Sapp asked the City Attorney about the procedure.

~~The City Attorney said that his understanding of the rule is that you are obligated to keep repeating the process until there is an election of Mayor. He said that he was assuming at some point the determination should be made as to whether you are hopelessly deadlocked and if you are hopelessly deadlocked, he would suggest that Council move on to the election of Deputy Mayor. He then said that Council has the obligation to continue the process until such time as you are hopelessly deadlocked.~~

Councilmember Sapp asked Council to vote one more time.

The City Clerk called for nominations for the Office of Mayor.

Councilmember Seifrit nominated Matt Delligatti to serve as Mayor.

Councilmember Smith nominated Bill Burdick to serve as Mayor.

Councilmember Weber nominated Chuck Warner to serve as Mayor.

There being no other nominations, the City Clerk entertained a motion to close nominations.

Motion:

Councilmember Seifrit moved that nominations be closed. The motion was seconded by Councilmember Burdick.

Roll call was taken by the City Clerk to close the nominations.

The Clerk declared the nominations closed by unanimous vote of Council.

Roll call was taken on the nomination of Matt Delligatti as Mayor and the following votes were recorded:

Councilmember Smith	No	Councilmember Burdick	No
Councilmember Sapp	Yes	Councilmember Seifrit	Yes
Councilmember Weber	No	Councilmember Garcia	Yes
Councilmember Warner	No	Councilmember Delligatti	Yes

Thereupon, the City Clerk declared Matt Delligatti not elected as Mayor by a 4 to 4 vote.

Roll call was taken on the nomination of Bill Burdick as Mayor and the following votes were recorded:

Councilmember Delligatti	No	Councilmember Smith	Yes
Councilmember Warner	No	Councilmember Weber	No
Councilmember Burdick	Yes	Councilmember Sapp	No
Councilmember Seifrit	No	Councilmember Garcia	No

Thereupon, the City Clerk declared Bill Burdick not elected as Mayor by a 2 to 6 vote.

Roll call was taken on the nomination of Chuck Warner as Mayor and the following votes were recorded:

Councilmember Smith	No	Councilmember Sapp	No
Councilmember Seifrit	No	Councilmember Delligatti	No
Councilmember Burdick	No	Councilmember Weber	Yes
Councilmember Garcia	No	Councilmember Warner	Yes

Thereupon, the City Clerk declared Chuck Warner not elected as Mayor by a 2 to 6 vote.

Councilmember Smith stated that he would like to throw his name in with the nominations.

The City Manager said that the point of order is whether to proceed.

The City Attorney stated that it would be his opinion that the voting from the second slate and the first slate to the third slate have changed so it appears that progress is being made. He then said that Council has the obligation under the procedural rules that has been previously adopted to continue to proceed. He stated that nominations should be asked for and Council should proceed to vote on the fourth slate of nominations for the office of Mayor.

The City Clerk called for nominations for the Office of Mayor.

Councilmember Seifrit nominated Matt Delligatti to serve as Mayor.

Councilmember Smith nominated Bill Burdick to serve as Mayor.

There being no other nominations, the City Clerk entertained a motion to close nominations.

Motion:

Councilmember Seifrit moved that nominations be closed. The motion was seconded by Councilmember Garcia.

Roll call was taken by the City Clerk to close the nominations.

The Clerk declared the nominations closed by unanimous vote of Council.

Roll call was taken on the nomination of Matt Delligatti as Mayor and the following votes were recorded:

Councilmember Smith	No	Councilmember Garcia	Yes
Councilmember Burdick	No	Councilmember Delligatti	Yes
Councilmember Seifrit	Yes	Councilmember Sapp	Yes

~~Councilmember-Weber~~

~~Yes~~

~~Councilmember-Warner~~

~~No~~

Thereupon, the City Clerk declared Matt Delligatti elected as Mayor of the City of Fairmont by majority vote and then administered the Oath of Office to Mayor Delligatti.

**IN RE: OATH OF OFFICE – MAYOR DELDIGATTI**

The Clerk administered the Oath of Office of Mayor, to-wit: “Do you, Matthew Delligatti, having been duly elected to serve as Mayor of the City of Fairmont, solemnly swear, that you will support the Constitution of the United States, the Constitution of the State of West Virginia, and the Charter of the City of Fairmont, and that you will faithfully and impartially perform the duties of the office of Mayor of the City of Fairmont, to the best of your skill and judgment, so help you God?”

Mayor Delligatti “I do”.

Thereupon Mayor Delligatti formally took the presiding Chair.

**IN RE: ELECTION OF DEPUTY MAYOR**

Mayor Delligatti entertained nominations for the Office of Deputy Mayor.

Councilmember Seifrit nominated Bill Burdick to serve as Deputy Mayor.

There being no other nominations, the Mayor entertained a motion to close nominations.

Motion:

Councilmember Seifrit moved that nominations be closed. The motion was seconded by Councilmember Burdick.

Roll call was taken by the Clerk to close the nominations.

The Mayor declared the nominations closed by unanimous vote of Council.

Roll call was taken on the nomination of Bill Burdick as Deputy Mayor.

The Mayor declared Bill Burdick duly elected as Deputy Mayor for the City of Fairmont by unanimous vote of Council. He then asked the City Clerk to administer the Oath of Office to Deputy Mayor Burdick.

**IN RE: OATH OF OFFICE – DEPUTY MAYOR BURDICK**

The Clerk administered the Oath of Office of Deputy Mayor, to-wit: “Do you, William Burdick, having been duly elected to serve as Deputy Mayor of the City of Fairmont, solemnly swear, that you will support the Constitution of the United States, the Constitution of the State of West

~~Virginia, and the Charter of the City of Fairmont, and that you will faithfully and impartially perform the duties of the office of Deputy Mayor of the City of Fairmont, to the best of your skill and judgment, so help you God?"~~

Deputy Mayor Burdick "I do".

**IN RE:        ADOPT COUNCIL'S RULES OF ORDER AND PROCEDURE**

Mayor Delligatti stated that the Council's Rules of Order and Procedure need to be adopted as mandated by both the Charter and Council's current Rules of Order and Procedure.

Mayor Delligatti then entertained a motion to adopt the Council's Rules of Order and Procedure.

Motion:

Councilmember Warner moved to adopt the current Council's Rules of Order and Procedure. The motion was seconded by Councilmember Sapp.

Roll call was taken by the Clerk.

The Mayor declared the City Council's Rules of Order and Procedure officially re-adopted by unanimous vote of Council.

**ADJOURNMENT**

Mayor Delligatti entertained a motion for the adjournment of the Organizational Meeting.

Motion:

Councilmember Sapp moved to adjourn and Councilmember Seifrit the motion.

Mayor Delligatti declared the Organizational Meeting adjourned by voice vote of Council at 7:23 p.m.

**September 12, 2012**

The adjourned meeting of the City Council of the City of Fairmont was held at 7:00 p.m. on the 12<sup>th</sup> day of September, 2012, at the Public Safety Building located at 500 Quincy Street in Fairmont, West Virginia.

Mayor Burdick called the meeting to order.

Councilmembers present were:

First District	Robert D. (Bob) Gribben
Second District	Robert F. (Bob) Sapp
Third District	Deborah D. (Debbie) Seifrit
Fourth District	William H. (Bill) Burdick
Fifth District	Charles E. (Chuck) Warner
Sixth District	Daniel K. (Dan) Weber
Eighth District	Robin W. Smith
Ninth District	Ronald J. (Ron) Straight, Sr.

Absent:

Seventh District	Robert Garcia
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Also present were:

City Manager	Jay Rogers
City Clerk	Janet L. Keller
City Attorney	Kevin V. Sansalone
City Planner	Kathy Wyrosdick
Bond Counsel	John Stump, Steptoe & Johnson
Greg Isaacs	Crews and Associates

**IN RE: COUNCILMEMBER GARCIA EXCUSED**

Councilmember Weber moved to excuse Councilmember Garcia from tonight's meeting. The motion was seconded by Councilmember Straight.

The Mayor declared Councilmember Garcia excused from this meeting by voice vote of Council.

**IN RE: OPENING CEREMONIES**

Rev. D.D. Meighen gave the invocation followed by the Pledge of Allegiance to the Flag led by Councilmember Weber.

**APPROVAL OF MINUTES**

Mayor Burdick noted that each member of Council had received a copy of the minutes from regular meeting held on August 28, 2012. He asked if there were any corrections, deletions, or amendments.

Motion:

Councilmember Straight moved to approve the minutes as submitted. Councilmember Weber seconded the motion.

The Mayor declared the minutes approved as submitted by voice vote of Council.

### PUBLIC HEARINGS

**IN RE: AN ORDINANCE OF THE COUNCIL OF THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 1545 DULY ADOPTED JANUARY 10, 2012, PERSONNEL RULES, TO AMEND THE PAY PLAN AND LIST OF OCCUPATIONAL CLASSES TO PROVIDE FOR ALTERNATIVE PAY PLANS AND LONGEVITY PAY STRUCTURES FOR THE FOLLOWING CLASSES OF EMPLOYEES:**

- A. POLICE OFFICERS COVERED UNDER THE COLLECTIVE BARGAINING AGREEMENT BY AND BETWEEN THE CITY OF FAIRMONT AND THE FOP LODGE #69;**
- B. UNREPRESENTED NON-EXEMPT EMPLOYEES; AND**
- C. UNREPRESENTED EXEMPT EMPLOYEES**

Pursuant to a notice duly published in the Times-West Virginian on September 5, 2012, a public hearing was convened to obtain citizen input on ordinance to amend the pay plan to provide for pay plans and longevity pay structures for the police officers and unrepresented employees.

The Mayor asked if anyone present desired to speak to the proposed ordinance.

**GLEN STALEY**, President of FOP Lodge #69, spoke in favor of the proposed ordinance. Sgt. Staley said that the FOP and the City Manager came up with a fair and equitable wage scale which now makes us competitive. He then said that hopefully we can start retaining the new officers rather than losing them so quickly and this gives the rest of the officers a much needed cost of living adjustment. He stated that he thought the City Manager has gone out of his way to work with them and structured this so it is fair to the officers and fair to the City.

There being no one else to speak, the public hearing was called to a close at 7:08 p.m.

**IN RE: AN ORDINANCE OF THE COUNCIL OF THE CITY OF FAIRMONT TO SUPPLEMENT THE CITY'S PAY PLAN TO PROVIDE FOR A ONE TIME CASH PAYMENT IN LIEU OF BASE INCREASE FOR CERTAIN CLASSIFIED AND UNCLASSIFIED EMPLOYEES PAYABLE ON OR BEFORE DECEMBER 31, 2012**

Pursuant to a notice duly published in the Times-West Virginian on September 5, 2012, a public hearing was convened to obtain citizen input on ordinance to provide for a one time cash payment in lieu of base increase for certain classified and unclassified employees.

The Mayor asked if anyone present desired to speak to the proposed ordinance.

Mr. Rogers mentioned that is ordinance provides for the payment in lieu of a base pay increase to those individuals that are not going through this second phase of the implementation of the pay plan. He explained that it is his intent to move through to the third and final phase before the payment of the \$750.00 on or before December 31, 2012. He went on to say that the funds that are required for this ordinance were budgeted in the 2013 budget and those revisions were also made during the budget revision to remove the \$750.00 from those employees that are receiving the base pay increase.

There being no one else to speak, the public hearing was called to a close at 7:10 p.m.

**IN RE: AN ORDINANCE PROVIDING FOR THE VACATION AND ABANDONMENT OF THE FOLLOWING UNOPENED PORTIONS OF THE RIGHT OF WAY OF LEWIS STREET, SITUATE, LYING AND BEING IN THE CITY OF FAIRMONT, FAIRMONT CITY DISTRICT, MARION COUNTY, WEST VIRGINIA:**

- A. THAT CERTAIN PORTION OF SAID RIGHT OF WAY FROM HOLBERT STREET TO LEHMAN STREET BETWEEN THOSE CERTAIN PARCELS OF REAL ESTATE IDENTIFIED AS PARCELS NO. 81 & 98 AND PARCELS NO. 82 & 97 OF MARION COUNTY TAX MAP 01-36; AND**
- B. THAT CERTAIN PORTION OF SAID RIGHT OF WAY SOUTH OF HOLBERT STREET AND BETWEEN THOSE CERTAIN PARCELS OF REAL ESTATE IDENTIFIED AS PARCELS NO. 39 AND 40 OF SAID TAX MAP**

**SAID PARCELS ARE OWNED BY IDA MAE WOODS, RANDY HINES AND MISTY R. HINES, RUSSELL DOBBS COOK AND LINDA COOK, DAVID RUSSELL COOK AND JENNIFER LYNN COOK, JEREMY P. THOMAS AND PHYLISA THOMAS, AND THE CITY OF FAIRMONT RESPECTIVELY; RESERVING ALL UTILITY RIGHTS**

Pursuant to a notice duly published in the Times-West Virginian on September 5, 2012, a public hearing was convened to obtain citizen input on ordinance providing for the vacation and abandonment of the right of way of Lewis Street.

The Mayor asked if anyone present desired to speak to the proposed ordinance.

**KATHY WYROSDICK**, City Planner, spoke in favor of the proposed ordinance. She said that Russell Cook made application to have this unopened alley portion of the right-of-way abandoned back in July. She said that after a review of the Planning Commission and notification of all affected property owners, the Planning Commission recommended approval of

the right-of-way abandonment on August 15, 2012 and during the public hearing no property owners spoke against the request.

There being no one else to speak, the public hearing was called to a close at 7:12 p.m.

**IN RE: AN ORDINANCE OF THE COUNCIL OF THE CITY OF FAIRMONT APPROVING THE TERMS AND CONDITIONS OF THAT CERTAIN AGREEMENT AND LEASE BY AND BETWEEN THE FAIRMONT PLANNING COMMISSION AND THE TASK FORCE ON DOMESTIC VIOLENCE, HOPE, INC., PROVIDING FOR THE LEASE OF THE LT. HARRY B. COLBURN UNITED STATES ARMY RESERVE CENTER TO HOPE, INC., AND AUTHORIZING THE EXECUTION AND DELIVERY THEREOF BY THE CHAIRMAN OF THE PLANNING COMMISSION; RESERVATIONS**

Pursuant to a notice duly published in the Times-West Virginian on September 5, 2012, a public hearing was convened to obtain citizen input on ordinance approving the terms and conditions of the agreement and lease by and between the Fairmont Planning Commission and Hope, Inc. providing for the lease of the Army Reserve Center to Hope, Inc.

The Mayor asked if anyone present desired to speak to the proposed ordinance.

Mr. Rogers stated that he spoke with the representative from the Department of Defense and it looks like the Defense Commission will be complete and ready to transfer to the City by March of 2013. He noted that he will relay that information to Harriett Sutton at Hope, Inc. and make sure that she is prepared for that take over and transfer.

There being no one else to speak, the public hearing was called to a close at 7:15 p.m.

#### ANNOUNCEMENTS

**IN RE: PAVING OF COLEMAN AVENUE**

Mr. Straight reported that a resident on Coleman Avenue suggested that maybe the next time the street is paved that they do one lane at a time. He noted that there were a number of people that could not get out.

Mr. Rogers said that he spoke with the Public Works Director and one of the issues that they wanted to solve and why they actually paved the way they did was to place the crown back in the middle of the road to help with proper drainage in that area. He noted that they made provisions as far as utilizing the UTV to transport people out of the neighborhood and they were able to get parking for residents at some off-site facilities.

The Mayor noted that Coleman Avenue really looks great.

**IN RE: FARMERS MARKET**

Councilmember Straight then mentioned that someone asked him why the Farmers Market could not be moved to the Veterans Plaza to free up the Post Office parking lot.

Mr. Rogers reminded Council that was tried before and did not go over very well.

**IN RE: MON YOUTH BUILD**

Councilmember Gribben reported that Mon Youth Build has received a grant which will allow them to put their operation back together.

**IN RE: MEET YOUR CODE INSPECTOR**

Councilmember Gribben stated that he and Councilmember Seifrit attended the "Meet Your Code Inspector" meeting last Monday. He mentioned they had the opportunity to meet John Miller and they got a good perspective from his point of view.

**IN RE: CONGRATULATIONS EXTENDED**

Councilmember Seifrit extended congratulations to Dr. Maria Rose, the new President of Fairmont State University and to David Nuzum who has been named outstanding principal for the State of West Virginia as voted by his peers.

**IN RE: FAIRMONT COMMUNITY DEVELOPMENT PARTNERSHIP**

Mayor Burdick reported that the Fairmont Partnership had a Board of Director's meeting at the Water Treatment Plant.

**IN RE: EVENT AT TECHNOLOGY PARK**

The Mayor announced that he and the City Manager attended an event at the Technology Park and he presented a proclamation to Dr. Mary Kicza who is the National Oceanic and Atmospheric Administration (NOAA) Assistant Administrator for Satellite and Information Services.

**CITIZENS PETITIONS**

**IN: PAVING OF 4<sup>th</sup> STREET**

**JAMES WHARTON**, a resident of 38 Hollen Circle, addressed Council regarding the paving of 4<sup>th</sup> Street. He reported that it is a very bad section of road with major potholes and it is hard on vehicles. He then said that if it could not be paved to at least do whatever it takes to smooth it out so cars don't get torn up.

## CITY MANAGER'S REPORT

### **IN: PAVING UPDATE**

Mr. Rogers explained that we have talked about the replacement of the 4<sup>th</sup> Street Bridge for more than a year. He said that they are scheduled to begin buying right-of-ways this October or November for that project that would remove the bridge at 4<sup>th</sup> Street and relocate that bridge to 3<sup>rd</sup> Street. He went on to say that with it being a State project and the removal of the 4<sup>th</sup> Street Bridge will be in their construction schedule. He mentioned that he did not have an understanding now if they will leave that bridge in place until they completed the 3<sup>rd</sup> Street project or when that will happen. He said the factor that does come in would be the continued deterioration of that bridge and the concern that the Public Works Department and the Department of Highways have expressed over the last three or four years where we have had weight restrictions placed on it and took the pavement off to try to help with some of the weight issues. He noted that the City will continue to monitor that portion of it with the State to get an understanding if a premature closure is going to be necessary and how the schedule of construction of the new bridge will impact that.

Mr. Rogers then said that from a pavement standpoint, in speaking with the Public Works Director and with the Maintenance Superintendent, the plan of what they have been trying to do in this fall neighborhood program is to be able to go in and isolate an entire neighborhood and pave in that area. He then said that there were obvious concerns, stormwater issues, water line issues in the Albert Court area and Walnut Avenue.

The City Manager then reported that the Watson and West Side areas have been completed. He mentioned that milling will begin Thursday in the downtown area which is comprised of streets in the Jackson Addition areas and will begin paving on Monday.

### **IN RE: BUILDING INSPECTION – “MEET YOUR CODE INSPECTOR”**

The Manager reported that the series continues next Monday night with Districts #7, #8, and #9. He noted that they will meet with Sondra Martisko at the Marion County Senior Citizens Center from 5:00 p.m. to 7:00 p.m. He then said that with Districts #4, #5, and #6, John Metz will hold his public meeting on September 24<sup>th</sup> at the Public Safety Building from 5:00 p.m. to 7:00 p.m.

Mr. Rogers stated that the Code Officers are in uniform and they look very nice, very professional.

### **IN RE: MARION COUNTY HEALTH DEPARTMENT OPEN HOUSE**

Mr. Rogers reminded Council that the Marion County Health Department will celebrate their renovations and new facility on Friday, September 14<sup>th</sup> from 11:00 a.m. to 2:00 p.m.

**CONSIDERATION OF COUNCIL BUSINESS**

**IN RE: ADOPTION, AN ORDINANCE OF THE COUNCIL OF THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 1545 DULY ADOPTED JANUARY 10, 2012, PERSONNEL RULES, TO AMEND THE PAY PLAN AND LIST OF OCCUPATIONAL CLASSES TO PROVIDE FOR ALTERNATIVE PAY PLANS AND LONGEVITY PAY STRUCTURES FOR THE FOLLOWING CLASSES OF EMPLOYEES:**

**A. POLICE OFFICERS COVERED UNDER THE COLLECTIVE BARGAINING AGREEMENT BY AND BETWEEN THE CITY OF FAIRMONT AND THE FOP LODGE #69;**

**B. UNREPRESENTED NON-EXEMPT EMPLOYEES; AND**

**C. UNREPRESENTED EXEMPT EMPLOYEES**

Mayor Burdick entertained a motion for the adoption of an ordinance to amend the pay plan to provide for pay plans and longevity pay structures for the police officers and unrepresented employees.

Motion:

Councilmember Straight moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Weber.

Roll call was taken by the Clerk.

The Mayor declared the ordinance adopted by unanimous vote of those Councilmembers present and the ordinance designated as Ordinance No. 1573 was duly adopted.

**IN RE: ADOPTION, AN ORDINANCE OF THE COUNCIL OF THE CITY OF FAIRMONT TO SUPPLEMENT THE CITY'S PAY PLAN TO PROVIDE FOR A ONE TIME CASH PAYMENT IN LIEU OF BASE INCREASE FOR CERTAIN CLASSIFIED AND UNCLASSIFIED EMPLOYEES PAYABLE ON OR BEFORE DECEMBER 31, 2012**

Mayor Burdick entertained a motion for the adoption of an ordinance to provide for a one time cash payment in lieu of base increase for certain classified and unclassified employees.

Motion:

Councilmember Warner moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Seifrit.

Roll call was taken by the Clerk.

The Mayor declared the ordinance adopted by unanimous vote of those Councilmembers present and the ordinance designated as Ordinance No. 1574 was duly adopted.

**IN RE: ADOPTION, AN ORDINANCE PROVIDING FOR THE VACATION AND ABANDONMENT OF THE FOLLOWING UNOPENED PORTIONS OF THE RIGHT OF WAY OF LEWIS STREET, SITUATE, LYING AND BEING IN THE CITY OF FAIRMONT, FAIRMONT CITY DISTRICT, MARION COUNTY, WEST VIRGINIA:**

**A. THAT CERTAIN PORTION OF SAID RIGHT OF WAY FROM HOLBERT STREET TO LEHMAN STREET BETWEEN THOSE CERTAIN PARCELS OF REAL ESTATE IDENTIFIED AS PARCELS NO. 81 & 98 AND PARCELS NO. 82 & 97 OF MARION COUNTY TAX MAP 01-36; AND**

**B. THAT CERTAIN PORTION OF SAID RIGHT OF WAY SOUTH OF HOLBERT STREET AND BETWEEN THOSE CERTAIN PARCELS OF REAL ESTATE IDENTIFIED AS PARCELS NO. 39 AND 40 OF SAID TAX MAP**

**SAID PARCELS ARE OWNED BY IDA MAE WOODS, RANDY HINES AND MISTY R. HINES, RUSSELL DOBBS COOK AND LINDA COOK, DAVID RUSSELL COOK AND JENNIFER LYNN COOK, JEREMY P. THOMAS AND PHYLISA THOMAS, AND THE CITY OF FAIRMONT RESPECTIVELY; RESERVING ALL UTILITY RIGHTS**

Mayor Burdick entertained a motion for the adoption of an ordinance providing for the vacation and abandonment of the right of way of Lewis Street.

Motion:

Councilmember Straight moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Seifrit.

Roll call was taken by the Clerk.

The Mayor declared the ordinance adopted by unanimous vote of those Councilmembers present and the ordinance designated as Ordinance No. 1575 was duly adopted.

**IN RE: ADOPTION, AN ORDINANCE OF THE COUNCIL OF THE CITY OF FAIRMONT APPROVING THE TERMS AND CONDITIONS OF THAT CERTAIN AGREEMENT AND LEASE BY AND BETWEEN THE FAIRMONT PLANNING COMMISSION AND THE TASK FORCE ON DOMESTIC VIOLENCE, HOPE, INC., PROVIDING FOR THE LEASE OF THE LT. HARRY B. COLBURN UNITED STATES ARMY RESERVE CENTER TO HOPE, INC., AND AUTHORIZING THE EXECUTION AND DELIVERY THEREOF BY THE CHAIRMAN OF THE PLANNING COMMISSION; RESERVATIONS**

Mayor Burdick entertained a motion for the adoption of an ordinance approving the terms and conditions of the agreement and lease by and between the Fairmont Planning Commission and Hope, Inc. providing for the lease of the Army Reserve Center to Hope, Inc.

Motion:

Councilmember Seifrit moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Warner.

Roll call was taken by the Clerk.

The Mayor declared the ordinance adopted by unanimous vote of those Councilmembers present and the ordinance designated as Ordinance No. 1576 was duly adopted.

**IN RE:        ADOPTION, A SECOND SUPPLEMENTAL RESOLUTION PROVIDING TERMS AND OTHER PROVISIONS RELATING TO A COMMITMENT FOR MUNICIPAL BOND INSURANCE FOR THE WATER REFUNDING REVENUE BONDS, SERIES 2012 D; APPROVING THE FORM OF THE PRELIMINARY OFFICIAL STATEMENT AND MAKING OTHER PROVISIONS AS TO THE BONDS**

Mayor Burdick entertained a motion for the adoption of a resolution providing terms and other provisions relating to the Water Refunding Revenue Bonds.

Motion:

Councilmember Seifrit moved for the adoption of the proposed resolution and the reading of a synopsis in lieu of the entire resolution. The motion was seconded by Councilmember Warner.

The Clerk read the proposed resolution by synopsis for the first time.

Discussion:

**JOHN STUMP**, Bond Counsel, with Steptoe and Johnson, passed out a copy of a rating summary from Standard & Poor's Rating Service. Mr. Stump explained this process has gone on for actually a number of years and as part of the process Crews and Associates went out and with the assistance of the City's professional administrative staff solicited a rating for the City with respect to the water system. He said that he wanted to congratulate the City of Fairmont in receiving an "A" rating which is a stable rating and this is a rating from Standard and Poor's. He noted that he was not aware of another utility in the State which has a higher rating. He went on to say that this reflects very well on City Council and on your administrative staff and it directly relates to the cost and to the savings as a result of this financing. He explained that what happens is that "A" rating is what the potential purchasers of the bonds look at when they determine what interest rating they are willing to pay for the bonds themselves. He noted that the money saved is a big deal and having achieved an "A" rating is a momentous occasion for the City of Fairmont.

Mr. Stump then stated as far as the savings, as of today, the market is still moving all over the place, however, we are looking at a total savings of between \$2 and \$3 million dollars but we are thinking it is going to be a little over \$2.5 million dollars over the life of the bond issue. He then said that this is in large part, not entirely, due to the rating. Mr. Stump then told City Council this was the last official action required by Council in order to be able to move forward with the refunding. He said their goal was to have this priced in the next week to ten day and close it out within a couple weeks after it is priced.

Councilmember Seifrit mentioned that we were probably lucky that the event happened in 2007 because she could not imagine what the cost would be like if we had to start from scratch again.

Mr. Rogers said that when you look at the timeline of events, not just here in Fairmont, but what has happened in the country and how that has impacted where we are. He noted that we have been able to achieve favorable rates because of the conditions, we were able to take advantage of stimulus funding, and we were able to take advantage of technology that was found out with the GE product. He then said that now there is a policy at the West Virginia Bureau of Public Health that you don't build a plant without pretreatment now and now GE has their own new policy that they won't sell membranes without pretreatment because that technology was new when we opened the plant and they would that these were some issues. Mr. Rogers then said that when this occurred, the events that have transpired since 2007 have lead to this.

Councilmember Gribben then commended Utility Manager David Sago and his staff for this entire project.

Roll call was taken by the Clerk.

The Mayor declared the resolution adopted by unanimous vote of those Councilmembers present.

### ADJOURNMENT

The Mayor entertained a motion for adjournment.

Motion:

Councilmember Smith moved to adjourn the meeting. The motion was seconded by Councilmember Straight.

The Mayor declared the meeting adjourned by voice vote of Council at 7:49 p.m.

**June 12, 2012**

The regular meeting of the City Council of the City of Fairmont was held at 7:20 p.m. on the 12<sup>th</sup> day of June, 2012, at the Public Safety Building located at 500 Quincy Street in Fairmont, West Virginia.

Mayor Burdick called the meeting to order.

Councilmembers present were:

First District	Robert D. (Bob) Gribben
Third District	Deborah D. (Debbie) Seifrit
Fourth District	William H. (Bill) Burdick
Fifth District	Charles E. (Chuck) Warner
Sixth District	Daniel K. (Dan) Weber
Seventh District	Robert Garcia
Eighth District	Robin W. Smith
Ninth District	Ronald J. (Ron) Straight, Sr.

Absent:

Second District	Robert F. (Bob) Sapp
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Also present were:

City Manager	Jay Rogers
City Clerk	Janet L. Keller
City Attorney	Kevin V. Sansalone
City Planner	Kathy Wyrodick
Finance Director	Eileen Layman
Utility Controller	Mark Moore
Bond Counsel	John Stump, Steptoe & Johnson

**IN RE: EXCUSE COUNCILMEMBER SAPP**

Councilmember Smith moved to excuse Councilmember Sapp from tonight's meeting. The motion was seconded by Councilmember Warner.

The Mayor declared Councilmember Sapp excused from this meeting by voice vote of Council.

**IN RE: OPENING CEREMONIES**

Junior Bennett gave the invocation followed by the Pledge of Allegiance to the Flag led by Councilmember Straight.

**APPROVAL OF MINUTES**

Mayor Burdick noted that each member of Council had received a copy of the minutes from regular meeting held on May 22, 2012. He asked if there were any corrections, deletions, or amendments.

Motion:

Councilmember Gribben moved to approve the minutes as submitted. Councilmember Warner seconded the motion.

The Mayor declared the minutes approved as submitted by voice vote of Council.

### **PUBLIC HEARINGS**

#### **IN RE: AN ORDINANCE PROVIDING FOR AN AMENDMENT TO THE CITY OF FAIRMONT'S 2011-2012 ANNUAL BUDGET: GENERAL FUND**

Pursuant to a notice duly published in the Times-West Virginian on May 28, 2012, a public hearing was convened to obtain citizen input on ordinance providing for a General Fund Budget Revision.

The Mayor asked if anyone present desired to speak to the proposed ordinance.

EILEEN LAYMAN, Finance Director, spoke in favor of the proposed ordinance. She stated this ordinance is the final revision for the FY12 budget for General Fund. She then went over some of the items in the revision.

There being no one else to speak, the public hearing was called to a close at 7:30 p.m.

#### **IN RE: AN ORDINANCE PROVIDING FOR AN AMENDMENT TO THE CITY OF FAIRMONT'S 2011-2012 ANNUAL BUDGET: COAL SEVERANCE**

Pursuant to a notice duly published in the Times-West Virginian on May 28, 2012, a public hearing was convened to obtain citizen input on ordinance providing for a Coal Severance Budget Revision.

The Mayor asked if anyone present desired to speak to the proposed ordinance.

EILEEN LAYMAN, Finance Director, spoke in favor of the proposed ordinance. She stated this ordinance is the final revision for the FY12 budget for Coal Severance and noted that the only change is an expected increase in revenues and this fund has been increased by \$7,500.00.

There being no one else to speak, the public hearing was called to a close at 7:31 p.m.

#### **IN RE: AN ORDINANCE OF THE COUNCIL FOR THE CITY OF FAIRMONT, AMENDING AND SUPPLEMENTING THE FAIRMONT ZONING CODE, MORE**

**PARTICULARLY, PART 13, CHAPTER 1 ZONING ADMINISTRATION, ARTICLE 1303 DEFINITIONS, CHAPTER 3 DISTRICTS AND REGULATIONS, ARTICLE 1317, DISTRICTS, SECTIONS 1317.01 GENERAL RESIDENTIAL, 1317.03 NEIGHBORHOOD RESIDENTIAL, 1317.05 NEIGHBORHOOD MIXED USE, 1317.07 CITY CENTER, 1317.09 MAIN CORRIDOR COMMERCIAL AND 1317.11 HIGHWAY COMMERCIAL, ARTICLE 1331 USES PERMITTED WITH CONDITIONS, AND ARTICLE 1343 PARKING AND LIGHTING REQUIREMENTS THEREOF, TO FACILITATE AND ENCOURAGE AFFORDABLE, CONVENIENTLY LOCATED, QUALITY CHILD CARE FACILITIES FOR THE RESIDENTS OF THE CITY OF FAIRMONT**

Pursuant to a notice duly published in the Times-West Virginian on May 28, 2012, a public hearing was convened to obtain citizen input on ordinance amending the City Code regarding Child Care facilities.

The Mayor asked if anyone present desired to speak to the proposed ordinance.

**KATHY WYROSDICK**, City Planner, explained the proposed ordinance. She said this amendment does very little to change what our current Code has. She explained that it changes the terminology to be in line with the State definitions. She noted that it does not expand where day care homes, centers or facilities are permitted; essentially we are just changing the terminology. She said that it was a long introduction only because it affects multiple zoning districts. She said that the Planning Commission considered this amendment and held a public hearing on April 18, 2012 and it was passed and approved and recommended to City Council.

There being no one else to speak, the public hearing was called to a close at 7:39 p.m.

**IN RE: AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 1280, CODIFIED AS PART ONE ADMINISTRATIVE CODE, ARTICLE 179, HISTORIC PRESERVATION REVIEW COMMISSION, AND MORE PARTICULARLY, SECTION 12 APPEALS, THEREOF, TO PROVIDE FOR A DIRECT APPEAL FROM ANY DECISION OF SAID COMMISSION TO THE CIRCUIT COURT OF MARION COUNTY, WEST VIRGINIA**

Pursuant to a notice duly published in the Times-West Virginian on May 28, 2012, a public hearing was convened to obtain citizen input on ordinance to provide for a direct appeal from any decision of the Historic Review Commission to the Circuit Court.

The Mayor asked if anyone present desired to speak to the proposed ordinance.

Mr. Rogers stated that the Historic Review Commission challenged the legality of Section 179.12 of the ordinance that required that an appeal from the Historic Preservation Review Commission went to City Council, challenging it that it was in conflict with State law. He said that upon determination from the Marion County Circuit Court, that provision of our ordinance was struck down with the Court's determination that would prohibit the City and Council from

giving full force and affect to that provision. He noted that his ordinance amends our ordinance to come into conformity with the State Code.

Councilmember Weber asked if the State Code has a limit or a cap on the expenses of a commission.

Mr. Rogers replied no, not to his knowledge. He said that the City Attorney had prepared a legal opinion a while back based on what was the reasonableness and the responsibility that the Council had to support a board and commission and then there was the weighing of the support of that board and commission in a function of their duties and their responsibilities with what is reasonable expenses that they may occur.

Councilmember Weber asked who defines reasonable.

Mr. Rogers said that is the collective pole of the elective body of the Council to determine that.

There being no one else to speak, the public hearing was called to a close at 7:43 p.m.

### ANNOUNCEMENTS

**IN RE: CORNERSTONE AT EAST FAIRMONT JR. HIGH SCHOOL**

Councilmember Straight reported that he and the Mayor attended the ceremony for the laying of the cornerstone at the new East Fairmont Jr. High School. He said that Masonic Lodge #9 put on the ceremony for the laying of the cornerstone.

**IN RE: BEVERLY ESTATES**

Councilmember Straight asked the City Manager for an update on the situation at Beverly Estates.

Mr. Rogers replied that he will mention it during his City Manager's Report.

**IN RE: SPEEDING ON VIRGINIA AVENUE**

Councilmember Straight stated that he received a complaint about speeding on 11<sup>th</sup> Street since it has recently been paved. He then requested that a stop sign be placed at the corner of 11<sup>th</sup> Street and Virginia Avenue.

**IN RE: MARION COUNTY HEALTH DEPARTMENT BUILDING**

Councilmember Gribben saluted that County Commission for the job that they are doing at the Marion County Health Department building. He said that it is really an outstanding piece of work and is close to completion.

**IN RE: REPAIR GRANITE ALONG GATEWAY CONNECTOR**

Councilmember Seifrit asked again about the cracks in the granite along the Gateway Connector.

Mr. Rogers said the entire Gateway Connector project was broken into 10 or 12 different contracts and the DOH said the contract for that particular work was already complete and accepted by the DOH before the cracks appeared. He went on to say that he and the Public Works Director have been talking and they are concerned about the thickness of the granite near the bridge and maybe that was not an acceptable material to place in that area. He said that we do not seem to be experiencing problems at the Haymond Street entrance or the Elkins Street exit and what you have is a granite slab around three inches as opposed to five or six inches in other areas. He said that it does continue to function and the recommendation of the Public Works Director is to not do anything right now. He said that they are looking into being able to seal it so we will not have concern about the freeze/thaw cycle. He mentioned that the Public Works Director certainly does not want to make any replacements or repairs until the entire section needs to be repaired.

**IN RE: WVML BOARD OF DIRECTORS MEETING**

Mayor Burdick announced that he and Councilmember Smith attended the Municipal League Board of Director's meeting. He noted that they talked about grants for sewer projects and how the League promotes businesses and what their liability is concerning their promotion of businesses.

**IN RE: PLAYGROUND EQUIPMENT AT BELLVIEW PARK**

The Mayor stated that someone lit a firecracker and burned down the new playground equipment at the Bellview Park.

**CITIZENS PETITIONS**

**IN RE: ZONING CODE AND PROPOSED SIGN ORDINANCE**

**JAMES WHARTON**, 39 Hollen Circle, stated that he has been in business since 1977 and has talked to several business owners as to why they left Fairmont and was told that it all came down to the Zoning Codes because they could not do what they wanted to do. He said in the past year he has heard two businesses say that they left because of the way that they are treated. He mentioned that he voted against the proposed Sign Ordinance, as a voting member of the Planning Commission. He explained that the proposed Sign Ordinance is too complicated and the Zoning Codes need to be simplified so people can understand it and live by it and not get into so many little details. He said that there are vacant buildings all over town and you can't do anything with them because of the zoning. He then said that as long as Council keeps passing these complicated ordinances, we will never get businesses to come in, except for government

and medical. He then said that his recommendation on the Sign Ordinance is to send it back to the Planning Commission and get a thorough discussion and get the thing simplified. He closed by saying that people don't want all of these regulations.

### **CITY MANAGER'S REPORT**

#### **IN RE: SPRING PAVING PROGRAM**

Mr. Rogers reported that the spring paving program was completed under budget and was also able to extend the area a little larger than originally projected. He announced that they spent \$212,667.61 to pave from Moore Place to 10<sup>th</sup> Street and the streets in between in that grid of Chamberlain Avenue, Minor Avenue, 11<sup>th</sup> Street, 12<sup>th</sup> Street, 13<sup>th</sup> Street and 14<sup>th</sup> Street. He then commended the Public Works Department for all their work and effort and also the Utilities Department.

He then stated that he will have a quarterly report for the Street Maintenance Charge at the July 10<sup>th</sup> meeting and will talk about the fall paving program at that time.

#### **IN RE: BELLVIEW FIRE STATION**

Mr. Rogers stated that he received an estimate for repairs that are needed for the Bellview Fire Station. He said that he was not prepared to discuss that estimate and those numbers today because the landlord is out of town and have not had the opportunity to see that report. He said that it would not be proper to have that discussion but he wanted Council and the public to know that we had the estimate and a tentative meeting is set up with the landlords on July 2<sup>nd</sup>.

#### **IN RE: BEVERLY ESTATES**

The Manager said that he looks to have some more information in the Weekly Report as some of these actions play out. He said that he provided Council with a synopsis from the City Planner from our meeting we had with the developer and there were some action items in there that were to be taken care of. He then said that individual has not followed through on cleaning up the property so a code notice has been issued to the individual. He mentioned that we have a real dilemma with Beverly Estates. He said that it does not do any good to kill the development; we have residents that are living in there. He said on the other hand, we have not under any of the standards accepted the roadways or the infrastructure into the corporate limits of the City of Fairmont. He said they have not made the improvements to the part so they are not technically public roads that have been dedicated to the public. He explained that we do have individuals living inside the corporate limits that are paying for city services and there are some city services that they should provide. He noted that this was the next step that he and staff need to discuss about how we respond to those things and how we try to work with this developer to get him to do what needs to be done and to finish that development out.

#### **IN RE: BELLVIEW PARK**

The City Manager said that it was very disheartening that the community has come to the Council and come to the Parks Commission and that Council and the Parks Commission has responded by working to make improvements in that park. He said to get phone calls from parents with children who are crying in the background because now their playground is destroyed become more disheartening. He noted that the Police Department will investigate it as arson and somebody should have information on how this happened. He then asked anyone to provide any information that they have to the Police Department and we will prosecute them to the fullest extent of the law. He said from an insurance standpoint, it is infrastructure that is not covered so it is not an insurance claim. He stated that it all needs to come down and unfortunately, it is a monetary expense that this Council had appropriated and that we had done and had undertaken and if you look at the pictures, you have volunteers and kids from the community that were proud of putting that there.

**CONSIDERATION OF COUNCIL BUSINESS**

**IN RE: ADOPTION, AN ORDINANCE PROVIDING FOR AN AMENDMENT TO THE CITY OF FAIRMONT'S 2011-2012 ANNUAL BUDGET: GENERAL FUND**

Mayor Burdick entertained a motion for the adoption of an ordinance providing for a General Fund Budget amendment.

Motion:

Councilmember Seifrit moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Straight.

Discussion:

Councilmember Weber stated that in good conscience, he cannot vote for this budget revision because of the legal fees incurred with the Historic Preservation Review Commission.

Roll call was taken by the Clerk and the following votes were recorded:

Councilmember Warner	Yes	Councilmember Gribben	No
Councilmember Garcia	Yes	Councilmember Smith	Yes
Councilmember Seifrit	Yes	Councilmember Straight	Yes
Councilmember Weber	No	Mayor Burdick	Yes

The Mayor declared the ordinance adopted by majority vote of those Councilmembers present and the ordinance designated as Ordinance No. 1561 was duly adopted.

**IN RE: ADOPTION, AN ORDINANCE PROVIDING FOR AN AMENDMENT TO THE CITY OF FAIRMONT'S 2011-2012 ANNUAL BUDGET: COAL SEVERANCE**

Mayor Burdick entertained a motion for the adoption of an ordinance providing for a Coal Severance Budget amendment.

Motion:

Councilmember Seifrit moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Warner.

Roll call was taken by the Clerk.

The Mayor declared the ordinance adopted by unanimous vote of those Councilmembers present and the ordinance designated as Ordinance No. 1562 was duly adopted.

**IN RE: ADOPTION, AN ORDINANCE OF THE COUNCIL FOR THE CITY OF FAIRMONT, AMENDING AND SUPPLEMENTING THE FAIRMONT ZONING CODE, MORE PARTICULARLY, PART 13, CHAPTER 1 ZONING ADMINISTRATION, ARTICLE 1303 DEFINITIONS, CHAPTER 3 DISTRICTS AND REGULATIONS, ARTICLE 1317, DISTRICTS, SECTIONS 1317.01 GENERAL RESIDENTIAL, 1317.03 NEIGHBORHOOD RESIDENTIAL, 1317.05 NEIGHBORHOOD MIXED USE, 1317.07 CITY CENTER, 1317.09 MAIN CORRIDOR COMMERCIAL AND 1317.11 HIGHWAY COMMERCIAL, ARTICLE 1331 USES PERMITTED WITH CONDITIONS, AND ARTICLE 1343 PARKING AND LIGHTING REQUIREMENTS THEREOF, TO FACILITATE AND ENCOURAGE AFFORDABLE, CONVENIENTLY LOCATED, QUALITY CHILD CARE FACILITIES FOR THE RESIDENTS OF THE CITY OF FAIRMONT**

Mayor Burdick requested that the ordinance amending the City Code regarding Child Care be read by title.

The Mayor then asked the City Clerk to call the roll.

The Mayor declared the ordinance adopted by unanimous vote of those Councilmembers present and the ordinance designated as Ordinance No. 1563 was duly adopted.

**IN RE: ADOPTION, AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 1280, CODIFIED AS PART ONE ADMINISTRATIVE CODE, ARTICLE 179, HISTORIC PRESERVATION REVIEW COMMISSION, AND MORE PARTICULARLY, SECTION 12 APPEALS, THEREOF, TO PROVIDE FOR A DIRECT APPEAL FROM ANY DECISION OF SAID COMMISSION TO THE CIRCUIT COURT OF MARION COUNTY, WEST VIRGINIA**

Mayor Burdick requested that the ordinance providing for a direct appeal from any decision of the Historic Review Commission to the Circuit Court be read by title.

Discussion:

Mayor Burdick said that he was more of a Home Rule person and he was tired of the State dictating how we run our business.

The Mayor then asked the City Clerk to call the roll and the following votes were recorded:

Councilmember Garcia	Yes	Councilmember Gribben	Yes
Councilmember Smith	Yes	Councilmember Seifrit	Yes
Mayor Burdick	No	Councilmember Straight	Yes
Councilmember Weber	No	Councilmember Warner	Yes

The Mayor declared the ordinance adopted by majority vote of those Councilmembers present and the ordinance designated as Ordinance No. 1564 was duly adopted.

**IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE PROVIDING FOR THE VACATION AND ABANDONMENT OF THE RIGHT OF WAY OF AN UNNAMED ALLEY SITUATE IN THE CITY OF FAIRMONT, FAIRMONT CITY DISTRICT, MARION COUNTY, WEST VIRGINIA, AND BEING THE RIGHT OF WAY OF THAT CERTAIN ALLEY SITUATE BETWEEN NINTH STREET AND TENTH STREET, AND FAIRMONT AVENUE AND GASTON AVENUE, ADJACENT TO THOSE CERTAIN PARCELS OF REAL ESTATE IDENTIFIED AS PARCELS NO. 10, 12, AND 13, AND PARCELS NO. 14.1 14, 15 AND 18 OF MARION COUNTY TAX MAP 01-05, WHICH SAID PARCELS ARE OWNED BY LUCAS MANAGEMENT LLC, McDONALD's USA, LLC, CYNTHIA BONAFIELD AND MICHAEL J. MAZELON, AND THE FAIRMONT FEDERAL CREDIT UNION; RESERVING ALL UTILITY RIGHTS**

Mayor Burdick entertained a motion and a second for the introduction of an ordinance providing for the vacation and abandonment of an unnamed alley between 9<sup>th</sup> Street and 10<sup>th</sup> Street.

Motion:

Councilmember Garcia moved for the introduction of the proposed ordinance and the reading of a synopsis in lieu of the entire ordinance. Councilmember Smith seconded the motion.

The Clerk read the proposed ordinance by synopsis for the first time.

The Mayor entertained a motion and second to set the public hearing for June 26, 2012.

Motion:

Councilmember Warner moved to set the public hearing for June 26, 2012. Councilmember Straight seconded the motion.

The Mayor declared the public hearing set for June 26, 2012 by voice vote of Council.

**IN RE: ADOPTION, A SUPPLEMENTAL RESOLUTION PROVIDING PARAMETERS AS TO THE PRINCIPAL AMOUNTS, DATES, MATURITY DATES, INTEREST RATES, INTEREST AND PRINCIPAL PAYMENT DATES AND OTHER TERMS OF THE WATER REFUNDING REVENUE BONDS, SERIES 2012 D; AUTHORIZING AND APPROVING A BOND PURCHASE AGREEMENT; A COMMITMENT FOR MUNICIPAL BOND INSURANCE; THE SALE AND DELIVERY OF SUCH BONDS TO THE ORIGINAL PURCHASER; APPOINTING A REGISTRAR AND PAYING AGENT FOR SUCH BONDS; AND MAKING OTHER PROVISIONS AS TO THE BONDS**

Mayor Burdick entertained a motion for the adoption of a Supplemental Resolution providing parameters as to the terms of the Water Refunding Revenue Bonds, Series 2012 D.

Motion:

Councilmember Garcia moved for the adoption of the proposed resolution and the reading of a synopsis in lieu of the entire resolution. The motion was seconded by Councilmember Smith.

The Clerk read the proposed resolution by synopsis for the first time.

Discussion:

John Stump, Bond Counsel, spoke in favor of the proposed resolution. He said the purpose of this resolution is the last official action of Council that is required in order to issue the Refunding Bonds. He said the market continues to be favorable and we are continuing to work with the rating agencies and bond insurer to determine the best route to take.

Roll call was taken by the Clerk.

The Mayor declared the resolution adopted by unanimous vote of those Councilmembers present.

**IN RE: ADOPTION, A RESOLUTION (FOURTEENTH) OF THE CITY OF FAIRMONT APPROVING INVOICES RELATING TO ACQUISITION AND CONSTRUCTION AND OTHER SERVICES FOR THE PROPOSED WATER PROJECT AND AUTHORIZING PAYMENT THEREOF**

Mayor Burdick entertained a motion for the adoption of a resolution approving invoices for the Corrective Action Plan at the Water Filtration Plant.

Motion:

Councilmember Garcia moved for the adoption of the proposed resolution and the reading of a synopsis in lieu of the entire resolution. The motion was seconded by Councilmember Warner.

The Clerk read the proposed resolution by synopsis for the first time.

Roll call was taken by the Clerk.

The Mayor declared the resolution adopted by unanimous vote of those Councilmembers present.

**IN RE: ADOPTION, A RESOLUTION (FIFTEENTH) OF THE CITY OF FAIRMONT APPROVING INVOICES RELATING TO ACQUISITION AND CONSTRUCTION AND OTHER SERVICES FOR THE PROPOSED WATER PROJECT AND AUTHORIZING PAYMENT THEREOF**

Mayor Burdick entertained a motion for the adoption of a resolution approving invoices for the Corrective Action Plan at the Water Filtration Plant.

Motion:

Councilmember Garcia moved for the adoption of the proposed resolution and the reading of a synopsis in lieu of the entire resolution. The motion was seconded by Councilmember Straight.

The Clerk read the proposed resolution by synopsis for the first time.

Roll call was taken by the Clerk.

The Mayor declared the resolution adopted by unanimous vote of those Councilmembers present.

**IN RE: ONE APPOINTMENT, MARION COUNTY CONVENTION AND VISITORS BUREAU, TWO YEAR TERM TO END JUNE 30, 2014**

Mayor Burdick entertained a motion for one appointment to the Marion County Convention and Visitors Bureau for a two year term to end June 30, 2014.

Motion:

Councilmember Warner moved to re-appoint Councilmember Bob Sapp to the Marion County Convention and Visitors Bureau for a two year term to end June 30, 2014. The motion was seconded by Councilmember Garcia.

Roll call was taken by the Clerk.

The Mayor declared Councilmember Bob Sapp re-appointed to the Marion County Convention and Visitors Bureau for a two year term to end June 30, 2014 by unanimous vote of those Councilmembers present.

**ADJOURNMENT**

The Mayor entertained a motion for adjournment.

Motion:

Councilmember Smith moved to adjourn the meeting. The motion was seconded by Councilmember Straight.

The Mayor declared the meeting adjourned by voice vote of Council at 8:25 p.m.

**March 27, 2012**

The regular meeting of the City Council of the City of Fairmont was held at 7:00 p.m. on the 27<sup>th</sup> day of March, 2012, at the Public Safety Building located at 500 Quincy Street in Fairmont, West Virginia.

Mayor Burdick called the meeting to order.

Councilmembers present were:

First District	Robert D. (Bob) Gribben
Second District	Robert F. (Bob) Sapp
Third District	Deborah D. (Debbie) Seifrit
Fourth District	William H. (Bill) Burdick
Fifth District	Charles E. (Chuck) Warner
Sixth District	Daniel K. (Dan) Weber
Seventh District	Robert Garcia
Eighth District	Robin W. Smith
Ninth District	Ronald J. (Ron) Straight, Sr.

Also present were:

City Manager	Jay Rogers
City Clerk	Janet L. Keller
City Attorney	Kevin Sansalone
Finance Director	Eileen Layman

**IN RE:        OPENING CEREMONIES**

Rev. Aslam Barkat of Faith United Methodist Church gave the invocation followed by the Pledge of Allegiance to the Flag led by Councilmember Smith.

**APPROVAL OF MINUTES**

Mayor Burdick noted that each member of Council had received a copy of the minutes from regular meeting held on March 13, 2012. He asked if there were any corrections, deletions, or amendments.

Motion:

Councilmember Warner moved to approve the minutes as submitted. Councilmember Seifrit seconded the motion.

The Mayor declared the minutes approved as submitted by voice vote of Council.

## PUBLIC HEARINGS

**IN RE: AN ORDINANCE AUTHORIZING THE REFUNDING OF THE ISSUER'S OUTSTANDING WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997 A; WATER REVENUE BONDS, SERIES 1998 AND A PORTION OF THE WATER REVENUE BONDS, SERIES 1999 AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, AND PAYING COSTS OF ISSUANCE AND RELATED COSTS, THROUGH THE ISSUANCE OF WATER REFUNDING REVENUE BONDS, SERIES 2012 C (BANK QUALIFIED) OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$10,000,000; AND WATER REFUNDING REVENUE BONDS, SERIES 2012 D (NON-BANK QUALIFIED) OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$30,000,000 PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TAX AND NON-ARBITRAGE CERTIFICATE, AN OFFICIAL STATEMENT, A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER DOCUMENTS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO**

Pursuant to a notice duly published in the Times-West Virginian on March 15, 2012 and March 22, 2012, a public hearing was convened to obtain citizen input on ordinance authorizing the refunding of Water Revenue Bonds.

The Mayor asked if anyone present desired to speak to the proposed budget.

Mr. Rogers said this is a mechanism that will allow us to be able to achieve substantial savings in repayment of our outstanding water reserve bonds that we have in place. He went on to say that the passage of this ordinance allows us to move forward and place the bonds until we actually adopt a supplemental resolution.

There being no one else to speak, the public hearing was called to a close at 7:06 p.m.

**IN RE: AN ORDINANCE PROVIDING FOR AN AMENDMENT TO THE CITY OF FAIRMONT'S 2011-2012 ANNUAL BUDGET: GENERAL FUND**

Pursuant to a notice duly published in the Times-West Virginian on March 19, 2012, a public hearing was convened to obtain citizen input on ordinance providing for a General Fund Budget Revision.

The Mayor asked if anyone present desired to speak to the proposed budget.

Eileen Layman, Finance Director, went over some of the items contained in the budget revision.

There being no one else to speak, the public hearing was called to a close at 7:08 p.m.

## ANNOUNCEMENTS

### **IN RE: FIREFIGHTERS RECOGNIZED**

Councilmember Seifrit recognized the two firefighters, Steve Ash and Jason Barker, who rescued a father, a mother, and a baby from the flood waters at Booths Creek. She expressed her appreciation for the rescue.

### **IN RE: TURNING LANE ON CLEVELAND AVENUE**

Councilmember Warner asked about the turning lane coming from Cleveland Avenue onto Adams Street. He asked if you are not allowed to turn from the center lane.

Mr. Rogers replied that the mere closing, which is a temporary closing, of Cleveland Avenue actually takes away that turning lane. He said the center lane is still posted as the center lane, therefore, it should not be a turn from the center lane and that should be enforced.

### **IN RE: PIERPONT RACE**

Mayor Burdick stated that he participated in the Pierpont race and then attended the reception after the race at Fairmont State University.

### **IN RE: POST-TRAUMATIC STRESS DISORDER**

The Mayor reported that he attended an event at Fairmont State University, featuring Dr. Tick, on post-traumatic stress disorder for Veterans. He said the event was to make the public more sensitive to the returning Veterans and to help the Veterans adjust to life when they come back from duty.

### **IN RE: BELLVIEW FIRE STATION**

The Mayor stated that the Bellview Fire Station is closed due to mold in the building. He mentioned that he and the City Manager are trying to get a comprehensive plan as far as all of the fire stations because the East Side Fire Station is too small for some of the trucks and there are some small issues at the Watson Station.

### **IN RE: APPEAL HEARING**

The Mayor said that regarding the appeal hearing that was scheduled between the Historic Review Commission and Fairmont Community Development Partnership, we talked about having the ordinance amended and/or eliminated in order to not have City Council deal with issues like this. He then asked if it was worth Council getting involved if it is to go to Circuit Court anyway.

## CITIZENS PEITIONS

**IN RE: TRIBUTE TO A. JAMES MANCHIN**

Rev. D. D. Meighen announced that a DVD will be shown on Saturday, March 31, at 10:30 am, at the Farmington Volunteer Fire Department to honor the late A. James Manchin. He invited Council to attend the event.

**CITY MANAGER'S REPORT**

**IN RE: BELLVIEW FIRE STATION**

Mr. Rogers stated that we had to temporarily relocate out of the Bellview Fire Station due to some structural issues there. He said it will be on a temporary basis until those corrections are made. He then said that it has brought back the whole notion of looking at that substation along with the other substations. He said some of the equipment will no longer fit into the East Side Fire Station because the equipment that is made today cannot be accommodated by the doors that are there. He said that is a structure with significant age and the arches have a certain architectural characteristic to them and going back to retrofitting doors versus do you take a look at it at a different substation. He then said that because of the Gateway Connector things are changing and with the possibility of redeveloping the Owens Illinois Property and the Fairmont Coke Works, you start to question is that the ideal location that you need to be. He then inform Council that staff will meet next week with the Fire Chief, several of his Captains, and some of the department heads to start to take a look at how we can put together a comprehensive plan to address the needs and characteristics of the substations and the make a recommendation to Council.

**IN RE: APPEAL HEARING**

The City Manager reported that there was an appeal hearing scheduled for this evening, however, that matter was first heard by Judge Janes in Circuit Court which there was a motion filed that would suspend the hearing this evening if the Court did, indeed, find that the ordinance of the City of Fairmont violated the State Law. He said that Judge Janes found enough in the discussion that was held to suspend the hearing and is suspended until further notice of the Court. He then explained that the Plaintiff will have seven days to file supporting documents to their motion that they filed today and the Defendant will have seven days to answer those pleadings and then we will actually have a hearing in front of the Judge to determine whether the Council can hear the matter. He noted that we have to wait for the hearing from Judge Janes to determine whether the hearing can actually be held by the Council or not.

**CONSIDERATION OF COUNCIL BUSINESS**

**IN RE: ADOPTION, AN ORDINANCE AUTHORIZING THE REFUNDING OF THE ISSUER'S OUTSTANDING WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997 A; WATER REVENUE BONDS, SERIES 1998 AND A PORTION OF THE WATER REVENUE BONDS, SERIES 1999 AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, AND PAYING COSTS OF ISSUANCE**

**AND RELATED COSTS, THROUGH THE ISSUANCE OF WATER REFUNDING REVENUE BONDS, SERIES 2012 C (BANK QUALIFIED) OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$10,000,000; AND WATER REFUNDING REVENUE BONDS, SERIES 2012 D (NON-BANK QUALIFIED) OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$30,000,000 PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TAX AND NON-ARBITRAGE CERTIFICATE, AN OFFICIAL STATEMENT, A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER DOCUMENTS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO .**

Mayor Burdick entertained a motion for the adoption of an ordinance authorizing the refunding of Water Revenue Bonds.

Motion:

Councilmember Sapp moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Warner.

Roll call was taken by the Clerk.

The Mayor declared the ordinance adopted by unanimous vote of Council and the ordinance designated as Ordinance No. 1552 was duly adopted.

**IN RE: ADOPTION, AN ORDINANCE PROVIDING FOR AN AMENDMENT TO THE CITY OF FAIRMONT'S 2011-2012 ANNUAL BUDGET: GENERAL FUND**

Mayor Burdick entertained a motion for the adoption of an ordinance providing for a General Fund Budget Revision.

Motion:

Councilmember Warner moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Seifrit.

Roll call was taken by the Clerk.

The Mayor declared the ordinance adopted by unanimous vote of Council and the ordinance designated as Ordinance No. 1553 was duly adopted.

**IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE TO APPROVE AND ADOPT CURRENT REPLACEMENT PAGES TO THE FAIRMONT CITY CODE**

Mayor Burdick entertained a motion and a second for the introduction of an ordinance to approve and adopt replacement pages to the City Code.

Motion:

Councilmember Garcia moved for the introduction of the proposed ordinance and the reading of a synopsis in lieu of the entire ordinance. Councilmember Seifrit seconded the motion.

The Clerk read the proposed ordinance by synopsis for the first time.

The Mayor entertained a motion and second to set the public hearing for April 10, 2012.

Motion:

Councilmember Warner moved to set the public hearing for April 10, 2012. Councilmember Garcia seconded the motion.

The Mayor declared the public hearing set for April 10, 2012 by voice vote of Council.

**IN RE: ADOPTION, A RESOLUTION PROCLAIMING APRIL 2012 AS FAIR HOUSING MONTH IN THE CITY OF FAIRMONT**

Mayor Burdick entertained a motion for the adoption of a resolution proclaiming April 2012 as Fair Housing Month.

Motion:

Councilmember Seifrit moved for the adoption of the proposed resolution and the reading of a synopsis in lieu of the entire resolution. The motion was seconded by Councilmember Garcia.

The Clerk read the proposed resolution by synopsis for the first time.

Roll call was taken by the Clerk.

The Mayor declared the resolution adopted by unanimous vote of Council.

**IN RE: ADOPTION, A RESOLUTION OF THE COUNCIL FOR THE CITY OF FAIRMONT ADOPTING THE UPDATED REGIONALIZED REGION VI PLANNING AND DEVELOPMENT COUNCIL MULTI-JURISDICTIONAL HAZARD MITIGATION PLAN**

Mayor Burdick entertained a motion for the adoption of a resolution adopting the updated Regionalized Region VI Planning and Development Council Multi-Jurisdictional Hazard Mitigation Plan.

Motion:

Councilmember Warner moved for the adoption of the proposed resolution and the reading of a synopsis in lieu of the entire resolution. The motion was seconded by Councilmember Garcia.

The Clerk read the proposed resolution by synopsis for the first time.

Roll call was taken by the Clerk.

The Mayor declared the resolution adopted by unanimous vote of Council.

**IN RE: APPEAL HEARING**

Councilmember Weber stated that he understands that Council is the protector of funds generated by fees, taxes, etc. from the citizens. He then stated that he was concerned about the legal fees expended and future fees that will be expended concerning the Historic Review Commission and the Fairmont Community Development Partnership for that argument that they are having. He said from what he understands, the City is going to be responsible for paying the legal fees for both organizations. He asked the City Manager if this was true.

Mr. Rogers said the City is not responsible for paying any legal funds for the Partnership.

Councilmember Weber asked about the Historic Review Commission.

Mr. Rogers and the Mayor both replied yes.

Councilmember Weber asked if there was a limit to the funds that we have to spend and do we have a cap on those legal fees.

Mr. Rogers replied there is not a cap on the legal fees. He added that there was a budget that the Historic Review Commission has and there is also an independent bank account that the Historic Review Commission has.

Councilmember Weber said our limit is what we said with the Outside Agencies during the budget meeting of \$90,588. He said that they have to get a \$1,500 grant from the City to this Historic Review Commission. He asked again if that was our cap.

The City Manager said that is what is in their budget absent a budget revision that will be approved by the Council.

Councilmember Weber noted that he wanted to make sure that he had this perfectly clear that the City will be responsible for the legal fees encumbered by the Historic Review Commission once they have reached their limit that we granted in the budget plus if they spend more than what they have in their own bank account. He then asked that where do we stand in that particular argument and how much can we spend on this particular conflict when we don't have discretionary dollars in our budget and we would have to come back to Council and ask Council for more money to pay legal fees. He asked if this was correct.

Mr. Rogers said that was correct. He noted that it would be very similar to what the Council undertook in other legal matters when you hired outside Counsel where you had a budgeted line item. He said in other litigation when that line item was expended then there was a budget revision that was proposed to Council and Council decided to either approve or deny that budget revision.

Councilmember Weber said that he read over some of the information that Council received from the lawyer who represents the Historic Review Commission and they had listed in there the legal fee for the primary lawyer was \$200.00 per hour and went down in scale from that to maybe \$100.00 per hour. He noted that he was just thinking that how much today cost the Historic Review Commission for their lawyer and legal fees. He said this concerns him that we are spending money for legal fees and we are responsible for those legal fees and we aren't taking care of other things that are needed to be taken care of by the City that are much more pressing than the demolition of a building. He said again this does concern him and he has thought about this at length. He then said that he did not know whether we need to formalize an amendment or an ordinance saying that we are going to limit our cap on some of these legal fees. He closed by saying that it could be extremely expensive for the City of Fairmont.

Councilmember Sapp said the only way that they can get more money in that matter is through a budget revision that would have to be passed by City Council. He said as opposed to setting an ordinance that any group, board or commission under us has a cap of what we can spend on legal fees that would be determined by the Council who hears that at that time on a budget revision. He then said that it was not just legal fees for our commissions but also legal fees for this Council itself. He said that he would think something would be put into effect that says that a certain threshold is going to have to come before Council to make a determination whether additional funding is going to be made available to go forward or not.

Councilmember Weber said another question is where they are at this point with their \$1,500 that Council approved for them.

Mr. Rogers said that he cannot answer that since there has not been a billing that has been provided to the City.

Councilmember Weber asked the City Manager to ask for a billing so we will know where we are. He said again this concerns him.

Mr. Rogers stated that he shares his concern. He then said that they are a board and commission of the City and we start to set a dangerous precedent over deciding that you may provide funds to one board and commission for legal expenses but you may not for another board and commission. He noted that we have to take that into consideration as we move forward. He then said that he will get Council some additional information including the building and then we can have a discussion about that.

Councilmember Weber stated that from what he understands if a lawyer calls the client and talks for five minutes, he's billed for that time. He then said that everything that a lawyer does for the client is billed and this could become astronomical.

Mr. Sansalone replied that generally if a lawyer is paid an hourly rate the billing is sometimes in a quarter of an hour increments.

The Mayor stated that he and the City Manager talked about today's proceedings and the Mayor said that all we are doing is spending money.

Councilmember Weber noted that he was just concerned about the monies that may be going out and we have no control over that.

Mr. Rogers said that he would provide additional information to Council.

### **ADJOURNMENT**

The Mayor entertained a motion for adjournment.

Motion:

Councilmember Smith moved to adjourn the meeting. The motion was seconded by Councilmember Straight.

The Mayor declared the meeting adjourned by voice vote of Council at 7:45 p.m.

**March 13, 2012**

The regular meeting of the City Council of the City of Fairmont was held at 7:00 p.m. on the 13<sup>th</sup> day of March, 2012, at the Public Safety Building located at 500 Quincy Street in Fairmont, West Virginia.

Mayor Burdick called the meeting to order.

Councilmembers present were:

First District	Robert D. (Bob) Gribben
Second District	Robert F. (Bob) Sapp
Third District	Deborah D. (Debbie) Seifrit
Fourth District	William H. (Bill) Burdick
Fifth District	Charles E. (Chuck) Warner
Sixth District	Daniel K. (Dan) Weber
Seventh District	Robert Garcia
Eighth District	Robin W. Smith
Ninth District	Ronald J. (Ron) Straight, Sr.

Also present were:

City Manager	Jay Rogers
City Clerk	Janet L. Keller
City Attorney	Kevin Sansalone
Finance Director	Eileen Layman
City Planner	Kathy Wyrosdick

**IN RE: OPENING CEREMONIES**

Rev. D. D. Meighen gave the invocation followed by the Pledge of Allegiance to the Flag led by Councilmember Smith.

**IN RE: CERTIFICATE OF ACHIEVEMENT PRESENTED**

Mayor Burdick presented a Certificate of Achievement to Marissa Garrett, a student from Barrackville Middle School, for winning "If I Were Mayor . . . I Would" essay contest sponsored by the WV Municipal League. Marissa then read her essay.

**APPROVAL OF MINUTES**

Mayor Burdick noted that each member of Council had received a copy of the minutes from regular meeting held on February 28, 2012. He asked if there were any corrections, deletions, or amendments.

Motion:

Councilmember Straight moved to approve the minutes as submitted. Councilmember Warner seconded the motion.

The Mayor declared the minutes approved as submitted by voice vote of Council.

### **PUBLIC HEARINGS**

#### **IN RE: 2012-2013 CITY BUDGETS: GENERAL FUND, PARKING FUND, COAL SEVERANCE AND OUTSIDE AGENCIES**

Pursuant to a notice duly published in the Times-West Virginian on February 29, 2012 and March 7, 2012, a public hearing was convened to obtain citizen input on the 2012-2013 City Budgets.

The Mayor asked if anyone present desired to speak to the proposed budget.

**EILEEN LAYMAN**, Finance Director, spoke in favor of the proposed budget. She noted that the budgets are as presented to Council in the work session with one modification in the General Fund budget. She mentioned that she received the levy rate from the Assessor's Office and she had an estimate on the Ad Valorem Tax line and with the levy order they had a change to that. She noted that it was an increase of \$425,000.00 in that line item which increased the General Fund revenues to \$13,202,280.00.

Councilmember Garcia asked if this was a one-time thing.

Ms. Layman said it is based on an allocation of the Public Utility class property and that is a statewide allocation and will change annually based on the assessed values throughout the state.

There being no one else to speak, the public hearing was called to a close at 7:08 p.m.

#### **IN RE: AN ORDINANCE OF THE COUNCIL FOR THE CITY OF FAIRMONT PROVIDING FOR THE PURCHASE FROM NORFOLK SOUTHERN RAILWAY COMPANY OF THOSE CERTAIN TRACTS OR PARCELS OF REAL ESTATE CONTAINING APPROXIMATELY 7.84 ACRES, MORE OR LESS, LOCATED IN UNION CITY DISTRICT, MARION COUNTY, WEST VIRGINIA**

Pursuant to a notice duly published in the Times-West Virginian on March 5, 2012, a public hearing was convened to obtain citizen input on an ordinance to purchase 7.84 acres from Norfolk Southern Railway Company located in Union City District.

The Mayor asked if anyone desired to speak to the proposed ordinance.

Mr. Rogers said that this involves a portion of property that is mainly known as the Merchant Street Parking Lot. He explained that the City has leased that property from the Railroad since the early 1960's paying a lease rate annually for that property. He said the Fairmont Parking

Authority in conjunction with the Urban Renewal Authority has looked at that property over the last year or two as a mechanism to increase some of the stability and possibility of seeing some businesses relocate or expand or renovate on the Merchant Street area of town that would know that there was some stability and that long-term parking was always going to be there and be possible for them. He said that last year the Railroad presented the City with a new lease with a substantial increase in the lease rate and we were able to continue at the old lease rate while we had discussions with them. He went on to say that the Fairmont Parks Commission entertained a presentation from a group of putting a memorial project in the Park or adjacent to the Park that actually was property of Norfolk Southern Railroad. He then said that it started to come to the point where for those two projects, for riverfront development and for some other things to happen, we started taking a look at this very seriously of could we put ourselves in the position to be able to purchase the property. He noted that it was a very generous purchase price for this property when you consider that the Merchant Street parking lot alone is assessed at over \$200,000.00. He went on to say that purchasing the property allows us to do things that we need to do, to stabilize those businesses on Merchant Street, allows us to move the Parks Commission initiative forward with the memorial and then starts to give some emphasis to the riverfront and the master plan. He then said that the purchase price of the property is \$15,500.00 and this positions us very well for the future in that area to do some things that will allow us to stabilize that business market over there and expand our parks. He then recommended that Council adopt the proposed ordinance in order to complete the transaction.

There being no one else to speak, the public hearing was called to a close at 7:18 p.m.

### ANNOUNCEMENTS

#### **IN RE: RECENT FLOODING**

Councilmember Straight thanked all of the people that were involved with the recent flooding.

Councilmember Smith stated that he was glad the way the community came together with the flooding.

Councilmember Garcia stated that he was involved in the flooding because a lot of their facilities were damaged. He said all of the agencies were there to respond.

Councilmember Weber noted that the rains were devastating to a lot of people. He then thanked the first responders, police, fire, the City Manager, and all of the people connected with the City for helping all of those people. He wished the residents in the Pricketts Creek area and the Bunners Ridge area all the best.

Councilmember Seifrit asked about where the water runs to in the culvert behind Wendy's on East Park Avenue.

Mr. Rogers said that it runs from Hickman Run and goes to the Mon River. He said that it was one of the largest drainage basins that we have.

Councilmember Seifrit said that a lot of people lost a lot of things and the one thing that she is concerned about is that if there would have been a fire in Homewood, the trucks would never have been able to get there. She noted that the City has done work on Country Club Road, in the Ridgely Avenue area, and the Watson area and she thought the City needed to look at this area.

**IN RE: HAPPY BIRTHDAY TO FORMER MAYOR STRAIGHT**

Councilmember Straight noted that his father, former Mayor Straight, celebrated his 101<sup>st</sup> birthday on March 9<sup>th</sup>.

Councilmember Seifrit wished former Mayor Straight a Happy Birthday.

Councilmember Warner extended a Happy Birthday to Mayor Straight.

**IN RE: FSHS BOYS BASKETBALL TEAM**

Councilmember Garcia commended the FSHS Boys Basketball Team for making it to the State tournament. He then wished them good luck when they play on Thursday.

**IN RE: RECENT FIRES**

Councilmember Garcia stated that he responded to two fire calls that our firefighters were battling. He said at both locations, Cedar Street and Guffey Street, the firefighters acted both swiftly and safely to get both fire under control in a short period of time. He then commended the firefighters.

**IN RE: CONGRATULATIONS TO MARISSA GARRETT**

Councilmember Weber extended congratulations to Marissa Garrett for winning the essay contest. He noted that he was glad she got to read it to the City Council.

**IN RE: NICE WEATHER**

Councilmember Sapp noted that it was nice to see people out enjoying the parks, walking and biking because of the nice weather.

Councilmember Seifrit mentioned that the Morgantown Avenue Park was packed with kids and people. She noted that these parks will be used because of the nice weather.

**IN RE: BELTLINE DEVELOPMENT**

The Mayor reported that he attended the Beltline Development with the WVU students and the City Planner.

**IN RE: WORKFORCE WEST VIRGINIA**

Mayor Burdick stated that he attended an elected officials meeting with Workforce West Virginia. He said that they talked about people getting laid off in the community and what is effective. He said money is available to hire people and some are 100% guaranteed through Workforce West Virginia.

**IN RE: PIERPONT RACE**

The Mayor announced that the Pierpont College and Veterans Education Race will be held on Thursday, March 22<sup>nd</sup>. He noted that it will be held at 6:00 p.m. in the downtown area.

**CITIZENS PETITIONS**

**IN RE: HISTORY EXPO**

**DORA GRUBB**, with the Marion County Historical Society, invited the Mayor and City Council to attend a History Expo to be held at the Marion County Court House on Saturday, March 24<sup>th</sup>. She provided Council with a list of some of the activities that will take place.

**IN RE: MON YOUTH BUILD**

**ROBERT BOHIGIAN** of 219 Jefferson Street addressed Council on behalf of a citizens group called WFNI (What Fairmont Needs). He said that at the last meeting he gave the City Clerk a handout to give the City Manager regarding Mon Youth Build. He explained that the City is going to lose a vital service that has been in Fairmont since 1996. He then asked if there was any way that Council could work with Mon Youth Build in order to preserve this vital asset to the community. He stated that they not only give direction to young people who may have dropped out from high school but it teaches them a trade or a viable technical position and community service.

The Mayor then asked Mr. Bohigian what he wanted Council to do.

Mr. Bohigian replied that he wanted the City of Fairmont to investigate a way that they might participate in joint venture and sponsorship in preserving the Mon Youth Building program.

**IN RE: REQUEST FOR SIGN PERMIT**

**ROBERT BOHIGIAN** also addressed Council on behalf of Monica Yaremchuk Delbrook and Mark Delbrook, owners of Fire House Café on Adams Street. He said that they are requesting an exception or a variance of the sign ordinance. He noted that they are having trouble hanging a sign up for their business. He mentioned that they did not even know who to call about this problem.

The City Manager said that it was not that complicated and he can address that after the meeting.

**CITY MANAGER'S REPORT**

**IN RE: MON YOUTH BUILD**

Mr. Rogers said that he and the City Planner became aware of some of the issues with Mon Youth Build about four to six months ago. He said that we are in the process of working on the need for demolition and are creating a program in Fairmont with that. He then said that what he wants to present to Council is to talk more about a Neighborhood Reinvestment Program where it is more than just options for demolition. He said that we have talked about how Mon Youth Build can be a resource for some citizens out in the community.

**IN RE: RECENT FLOODING**

The City Manager thanked Council for their comments directed towards our staff about the floods.

Mr. Rogers said that during the flood, we had a firefighter that actually jumped in the water and rescued some people.

Mr. Rogers then said that during the heavy rains on March 2<sup>nd</sup>, the City had three individuals, John Carson, Ken Hacker, and Mike Bragg, left work at 4:30 p.m. went home to change clothes and came back and sat at the Wastewater Treatment Plant with sandbags in their vehicles, knowing that we had issues out there that they didn't know if they could control or help, but they came back on their off time to make sure if people were going to have some problems, they were going out to try to help them. He noted that these people are paid an hourly wage so there was no overtime.

**IN RE: LIGHTS ON HIGH LEVEL BRIDGE**

The City Manager reported that we now have at least two working lights on every flag on the bridge. He noted that we had a problem with the wiring, got it fixed and got the conduit fixed. He said that there seems to be a problem with the light fixture itself and the lights are shorting out.

**IN RE: MILLING OF STREETS**

Mr. Rogers announced that the Public Works has milled the tail end of Mary Lou Retton Drive. He noted that this will lesson some of the problems and the bad asphalt that we have and we hope to move forward with the storm water project there and then we will be able to get that area paved. He said they will then move to Farms Drive and then to 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Street intersections of Virginia Avenue and Gaston Avenue.

**IN RE: PAVING PROGRAM**

The Manager stated that we would like to explore the possibility of two paving programs this year, one to begin the paving program in the spring and then pave again in the fall. He said that he has asked the Finance Director to look at the revenues in the account and make sure that we

have enough revenues so that the project we put out is worth the contractors bidding on or if we use the State contract that it is worth it for them to come in and give us a good price to do it.

### CONSIDERATION OF COUNCIL BUSINESS

**IN RE: ADOPTION, AN ORDINANCE OF THE COUNCIL FOR THE CITY OF FAIRMONT PROVIDING FOR THE PURCHASE FROM NORFOLK SOUTHERN RAILWAY COMPANY OF THOSE CERTAIN TRACTS OR PARCELS OF REAL ESTATE CONTAINING APPROXIMATELY 7.84 ACRES, MORE OR LESS, LOCATED IN UNION CITY DISTRICT, MARION COUNTY, WEST VIRGINIA**

Mayor Burdick entertained a motion for the adoption of an ordinance to purchase 7.84 acres from Norfolk Southern Railway Company located in Union City District.

Motion:

Councilmember Sapp moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Gribben.

Roll call was taken by the Clerk.

The Mayor declared the ordinance adopted by unanimous vote of Council and the ordinance designated as Ordinance No. 1551 was duly adopted.

**IN RE: SECOND READING, SET PUBLIC HEARING, AN ORDINANCE AUTHORIZING THE REFUNDING OF THE ISSUER'S OUTSTANDING WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997 A; WATER REVENUE BONDS, SERIES 1998 AND A PORTION OF THE WATER REVENUE BONDS, SERIES 1999 AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, AND PAYING COSTS OF ISSUANCE AND RELATED COSTS, THROUGH THE ISSUANCE OF WATER REFUNDING REVENUE BONDS, SERIES 2012 C (BANK QUALIFIED) OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$10,000,000; AND WATER REFUNDING REVENUE BONDS, SERIES 2012 D (NON-BANK QUALIFIED) OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$30,000,000 PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TAX AND NON-ARBITRAGE CERTIFICATE, AN OFFICIAL STATEMENT, A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER DOCUMENTS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO**

Mayor Burdick entertained a motion and a second for the second reading of an ordinance authorizing the refunding of the Waterworks Refunding Revenue Bonds.

Motion:

Councilmember Warner moved for the second reading of the proposed ordinance and the reading of a synopsis in lieu of the entire ordinance. Councilmember Seifrit seconded the motion.

The Clerk read the proposed ordinance by synopsis for the second time.

Motion:

Councilmember Sapp moved to confirm the public hearing for March 27, 2012. Councilmember Warner seconded the motion.

The Mayor declared the second reading held and the third reading and public hearing set for March 27, 2012 by voice vote of Council.

**IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE PROVIDING FOR AN AMENDMENT TO THE CITY OF FAIRMONT'S 2011-2012 ANNUAL BUDGET: GENERAL FUND**

Mayor Burdick entertained a motion and a second for the introduction of an ordinance providing for a General Fund Budget Revision.

Motion:

Councilmember Garcia moved for the introduction of the proposed ordinance and the reading of a synopsis in lieu of the entire ordinance. Councilmember Gribben seconded the motion.

The Clerk read the proposed ordinance by synopsis for the first time.

The Mayor entertained a motion and second to set the public hearing for March 27, 2012.

Motion:

Councilmember Warner moved to set the public hearing for March 27, 2012. Councilmember Garcia seconded the motion.

The Mayor declared the public hearing set for March 27, 2012 by voice vote of Council.

**IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE OF THE COUNCIL OF THE CITY OF FAIRMONT GRANTING A NON-EXCLUSIVE FRANCHISE TO TIME WARNER CABLE, LLC, d/b/a TIME WARNER CABLE FOR PURPOSES OF CONSTRUCTING, OPERATING AND MAINTAINING A CABLE SYSTEM AND PROVIDING CABLE AND CABLE RELATED SERVICES TO CUSTOMERS WITHIN THE CORPORATE LIMITS OF THE CITY OF FAIRMONT AND APPROVING THE FORM AND CONTENT OF THE FRANCHISE AGREEMENT**

**BETWEEN THE CITY AND TIME WARNER CABLE AND AUTHORIZING THE EXECUTION AND DELIVERY THEREOF; LIMITATIONS**

Mayor Burdick entertained a motion and a second for the introduction of an ordinance granting a non-exclusive franchise to Time Warner Cable, LLC.

Motion:

Councilmember Garcia moved for the introduction of the proposed ordinance and the reading of a synopsis in lieu of the entire ordinance. Councilmember Warner seconded the motion.

The Clerk read the proposed ordinance by synopsis for the first time.

Discussion:

Councilmember Weber asked if the 5% franchise fee is at the maximum rate and where does the 5% come from.

Mr. Rogers replied that it comes from the Federal Communications Commission. He noted that it is set by law.

Mr. Sansalone said that we raised it from 3% to the maximum rate of 5% when Council adopted Ordinance No. 1139 in May of 2000.

Councilmember Weber asked if this was the same for Comcast.

Mr. Sansalone said our Comcast is currently 3% but this ordinance will go to 5%.

Mr. Rogers said that if you have more than one cable franchise operator, they have to have the same franchise fee.

Councilmember Weber asked what procedure would we take to persuade the FCC to . . .

Mr. Sansalone said to lobby the legislature.

The City Manager said that these are corporate entities that if the franchise fee increases then we will see the increase on our cable bill.

Councilmember Straight asked if the City ever looked at bringing somebody else in.

Mr. Rogers said that it was regulated by the Public Service Commission. He said the company would have to apply to the PSC and be granted a license to serve in that territory. He said that we are at the mercy of the cable operators that want to come into this area. He explained that it was not like we can put out a RFQ or RFP and somebody decides to come to Fairmont. He then said that this agreement along with the one from Comcast is that they are not exclusive so neither one of these entities have the exclusive right to deliver the service. He noted that you would

have to have a cable franchise operator that would want to come to Fairmont and have permission through the PSC to serve a portion of Fairmont. He mentioned that when Comcast was Adelphia they tried to expand their territory in Marion County and they weren't granted a license.

Councilmember Weber asked if we talked to them about the programming.

The City Manager said that, in the agreement, this is one of the things that we put in there that was not in there before. He said that it actually requires Time Warner to go through and do customer surveys and to allow us to receive some of those results from the surveys to understand what the satisfaction level is with the service that they are providing.

The Mayor entertained a motion and second to set the public hearing for April 10, 2012.

Motion:

Councilmember Warner moved to set the public hearing for April 10, 2012. Councilmember Sapp seconded the motion.

The Mayor declared the public hearing set for April 10, 2012 by voice vote of Council.

**IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE OF THE COUNCIL OF THE CITY OF FAIRMONT GRANTING A NON-EXCLUSIVE FRANCHISE TO COMCAST OF COLORADO/PENNSYLVANIA/ WEST VIRGINIA, LLC, FOR PURPOSES OF CONSTRUCTING, OPERATING AND MAINTAINING A CABLE SYSTEM AND PROVIDING CABLE AND CABLE RELATED SERVICES TO CUSTOMERS WITHIN THE CORPORATE LIMITS OF THE CITY OF FAIRMONT AND APPROVING THE FORM AND CONTENT OF THE FRANCHISE AGREEMENT BETWEEN THE CITY AND COMCAST AND AUTHORIZING THE EXECUTION AND DELIVERY THEREOF; FRANCHISE FEE; LIMITATIONS**

Mayor Burdick entertained a motion and a second for the introduction of an ordinance granting a non-exclusive franchise to Comcast Cable.

Motion:

Councilmember Garcia moved for the introduction of the proposed ordinance and the reading of a synopsis in lieu of the entire ordinance. Councilmember Warner seconded the motion.

The Clerk read the proposed ordinance by synopsis for the first time.

Discussion:

Councilmember Smith asked why we have two cable companies when most cities only have one.

Mr. Rogers replied that Comcast only basically serves the Bellview area and he did not know if that goes back to corporate limits expanding and territories or what. He said before Comcast it was Adelphia and that has been their territory. He said that Comcast is still the larger provider in Morgantown and Mon County and he thought that when they put their request into the PSC some of their territory bled over into this part of Marion County. He then said that Times Warner has yielded to that and they have never tried to take that area from them under the PSC.

The Mayor stated that he did not see why Comcast does not have DDTV within this area. He said that he cannot see why we can't make them give the customers in the Bellview area PEG Access Channel 19. He said that he is getting tired of watch PEG Access in Grafton.

Councilmember Weber said that we need to ask for a little bit better service or for the service that we want.

The Mayor then asked the City Attorney to get back with Comcast to let them know what we want.

The City Manager said that with Comcast, their PEG Access Channel goes with who their largest carrier is which is Morgantown. He noted that they also have a large percentage of Taylor County so that is where they provide the PEG Access to. He went on to say that what we have to work out with them is providing a dedicated channel that DD Meighen can be able to submit his tapes to and go from there. He noted that this will be a supplement agreement to this but we will move this part of it forward.

Councilmember Sapp asked if Comcast needs this approval in order to continue their business in the City of Fairmont.

Mr. Sansalone mentioned their franchise agreement has been expired.

Mr. Rogers said that they did not need it to provide the service but we need it to collect the franchise fee.

Councilmember Sapp then said that really this Council does not have the authority and the power to control what Comcast and Time Warner realistically does.

The Mayor entertained a motion and second to set the public hearing for April 10, 2012.

Motion:

Councilmember Garcia moved to set the public hearing for April 10, 2012. Councilmember Warner seconded the motion.

The Mayor declared the public hearing set for April 10, 2012 by voice vote of Council.

**IN RE: ADOPTION, A RESOLUTION APPROVING THE CITY OF FAIRMONT'S FISCAL YEAR 2012-2013 CITY BUDGETS: GENERAL FUND, PARKING FUND, COAL SEVERANCE AND OUTSIDE AGENCIES**

Mayor Burdick entertained a motion for the adoption of a resolution approving the 2012-2013 City Budgets.

Motion:

Councilmember Warner moved for the adoption of the proposed resolution and the reading of a synopsis in lieu of the entire resolution. The motion was seconded by Councilmember Garcia.

The Clerk read the proposed resolution by synopsis for the first time.

Discussion:

Councilmember Weber asked if these are our limits under the Outside Agencies in the amount of \$90,503.00. He then asked if we were going to increase them or decrease them under any circumstances.

Eileen Layman said that it would require a budget revision if Council would chose to amend those allocations. She said other than that, there is no plan to do that.

Councilmember Weber asked that the amount of money that we give these agencies, this is it.

Ms. Layman replied yes.

Mr. Rogers noted that any changes will be done by a budget revision.

Roll call was taken by the Clerk.

The Mayor declared the resolution adopted by unanimous vote of Council.

**ADJOURNMENT**

The Mayor entertained a motion for adjournment.

Motion:

Councilmember Smith moved to adjourn the meeting. The motion was seconded by Councilmember Garcia.

The Mayor declared the meeting adjourned by voice vote of Council at 8:14 p.m.

**February 28, 2012**

The regular meeting of the City Council of the City of Fairmont was held at 7:00 p.m. on the 28<sup>th</sup> day of February, 2012, at the Public Safety Building located at 500 Quincy Street in Fairmont, West Virginia.

Mayor Burdick called the meeting to order.

Councilmembers present were:

First District	Robert D. (Bob) Gribben
Second District	Robert F. (Bob) Sapp
Third District	Deborah D. (Debbie) Seifrit
Fourth District	William H. (Bill) Burdick
Fifth District	Charles E. (Chuck) Warner
Sixth District	Daniel K. (Dan) Weber
Seventh District	Robert Garcia
Eighth District	Robin W. Smith
Ninth District	Ronald J. (Ron) Straight, Sr.

Also present were:

City Manager	Jay Rogers
City Clerk	Janet L. Keller
City Attorney	Kevin Sansalone
Finance Director	Eileen Layman
Police Chief	Kelley Moran
Utility Manager	David Sago
City Controller	Mark Moore
Bond Counsel	John Stump, Steptoe & Johnson

**IN RE:        OPENING CEREMONIES**

Valerie Gittings with the First Baptist Church gave the invocation followed by the Pledge of Allegiance to the Flag led by Councilmember Garcia.

**IN RE:        PRESENTATION TO CITY MANAGER**

Mayor Burdick stated that he and Deputy Mayor Garcia were invited to the banquet celebrating the WV Little League team's State Championship from Fairmont. He and Deputy Mayor Garcia presented the City Manager with two Little League signed baseballs, one for the City's showcase on the Third Floor and the other one for the Marion County Historical Society.

**APPROVAL OF MINUTES**

Mayor Burdick noted that each member of Council had received a copy of the minutes from

regular meeting held on February 14, 2012. He asked if there were any corrections, deletions, or amendments.

Motion:

Councilmember Straight moved to approve the minutes as submitted. Councilmember Weber seconded the motion.

The Mayor declared the minutes approved as submitted by voice vote of Council.

### PUBLIC HEARINGS

**IN RE: AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATERWORKS SYSTEM OF THE CITY OF FAIRMONT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF FAIRMONT OF NOT MORE THAN \$4,780,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2012 A (WEST VIRGINIA DWTRF PROGRAM); NOT MORE THAN \$1,000,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2012 B (WEST VIRGINIA INFRASTRUCTURE FUND) PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING LOAN AGREEMENTS RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO**

Pursuant to a notice duly published in the Times-West Virginian on February 16, 2012 and February 23, 2012 by Steptoe and Johnson, a public hearing was convened to obtain citizen input on an ordinance authorizing the financing of a Water Revenue Bond Issuance for the AMR Project.

The Mayor asked if anyone desired to speak to the proposed ordinance.

**JOHN STUMP**, Bond Counsel with Steptoe and Johnson, spoke in favor of the proposed ordinance. He said this ordinance is necessary in order to finance the State subsidized loans for the upcoming water system project. He said this is the third of four steps and following the enactment of the ordinance, they will come back with a supplemental resolution which will spell out the exact amount of the bonds and the terms will stay as previously presented.

**DAVID SAGO**, Utility Manager, asked Council to approve the funding package for the automated meter reading program. He mentioned that they have been looking at this project since 2005 and will be used for an unaccounted for water and a rate stabilization program for our meter reading system and our water distribution system. He stated that this will give us a project

to start identifying leaking areas within our system and we will be installing the automated meter infrastructure, a generator at the raw water main pump station, and the master meters. He then asked Council to vote for the package to finance the project.

Councilmember Weber asked when the project will begin.

Mr. Sago replied we are in the design phase of the project now. He noted that Strand Associates is the engineer for the project and they are looking at a late summer design. He said they will then submit the design to the Bureau of Public Health and once they get approval from the Bureau and put the project out to bid, the bid process usually lasts 30 to 40 to 60 days; therefore, we are looking to give a notice to proceed after the pre-construction meeting so it should be around late November. He noted that it will be a 12 to 15 month project so they are looking at February of 2014 to be complete.

Councilmember Sapp stated that this is part of the project that was actually built into the rate increase and recommended by the Public Service Commission so the revenue to support these bonds is already built in.

Mr. Sago replied that was correct. He said that Council passed a resolution supporting the project and they presented that resolution to the Public Service Commission and they approved the project. He said they were able to get rates built in through the last rate increase for this project.

There being no one else to speak, the public hearing was called to a close at 7:15 p.m.

**IN RE: AN ORDINANCE OF THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING PART THREE TRAFFIC CODE, CHAPTER FIVE VEHICULAR OPERATION, ARTICLE 349 MISCELLANEOUS RULES, SECTION 12 SQUEALING TIRES, CRACKING EXHAUST NOISES, TO PROVIDE FOR THE OFFENSE OF OPERATING A MOTOR VEHICLE IN THE CORPORATE LIMITS WITH AN UNMUFFLED OR IMPROPERLY MUFFLED ENGINE BRAKE; USE OF SAFETY DEVICES NOT PROHIBITED; NONLIABILITY; PENALTY**

Pursuant to a notice duly published in the Times-West Virginian on February 20, 2012, a public hearing was convened to obtain citizen input on an ordinance to provide for the offense of operating a motor vehicle with an unmuffled or improperly muffled engine brake.

The Mayor asked if anyone desired to speak to the proposed ordinance.

**KRISTA GRECO**, 339 Baldwin Street, spoke in favor of the proposed ordinance. She encouraged Council to adopt the proposed ordinance for the betterment of their quality of life. She said this will provide the law enforcement officers with the power to cite these folks and will improve their quality of life. She went on to say that with the trucks on the Connector, it is like waking up to a jackhammer every morning and the noise is bringing down their quality of life. She then encouraged Council to adopt the proposed ordinance.

**JOSEPH WEEKS**, an East Side resident for 85 years, spoke in favor of the ordinance. He said that he can hear the trucks every day with the windows closed. He then asked what it is going to be like in the summer with the windows open.

There being no one else to speak, the public hearing was called to a close at 7:18 p.m.

**ANNOUNCEMENTS**

**IN RE:       MARION COUNTY WRESTLERS**

Councilmember Garcia extended congratulations to all the Marion County wrestlers who participated in the State Wrestling Tournament this past weekend.

Mayor Burdick extended congratulations to Jesse Roman for being named runner-up at the tournament.

**IN RE:       LIGHTS ON THE FLAG POLES**

Councilmember Seifrit stated that if we are not going to light the flag poles on the High Level Bridge, then we need to take the flags down.

**IN RE:       CITY MANAGER COMMENDED**

Mayor Burdick commended the City Manager for pursuing the litigation against Fairmont General Hospital to the State Supreme Court. He said that was the consensus of Council and he was glad that he took the initiative and steps to do it.

**CITIZENS PETITIONS**

There were no citizen's petitions for this meeting.

**CITY MANAGER'S REPORT**

**IN RE:       PRO-ACTIVE FOR CITIZENS**

Mr. Rogers said a lot of things we do, we are trying to be pro-active for the citizens; however, we still need their help. He explained that a lot of times we don't know about the water leaks or high grass, etc. and he then reminded the residents to let us know so we can be responsive when those things are out there.

**IN RE:       NEW SIGNAGE INSTALLED**

The City Manager reported that the Traffic Department installed new signage that directs motorists to the parking garage as well as the Madison Street lot.

**IN RE:           PARKING PROGRAM ON ADAMS STREET**

Mr. Rogers said that the ordinance is now effective for the parking program on Adams Street. He said the signage went up for the two-hour parking restriction on Adams Street and we are starting to put the stickers on the meters.

**IN RE:           CLEVELAND AVENUE & ADAMS STREET INTERSECTION**

The Manager said that with the closing of the 100 block of Adams Street due to the demolition of the State Office Complex that caused the left hand turn lane on Cleveland Avenue to be closed. He noted that the center turn lane is still open but the left hand turn from the center is prohibited and citations are being issued.

**CONSIDERATION OF COUNCIL BUSINESS**

**IN RE:           ADOPTION, AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATERWORKS SYSTEM OF THE CITY OF FAIRMONT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF FAIRMONT OF NOT MORE THAN \$4,780,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2012 A (WEST VIRGINIA DWTRF PROGRAM); NOT MORE THAN \$1,000,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2012 B (WEST VIRGINIA INFRASTRUCTURE FUND) PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING LOAN AGREEMENTS RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO**

Mayor Burdick entertained a motion for the adoption of an ordinance authorizing the financing of a Water Revenue Bond Issuance for the AMR Project.

Motion:

Councilmember Sapp moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Straight.

Roll call was taken by the Clerk.

The Mayor declared the ordinance adopted by unanimous vote of Council and the ordinance designated as Ordinance No. 1549 was duly adopted.

**IN RE: ADOPTION, AN ORDINANCE OF THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING PART THREE TRAFFIC CODE, CHAPTER FIVE VEHICULAR OPERATION, ARTICLE 349 MISCELLANEOUS RULES, SECTION 12 SQUEALING TIRES, CRACKING EXHAUST NOISES, TO PROVIDE FOR THE OFFENSE OF OPERATING A MOTOR VEHICLE IN THE CORPORATE LIMITS WITH AN UNMUFFLED OR IMPROPERLY MUFFLED ENGINE BRAKE; USE OF SAFETY DEVICES NOT PROHIBITED; NONLIABILITY; PENALTY**

Mayor Burdick entertained a motion for the adoption of an ordinance to provide for the offense of operating a motor vehicle with an unmuffled or improperly muffled engine brake.

Motion:

Councilmember Warner moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Sapp.

Roll call was taken by the Clerk.

The Mayor declared the ordinance adopted by unanimous vote of Council and the ordinance designated as Ordinance No. 1550 was duly adopted.

**IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE AUTHORIZING THE REFUNDING OF THE ISSUER'S OUTSTANDING WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997 A; WATER REVENUE BONDS, SERIES 1998 AND A PORTION OF THE WATER REVENUE BONDS, SERIES 1999 AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, AND PAYING COSTS OF ISSUANCE AND RELATED COSTS, THROUGH THE ISSUANCE OF WATER REFUNDING REVENUE BONDS, SERIES 2012 C (BANK QUALIFIED) OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$10,000,000; AND WATER REFUNDING REVENUE BONDS, SERIES 2012 D (NON-BANK QUALIFIED) OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$30,000,000 PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TAX AND NON-ARBITRAGE CERTIFICATE, AN OFFICIAL STATEMENT, A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER DOCUMENTS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO**

Mayor Burdick entertained a motion and a second for the introduction of an ordinance authorizing the refunding of the Waterworks Refunding Revenue Bonds.

Motion:

Councilmember Warner moved for the introduction of the proposed ordinance and the reading of a synopsis in lieu of the entire ordinance. Councilmember Garcia seconded the motion.

The Clerk read the proposed ordinance by synopsis for the first time.

The Mayor entertained a motion and second to set the second reading for March 13, 2012 and the public hearing for March 27, 2012.

Discussion:

Councilmember Sapp asked if this ordinance was to refinance the old bonds at a better rate.

Mr. Rogers replied yes. He explained that in 2010, the market looked favorable and we went this route and got the ordinance introduced and got to the second hearing that the market turned on us again. He said that we looked at a net present value savings between 9% and 12% that we could achieve. He went on to say that once the ordinance is adopted, we still have a period before we actually go to market to see if it will actually occur. He then said that we will have a resolution at the end that authorizes the final amount.

Mr. Stump explained that this ordinance does require three total readings and then we will have the 30 day period for the ordinance to become enacted and at the end of that we will be in a position to go out to market and see where the interest rates are. He then said that if the interest rates are not favorable and will not yield a savings that the City wants, we simply don't do it and the City is not out anything. He noted that there will be no cost to the City until the deal gets done.

Councilmember Warner asked if we can pre-approve the three readings.

Mr. Stump said that essentially that is what we are doing. He said that we have to go through this process and we have a 30-day period and the supplemental resolution is what we call a parameters resolution and it does not lock in a specific interest rate. He said that what it authorizes is the Mayor and City Manager to market the bonds and determine if the savings is adequate. He said that they will put a range in there and if something happens in May but suddenly in August the rates look better, we go to market then and Council would have taken all the actions that were necessary in order for the City to take advantage of those interest rates. Mr. Stump then said that this will put us in good shape until the end of the year.

Mr. Rogers said as long as it stays in 2012; if not, we'll be back in 2013.

Motion:

Councilmember Sapp moved to set the second reading for March 13, 2012 and the public hearing for March 27, 2012. Councilmember Garcia seconded the motion.

The Mayor declared the second reading set for March 13, 2012 and the public hearing set for March 27, 2012 by voice vote of Council.

**IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE OF THE COUNCIL FOR THE CITY OF FAIRMONT PROVIDING FOR THE PURCHASE FROM NORFOLK SOUTHERN RAILWAY COMPANY OF THOSE CERTAIN TRACTS OR PARCELS OF REAL ESTATE CONTAINING APPROXIMATELY 7.84 ACRES, MORE OR LESS, LOCATED IN UNION CITY DISTRICT, MARION COUNTY, WEST VIRGINIA**

Mayor Burdick entertained a motion and a second for the introduction of an ordinance providing for the purchase of 7.84 acres from Norfolk Southern Railway Company located in Union City District.

Motion:

Councilmember Sapp moved for the introduction of the proposed ordinance and the reading of a synopsis in lieu of the entire ordinance. Councilmember Garcia seconded the motion.

The Clerk read the proposed ordinance by synopsis for the first time.

The Mayor entertained a motion and second to set the public hearing for March 13, 2012.

Motion:

Councilmember Warner moved to set the public hearing for March 13, 2012. Councilmember Weber seconded the motion.

The Mayor declared the public hearing set for March 13, 2012 by voice vote of Council.

**IN RE: ADOPTION, A RESOLUTION OF THE COUNCIL FOR THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING THE CITY OF FAIRMONT'S INVESTMENT POLICY RELATING TO THE INVESTMENT OF THE GENERAL AND SPECIAL REVENUE FUNDS OF THE CITY OF FAIRMONT, WHICH CHANGES ARE NECESSITATED BY THE 2010 AMENDMENTS TO WEST VIRGINIA CODE §8-13-22a; APPROVING CERTAIN ADDITIONAL LOCAL GUIDELINES**

Mayor Burdick entertained a motion for the adoption of a resolution amending the City's Investment Policy.

Motion:

Councilmember Warner moved for the adoption of the proposed resolution and the reading of a synopsis in lieu of the entire resolution. The motion was seconded by Councilmember Garcia.

The Clerk read the proposed resolution by synopsis for the first time.

Discussion:

The Finance Director explained the new Investment Policy and answered questions from Council.

Roll call was taken by the Clerk.

The Mayor declared the resolution adopted by unanimous vote of Council.

**IN RE: ADOPTION, A RESOLUTION PROVIDING FOR AUTHORIZATION TO FILE AN APPLICATION AND ENTER INTO AN AGREEMENT WITH THE WEST VIRGINIA EMERGENCY SHELTER GRANTS PROGRAM (HOPE, INC.)**

Mayor Burdick entertained a motion for the adoption of a resolution for Hope Inc.

Motion:

Councilmember Garcia moved for the adoption of the proposed resolution and the reading of a synopsis in lieu of the entire resolution. The motion was seconded by Councilmember Warner.

The Clerk read the proposed resolution by synopsis for the first time.

Discussion:

Councilmember Garcia asked if this was something that we adopt each year.

Mr. Rogers replied that this resolution and the one for Scott Place Shelter, they must have a local governmental agency to sponsor their application and we do that on an annual basis and then actually administer the grant for them.

Councilmember Weber said that several Councilmembers toured the Spadafore Building on First Street and as we were going around to the back side where the white building is he noticed a man seemed to be living in the garage of the white building. He said that he thought about it later and then asked if the City has something in place to assist individuals like this in the City or passing this resolution will be of help to that individual.

Mr. Rogers replied that agencies and facilities exist in Fairmont and each of those from Scott Place to Hope to the Union Mission come with their own rules and regulations for who they take in. He said individuals that Councilmember Weber just described, if we pick them up that is one of the locations that we try to take them to but whether they are accepted that may depend upon the shelter's rules and regulations. He went on to say that these two resolutions are part of the Federal and State Act that they are provided this funding so it is already set aside, they just need to apply and they need to have us as a sponsor. He then mentioned that they receive this funding for actual operations of their facilities.

Councilmember Weber asked if we have a mechanism to check on these individuals. He said this particular situation got to him and that white building on First Street has no doors on the building and doesn't look very safe. He then asked if Code Enforcement can nail up some plywood on the doors.

Mr. Rogers said that we have in the past. He said this particular piece of property will be talked about in the coming months particularly with this Neighborhood Reinvestment Program that we need to discuss. He then said that the City has boarded up that property at least five times and it comes undone.

Roll call was taken by the Clerk.

The Mayor declared the resolution adopted by unanimous vote of Council.

**IN RE: ADOPTION, A RESOLUTION PROVIDING FOR AUTHORIZATION TO FILE AN APPLICATION AND ENTER INTO AN AGREEMENT WITH THE WEST VIRGINIA EMERGENCY SHELTER GRANTS PROGRAM (SCOTT PLACE SHELTER)**

Mayor Burdick entertained a motion for the adoption of a resolution for Scott Place Shelter.

Motion:

Councilmember Garcia moved for the adoption of the proposed resolution and the reading of a synopsis in lieu of the entire resolution. The motion was seconded by Councilmember Seifrit.

The Clerk read the proposed resolution by synopsis for the first time.

Roll call was taken by the Clerk.

The Mayor declared the resolution adopted by unanimous vote of Council.

**IN RE: ONE APPOINTMENT, BOARD OF ZONING APPEALS, UNEXPIRED TERM TO END JANUARY 1, 2015**

Mayor Burdick entertained a motion for one appointment to the Board of Zoning Appeals for an unexpired term to end January 1, 2015.

Motion:

Councilmember Straight moved to appoint Nicholas "Scott" Merashoff to the Board of Zoning Appeals for a term to end January 1, 2015. The motion was seconded by Councilmember Garcia.

Roll call was taken by the Clerk.

The Mayor declared Nicholas “Scott” Merashoff appointed to the Board of Zoning Appeals for a term to end January 1, 2015 by unanimous vote of Council.

**ADJOURNMENT**

The Mayor entertained a motion for adjournment.

Motion:

Councilmember Smith moved to adjourn the meeting. The motion was seconded by Councilmember Straight.

The Mayor declared the meeting adjourned by voice vote of Council at 7:55 p.m.

**AFFIDAVIT OF PUBLICATION**

011989

State of West Virginia  
County of Marion, to wit:

I, Beverly A Miller, being first duly sworn upon my oath,

do dispose and say that I am head clerk of the **TIMES WEST VIRGINIAN**  
a corporation, publisher of the newspaper entitled the **TIMES WEST VIRGINIAN** an independent news-  
paper:

that I have been duly authorized by the board of directors of such corporation to execute this affidavit of  
publication; that such newspaper has been published for more than one year prior to publication of the  
annexed notice described below, that such newspaper is regularly published daily except Saturday and  
Sunday, for at least fifty weeks during the calendar year, in the Municipality of Fairmont, Marion County, West  
Virginia; that such newspaper is a newspaper of "general circulation," as that term is defined in article three,  
chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the  
aforementioned municipality and Marion County; that such newspaper averages in length four or more pages,  
exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price or  
consideration; that such newspaper is a newspaper to which the general public resorts for passing events of  
a political, religious, commercial or social nature, and for current happenings, announcements, miscellane-  
ous reading matter, advertisements and other notices.

that the annexed notice of Public Hearing was duly published in said  
newspaper once week for 2 successive weeks (Class II), commencing with  
the issue of the 16 day of March, 2012, and ending with the issue of the 22  
day of March, 2012, and was posted at the front door of the Marion County Courthouse on  
the 16 day of March, 2012; that said annexed notice was  
published on the following dates: March 19, 20, 2012

and the cost of publishing said annexed notice as aforesaid was \$ 229.27

Taken, subscribed and sworn to before me in said county this 5 day of April, 2012.

My commission expires Jan 24, 2010

Beverly A Miller

NOTARY PUBLIC - SPECIAL USE  
Sherry G. Gullett  
State of West Virginia  
My Commission Expires  
February 24, 2010  
1400 Quincey St.



Sherry G. Gullett  
Notary Public of Marion County, West Virginia

**NOTICE OF PUBLIC HEARING ON THE CITY OF FAIRMONT BOND ORDINANCE**

A public hearing will be held on the following-entitled Ordinance at a regular meeting of the Council of the City of Fairmont (the "City") to be held on Tuesday, March 27, 2012, at 7:00 p.m. at the City Hall, Fairmont, West Virginia, and at such hearing any person interested may appear before the City and present protests, and all protests and suggestions shall be heard by the City and it shall then take

**Legals**

such actions as it shall deem proper in the premises upon an Ordinance entitled:

**CITY OF FAIRMONT**

AN ORDINANCE AUTHORIZING THE REFUNDING OF THE ISSUER'S OUTSTANDING WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997 A; WATER REVENUE BONDS, SERIES 1998 AND A PORTION OF THE WATER REVENUE BONDS, SERIES 1999 AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, AND PAYING COSTS OF ISSUANCE AND RELATED COSTS, THROUGH THE ISSUANCE OF WATER REFUNDING REVENUE BONDS, SERIES 2012 C (BANK QUALIFIED) OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$10,000,000; AND WATER REFUNDING REVENUE BONDS, SERIES 2012 D (NON-BANK QUALIFIED) OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$30,000,000 PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TAX AND NON-ARBITRAGE CERTIFICATE, AN OFFICIAL STATEMENT, A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER DOCUMENTS, AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

The above-quoted title of the Ordinance describes generally the contents thereof and the purposes of the Bonds contemplated thereby. The City contemplates the issuance of the Bonds described in the Ordinance. The proceeds of the Bonds will be used for (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds, (ii) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds, (iii) paying a portion of the outstanding principal of and the prorated accrued interest on the Series 1999 Bonds; (iv) funding the Reserve Accounts; and (v) paying costs of issuance of the Bonds and related costs. The Bonds are payable from the revenues derived from the System. No taxes may at any time be levied for the payment of the Bonds or the interest thereon.

The above-entitled Ordinance was adopted on second reading by the

**Legals**

Council of the City of Fairmont on March 13, 2012. A certified copy of the above-entitled Ordinance is on file with the City for review by interested parties during regular office hours.

Following the public hearing, the City intends to enact the Ordinance upon final reading.

Janet Keller  
Clerk

TIMES: MARCH 15, 22,  
2012

ORDINANCE NO. 1440

**AN ORDINANCE OF THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING THE CITY OF FAIRMONT'S WATER TARIFFS, FEES, RATES AND CHARGES, WHICH TARIFFS, FEES, RATES AND CHARGES WERE ADOPTED BY THE CITY OF FAIRMONT BY ORDINANCE NO. 1390, ON JULY 10, 2007, AND WHICH TARIFFS, FEES, RATES AND CHARGES ARE SET OUT IN P.S.C. W.VA. TARIFF NO. 17, ISSUED BY THE PUBLIC SERVICE COMMISSION OF WEST VIRGINIA ON AUGUST 21, 2007, TO PROVIDE FOR INCREASED RATES, FEES, AND CHARGES FOR ALL GENERAL DOMESTIC, COMMERCIAL, INDUSTRIAL AND RESALE CUSTOMERS.**

**SYNOPSIS**

This proposed ordinance provides for an increase in the City of Fairmont's water tariffs, rates and charges for all domestic, commercial, industrial and resale service, which tariff's rates and charges were established by Ordinance No. 1390, duly adopted on July 10, 2007, and set out in P.S.C. W.VA. Tariff No. 17, issued by the Public Service Commission of West Virginia Tariff Office on August 21, 2007, for service on or after August 24, 2007.

This proposed ordinance also provides for an additional reconnect service charge for reconnect services outside of normal business operating hours.

This increase in the tariffs, rates and charges is the minimum increase necessary to provide sufficient revenue to accommodate existing debt service, the increased debt service required for the corrections necessary to abate the filtration plant deficiencies, all operating and maintenance expenses, and reasonable capital improvements.

This proposed ordinance provides an average rate increases for all general domestic, commercial, industrial and resale customers of 49% above current rates.

After the effective date of said ordinance the minimum bill for residential water service for a 5/8" line will be \$21.65 per month which is an increase of \$7.11 per month above the current minimum bill for said line of \$14.54 per month.

This increase will generate approximately \$3,339,775 annually in additional operating revenues.

ORDINANCE NO. 1440

**AN ORDINANCE OF THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING THE CITY OF FAIRMONT'S WATER TARIFFS, FEES, RATES AND CHARGES, WHICH TARIFFS, FEES, RATES AND CHARGES WERE ADOPTED BY THE CITY OF FAIRMONT BY ORDINANCE NO. 1390, ON JULY 10, 2007, AND WHICH TARIFFS, FEES, RATES AND CHARGES ARE SET OUT IN P.S.C. W.VA. TARIFF NO. 17, ISSUED BY THE PUBLIC SERVICE COMMISSION OF WEST VIRGINIA ON AUGUST 21, 2007, TO PROVIDE FOR INCREASED RATES, FEES, AND CHARGES FOR ALL GENERAL DOMESTIC, COMMERCIAL, INDUSTRIAL AND RESALE CUSTOMERS**

**WHEREAS**, Chapter 24, Article 2, Section 4(b) of the Code of the State of West Virginia 1931 as amended authorizes the fixing of all rates and charges of municipally operated utilities by the adoption of appropriate ordinances;

**WHEREAS**, since 1891, the City of Fairmont has provided quality potable water to its general domestic, commercial, industrial and resale customers within the City's corporate limits and within certain areas of Marion County, West Virginia

**WHEREAS**, in 2003, the City of Fairmont replaced its conventional water filtration plant with a plant utilizing an immersed ultra-filtration membrane system. The new filtration plant, as designed, was purportedly to have a capacity of producing 10.0 million gallons of potable water per day (MGD), with an immediate expansion capability to 12.0 MGD and an ultimate expansion capability to 15.0 MGD;

**WHEREAS**, although the water produced continued to exceed all drinking water standards, in January 2007, and again in late February – early March 2007, the City of Fairmont experienced greatly reduced production of potable water resulting in boil water advisories, usage curtailments, cancellation of school, and the involvement of the state and local offices of emergency services. In order to enhance production capabilities, abate the immediate shortage and provide sufficient potable water in the short term, the City was forced to make certain unanticipated capital expenditures and incurred increased operating, maintenance and other expenses;

**WHEREAS**, the City of Fairmont has engaged in evaluating and analyzing plant deficiencies and corrective measures, including developing further enhanced production, addressing accountability issues, resolving pretreatment of the source water and solids handling, and providing for increased storage capacity, among others;

**WHEREAS**, as a result of said evaluation and analysis, it appears that it is necessary to undertake a corrective action plan to correct the filtration plant deficiencies;

**WHEREAS**, in addition to increases in operating expenses experienced as a result of the water plant deficiencies, the City of Fairmont has experienced an overall increase in operating and maintenance expenses relating to the production of potable water and will continue to experience such an increase in operating and maintenance expenses into the foreseeable future.

**WHEREAS**, the City's current rates for water service were established by Ordinance No. 1390, duly adopted on July 10, 2007, and are set out in P.S.C. W.VA. Tariff No. 17, issued by the Public Service Commission of West Virginia Tariff Office on August 21, 2007, for service rendered by the City of Fairmont on or after August 24, 2007;

**WHEREAS**, it appears that increased rates and charges for all general domestic, commercial, industrial and resale water service rendered after the effective date of this ordinance are reasonable and are the minimum rates necessary to provide sufficient revenues to enable the City of Fairmont's water fund to accommodate the increased debt service required for the corrections necessary to abate the filtration plant deficiencies, to meet existing debt service, and to satisfy all operating, maintenance and other expenses and to provide for reasonable capital improvements.

**WHEREAS**, it appears that said rates are just, reasonable and based primarily upon the cost of providing services to the City's various classes of customers.

**NOW, THEREFORE, THE CITY OF FAIRMONT HEREBY ORDAINS THAT:**

The water rates or tariffs of the City of Fairmont established by Ordinance No. 1390, duly adopted on July 10, 2007, and set out in P.S.C. W.VA. Tariff No. 17, issued by the Public Service Commission of West Virginia Tariff Office on August 21, 2007, be and are hereby amended and revised as follows: (New matter double underlined; matter to be deleted bracketed)

**RULES AND REGULATIONS**

Rules and Regulations for the Government of Water Utilities, adopted by the Public Service Commission of West Virginia, and now in effect, and all amendments thereto and modification thereof hereafter made by said Commission.

**WATER SCHEDULE NO. 1**

**APPLICABILITY** Applicable in entire territory or area served.

**AVAILABILITY** Available for general domestic, commercial and industrial service.

**RATE**

Water Consumption  
(Gallons used per month)

Rate  
(Per 1000 gallons)

First	25,000	[\$5.81]	<u>\$8.66</u>
Next	25,000	[\$3.40]	<u>\$5.07</u>
Next	25,000	[\$2.79]	<u>\$4.16</u>
All Over	75,000	[\$2.74]	<u>\$4.08</u>

MINIMUM RATES No bill shall be rendered for less than the following amounts, according to size of meter installed:

Size of Meter (Inches)	Rate (Per month)	
5/8 or less	[\$ 14.54]	<u>\$ 21.65</u>
3/4	[\$ 21.81]	<u>\$ 32.50</u>
1	[\$ 36.36]	<u>\$ 54.18</u>
1-1/4	[\$ 53.08]	<u>\$ 79.09</u>
1-2	[\$ 72.71]	<u>\$ 108.34</u>
2	[\$ 116.34]	<u>\$ 173.35</u>
3	[\$ 218.14]	<u>\$ 325.03</u>
4	[\$ 363.56]	<u>\$ 541.70</u>
6	[\$ 727.13]	<u>\$1,083.42</u>
8	[\$1,163.40]	<u>\$1,733.47</u>

TAP FEE

Three Hundred Dollars (\$300.00)

RECONNECTION SERVICE CHARGE

Twenty-Five Dollars (\$25.00) provided however that any customer who desires a reconnect outside of normal business operating hours between 7:30 a.m. to 3:30 p.m., Monday through Friday, inclusive, shall be charged an additional service surcharge in the amount of Seventy Nine Dollars (\$79.00) per meter connection.

DELAYED PAYMENT PENALTY

The above tariff is net. On all current usage billings not paid within twenty (20) days, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

LEAK ADJUSTMENT

[\$0.455] \$0.68 per 1,000 gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

DISHONORED CHECK CHARGE

The maker of any check tendered in payment for water service which is returned for insufficient funds, closed account, or not honored for any other cause and for which a charge is imposed upon the City by any financial institution, shall be assessed a charge of Twenty-five Dollars (\$25.00) per check. Provided, that nothing herein shall preclude the institution of criminal or civil proceedings for a dishonored check.

WATER SCHEDULE NO. 2.

APPLICABILITY

Applicable in the entire territory served.

AVAILABILITY

Available for resale.

RATE

The rate under this schedule is [~~\$1.93~~] Two Dollars and Eighty-Eight Cents (\$2.88) per thousand gallons per month.

The tap fee, connection and reconnection charges, dishonored check charge, and delayed payment penalty, set forth in Schedule No. 1 are applicable to Schedule No. 2.

WATER SCHEDULE NO. 3

APPLICABILITY

Applicable in the entire territory served.

AVAILABILITY

Available for public fire protection.

RATE

The monthly rate for public fire protection [will be Seventeen Dollars and Five Cents (\$17.05)] is Twenty Five Dollars and Forty Cents (\$25.40) per hydrant or connection.

The tap fee, connection and reconnection charges, dishonored check charge, and delayed payment penalty, set forth in Schedule 1 are applicable to Schedule No. 3.

WATER SCHEDULE NO. 4

APPLICABILITY

Applicable in the entire territory where private fire service is provided.

AVAILABILITY

Available for private fire protection service.

MINIMUM RATES

No bill will be rendered for less than the following amounts, according to size of line installed:

Size of Line (inches)	Rate	
2 or less	[\$ 39.65]	<u>\$ 59.08</u>
3	[\$ 59.48]	<u>\$ 88.63</u>
4	[\$ 79.30]	<u>\$118.16</u>
6	[\$ 99.14]	<u>\$147.72</u>
8	[\$148.71]	<u>\$221.58</u>

HYDRANT FEE

In addition to the minimum rates established above, the monthly rate per hydrant connection [will be Seventeen Dollars and Five Cents (\$17.05)] is Twenty Five Dollars and Forty Cents (\$25.40).

The tap fee, connection and reconnection charges, dishonored check charge, [and] delayed payment penalty, set forth in Schedule No. 1 are applicable to schedule No. 4.

**SEVERABILITY:** The provisions of this Ordinance are severable, and if any provisions or part thereof shall be deemed invalid or unconstitutional or inapplicable to any person or circumstances, such invalidity, unconstitutionality or inapplicability shall not affect or impair the remaining provisions of this Ordinance.

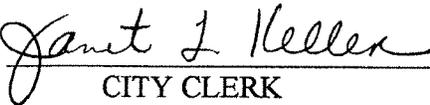
SAVINGS CLAUSE: Except as herein amended, any other rate, fee or charge established by Ordinance No. 1390, and set out in P.S.C. W.VA. Tariff No. 17 issued by the Public Service Commission of West Virginia Tariff Office on August 21, 2007, for service rendered by the City of Fairmont on or after August 24, 2007 be and is hereby saved and the same shall remain in full force and effect.

EFFECTIVE DATE: This ordinance shall become effective forty-five (45) days after passage, unless otherwise ordered by the Public Service Commission of West Virginia.

Passed this the 10th day of February, 2009.

  
\_\_\_\_\_  
MAYOR

ATTEST:

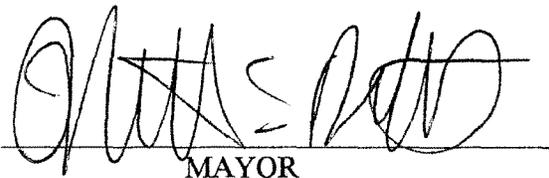
  
\_\_\_\_\_  
CITY CLERK

WE, the undersigned officials of the City of Fairmont, West Virginia, do hereby certify that **Ordinance No. 1440:**

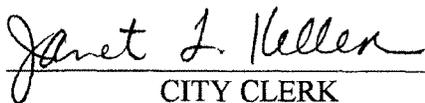
AN ORDINANCE OF THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING THE CITY OF FAIRMONT'S WATER TARIFFS, FEES, RATES AND CHARGES, WHICH TARIFFS, FEES, RATES AND CHARGES WERE ADOPTED BY THE CITY OF FAIRMONT BY ORDINANCE NO. 1390, ON JULY 10, 2007, AND WHICH TARIFFS, FEES, RATES AND CHARGES ARE SET OUT IN P.S.C. W.VA. TARIFF NO. 17, ISSUED BY THE PUBLIC SERVICE COMMISSION OF WEST VIRGINIA ON AUGUST 21, 2007, TO PROVIDE FOR INCREASED RATES, FEES, AND CHARGES FOR ALL GENERAL DOMESTIC, COMMERCIAL, INDUSTRIAL AND RESALE CUSTOMERS

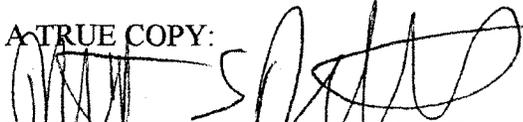
was introduced and publicly read in its entirety at the Regular Meeting of Council held January 27, 2009 and was published in the Times-West Virginian on February 2, 2009, pursuant to Charter provisions Section 2.13(d); a public hearing was held on February 10, 2009. There being no request that the proposed Ordinance be read in its entirety for a second time, the Clerk read the title only and copies were available to the public as required by Ordinance No. 499. The Ordinance was duly adopted pursuant to the Charter of the City of Fairmont and West Virginia Code; signed by the undersigned officials and filed in the office of the City Clerk.

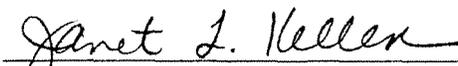
Adopted by Council of the City of Fairmont, West Virginia, this the 10<sup>th</sup> day of February, 2009.

  
MAYOR

ATTEST:

  
CITY CLERK

A TRUE COPY:  
  
MAYOR, CITY OF FAIRMONT, WEST VIRGINIA

  
CLERK, CITY OF FAIRMONT, WEST VIRGINIA

APPROVED AS TO FORM:

\_\_\_\_\_  
ATTORNEY, CITY OF FAIRMONT, WEST VIRGINIA

**CERTIFICATION**

STATE OF WEST VIRGINIA,  
COUNTY OF MARION,  
CITY OF FAIRMONT, TO-WIT:

I, Janet L. Keller, Clerk of the City of Fairmont, West Virginia, keeper of the official records of said City, do hereby certify that the attached is a true copy of **Ordinance No. 1440**, being **AN ORDINANCE OF THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING THE CITY OF FAIRMONT'S WATER TARIFFS, FEES, RATES AND CHARGES, WHICH TARIFFS, FEES, RATES AND CHARGES WERE ADOPTED BY THE CITY OF FAIRMONT BY ORDINANCE NO. 1390, ON JULY 10, 2007, AND WHICH TARIFFS, FEES, RATES AND CHARGES ARE SET OUT IN P.S.C. W.VA. TARIFF NO. 17, ISSUED BY THE PUBLIC SERVICE COMMISSION OF WEST VIRGINIA ON AUGUST 21, 2007, TO PROVIDE FOR INCREASED RATES, FEES, AND CHARGES FOR ALL GENERAL DOMESTIC, COMMERCIAL, INDUSTRIAL AND RESALE CUSTOMERS.**

The Ordinance was adopted by the Council of the City of Fairmont, West Virginia, at its regular meeting held February 10, 2009.

Given under my hand and seal this the 12<sup>th</sup> day of February, 2009.



*Janet L. Keller*  
\_\_\_\_\_  
CITY CLERK

**AFFIDAVIT OF PUBLICATION**

008820

State of West Virginia  
County of Marion, to wit:

I, CARLA SABATINO, being first duly sworn upon my oath,

do dispose and say that I am LEGAL CLERK of the **TIMES WEST VIRGINIAN** a corporation, publisher of the newspaper entitled the **TIMES WEST VIRGINIAN** an Independent newspaper:

that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below, that such newspaper is regularly published daily except Saturday and Sunday, for at least fifty weeks during the calendar year, in the Municipality of Fairmont, Marion County, West Virginia; that such newspaper is a newspaper of "general circulation," as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforementioned municipality and Marion County; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price or consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial or social nature, and for current happenings, announcements, miscellaneous reading matter, advertisements and other notices.

that the annexed notice of Public Hearing was duly published in said newspaper once DAY for 1 successive DAY (Class I), commencing with the issue of the 2<sup>ND</sup> day of FEBRUARY, 2009, and ending with the issue of the 2<sup>ND</sup> day of FEBRUARY, 2009, and was posted at the front door of the Marion County Courthouse on the 2<sup>ND</sup> day of FEBRUARY, 2009; that said annexed notice was published on the following dates: FEBRUARY 2, 2009

and the cost of publishing said annexed notice as aforesaid was \$ 100.04.

Taken, subscribed and sworn to before me in said county this 12<sup>TH</sup> day of February, 2009.

My commission expires April 21, 2009



Carla Sabatino  
Tom A. Ricer  
Notary Public of Marion County, West Virginia

RECEIVED  
2009 FEB 19 AM 8 38  
WVA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE



**NOTICE OF PUBLIC HEARING ON PROPOSED WATER RATE ORDINANCE**

The Council of the City of Fairmont at its regular meeting held January 27, 2009, introduced and read by synopsis for the first time the following City Ordinance:

**AN ORDINANCE OF THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING THE CITY OF FAIRMONT'S WATER TARIFFS, FEES, RATES AND CHARGES, WHICH TARIFFS, FEES, RATES AND CHARGES WERE ADOPTED BY THE CITY OF FAIRMONT BY ORDINANCE NO. 1390, ON JULY 10, 2007, AND WHICH TARIFFS, FEES, RATES AND CHARGES ARE SET OUT IN P.S.C. W.VA. TARIFF NO. 17, ISSUED BY THE PUBLIC SERVICE COMMISSION OF WEST VIRGINIA ON AUGUST 21, 2007, TO PROVIDE FOR INCREASED RATES, FEES, AND CHARGES**

The purpose of the ordinance is to increase the water rates charged customers of the water system, including resale customers, operated by the City of Fairmont.

The Public Hearing will be held at 7:00 p.m. or as soon thereafter as the matter may be heard on Tuesday, February 10, 2009, in Council Chambers, City of Fairmont Public Safety Building, 500 Quincy Street, Fairmont, West Virginia.

Any interested person may appear at the public hearing be heard as to whether or not said proposed Ordinance shall be enacted. All objections and suggestions shall be heard and Council shall take such action as it deems necessary in the premises.

Council of the City of Fairmont shall vote on the adoption of the proposed Ordinance following the above Public Hearing.

Copies of the proposed Ordinance are available for inspection in the Office of the City Clerk, Room 312, 200 Jackson Street, Fairmont, West Virginia.



# CITY OF FAIRMONT

CITY/COUNTY COMPLEX  
P.O. Box 1428  
200 Jackson Street  
Fairmont, West Virginia 26555-1428  
(304) 366-6211  
(304) 366-0228 FAX  
www.fairmontwv.gov

March 2, 2009

Sandra Squire, Executive Secretary  
Public Service Commission of West Virginia  
201 Brooks Street  
P.O. Box 812  
Charleston, 25301

Re: City of Fairmont  
Water Rate Ordinance No. 1440  
Municipal Appeal Case No. 09-0171-W-MA

Dear Ms. Squire:

09-0144-W-PW  
ORDW FAIRMONT 09A

RECEIVED  
2009 MAR 3 PM 8 45  
WVA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

As a supplement to the above municipal appeal, please find enclosed the twelve copies of an **Affidavit of Publication** reflecting that the **Public Notice of Establishment of Rates** was published as a Class II legal advertisement in the Times - West Virginian, a newspaper in general circulation in Marion County, West Virginia, on February 14, and February 21, 2009. Please date stamp same as received and process accordingly.

Thank you for your assistance in this matter.

Very truly yours,

Kevin V. Sansalone

KVS/sf  
enclosure

CC: David Sago, Utility Manager, w/enc.

**AFFIDAVIT OF PUBLICATION**

008853

State of West Virginia  
County of Marion, to wit:

I, CARLA SAGATINO, being first duly sworn upon my oath,

do dispose and say that I am LEGAL CLERK of the **TIMES WEST VIRGINIAN** a corporation, publisher of the newspaper entitled the **TIMES WEST VIRGINIAN** an Independent newspaper:

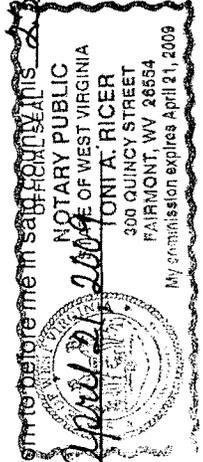
that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below, that such newspaper is regularly published daily except Saturday and Sunday, for at least fifty weeks during the calendar year, in the Municipality of Fairmont, Marion County, West Virginia; that such newspaper is a newspaper of "general circulation," as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforementioned municipality and Marion County; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price or consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial or social nature, and for current happenings, announcements, miscellaneous reading matter, advertisements and other notices.

that the annexed notice of Public Notice of Establishment of Rates was duly published in said newspaper once WEEK for 2 successive WEEK (Class II), commencing with the issue of the 14<sup>th</sup> day of FEBRUARY, 2009, and ending with the issue of the 21<sup>st</sup> day of FEBRUARY, 2009, and was posted at the front door of the Marion County Courthouse on the 14<sup>th</sup> day of FEBRUARY, 2009; that said annexed notice was published on the following dates: FEBRUARY 14, 21, 2009 and the cost of publishing said annexed notice as aforesaid was \$ 313.45

Carla Sagatino

Taken, subscribed and sworn to before me in said County, this 21<sup>st</sup> day of February, 2009

My commission expires April 21, 2009



Tonia Ricer  
Notary Public of Marion County, West Virginia

**PUBLIC NOTICE  
OF ESTABLISHMENT  
OF RATES BY  
THE CITY OF FAIRMONT  
(Tariff Form No. 12)**

NOTICE is hereby given that the City of Fairmont a public utility, adopted, by ordinance, on Tuesday, February 10, 2009, a tariff containing increased rates, tolls and charges for furnishing potable water service to 13,171 residential, commercial and industrial, customers at Fairmont and its environs in Marion County, West Virginia.

The proposed rates and charges will become effective on March 27, 2009, unless otherwise ordered by the Public Service Commission and will produce approximately \$3,339,775.00 annually in additional revenue, an increase of 49%. The average monthly bill for the various classes of customers will be changed as follows:

**(\$) INCREASE  
INCREASE (%)**

Residential: 12.82; 49

Commercial: 48.19; 49

Industrial: 312.34; 49

Resale: 4,378.15; 49

Public Fire Service: 8.35  
per hydrant; 49

Private Fire Service: 67.47;  
49

In addition to the 13,171 residential, commercial and industrial customers, the City has ten (10) resale customers. The ten (10) resale customers of

**Legals**

the City of Fairmont are:

City of Mannington, a municipal corporation  
Grant Town  
Public Service District  
Ice= Run  
Public Service District  
Little Creek  
Public Service District  
Montana Water Works  
Monumental  
Public Service District  
Paw Paw  
Public Service District  
Town of Rivesville,  
a municipal corporation  
Tri-County Water  
Association  
Valley Falls  
Public Service District

The increases shown are based on averages of all customers in the indicated class. Individual customers may receive increases that are greater or less than average. Furthermore, the requested rates and charges are only a proposal and are subject to change (increases or decreases) by the Public Service Commission of West Virginia in its review of the filing. The Commission shall review and approve or modify the increased rates only upon the filing of a petition within thirty (30) days of the adoption of the ordinance changing said rates or charges by:

(1) Any customer aggrieved by the rates or charges who presents to the Commission a petition signed by not less than twenty-five percent of the customers served by the municipally operated public utility; or

(2) Any customer who is served by a municipally operated public utility and who resides outside the corporate limits and who is affected by the rates or charges and who presents to the Commission a petition alleging discrimination between customers within and without the municipal boundaries. Said petition shall be accompanied by evidence of discrimination; or

(3) Any customer or group of customers who are affected by said rates who reside within the municipal boundaries and who present a petition to the Commission alleging discrimination between said customer or group of customers and other customers of the municipal utility. Said petition shall be accompanied by evidence of discrimination.

All petitions should be addressed to the Executive Secretary, Public Service Commission of West Virginia, 201 Brooks Street, P.O. Box 812, Charleston, WV 25323

A complete copy of the proposed rates, as well as a representative of the City of Fairmont to provide information requested concerning it, is available to all customers, prospective customers or their agents at any of the following offices of the City:

**Office of the City Clerk,  
City of Fairmont  
Rm 312  
City County Complex  
200 Jackson Street  
Fairmont, WV 26554**

A copy of the proposed rate is available for public inspection at the aforementioned Clerk's Office and at the Office of the Executive Secretary of the Public Service Commission, at 201 Brooks Street, P.O. Box 812, Charleston, WV. /  
Times: February 14, 21,  
2009

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

**Entered: October 2, 2009**

FINAL

10/22/2009

CASE NO. 09-0171-W-MA

CITY OF FAIRMONT, a municipal utility.  
Investigation and suspension of increase  
in water rates and charges as a result  
of petitions filed in accordance with  
*West Virginia Code §24-2-4b.*

CASE NO. 09-0623-W-CN

CITY OF FAIRMONT, a municipal utility.  
Application for a certificate of convenience and  
necessity to construct, operate and maintain a  
water filtration plant corrective action program.

**RECOMMENDED DECISION**

**PROCEDURE**

Case No. 09-0171-W-MA

On February 10, 2009, the City of Fairmont (Fairmont), a municipal corporation, Fairmont, Marion County, adopted an ordinance increasing its rates and charges to provide water service to its customers inside and outside its corporate boundaries, to become effective March 27, 2009. Fairmont published a notice of these rates, and, pursuant thereto, on or about February 23, 2009, the City of Mannington (Mannington) and the Valley Falls Public Service District (District), both resale customers of Fairmont, submitted separate petitions with the Public Service Commission protesting Fairmont's February 10, 2009 rate ordinance, alleging discrimination to their respective customers.

Pursuant to the protests and pursuant to *West Virginia Code (Code) §24-2-4b*, by the February 24, 2009 Commission Order Suspending Rates and Referring to Administrative Law Judge (Order), the Commission invoked its jurisdiction over the municipal appeal. Subsequently, several petitions were filed with the Commission by customers of Fairmont, some containing the signatures of hundreds of alleged Fairmont customers, also protesting the rate ordinance. Fairmont also requested that, if the Commission obtained jurisdiction over this proceeding, it approve emergency interim rates to cover certain going-level operation and maintenance (O&M) expenses.

By said February 24, 2009 Order, the Commission made Fairmont a Respondent to this proceeding and, pending investigation, hearing and decision in this matter, the Commission suspended the aforesaid rate ordinance and deferred the use of the rates and charges stated in the rate ordinance until 12:01 a.m., July 25, 2009, unless otherwise ordered by the Commission, to enable the Commission to examine and investigate the supporting data filed with the rate ordinance and to provide time for Commission Staff to make reports concerning the matters involved in this proceeding. Also, the Order referred this matter to the Division of Administrative Law Judges for decision on or before June 25, 2009, effectively 29 days prior to the end of the statutory suspension period, since July 25, 2009, was a Saturday. Finally, the Order directed Commission Staff to file its report on or before May 11, 2009.

On February 24, 2009, Fairmont submitted a motion for a protective order. Fairmont alleged that certain information provided to the Commission should be afforded confidential treatment and protected from public disclosure. The information for which protection was sought was a Settlement Agreement and Mutual Release dated February 11, 2009, entered into by and between Fairmont and Zenon Environmental Corp., *et al.* Fairmont stated that, while the Settlement Agreement and Mutual Release will substantiate Fairmont's need for an immediate rate increase, it contains confidential, sensitive and proprietary information which has substantial and commercial value to parties, in particular to Zenon Environmental Corp., and public disclosure of this information would unfairly enhance the commercial position of those in competition with Zenon Environmental Corp., and would unfairly enhance the bargaining power of any future customer of Zenon Environmental Corp.

On several different days during the month of March 2009, Fairmont filed motions to disallow the protests of the various residential customers that were filed in this matter.

On March 6, 2009, responding to Fairmont's request for emergency interim rates, Staff Attorney Ronald E. Robertson, Jr., submitted the Initial and Final Joint Staff Memorandum, attaching the March 5, 2009 Initial and Final Staff Internal Memorandum from Utilities Analyst Nathan Nelson, Water and Wastewater Division, and Staff Engineer James Weimer, P.E., Engineering Division. Staff reported that Fairmont recently had incurred serious financial hardship, mainly attributable to problems it has had in operating a treatment plant constructed in 2003. In early 2007, Fairmont experienced greatly reduced water production from this plant. To increase the plant's treatment capacity in order to meet demand, Fairmont had to expend much more on O&M than anticipated. For this reason, Fairmont passed the February 10, 2009 rate ordinance that would increase rates by 49%. Staff also related that Fairmont is in the planning stages of an approximately \$10,000,000 project to address the treatment plant issues. The rate ordinance is designed to cover the debt service and O&M expenses related to this project, as well as address going-level needs. Staff noted that Fairmont currently is experiencing a 50% internal water loss, which is one of the issues to be addressed in the planned project. Staff opined that it cannot recommend interim rates that would cover costs related to the project, but believed that Fairmont did need interim rate relief while the municipal appeal is being processed. Accordingly, Staff recommended that the Commission approve emergency interim rates that would increase Fairmont's rates by approximately 24% across-the-board, subject to refund.

In support of its recommended 24% interim rate increase, Staff reported that Fairmont had experienced a \$522,700 cash-flow deficit at per books and would experience a \$1,391,126 cash-flow deficit at going-level. The Staff-recommended interim rates would provide a \$17,189 cash-flow surplus and a 140.29% debt service coverage factor.

On March 13, 2009, Melissa K. Marland, Chief Administrative Law Judge, issued a Procedural Order appointing the undersigned Deputy Chief Administrative Law Judge (ALJ), Ronnie Z. McCann, to review the grievances raised by the petitioners in this proceeding, to conduct a hearing and to issue a recommended decision on the matters involved in this proceeding.

By the March 13, 2009 Procedural Order, the ALJ adopted a procedural schedule to further process and resolve this matter, including a Thursday, May 14, 2009 public hearing date, and required Fairmont to publish a notice of the public hearing. By the March 13, 2009 Protective Order, the ALJ granted Fairmont's February 24, 2009 request.

On March 20, 2009, Staff Attorney Chris Howard, acting for Staff Attorney Robertson, submitted the Further Initial Joint Staff Memorandum, attaching the March 18, 2009 Further Initial Staff Internal Memorandum from Utilities Analyst Nelson and Utilities Analyst Ronald Vernon of the Water and Wastewater Division and from Staff Engineer Weimer. Commission Staff noted that, after Staff made its recommendation on March 6, 2009, that the Commission approve a 24% across-the-board emergency interim rate increase, Fairmont brought to Commission Staff's attention the fact that Fairmont had approximately \$491,567 in outstanding invoices for O&M expenses which it could not pay and which were not considered by Staff in its March 6, 2009 recommendation. Fairmont had exhausted all of its reserve funds and could lose some of its suppliers if it did not start paying these overdue bills. Staff opined that it would not be proper to include the payment of these bills in regular rates, since, once the arrearage was satisfied, Fairmont would over-recover. For that reason, Staff recommended that, in addition to the 24% emergency interim rate increase, the Commission approve a \$1.54 per month per customer surcharge to be assessed and collected from all customer classes, until the arrearage had been eliminated. Staff recommended that the surcharge also be subject to refund.

Responding to all of the above, on March 26, 2009, the ALJ entered an Interim Recommended Decision approving emergency interim rates for Fairmont, subject to refund. Mannington filed exceptions to the March 26, 2009 Interim Recommended Decision on April 2, 2009, and, by the April 27, 2009 Commission Order, the Commission denied the exceptions and approved the interim rates. Also on April 2, 2009, Fairmont submitted a publication affidavit showing that it had published the interim rates in the *Times West Virginian*.

By the May 4, 2009 Commission Order, acting on an April 27, 2009 motion from Fairmont to toll the statutory suspension period and to cancel the May 14, 2009 hearing date, the Commission tolled the statutory suspension period for 100 days, until Monday, November 2, 2009; directed that Commission Staff submit its report no later than Wednesday, August 19, 2009; and granted the ALJ until Friday, October 2, 2009, to render his written recommended decision in this municipal appeal case.

On Friday, May 8, 2009, the ALJ ascertained by telephone that Fairmont already had published notice of the hearing scheduled to convene on Thursday, May 14, 2009. Fairmont wanted to postpone the hearing until after Commission Staff had filed its report on or about August 19, 2009. Fairmont indicated to the ALJ that, in order to avoid customers showing up for the May 14, 2009 hearing unnecessarily, it would submit a press release to the *Times West Virginian* indicating that the May 14, 2009 hearing would be postponed.

By the May 11, 2009 Order Canceling Hearing and Adopting New Procedural Schedule, the ALJ scheduled a hearing in this matter to convene on Tuesday, August 25, 2009, and required publication of a hearing notice.

Also on Monday, May 11, 2009, the ALJ received a letter from Fairmont, by facsimile transmission, to which was attached a copy of a detailed and substantial news story appearing in the *Times West Virginian* on Saturday, May 9, 2009, prominently displayed over four columns on page 1A and continuing to another page.

On May 14, 2009, Staff Attorney Ronald E. Robertson, Jr., moved the ALJ to reschedule the hearing due to a conflict with the August 25, 2009 date, stating that all parties were available on August 24, 2009.

By the May 22, 2009 Order Changing Hearing Date, the ALJ canceled the August 25, 2009 hearing date and rescheduled the matter to convene on Monday, August 24, 2009, again requiring publication of a hearing notice.

Case No. 09-0623-W-CN

On April 23, 2009, Fairmont filed an application with the Commission under *Code* §24-2-11 for a certificate of public convenience and necessity to construct, operate and maintain a water filtration plant corrective action program. Fairmont estimated that the project would cost approximately \$9,688,900, to be funded with a \$7,688,900 loan from the West Virginia Health Department Drinking Water Treatment Revolving Fund (DWTRF), bearing 0% interest and a 1% administrative fee over a 30-year term, and with a \$2,000,000 loan West Virginia Water Development Authority (WDA), bearing 3% interest for 20 years. The application noted that, on February 10, 2009, Fairmont adopted a rate ordinance increasing water rates by approximately 49% to cover increased going-level O&M expenses as well as increased O&M expenses and debt service requirements attributable to the project. The rate ordinance was the subject of the municipal appeal in Case No. 09-0171-W-MA, *City of Fairmont*, which, at that time, had an October 2, 2009 decision due date.

On April 23, 2009, as amended on April 29, 2009, the Commission required that Fairmont publish the Notice of Filing one time in a qualified newspaper, published and generally circulated in Marion County, providing a 30-day protest period. The Notice of Filing also provided that, if no protests were received within the 30-day protest period, the Commission may waive formal hearing

and grant the certificate based upon its review of the evidence submitted with the application. On July 9, 2009, Fairmont submitted a publication affidavit showing that the Notice of Filing was published in the *Times West Virginian*, a newspaper published and generally circulated in Marion County, on May 7, 2009. No protests to the certificate application were filed within the 30-day protest period or as of the date of this Order.

By the May 6, 2009 Referral Order, the Commission referred this case to the Division of Administrative Law Judges (ALJ Division) for decision on or before September 8, 2009, if no protest was filed, or by October 5, 2009, if the matter was protested.

On May 28, 2009, Staff Attorney Ronald E. Robertson, Jr., submitted the Initial Joint Staff Memorandum, indicating that, once it had completed its investigation, Commission Staff would submit a final substantive recommendation. Commission Staff concurred with the City's request for a waiver of the *Tariff Rule* 42 filing requirement. Staff also appeared to anticipate that the instant case would be consolidated with Case No. 09-0171-W-MA. Accordingly, Mr. Robertson indicated that Staff would file its report in the instant certificate application along with its report in the municipal appeal, i.e., on August 19, 2009.

On July 22, 2009, Staff Attorney Robertson submitted the Further Joint Staff Memorandum, indicating that Staff was still receiving information which it must evaluate before it could render its final substantive recommendation. Mr. Robertson noted that the City had filed a petition for a waiver of the requirements of Rule 10.3.d. of the Commission's *Rules of Practice and Procedure (Procedural Rules)*.

On July 23, 2009, Fairmont moved to consolidate Case Nos. 09-0623-W-CN and 09-0171-W-MA. The City noted that no protests were filed in the certificate application, indicated that the rate case would provide revenues to support the certificate case and stated that consolidation would eliminate the need for two public hearings and minimize public confusion.

By the July 30, 2009 Procedural Order, the ALJ stated the following in the Discussion section of the Order:

Having considered all of the above in light of the various activities which must transpire in this proceeding before he can render a written recommended decision and in light of no public protest to the application, the Administrative Law Judge (ALJ) holds that the decision due date is September 8, 2009.

The requested waiver of *Procedural Rule* 10.3.d. will not be addressed, except to note that *Procedural Rule* 10.3.d. does not apply to municipally operated public utilities, i.e., municipally operated utilities do not seek rate increases within a certificate proceeding. Fairmont has sought rates to support the project by enacting a rate ordinance, which has resulted in the municipal appeal in Case No. 09-0171-W-MA.

All of the notice requirements regarding any rate increase to support the project are addressed in the municipal appeal.

The ALJ will not address the motion to consolidate Case Nos. 09-0623-W-CN and 09-0171-W-MA at this time. Should either Fairmont or Commission Staff convince the Commission to toll the running of the statutory deadline and decision due date in Case No. 09-0623-W-CN, in order to consolidate the two cases for hearing and decision, the ALJ can see no reason why he would not favorably consider a motion to consolidate at that time.

At this time, however, the decision due date is September 8, 2009. Therefore, without a tolling of the statute, Commission Staff must submit its report no later than Friday, August 7, 2009. Since no public protests were filed, no public hearing or public hearing notice is required in the certificate application. The only reason for a hearing in the certificate would be to resolve any differences between Fairmont and Commission Staff. However, if the ALJ subsequently consolidated the matter upon the request of Staff or Fairmont, he would schedule the hearing in the certificate case concurrently with the hearing already scheduled in the municipal appeal case. While the only public notice of the hearing would be the one that was required in the municipal appeal, should the ALJ subsequently schedule a hearing in the certificate case in conjunction with the municipal appeal, the ALJ would permit any member of the public to make a public statement related to the project. Otherwise, as noted in the Notice of Filing, the ALJ would waive the requirement for hearing and rule on the certificate application based on the evidence contained in the application and Staff's review of such evidence.

The ALJ directed that Commission Staff submit its report in Case No. 09-0623-W-CN no later than Friday, August 7, 2009.

On August 4, 2009, Fairmont moved the Commission to toll the statutory deadline in Case No. 09-0623-W-CN so that it could be consolidated with Case No. 09-0171-W-MA.

By the August 6, 2009 Commission Order, responding to the August 4, 2009 request from Fairmont, the Commission tolled the statutory deadline in Case No. 09-0623-W-CN, until November 2, 2009, "to facilitate consolidation of this matter with the associated municipal appeal." The Commission granted the ALJ until October 2, 2009, to render a written recommended decision in Case No. 09-0623-W-CN.

#### Consolidation

By the August 7, 2009 Order Consolidating Cases and Adopting Procedural Schedule, the ALJ consolidated Case Nos. 09-0171-W-MA and 09-0623-W-CN for hearing and decision and adopted the procedural schedule already established for Case No. 09-0171-W-MA, as amended on May 22,

2009, and as updated therein, including the August 24, 2009 hearing date, for the consolidated proceeding.

On August 24, 2009, the ALJ convened the hearing as scheduled. Fairmont appeared at the hearing by counsel, Kevin Sansalone, Esquire; Commission Staff appeared by counsel, Staff Attorney Ronald E. Robertson, Jr., Esquire; and approximately 25 persons appeared to protest the rate increase, none of whom were direct customers of Fairmont, i.e., they were either customers of Fairmont's resale customers or unrepresented resale customers' representatives.<sup>1</sup> At the hearing, the parties waived their rights to file proposed findings of fact and conclusions of law, or briefs, as permitted under *West Virginia Code* §24-1-9(b).

On August 26, 2009, the reporter submitted a 128-page transcript and a one-page certificate that the transcript is a true and accurate record of the August 24, 2009 hearing.

### EVIDENCE

The first witness who testified on Fairmont's behalf was Brian Hackman, Fairmont's engineer. Mr. Hackman currently is employed by Strand Associates, Inc. (Strand), a Wisconsin engineering firm. Fairmont employed Strand to evaluate and analyze its water filtration plant, which experienced problems due to its design, which uses membrane filtration technology. The plant could not meet its rated design capacity, which led to numerous boil-water advisories and school closures and endangered people in local hospitals. He clarified that, while Fairmont's water quality met safe drinking water standards, the plant could not produce sufficient quantities of water to serve its customers. Although the new technology using the membrane system is sound, Fairmont needs to increase its plant's treatment capacity. Strand began its evaluation and analysis of Fairmont's treatment plant in 2007 and submitted a proposed corrective action plan in 2009. The chief deficiency in Fairmont's plant is a lack of pre-treatment to remove suspended solids, which clog the membranes and reduce the treatment capacity. Also, sewage discharge has increased in the area served by Fairmont. Strand also evaluated Fairmont's heating, ventilation and air conditioning at the plant, noting that increased humidity increases pipe corrosion and structural weakening within the plant. Strand identified several other structural problems at the plant. Mr. Hackman identified several other factors that were decreasing treatment capacity. The project will address all of the problems identified in the study. (Tr., pp. 14-20).

Mr. Hackman explained that the project will improve the removal of suspended solids and adjust the pH level of the treated water to control manganese oxidation. The main water source is the Tygart Valley River. The water is pumped up the hill into a reservoir and then treated. The water then will be transported to a solids contact clarifier which will further reduce suspended solids and send them to the sewage treatment plant for disposal. Then the water will be routed to the membrane system for treatment. The pre-treatment process will increase the life of the membranes and will

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<sup>1</sup>Robert Garcia, Mayor of the City of Mannington, and Gene Sapp, Chairman of the Board of Valley Falls Public Service District.

increase water production. Also, the project will improve the connection between the river water intake and the reservoir. The project will increase the treatment capacity to approximately 12,000,000 gallons per day. The project also includes adding backup power to the treatment plant and adding two membrane trains to the current four trains, which will permit membrane cleaning without shutting down the entire system. (Tr., pp. 20-26).

Mr. Hackman estimated that the project will cost approximately \$10,188,000. Fairmont has received commitments for financing the project, the larger portion of which is at zero interest and a 1% administrative fee. The remaining funding has a 4% interest rate. (Tr., pp. 23-24).

Mr. Hackman explained that the reservoir was built in approximately 1904. Its capacity at that time was sufficient to handle's today's demands. However, silt and debris have greatly reduced the reservoir capacity. The project will include dredging the reservoir to restore its original capacity. (Tr., pp. 26-28).

Mr. Hackman has produced plans and specifications for the project, which currently are under review by the West Virginia Bureau of Public Health (BPH). He anticipates no problems with the project obtaining all of the necessary regulatory and governmental agency approvals. Mr. Hackman identified his prepared direct testimony and other documents, received as Fairmont Exhibit No. 1. This information contained more detail of Strand's evaluation and analysis of Fairmont's system and the recommended corrective actions, which are the subject of the certificate application. (Tr., pp. 28-29; Fairmont Exhibit No. 1).

Mr. Hackman explained that, without the pre-treatment process, the existing membranes cannot handle the treatment capacity required by Fairmont. The membranes are rated for a 10-year useful life, but have failed in a much shorter time. He clarified that the treatment capacity currently is approximately 7,500,000 gallons per day, i.e., if one membrane train is taken off-line for cleaning, the three working membranes would treat 2,500,000 gallons each per day. By adding two more membrane trains, the capacity will increase to approximately 12,500,000 gallons per day, while one membrane at a time is being cleaned. The project will enable Fairmont to serve all of its direct customers and its resale customers and enable Fairmont to meet all safe drinking water standards. The improvements included in the project should have a 20-year useful life. Some parts of the project, such as SCADA and electrical improvements, may be limited to a 10-year useful life. The project is a significant improvement over the existing treatment plant. (Tr., pp. 29-40).

Next, Fairmont called David Sago, the City Manager for the City of Fairmont. Mr. Sago explained that Fairmont experienced a shortage in water treatment capacity and hired Strand to identify the problems and design a project to address all of the problems. To undergird the project and to ensure that Fairmont's rates generated sufficient revenues, Fairmont enacted a rate ordinance. Mr. Sago and Fairmont have reviewed the Staff-recommended rates and stipulate that those rates, while structured differently from Fairmont's rate ordinance, are sufficient and proper for Fairmont both currently and after the project is completed. (Tr., pp. 40-42).

The first witness who testified on behalf of Commission Staff was Staff Engineer James Weimer, P.E. Mr. Weimer identified the Staff Report, dated August 20, 2009, received as Staff Exhibit No. 1. Mr. Weimer prepared the portion of the Report dealing with engineering issues. The Report address both the certificate case and the municipal appeal. First, Mr. Weimer addressed what he termed as non-project rates, i.e., rates that Fairmont needs immediately to cover O&M expenses and debt service whether or not the project is built. Many of the significant deficiencies with Fairmont's water treatment plant and distribution system which were identified in Fairmont's last rate case were not provided for in the rates approved in that case. These needs still exist and must be addressed with or without the project. Fairmont is understaffed. One water tank is out of service and should be placed back in service in order to provide Fairmont with two days of storage capacity plus fire protection capacity. All of the tanks need maintenance. He identified two tanks, Allegheny and Sterling Heights, which were in particular need of repairs. Fairmont's water lines are very old and many need to be replaced. Those lines have been repaired too many times. Fairmont's water loss exceeds 50%, which is very significant and much greater than the Commission's limit of 15% for unaccounted-for or non-revenue water. This water loss is within Fairmont's own system and does not include any water lost by its resale customers. Also, since Fairmont supplies water to resale customers over most of Marion County, failure to produce sufficient water volumes affects all of the resale customers' customers as well as Fairmont's direct customers. About 80% of Fairmont's lines are over 40 years old and some of the lines are much older than that. Staff has recommended increased revenues to address this water loss problem. (Tr., pp. 43-53; Staff Exhibit No. 1).

Mr. Weimer recommended that Fairmont commence a leak-detection program and replace many of its old water meters with radio-read meters, which should lower the amount of unaccounted-for water and reduce the manpower required for meter reading, thereby freeing up personnel to perform other work and permitting Fairmont to start billing every month instead of every two months, i.e., Fairmont currently does not have enough personnel to read meters and bill every month. Fairmont has incurred more water leaks recently. Fairmont needs to replace, rather than patch, leaking lines. The project will address some of these problems and the Staff-recommended rates will address some of these problems. Also, Staff recommended that Fairmont institute a cross connection and backflow control program to eliminate a possible health hazard by eliminating one possibility of customers contaminating Fairmont's water system. The certificate project will address all of the issues which Fairmont has with its treatment plant. Fairmont has become the regional water supplier for practically all of Marion County, which makes it even more important to correct the problems, since the water distribution systems of its resale customers are affected by Fairmont's operations. Fairmont needs to take several actions to provide a backup for its operation. Adding the extra membrane filter trains will greatly enhance Fairmont's ability to provide a continuous and non-interrupted water supply for its direct customers and for the resale customers. Fairmont's reservoir needs to be dredged and cleaned. The water needs to be pre-treated in order to make the membrane system more efficient and reliable and to increase the plant's treatment capacity. The raw water pumping station at the river, which pumps water to the reservoir, is nearly 80 years old. Fairmont needs to replace pumps at that station and inspect the line running from the river to the reservoir to make sure it is not leaking and to repair any leaks. This pump station also needs a backup electric generator for emergencies. The Staff-recommended revenue level would enable Fairmont to replace

several old vehicles and other pieces of equipment. Fairmont needs to upgrade its computer system to automate several functions which now are performed manually, e.g., keeping track of inventory. (Tr., pp. 53-70; Staff Exhibit No. 1).

Mr. Weimer opined that Fairmont needs the level of revenues recommended by Staff in order to cover all O&M expenses and to improve its operation, whether or not the project is approved and built. Additional revenues will be needed once the certificate project is operational. Staff has recommended rates to become effective immediately to cover current O&M expenses and existing debt and provide a proper surplus. Staff has recommended additional rates to become effective after the project is operational. (Tr., pp. 70-75; Staff Exhibit No. 1).

Mr. Weimer specifically addressed the certificate case, agreeing with Mr. Hackman's assessments and recommending approval of the project. The project might subsequently become eligible for funding under The American Recovery and Reinvestment Act (ARRA), but it had not been approved for ARRA funding as of the hearing date. Staff's recommendations reflect funding for the project as set forth in the application. Should ARRA funds become available, post-project rates may need to be addressed again, since that funding source would not need to be repaid. The project will cost an estimated \$10,188,100, which includes an \$824,000 contingency. Mr. Weimer believes that the project will receive approval from the BPH, indicating that a representative from that agency was present at the hearing. The project will increase O&M expenses by approximately \$108,000, contrasted to the estimate made by Fairmont of \$160,000. He opined that the need for the project is undeniable, since Fairmont is the chief water source for most of Marion County, either directly or through its resale customers. Mr. Weimer provided engineering allocation factors for the customer class cost of service study which Staff used to design rates to generate the appropriate revenues for each customer class. For this reason, Mr. Weimer believes that the Staff-recommended rate design is appropriate and non-discriminatory. Staff used the data from the Gannett-Fleming study for West Virginia-American Water Company to develop the allocation factors for the cost of service study. The project should be approved. The post-project rates will not be very great when weighed or compared with the benefits of the project for Marion County. Since the project has not been bid, Fairmont may have to obtain separate approval if bids come in too high. (Tr., pp. 75-82).

Mr. Weimer opined that the project is both convenient and necessary. The cost per customer is very small compared to many certificate projects. The bulk of the rate increase is the result of increased O&M expenses prior to the project's completion, due to the extensive repairs that Fairmont needs to make irrespective of the project. He opined that the Staff-recommended pre-project and post-project rates are just and reasonable and based primarily on the cost of service. Staff has not recommended any corrective actions beyond the bare minimum which Fairmont needs to complete to continue operating, mainly due to the age of the system. Mr. Weimer recommended that Fairmont keep Commission Staff informed on a regular basis, indicating its completion of each Staff-recommended repair and replacement. Although Staff identified the same problems in Fairmont's previous (2005) rate case, sufficient funding was not provided then to cover the items that needed to be corrected. The Staff-recommended rates in this case will provide Fairmont with the funds

necessary to make the long-needed repairs and replacements to its system, separately from the project. (Tr., pp. 82-86; Staff Exhibit No. 1).

Next, Utilities Analyst Nathan Nelson testified on behalf of Commission Staff. Mr. Nelson indicated that he had prepared the financial analysis contained in the Staff Report and had designed rates based upon the customer class cost of service study which he performed. Mr. Nelson also identified two documents which corrected some errors in the Staff Report, received as Staff Exhibit Nos. 2 and 3. Staff Exhibit No. 2 replaces page 29 of the original Staff Report and Staff Exhibit No. 3 replaces page 31 of the original Staff Report. Mr. Nelson analyzed Fairmont's going-level expenses and debt service requirements, based on a historical test year ending on June 30, 2008. Staff made several going-level adjustments to reflect known and measurable expenses that were incurred after the test year, but which will be recurring expenses. Using the engineering allocation factors developed by Mr. Weimer, Mr. Nelson designed rates which will generate the revenues necessary to cover O&M expenses and debt service requirements, while providing a cash surplus for plant additions. The Staff-recommended rate design is just and reasonable and based primarily on the cost of service for each respective customer class. The first rates recommended by Staff are to become effective immediately. Mr. Nelson followed the same procedure to develop the rates to become effective after the project is completed and in operation, and those rates will not become effective until the Commission has received the engineer's certificate of substantial completion from Fairmont. (Tr., pp. 86-90; Staff Exhibit Nos. 1, 2 and 3).

Mr. Nelson testified that Fairmont's revenue requirement is approximately \$8,382,851. He designed rates based upon the customer class cost of service study which would produce the revenues needed from each customer class. He explained that, while the Staff-recommended rates contained a very small subsidy between the commercial and residential classes, this is acceptable since, on average, most of the commercial customers use approximately the same amount of water as residential customers. He attempted to design rates that would generate just enough revenue from each customer class to match the cost of service for each respective class. It costs more to serve residential customers than commercial, industrial or resale customers, since more plant, such as pipes, is required to distribute the water to the residential class. (Tr., pp. 90-92; Staff Exhibit Nos. 1, 2 and 3).

Mr. Nelson explained that all or most of the additional spending on capital improvements at going-level, e.g., the additional membrane filter trains, would be passed to Fairmont's direct customers, not to the resale customers. Under the Staff-recommended rates at going-level, an average bill for a customer using 4,500 gallons would be \$38.82, compared to the current charge of \$32.40, which equates to a 19.8% increase. After the project is completed and in use, Fairmont's O&M expenses will decrease, but debt service requirements will increase. Under the Staff-recommended pre-project rates, the debt service coverage ratio will be 139%, while the Staff-recommended post-project debt service coverage ratio will be 136%. The cash flow surplus will be approximately the same for both the pre-project and post-project rates. The combination of renewal and replacement funds and cash surplus is approximately the amount Staff calculated as the five-year average of capital additions. Mr. Nelson opined that both the pre-project and post-project rates are based on the

cost of service and are just, reasonable and non-discriminatory. (See, Tr., pp. 93-95; Staff Exhibit Nos. 1, 2 and 3).

The engineering allocation factors for the customer class cost of service study for the post-project rates were essentially the same as for the pre-project rates, since the project is mainly a plant upgrade. The amounts of water used by each customer class will not change significantly after the project is built. One reason for the larger post-project increase for the resale class is that the pre-project rate increase for the resale class does not include those improvements recommended by Staff which increase capital spending at going-level but do not directly benefit the resale class. The plant upgrades included in the project, however, will significantly benefit the resale class, which is why the rates for the resale class will increase by a larger percentage. The post-project bill for an average customer using 4,500 gallons of water will be \$39.92. The per books resale rate is \$1.93 per 1,000 gallons; the going-level<sup>2</sup> resale rate is \$2.39 per 1,000 gallons; the Staff-recommended pre-project resale rate is \$2.47 per 1,000 gallons; and the Staff-recommended post-project resale rate is \$2.70 per 1,000 gallons. The total increase for resale customers, from the rates that were effective prior to this consolidated proceeding, would be \$0.77 per 1,000 gallons, which represents a 40% increase for the resale class once the project is completed. The rate ordinance would have increased the resale rate to \$2.88 per 1,000 gallons. Mr. Nelson opined that the post-project rates probably will not become effective for at least a year, subject to the time it takes to complete the certificate project. (Tr., pp. 95-99; Staff Exhibit Nos. 1, 2 and 3).

Mr. Nelson testified that the post-project O&M expenses would decline by almost \$110,000, while the post-project debt service requirement would increase by over \$430,000, to cover the additional debt service requirement due to the approximately \$10,000,000 project. The pre-project renewal and replacement reserve of approximately \$214,500 will increase to \$223,862 after the project is completed. The project will be funded with a \$2,000,000 WDA loan bearing 5% interest for 20 years and a \$8,188,100 DWTRF loan bearing no interest and a 1% administrative fee for 30 years. Fairmont has commitment letters for these two loans. Fairmont may be entitled to funding from the ARRA, but Fairmont has received no commitment for this funding. Should Fairmont obtain ARRA funding, it likely would have to adjust its rates downward, since its debt service requirements would decrease. For this reason, Staff has recommended that, should the project's financing change, Fairmont will have to verify whether such change affects rates, and, if so, Fairmont would have to submit to reopen this proceeding for a rate review. (Tr., pp. 99-101; Staff Exhibit Nos. 1, 2 and 3).

The City of Fairmont's general fund has been subsidizing Fairmont's water operation. Fairmont needs to repay approximately \$2,000,000 to the City of Fairmont's general fund. The Staff-recommended rates include approximately \$300,000 for this purpose. The Staff-recommended rates will enable Fairmont to operate its water utility without any further subsidy from the general fund. Mr. Nelson underscored that the Staff-recommended pre-project rates would be sufficient, but not more than sufficient, to cover Fairmont's O&M expenses and debt service requirements, plus provide

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<sup>2</sup>See, Interim Recommended Decision, entered on March 26, 2009, which adopted emergency interim rates for Fairmont, subject to refund. The approved interim rates sometimes are referred to by Staff as the going-level rates.

a reasonable cash surplus and renewal and replacement reserve for capital additions. Likewise, he emphasized that the Staff-recommended post-project rates would be sufficient, but not more than sufficient, to cover Fairmont's O&M expenses and debt service requirements, once the project is operational, plus provide a reasonable cash surplus and renewal and replacement reserve for capital additions. Both phases of the Staff-recommended rates will provide revenues sufficient to provide a proper debt service coverage ratio. At going-level, Fairmont is experiencing a cash-flow deficit in excess of \$1,000,000. Mr. Nelson clarified that obtaining ARRA funding for the project would not affect the pre-project Staff-recommended rates. (Tr., pp. 101-111; Staff Exhibit Nos. 1, 2 and 3).

One of the Protestants, Eugene Sapp, Chairman of the Board for Valley Falls Public Service District, commented that Fairmont has neglected its water treatment and distribution system for many years and should not now be rewarded for its failure to keep up with proper maintenance. He called Fairmont's excessive unaccounted-for water percentage "phenomenal." Mr. Sapp believes that whoever engineered Fairmont's system should have to correct its deficiencies and those responsibilities should not be saddled on the resale customers. He questioned whether the rate increase is necessary and admonished Fairmont to wisely spend the addition revenues it will receive. (Tr., pp. 113-115).

Robert Garcia, Mayor of Mannington, also made a comment. He questioned why resale customers should have to pay for Fairmont's in-house problems and shortcomings. Mannington agreed to the per books resale rate of \$1.93 per 1,000 gallons. He believes that the Staff-recommended post-project rate of \$2.70 per 1,000 gallons is extremely excessive. He opined that Mannington will have to enact its own rate ordinance to address this increase. He stated that Fairmont had deceived Mannington and the other resale customers by leading them to believe that Fairmont's unaccounted-for water was only 17%. He subsequently learned that this 17% figure is accurate only if all of the water bought by the resale customers is included in the calculation. When you look only at water loss within Fairmont's distribution system, the unaccounted-for water zooms to over 50%, which is totally unacceptable. He does not believe that resale customers should have to pay for Fairmont to repair its distribution lines. Mannington gave Fairmont a \$1,500,000 grant to build a line to connect Fairmont with Mannington and now is being rewarded with an increase of over 40%, which he termed very unfair. Mr. Garcia wants the Commission to have concern about the Mannington customers and not bail out Fairmont from its indiscretions. Fairmont has had to close schools and hospitals due to its mismanagement of its water operations, while the resale customers have managed their systems well. He estimated that, since 2001, Fairmont's rates have increased by over 123% and now it wants another 49% increase. Mannington supplies water to approximately 28,000 people in northern Marion County, but cannot get the "right time of day" from Fairmont or the Marion County Commission. Mr. Garcia acknowledged that Staff has indicated that the resale customers would not be shouldered with paying for some of Fairmont's poor management, but really does not believe all of the representations made by Staff and believes that the resale class is being asked to subsidize Fairmont's customers who live inside Fairmont. (Tr., pp. 116-120, 126-127).

Ted Nice, Mannington's chief water operator, commented that Mannington would prefer to have its own water treatment plant. However, when Mannington started a certificate project for this

purpose, it was unable to obtain funding. He questions the wisdom of making Fairmont the water supplier for practically all of Marion County when smaller community water systems can function more efficiently and give their customers lower rates. Mr. Nice resents having to pay for Fairmont's mistakes. Mannington was producing its own water at a cost of \$1.14 per 1,000 gallons, but had to abandon its own treatment plant upgrades in deference to Fairmont, the reasoning for which Mr. Nice can neither understand nor comprehend. The customers of Fairmont's resale customers do not deserve this treatment, resulting from Fairmont's resale rate increasing from \$1.93 per 1,000 gallons to \$2.70 per 1,000 gallons. (Tr., pp. 120-123).

Another Protestant, Andrew Kolb, an officer with the Mannington police department, corroborated Mr. Garcia's statement and believed that a hearing held in Mannington during the evening hours was warranted in this case. (Tr., pp. 123-124).

After the hearing, on September 10, 2009, Fairmont filed a copy of a permit issued on September 3, 2009, by the State of West Virginia Office of Environmental Health Services approving the plans and specifications for the project.

### DISCUSSION

The ALJ holds that, since the project will enable Fairmont to produce a sufficient quantity of potable water to supply its direct customers and all of its resale customers; since Fairmont's ability to meet its current demand for water is not always being met; since Fairmont's treatment facility needs to be renovated, repaired and portions need to be replaced; since Fairmont has been able to obtain financing to build the project and possibly could obtain ARRA funding to reduce the post-project rates; since Fairmont has enacted an ordinance which supports the project; since Fairmont has obtained a permit from the Office of Environmental Health Services approving the plans and specifications for the project; and since the Protestants did not produce any evidence that the project is either inconvenient or unnecessary, he will grant the certificate application and approve the project's financing. Since Fairmont is operating at a current cash-flow deficit in excess of \$1,000,000 and needs to immediately repair, replace and renovate its distribution lines to lower its unaccounted-for water, the ALJ will approve the Staff-recommended pre-project rates, which are based on cost of service and are sufficient, but not more than sufficient, to cover Fairmont's O&M expenses and debt service requirements and provide a cash-flow surplus, which, when combined with the renewal and replacement fund, will generate funds equivalent to Fairmont's five-year average of capital improvements. The ALJ also will approve the post-project rates, since they are sufficient, but not more than sufficient, to cover all post-project O&M expenses and debt service requirements, while generating a cash-flow surplus similar to the pre-project rates.

### FINDINGS OF FACT

1. The City of Fairmont adopted an ordinance increasing its rates and charges to provide water service to its customers inside and outside its corporate boundaries, to become effective March 27, 2009. After protest and pursuant to *Code* §24-2-4b, the Commission invoked its jurisdiction over

the municipal appeal, i.e., Case No. 09-0171-W-MA, made Fairmont a Respondent and deferred the use of the rates and charges stated in the rate ordinance until 12:01 a.m., July 25, 2009, unless otherwise ordered by the Commission. Fairmont also requested that, if the Commission obtained jurisdiction over this proceeding, it approve emergency interim rates to cover certain going-level O&M expenses. (See, February 24, 2009 Order).

2. The ALJ entered an Interim Recommended Decision approving emergency interim rates for Fairmont, subject to refund. Mannington filed exceptions to the March 26, 2009 Interim Recommended Decision on April 2, 2009, and, by the April 27, 2009 Commission Order, the Commission denied the exceptions and approved the interim rates. Also on April 2, 2009, Fairmont submitted a publication affidavit showing that it had published the interim rates in the *Times West Virginian*. (See, March 26 and April 27, 2009 Orders; Commission's file).

3. Fairmont filed an application with the Commission under *Code* §24-2-11 for a certificate of public convenience and necessity to construct, operate and maintain a water filtration plant corrective action program. Fairmont estimated that the project would cost approximately \$9,688,900, to be funded with a \$7,688,900 DWTRF loan bearing 0% interest and a 1% administrative fee over a 30-year term, and with a \$2,000,000 WDA loan bearing 3% interest for 20 years. The application noted that, on February 10, 2009, Fairmont adopted a rate ordinance increasing water rates by approximately 49% to cover increased going-level O&M expenses as well as increased O&M expenses and debt service requirements attributable to the project. (See, April 23, 2009 application in Case No. 09-0623-W-CN).

4. Fairmont submitted a publication affidavit showing that the Notice of Filing in the certificate case was published in the *Times West Virginian*, a newspaper published and generally circulated in Marion County, on May 7, 2009. No protests to the certificate application were filed within the 30-day protest period or as of the date of this Order. (See, publication affidavit filed on July 9, 2009; Commission's file).

5. Fairmont employed Strand in 2007 to evaluate and analyze its water filtration plant, which was experiencing problems due to its design using membrane filtration technology. The plant could not meet its rated design capacity, which led to numerous boil-water advisories and school closures and endangered people in local hospitals. While Fairmont's water quality meets safe drinking water standards, the plant cannot produce sufficient quantities of water to serve its customers. Although the new technology using the membrane system is sound, Fairmont needs to increase its plant's treatment capacity. Strand submitted a proposed corrective action plan in 2009. The chief deficiency in Fairmont's plant is a lack of pre-treatment to remove suspended solids, which clog the membranes and reduce the treatment capacity. Also, sewage discharge has increased in the area served by Fairmont. Also, Fairmont's heating, ventilation and air conditioning, and other structures at the plant, are deficient. The project will address all of the problems identified in the study. (See, Tr., pp. 14-20).

6. The project will improve the removal of suspended solids and adjust the pH level of the treated water to control manganese oxidation. Fairmont's main water source is the Tygart Valley River. The water is pumped up the hill into a reservoir and then treated. After the project is built, the water will be transported to a solids contact clarifier which will further reduce suspended solids and send them to the sewage treatment plant for disposal. Then the water will be routed to the membrane system for treatment. The pre-treatment process will increase the life of the membranes and will increase water production. Also, the project will improve the efficiency and reliability of the connection between the river water intake and the reservoir. The project will increase the treatment capacity to approximately 12,000,000 gallons per day. The project also includes adding backup power to the treatment plant and adding two membrane trains to the current four trains, which will permit membrane cleaning without shutting down the entire system. (See, Tr., pp. 20-26).

7. The project will cost approximately \$10,188,000. Fairmont has received commitments for financing the project, the larger portion of which is at zero interest and a 1% administrative fee, while the remaining funding has a 4% interest rate. (See, Tr., pp. 23-24).

8. Fairmont's reservoir was built in approximately 1904. Its capacity at that time was sufficient to handle's today's demands. However, silt and debris have greatly reduced the reservoir capacity. The project will include dredging the reservoir to restore its original capacity. (See, Tr., pp. 26-28).

9. The plans and specifications for the project have been approved by the West Virginia Bureau of Public Health. Fairmont anticipates no problems with the project obtaining all of the necessary regulatory and governmental agency approvals. (Tr., pp. 28-29; Fairmont Exhibit No. 1; September 10, 2009 filing).

10. Without the proposed pre-treatment process, the existing membranes cannot handle the treatment capacity required by Fairmont. The membranes are rated for a 10-year useful life, but have failed in a much shorter time. The treatment capacity currently is approximately 7,500,000 gallons per day, i.e., if one membrane train is taken off-line for cleaning, the three working membranes would treat 2,500,000 gallons each per day. By adding two more membrane trains, the capacity would increase to approximately 12,500,000 gallons per day, while one membrane at a time was being cleaned. The project will enable Fairmont to continue to serve all of its direct customers and all of its resale customers and meet all safe drinking water standards. The improvements included in the project should have a 20-year useful life, although some parts of the project, such as SCADA and electrical improvements, may be limited to a 10-year useful life. The project is a significant improvement over the existing treatment plant. (See, Tr., pp. 29-40).

11. Fairmont agrees with the Staff-recommended rates and rate structure, believing they are sufficient and proper for Fairmont both currently and after the project is completed. (Tr., pp. 40-42).

12. Many of the significant deficiencies with Fairmont's water treatment plant and distribution system which were identified in Fairmont's last rate case were not provided for in the rates approved in that case. Those needs still exist and must be addressed with or without the project. Fairmont is understaffed. One water tank is out of service and should be placed back in service in order to provide Fairmont with two days of storage capacity plus fire protection capacity. All of the tanks need maintenance. Two tanks, Allegheny and Sterling Heights, need to be repaired. Fairmont's water lines are very old and many need to be replaced. Those lines have been repaired too many times. Fairmont's water loss exceeds 50%, which is very significant and much greater than the Commission's limit of 15% for unaccounted-for or non-revenue water. This water loss is within Fairmont's own system and does not include any water lost by its resale customers. Also, since Fairmont supplies water to resale customers over most of Marion County, failure to produce sufficient water volumes affects all of the resale customers' customers, as well as Fairmont's direct customers. About 80% of Fairmont's lines are over 40 years old and some of the lines are much older than that. Staff has recommended increased revenues to address this water loss problem. (See, Tr., pp. 43-53; Staff Exhibit No. 1).

13. Staff recommended that Fairmont commence a leak-detection program and replace many of its old water meters with radio-read meters, which should lower the unaccounted-for water rate and reduce the manpower required for meter reading, thereby freeing up personnel to perform other work and permitting Fairmont to start billing every month instead of every two months, i.e., Fairmont currently does not have enough personnel to read meters and bill every month. Fairmont has incurred more water leaks recently. The project will address some of these problems and the Staff-recommended pre-project rates will address some of these problems. Also, Staff recommended that Fairmont institute a cross connection and backflow control program to eliminate a possible health hazard by eliminating one possibility of customers contaminating Fairmont's water system. The certificate project will address all of the issues which Fairmont has with its treatment plant. (See, Tr., pp. 53-70).

14. Fairmont has become the regional water supplier for practically all of Marion County, which makes it even more important to correct the problems, since the water distribution systems of its resale customers are affected by Fairmont's operation. Fairmont needs to take several actions to provide backups for its operation. Adding the extra membrane filter trains will greatly enhance Fairmont's ability to provide a continuous and non-interrupted water supply for its direct customers and for the resale customers. Fairmont's reservoir needs to be dredged and cleaned. The water needs to be pre-treated in order to make the membrane system more efficient and reliable and to increase the plant's treatment capacity. The raw water pumping station at the river, which pumps water to the reservoir, is nearly 80 years old. Fairmont needs to replace pumps at that station and inspect the line running from the river to the reservoir to make sure it is not leaking and to repair any leaks. This pump station also needs a backup electric generator for emergencies. The Staff-recommended revenue level would enable Fairmont to replace several old vehicles and other pieces of equipment. Fairmont needs to upgrade its computer system to automate several functions which now are performed manually, e.g., keeping track of inventory. (See, Tr., pp. 53-70; Staff Exhibit No. 1).

15. Fairmont needs the pre-project revenues recommended by Staff in order to cover all O&M expenses and to improve its operation, irrespective of whether the project is approved and built. Additional revenues will be needed once the certificate project is operational. Staff has recommended rates to become effective immediately to cover O&M expenses and existing debt and provide a proper surplus. Staff has recommended additional rates to become effective after the project is operational. (See, Tr., pp. 70-75; Staff Exhibit No. 1).

16. Staff recommended approval of the certificate application. While the project might subsequently become eligible for ARRA funding, it had not been approved for ARRA funding as of the hearing date. Staff's recommendations reflect funding for the project as set forth in the application. Should ARRA funds become available, post-project rates may need to be addressed again, since that funding source would not need to be repaid. The project will cost an estimated \$10,188,100, which includes an \$824,000 contingency. The project will increase O&M expenses by approximately \$108,000, contrasted to the estimate made by Fairmont of \$160,000. Staff opined that the need for the project is undeniable, since Fairmont is the chief water source for most of Marion County, either directly or through its resale customers. (See, Tr., pp.75-82).

17. Staff opined that the project is both convenient and necessary. The cost per customer is very small compared to many certificate projects. The bulk of the rate increase is a result of increased O&M expenses due to the extensive repairs that Fairmont needs to make irrespective of the project. Staff has not recommended any corrective actions beyond the bare minimum which Fairmont needs to complete to continue operating, mainly due to the age of the system. Staff recommended that Fairmont keep Commission Staff informed on a regular basis, indicating its completion of each Staff-recommended repair and replacement. The Staff-recommended rates in this case will provide Fairmont with the funds necessary to make the long-needed repairs and replacements to its system, separately from the project. (See, Tr., pp. 82-86; Staff Exhibit No. 1).

18. Commission Staff analyzed Fairmont's going-level expenses and debt service requirements, based on a historical test year ending on June 30, 2008. Staff made several going-level adjustments to reflect known and measurable expenses which were incurred after the test year, but which will be recurring expenses. The pre-project rates recommended by Staff are to become effective immediately. Staff followed the same procedure to develop the post-project rates, which are not to become effective until the Commission has received the engineer's certificate of substantial completion from Fairmont. (See, Tr., pp. 86-90; Staff Exhibit Nos. 1, 2 and 3).

19. Fairmont's revenue requirement is approximately \$8,382,851. Staff designed rates based upon its customer class cost of service study to produce the revenues needed from each customer class. Staff designed rates that would generate just enough revenue from each customer class to match the cost of service for each respective class. It costs more to serve residential customers than commercial, industrial or resale customers, since more plant, such as pipes, is required to distribute the water to the residential class. (See, Tr., pp. 90-92; Staff Exhibit Nos. 1, 2 and 3).

20. All or most of the additional spending on capital improvements at going-level, e.g., the additional membrane filter trains, would be passed to Fairmont's direct customers, not to the resale customers. Under the Staff-recommended rates at going-level, an average bill for a customer using 4,500 gallons would be \$38.82, compared to the current charge of \$32.40, which equates to a 19.8% increase. After the project is completed and in use, Fairmont's O&M expenses will decrease, but debt service requirements will increase. Under the Staff-recommended pre-project rates, the debt service coverage ratio will be 139% and the Staff-recommended post-project debt service coverage ratio will be 136%. The cash flow surplus will be approximately the same for both the pre-project and post-project rates. The combination of renewal and replacement funds and cash surplus is approximately the amount Staff calculated as the five-year average of capital additions. (See, Tr., pp. 93-99; Staff Exhibit Nos. 1, 2 and 3).

21. The engineering allocation factors for the customer class cost of service study for the post-project rates were essentially the same as for the pre-project rates, since the project is mainly a plant upgrade. The amounts of water used by each customer class will not change significantly after the project is built. One reason for the larger post-project increase for the resale class is that the pre-project rate increase for the resale class does not include those improvements recommended by Staff which increase capital spending at going-level, but do not directly benefit the resale class. The plant upgrades included in the project, however, will significantly benefit the resale class, which is why the rates for the resale class will increase by a larger percentage. The post-project bill for an average customer using 4,500 gallons of water would be \$39.92. The per books resale rate is \$1.93 per 1,000 gallons; the going-level resale rate is \$2.39 per 1,000 gallons; the Staff-recommended pre-project resale rate is \$2.47 per 1,000 gallons; and the Staff-recommended post-project resale rate is \$2.70 per 1,000 gallons. The total increase for resale customers, from the rates that were effective prior to this consolidated proceeding, would be \$0.77 per 1,000 gallons, which represents a 40% increase for the resale class once the project is completed. The rate ordinance would have increased the resale rate to \$2.88 per 1,000 gallons. Staff opined that the post-project rates probably will not become effective for at least a year, subject to the time it takes to complete the certificate project. (See, Tr., pp. 93-99; Staff Exhibit Nos. 1, 2 and 3).

22. While the post-project O&M expenses should decline by almost \$110,000, the post-project debt service requirement should increase by over \$430,000, to cover the additional debt service requirement due to the approximately \$10,000,000 project; the pre-project renewal and replacement reserve of approximately \$214,500 would increase to \$223,862 after the project is completed. The project will be funded with a \$2,000,000 WDA loan bearing 5% interest for 20 years and a \$8,188,100 DWTRF loan bearing no interest and a 1% administrative fee for 30 years. Fairmont has commitment letters for these two loans. Fairmont may be entitled to funding from the ARRA, but Fairmont has received no commitment for this funding. Should Fairmont obtain ARRA funding, it likely would have to adjust its rates downward, since its debt service requirements would decrease. For this reason, Staff has recommended that, should the project's financing change, Fairmont will have to verify whether such change affects rates, and, if so, Fairmont would have to submit to reopen this proceeding for a rate review. (See, Tr., pp. 99-101; Staff Exhibit Nos. 1, 2 and 3).

23. The City of Fairmont's general fund has been subsidizing Fairmont's water operation. Fairmont needs to repay approximately \$2,000,000 to the City of Fairmont's general fund. The Staff-recommended rates include approximately \$300,000 for this purpose. The Staff-recommended rates will enable Fairmont to operate its water utility without any further subsidy from the general fund. (See, Tr., pp. 101-111; Staff Exhibit Nos. 1, 2 and 3).

24. Staff opined that the Staff-recommended pre-project rates would be sufficient, but not more than sufficient, to cover Fairmont's O&M expenses and debt service requirements, plus provide a reasonable cash surplus and renewal and replacement reserve for capital additions. Likewise, the Staff-recommended post-project rates should be sufficient, but not more than sufficient, to cover Fairmont's O&M expenses and debt service requirements, once the project is operational, plus provide a reasonable cash surplus and renewal and replacement reserve for capital additions. Both phases of the Staff-recommended rates should provide revenues sufficient to provide a proper debt service coverage ratio. At going-level, Fairmont is experiencing a cash-flow deficit in excess of \$1,000,000. Whether Fairmont obtains ARRA funding for the project would not affect the pre-project Staff-recommended rates. (See, Tr., pp. 101-111; Staff Exhibit Nos. 1, 2 and 3).

### CONCLUSIONS OF LAW

1. The public convenience and necessity require the proposed project.
2. The proposed financing for the project should be approved.
3. Should the scope, plans or financing for the project change, Fairmont must obtain prior Commission approval before commencing construction. Changes in project costs do not require separate approval if those changes do not affect rates and Fairmont submits an affidavit from a certified public accountant to this effect.
4. The Staff-recommended pre-project rates are based on cost of service and are sufficient, but not more than sufficient, to cover Fairmont's O&M expenses and debt service requirements and provide a cash flow surplus, which, when combined with the renewal and replacement fund, will generate funds equivalent to Fairmont's five-year average of capital improvements.
5. The Staff-recommended post-project rates are sufficient, but not more than sufficient, to cover all post-project O&M expenses and debt service requirements, while generating a cash flow surplus similar to the pre-project rates.

### ORDER

IT IS, THEREFORE, ORDERED that the application for a certificate of public convenience and necessity filed with the Commission on April 23, 2009, by the City of Fairmont under *Code* §24-2-11 to construct, operate and maintain improvements to its water treatment plant, be, and hereby is, granted.

IT IS FURTHER ORDERED that the proposed financing for the project, comprised of a \$2,000,000 West Virginia Water Development Fund loan bearing 5% interest for 20 years and an \$8,188,100 West Virginia Health Department Drinking Water Treatment Revolving Fund loan bearing no interest and a 1% administrative fee for 30 years, be, and hereby is, approved.

IT IS FURTHER ORDERED that the municipal rate ordinance adopted by the City of Fairmont on February 10, 2009, be, and hereby is, disapproved and set aside.

IT IS FURTHER ORDERED that the Staff-recommended pre-project rates and charges, set forth on the attached Appendix A, be, and hereby are, approved for all service rendered by the City of Fairmont on and after the date that this Recommended Decision becomes final.

IT IS FURTHER ORDERED that, within thirty (30) days of this Recommended Decision becoming final, the City of Fairmont file an original and at least five (5) copies of a proper tariff setting forth the pre-project rates and charges hereby approved.

IT IS FURTHER ORDERED that the Staff-recommended post-project rates and charges, set forth on the attached Appendix B, be, and hereby are, approved for all service rendered by the City of Fairmont on and after the date that Fairmont files a certificate of substantial completion from its project engineer.

IT IS FURTHER ORDERED that, within thirty (30) days of filing the certificate of substantial completion for the project, the City of Fairmont file an original and at least five (5) copies of a proper tariff setting forth the post-project rates and charges hereby approved. Reductions in debt service requirements due to financing changes are changes which would decrease rates and require Fairmont to petition the Commission for approval of such changes prior to construction.

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

IT IS FURTHER ORDERED that the City of Fairmont submit a copy of the certified tabulation of bids to the Commission, making the bids a part of the Commission's file in this case, as soon as the bids are tabulated.

IT IS FURTHER ORDERED that the City of Fairmont file with the Commission the certificate of substantial completion for the project as soon as it is received.

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

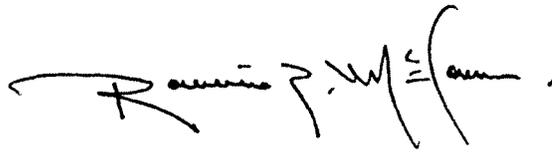
IT IS FURTHER ORDERED that this matter be, and hereby is, removed from the Commission's docket of open cases.

IT IS FURTHER ORDERED that the Executive Secretary serve a copy of this Recommended Decision upon the Commission by hand delivery and upon all parties of record by United States Certified Mail, return receipt requested.

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

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

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



**Ronnie Z. McCann**  
Deputy Chief Administrative Law Judge

RZM:s  
090171ag.wpd

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
AT CHARLESTON**

CASE NO. 09-0171-W-MA

CITY OF FAIRMONT, a municipal corporation.

Investigation and suspension of increase in water and sewer rates and charges as a result of a petition filed in accordance with *West Virginia Code* §24-2-4b.

**APPROVED PRE-PROJECT RATES**

**WATER SCHEDULE NO. 1**

**APPLICABILITY**

Applicable within the entire territory served.

**AVAILABILITY OF SERVICE**

Available for general domestic, commercial and industrial water service.

**RATE (Customers with metered water supply)**

First	25,000 gallons used per month	\$8.63 per 1,000 gallons
Next	25,000 gallons used per month	\$4.44 per 1,000 gallons
Next	25,000 gallons used per month	\$3.63 per 1,000 gallons
All Over	75,000 gallons used per month	\$3.54 per 1,000 gallons

**MINIMUM CHARGE**

No bill will be rendered for less than the following amounts based on meter size:

5/8-inch or less	\$ 21.56 per month
3/4-inch	\$ 32.35 per month
1-inch	\$ 53.91 per month
1-1/4-inch	\$ 78.71 per month
1-1/2-inch	\$ 107.82 per month
2-inch	\$ 172.51 per month
3-inch	\$ 345.02 per month
4-inch	\$ 539.10 per month
6-inch	\$1,078.20 per month
8-inch	\$1,725.12 per month

TAP FEE

The following charge is to be made whenever the utility installs a new tap to serve an applicant.

A tap fee of \$300.00 will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

RECONNECTION CHARGE \$25.00

To be charged whenever the supply of water is turned off for violations of rules, non-payment of bills or fraudulent use of water.

DELAYED PAYMENT PENALTY

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

LEAK ADJUSTMENT

\$0.39 per 1,000 gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the City or a maximum of \$25.00 will be imposed upon any customer whose check for payment of charges is returned by their bank due to insufficient funds.

DELINQUENT ACCOUNTS PAYABLE SURCHARGE

\$1.54 per customer per month from the effective date of this tariff will be charged in order to eliminate overdue accounts payable identified in the order in Case No. 09-0171-W-MA until the level of such identified payables has been reduced to current liabilities.

WATER SCHEDULE NO. 2

APPLICABILITY

Applicable within the entire territory served.

AVAILABILITY OF SERVICE

Available for sale for resale water service.

RATE

The rate under this schedule is \$2.47 per thousand gallons per month. The tap fee, connection and reconnection charges, dishonored check charge, and delayed payment penalty set forth in Schedule No. 1 are applicable to Schedule No. 2.

WATER SCHEDULE NO. 3

APPLICABILITY

Applicable within the entire territory served.

AVAILABILITY OF SERVICE

Available for public fire protection.

RATE

The monthly rate for public fire protection will be Seventeen Dollars and Five Cents (\$17.05) per hydrant or connection. The tap fee, connection and reconnection charges, dishonored check charge, and delayed payment penalty set forth in Schedule No. 1 are applicable to Schedule No. 3.

WATER SCHEDULE NO. 4

APPLICABILITY

Applicable within the entire territory where private fire service is provided.

AVAILABILITY OF SERVICE

Available for private fire protection service.

MINIMUM RATES

No bill will be rendered for less than the following amounts, according to the size of line installed:

HYDRANT FEE

In addition to the minimum rates established above, the monthly rate per hydrant connection will be Seventeen Dollars and Five Cents (\$17.05).

The tap fee, connection and reconnection charges, dishonored check charge, and delayed payment penalty set forth in Schedule No. 1 are applicable to Schedule No. 4.

Size of Line	Rate
2-inch or less	\$ 39.65 per month
3-inch	\$ 59.48 per month
4-inch	\$ 79.30 per month
6-inch	\$ 99.14 per month
8-inch	\$148.71 per month

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
AT CHARLESTON**

CASE NO. 09-0171-W-MA

CITY OF FAIRMONT, a municipal corporation.

Investigation and suspension of increase in water and sewer rates and charges as a result of a petition filed in accordance with *West Virginia Code* §24-2-4b.

**APPROVED POST-PROJECT RATES**

**WATER SCHEDULE NO. 1**

**APPLICABILITY**

Applicable within the entire territory served.

**AVAILABILITY OF SERVICE**

Available for general domestic, commercial and industrial water service.

**RATE (Customers with metered water supply)**

First	25,000 gallons used per month	\$8.87 per 1,000 gallons
Next	25,000 gallons used per month	\$4.68 per 1,000 gallons
Next	25,000 gallons used per month	\$3.82 per 1,000 gallons
All Over	75,000 gallons used per month	\$3.77 per 1,000 gallons

**MINIMUM CHARGE**

No bill will be rendered for less than the following amounts based on meter size:

5/8-inch or less	\$ 22.18 per month
3/4-inch	\$ 33.27 per month
1-inch	\$ 55.45 per month
1-1/4-inch	\$ 80.95 per month
1-1/2-inch	\$ 110.89 per month
2-inch	\$ 177.43 per month
3-inch	\$ 354.86 per month
4-inch	\$ 554.46 per month
6-inch	\$1,108.93 per month
8-inch	\$1,774.29 per month

TAP FEE

The following charge is to be made whenever the utility installs a new tap to serve an applicant.

A tap fee of \$300.00 will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

RECONNECTION CHARGE \$25.00

To be charged whenever the supply of water is turned off for violations of rules, non-payment of bills or fraudulent use of water.

DELAYED PAYMENT PENALTY

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

LEAK ADJUSTMENT

\$0.42 per 1,000 gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the City or a maximum of \$25.00 will be imposed upon any customer whose check for payment of charges is returned by their bank due to insufficient funds.

DELINQUENT ACCOUNTS PAYABLE SURCHARGE

\$1.54 per customer per month from the effective date of this tariff will be charged in order to eliminate overdue accounts payable identified in the order in Case No. 09-0171-W-MA until the level of such identified payables has been reduced to current liabilities.

WATER SCHEDULE NO. 2

APPLICABILITY

Applicable within the entire territory served.

AVAILABILITY OF SERVICE

Available for sale for resale water service.

RATE

The rate under this schedule is \$2.70 per thousand gallons per month. The tap fee, connection and reconnection charges, dishonored check charge, and delayed payment penalty set forth in Schedule No. 1 are applicable to Schedule No. 2.

WATER SCHEDULE NO. 3

APPLICABILITY

Applicable within the entire territory served.

AVAILABILITY OF SERVICE

Available for public fire protection.

RATE

The monthly rate for public fire protection will be Seventeen Dollars and Five Cents (\$17.05) per hydrant or connection. The tap fee, connection and reconnection charges, dishonored check charge, and delayed payment penalty set forth in Schedule No. 1 are applicable to Schedule No. 3.

WATER SCHEDULE NO. 4

APPLICABILITY

Applicable within the entire territory where private fire service is provided.

AVAILABILITY OF SERVICE

Available for private fire protection service.

MINIMUM RATES

No bill will be rendered for less than the following amounts, according to the size of line installed:

HYDRANT FEE

In addition to the minimum rates established above, the monthly rate per hydrant connection will be Seventeen Dollars and Five Cents (\$17.05).

The tap fee, connection and reconnection charges, dishonored check charge, and delayed payment penalty set forth in Schedule No. 1 are applicable to Schedule No. 4.

Size of Line	Rate
2-inch or less	\$ 39.65 per month
3-inch	\$ 59.48 per month
4-inch	\$ 79.30 per month
6-inch	\$ 99.14 per month
8-inch	\$148.71 per month

copy room 4

09-0171-W-MA

P.S.C. W. Va. No. 19  
Canceling P.S.C. W. Va. No. 18

**CITY OF FAIRMONT**, a municipal corporation

OF

FAIRMONT, WEST VIRGINIA

RATES, RULES AND REGULATIONS FOR FURNISHING

**WATER**

at Fairmont and vicinity, Marion County, West Virginia

Filed with **THE PUBLIC SERVICE COMMISSION**

of

**WEST VIRGINIA**

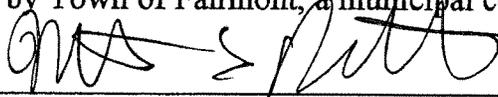
Issued November 5, 2009      Effective for service rendered on and after October 22, 2009  
or as otherwise provided herein

Issued by authority of an order of the  
Public Service Commission of West Virginia  
in Case No. 09-0171-W-MA final October 22, 2009  
and modified on November 3, 2009 or as otherwise  
provided herein

RECEIVED  
09 NOV 16 AM 10:23  
W VA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

Issued by Town of Fairmont, a municipal corporation

By



MAYOR

Title

RULES AND REGULATIONS

- I. Rules and Regulations for the Government of Water Utilities, adopted by the Public Service Commission of West Virginia, and now in effect, and all amendments thereto and modifications thereof hereafter made by said Commission.

WATER SCHEDULE NO. I

(C) APPLICABILITY

Applicable within the entire territory served.

(C) AVAILABILITY OF SERVICE

Available for general domestic, commercial and industrial water service.

(C,I) RATE (Customers with metered water supply)

First	25,000 gallons used per month	\$8.63 per 1,000 gallons
Next	25,000 gallons used per month	\$4.44 per 1,000 gallons
Next	25,000 gallons used per month	\$3.63 per 1,000 gallons
All Over	75,000 gallons used per month	\$3.54 per 1,000 gallons

(C,I) MINIMUM CHARGE

No bill shall be rendered for less than the following amounts based on meter size:

5/8	inch	\$ 21.56 per month
3/4	inch	\$ 32.35 per month
1	inch	\$ 53.91 per month
1 - 1/4	inch	\$ 78.71 per month
1 - 1/2	inch	\$ 107.82 per month
2	inch	\$ 172.51 per month
3	inch	\$ 345.02 per month
4	inch	\$ 539.10 per month
6	inch	\$1,078.20 per month
8	inch	\$1,725.12 per month

(O) SURCHARGE

(C) TAP FEE

The following charge is to be made whenever the utility installs a new tap to serve an applicant.

A tap fee of \$300.00 will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

(C) Indicates change in text

(I) Indicates increase

WATER SCHEDULE NO. I (Continued)

RECONNECTION SERVICE CHARGE

(\$25.00)

To be charged whenever the supply of water is turned off for violations of rules, non-payment of bills or fraudulent use of water.

DELAYED PAYMENT PENALTY

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

(D) LEAK ADJUSTMENT

\$0.39 per 1,000 gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the City or a maximum of \$25.00 will be imposed upon any customer whose check for payment of charges is returned by their bank due to insufficient funds.

(N) DELINQUENT ACCOUNTS PAYABLE SURCHARGE

\$1.54 per customer per month from the effective date of this tariff will be charged in order to eliminate overdue accounts payable identified in the order in Case No. 09-0171-W-MA until the level of such identified payables has been reduced to current liabilities.

(D) Indicates increase

(N) Indicates new

WATER SCHEDULE NO. 2

(C) APPLICABILITY

Applicable within the entire territory served.

(C) AVAILABILITY OF SERVICE

Available for sale for resale water service.

(I) RATE

The rate under this schedule is \$2.47 per thousand gallons per month. The tap fee, connection and reconnection charges, dishonored check charge, and delayed payment penalty set forth in Schedule No. 1 are applicable to Schedule No. 2.

WATER SCHEDULE NO. 3

(C) APPLICABILITY

Applicable within the entire territory served.

AVAILABILITY OF SERVICE

Available for public fire protection.

RATE

The monthly rate for public fire protection will be Seventeen Dollars and Five Cents (\$17.05) per hydrant or connection. The tap fee, connection and reconnection charges, dishonored check charge, and delayed payment penalty set forth in Schedule No. 1 are applicable to Schedule No. 3.

(C) Indicates change in text

(I) Indicates increase

WATER SCHEDULE NO. 4

(C) APPLICABILITY

Applicable within the entire territory where private fire service is provided.

(C) AVAILABILITY OF SERVICE

Available for private fire protection service.

(C) MINIMUM RATES

No bill will be rendered for less than the following amounts, according to size of line installed:

Size of Line (inches)	Rate
2-inch or less	\$ 39.65 per month
3-inch	\$ 59.48 per month
4-inch	\$ 79.30 per month
6-inch	\$ 99.14 per month
8-inch	\$148.71 per month

HYDRANT FEE

In addition to the minimum rates established above, the monthly rate per hydrant connection will be Seventeen Dollars and Five Cents (\$17.05).

The tap fee, connection and reconnection charges, dishonored check charge, and delayed payment penalty set forth in Schedule No. 1 are applicable to Schedule No. 4.

(C) Indicates change in text



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Writer's Contact Information

October 24, 2012

City of Fairmont  
Water Refunding Revenue Bonds, Series 2012 D

City of Fairmont  
Fairmont, West Virginia

Assured Guaranty Municipal Corp.  
New York, New York

Crews & Associates, Inc.  
Charleston, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

Piper Jaffray & Company  
Charleston, West Virginia

Ladies and Gentlemen:

We have examined a record of proceedings relating to the issuance by the City of Fairmont, West Virginia (the "Issuer") of its \$25,555,000 aggregate principal amount of Water Refunding Revenue Bonds, Series 2012 D, (the "Series 2012 D Bonds").

The Series 2012 D Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 8, Article 19 and Chapter 13, Article 2E of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Ordinance duly enacted by the Issuer on March 27, 2012, as supplemented by a Supplemental Parameters Resolution duly adopted by the Issuer on June 12, 2012 and a Second Supplemental Resolution duly adopted by the Issuer on September 12, 2012 (collectively, the "Ordinance"), and are subject to all the terms and conditions of the Ordinance. All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Ordinance when used herein.

The Series 2012 D Bonds are issued in fully registered form, are dated October 24, 2012, upon original issuance, mature on July 1 in the years and amounts and bear interest payable each January 1 and July 1, commencing January 1, 2013, as set forth in the Ordinance.

The Series 2012 D Bonds shall be subject to optional redemption on or after July 1, 2019, at par plus accrued interest thereon to the date set for redemption.

The Ordinance provides that the Series 2012 D Bonds are issued for the purpose of (i) currently refunding the Issuer's Waterworks Refunding Revenue Bonds, Series 1997 (the "Series 1997 Bonds"); (ii) currently refunding the Issuer's Water Revenue Bonds, Series 1998 (the "Series 1998 Bonds"); (iii) paying a portion of the Issuer's Water Revenue Bonds, Series 1999 (the "Series 1999 Bonds to be Refunded"); (iv) funding a debt service reserve account for the Series 2012 D Bonds; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs.

City of Fairmont, et al.  
October 24, 2012

The Series 2012 D Bonds have been sold to Crews & Associates, Inc. and Piper Jaffray & Company (collectively, the "Original Purchasers"), pursuant to a Bond Purchase Agreement dated September 25, 2012, and accepted by the Issuer (the "Bond Purchase Agreement").

As to questions of fact material to our opinion, we have relied upon representations of the Issuer, the Original Purchasers and other entities contained in the Ordinance, the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Tax Certificate and in the certified proceedings and other certifications of certain officials furnished to us without undertaking to verify the same by independent investigation.

Based upon the foregoing, and assuming compliance with the covenants and representations of the Issuer and others set forth in the Ordinance, the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Tax Certificate and such certifications, we are of the opinion, under existing law, that:

1. The Issuer is a duly organized and validly existing municipal corporation under and pursuant to the laws of the State of West Virginia, with full power and authority to adopt and enact the Ordinance, enter into the Bond Purchase Agreement, the Continuing Disclosure Agreement and Tax Certificate, perform its obligations under the terms and provisions thereof and to issue and sell the Series 2012 D Bonds, all under the provisions of the Act and other applicable provisions of law.

2. The Issuer, through its governing body, has legally and effectively adopted and enacted the Ordinance, has authorized, executed and delivered the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Tax Certificate, has authorized the distribution of the Official Statement in connection with the marketing and sale of the Series 2012 D Bonds, and has issued and delivered the Series 2012 D Bonds to the Original Purchasers pursuant to the Bond Purchase Agreement. The Ordinance is in full force and effect as of the date hereof.

3. Assuming due authorization, execution and delivery by the other parties thereto the Bond Purchase Agreement, the Continuing Disclosure Agreement and the Tax Certificate constitute valid, legal, binding and enforceable instruments of the Issuer in accordance with their respective terms.

4. The Series 2012 D Bonds have been duly authorized, executed and delivered by the Issuer and, assuming proper authentication, constitute valid and legally enforceable limited obligations of the Issuer, payable from, and secured by a lien on, the Gross Revenues of the System, on a parity with the Issuer's outstanding: (1) unrefunded portion of the Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000; (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000; (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618; (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618; (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000; and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (collectively, the "Prior Bonds"). The Series 2012 D Bonds are enforceable in accordance with their terms and the terms of the Ordinance, and are entitled to the benefits of the Ordinance and the Act.

5. The Series 1997 Bonds have been paid within the meaning and with the effect expressed in the ordinance, as supplemented, pursuant to which they were issued, and the covenants, agreements and other obligations of the Issuer to the holders and owners of the Series 1997 Bonds have been satisfied and discharged.

The Series 1998 Bonds have been paid within the meaning and with the effect expressed in the ordinance, as supplemented, pursuant to which they were issued, and the covenants, agreements and other obligations of the Issuer to the holders and owners of the Series 1998 Bonds have been satisfied and discharged.

The Series 1999 Bonds to be Refunded have been paid within the meaning and with the effect expressed in the ordinance, as supplemented, pursuant to which they were issued, and the covenants, agreements and other obligations of the Issuer to the holders and owners of the Series 1999 Bonds to be Refunded have been satisfied and discharged.

6. Under existing laws, regulations, published rulings and judicial decisions of the United States of America, as presently written and applied, the interest on the Series 2012 D Bonds (including any original issue discount properly allocable to owners of the Series 2012 D Bonds) is excludable from gross income of the holders thereof for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed upon individuals and corporations. It should be noted, however, that for the purpose of computing the alternative minimum tax on corporations (as defined for federal income tax purposes), such interest is taken into account in determining adjusted current earnings. Ownership of tax-exempt obligations, including the Series 2012 D Bonds, may result in collateral federal income tax consequences to certain taxpayers, including without limitation, financial institutions, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits, and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry such obligations. We offer no opinion as to such collateral tax consequences. The opinions set forth above are subject to the condition that the Issuer comply, on a continuing basis, with all requirements of the Internal Revenue Code of 1986, as amended, and regulations thereunder (collectively, the "Code") that must be satisfied subsequent to issuance of the Series 2012 D Bonds for interest thereon to be or continue to be excludable from gross income for federal income tax purposes and with all certifications, covenants and representations which may affect the excludability from gross income of the interest on the Series 2012 D Bonds set forth in the Ordinance, the Tax Certificate and the certifications of the Issuer and others. Failure to comply with such Code provisions or such certifications, covenants and representations could cause the interest on the Series 2012 D Bonds to be includable in gross income retroactive to the date of issuance of the Series 2012 D Bonds. We express no other opinion as to the federal tax consequences of purchasing, holding or disposing of the Series 2012 D Bonds. Prospective purchasers of the Series 2012 D Bonds should consult their own tax advisors as to such consequences.

7. Under the Act, the Series 2012 D Bonds and the interest thereon are exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

8. The Series 2012 D Bonds are exempted securities within the meaning of Section 3(a)(2) of the Securities Act of 1933, as amended, and the West Virginia Uniform Securities Act, as amended, and it is not necessary, in connection with the public offering and sale of the Series 2012 D Bonds, to register any securities under said Securities Acts.

City of Fairmont, et al.  
October 24, 2012

It is to be understood that the rights of the holders of the Series 2012 D Bonds and the enforceability of the Series 2012 D Bonds, the Ordinance, the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Tax Certificate, and the liens, pledges, rights or remedies with respect thereto, are subject to and may be limited by any applicable bankruptcy, reorganization, insolvency, moratorium or other similar laws heretofore or hereafter enacted affecting creditors' rights or remedies generally and that their enforcement may also be subject to the application of public policy, general principles of equity and the exercise of judicial discretion in appropriate cases.

We do not express any opinion as to the sufficiency or accuracy of the material, information or financial statements which are set forth in the Official Statement prepared and used in connection with the offering and sale of the Series 2012 D Bonds.

We have examined the executed and authenticated Series 2012 D Bonds of said issue, and in our opinion, said Series 2012 D Bonds are in proper form and have been duly executed and authenticated.

Very truly yours,



STEPTOE & JOHNSON PLLC

October 24, 2012

City of Fairmont  
Water Refunding Revenue Bonds, Series 2012 D

City of Fairmont  
Fairmont, West Virginia

Crews & Associates, Inc.  
Charleston, West Virginia

Ladies and Gentlemen:

We have served as bond counsel in connection with the issuance and sale by the City of Fairmont (the "City" or "Issuer") of its \$25,555,000 aggregate principal amount of Water Refunding Revenue Bonds, Series 2012 D (the "Series 2012 D Bonds"). In our capacity as bond counsel, we are delivering an opinion of even date herewith concerning the legality of the Series 2012 D Bonds and the exclusion of interest on the Series 2012 D Bonds from gross income for federal income tax purposes (the "Bond Opinions"). We have examined the documents and instruments as described in the Bond Opinions, the Official Statement and such other matters as we have deemed necessary or appropriate to render this opinion. Words and terms used in this opinion shall have the meanings assigned to them in the Bond Purchase Agreement (the "Bond Purchase Agreement") dated September 25, 2012, between the City and Crews & Associates, Inc. and Piper Jaffray & Co. (collectively, the "Underwriters").

Based upon the foregoing, we are of opinion that:

- (1) The Bond Purchase Agreement has been authorized, executed and delivered by the City and, assuming due authorization, execution and delivery by the other parties thereto, is a legal, valid, binding and enforceable obligation of the City (except to the extent that enforceability may be limited by bankruptcy, insolvency or other laws or equitable principles affecting creditors' right generally).
- (2) The City, under the Act, has full power and authority to enact the Ordinance, enter into the Bond Purchase Agreement and perform its obligations thereunder.
- (3) The Official Statement has been duly approved, signed and delivered by the City, and the City has authorized the distribution of the Official Statement and the use thereof by the Underwriters in connection with the offering of the Series 2012 D Bonds.
- (4) The statements and information contained in the Official Statement under the captions or subcaptions (i) "Tax Matters" are true and accurate in all material respects and presents a fair summary and description of the matters summarized and described under such caption, and (ii) the statements and information contained in the Official Statement under the captions or subcaptions, "Security for the Series 2012 D Bonds," "The Series 2012 D Bonds" (except for

the statements referred to therein under “Appendix G- Book-Entry Only System” with respect to the Depository Trust Company), “Financing Plan,” “Appendix D- Form of Bond Counsel Opinion,” “Appendix F- Ordinance, Supplemental Parameters Resolution and Second Supplemental Resolution,” and “Investment Considerations” except for financial or statistical data therein as to which no opinion is hereby expressed, do not contain any untrue statement of a material fact or omit to state a material fact necessary to make such statements, in light of the circumstances under which they were made, not misleading in any material respect and are accurate and present a fair summary of the matters referred to therein.

- (5) The Series 2012 D Bonds are exempt from registration pursuant to the Securities Act of 1933, as amended, and the Ordinance is exempt from qualification as a trust indenture pursuant to the Trust Indenture Act of 1939, as amended.

Very truly yours,



STEPHENS & JOHNSON PLLC



# CITY OF FAIRMONT

CITY/COUNTY COMPLEX  
P.O. Box 1428  
200 Jackson Street  
Fairmont, West Virginia 26555-1428  
(304) 366-6211  
(304) 366-0228 FAX  
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October 24, 2012

## City of Fairmont Water Refunding Revenue Bonds, Series 2012 D

City of Fairmont  
Fairmont, West Virginia

Assured Guaranty Municipal Corp.  
New York, New York

Crews & Associates, Inc.  
Charleston, West Virginia

Ladies and Gentlemen:

I have acted as counsel for the City of Fairmont, West Virginia (the "City") in connection with the sale of the above-referenced Bonds (the "Series 2012 D Bonds"), which are being delivered and sold pursuant to a Bond Purchase Agreement dated September 25, 2012 (the "Bond Purchase Agreement"), between Crews & Associates, Inc. and Piper Jaffray & Co. (collectively, the "Underwriters") and the City. Any capitalized term used herein and not defined herein shall have the meaning assigned to it in the Bond Purchase Agreement.

In this connection, I have reviewed and examined certain proceedings and documents with respect to the Series 2012 D Bonds, any such records, certificates and other documents as I have considered necessary or appropriate for the purposes of this opinion, the Constitution and the laws of the State of West Virginia, including Chapter 8, Article 19 and Chapter 13, Article 2 of the Code of West Virginia, 1931, as amended (the "Act"), the Ordinance of the City relating to the Series 2012 D Bonds enacted on March 27, 2012, as supplemented by a Supplemental Parameters Resolution adopted by the Council of the City on June 12, 2012, and Second Supplemental Resolution adopted by the Council of the City on September 12, 2012 (collectively, the "Ordinance"), the Bond Purchase Agreement and the Official Statement dated September 25, 2012, with respect to the issuance and offering of the Series 2012 D Bonds (the "Official Statement"), and certifications of the City. Based on such review and such other considerations of law and fact as I believe to be relevant, I am of the opinion that:

1. The City is a municipal corporation and political subdivision duly organized and existing under the laws and Constitution of the State of West Virginia. The City is authorized by the laws of the State of West Virginia, as provided by the Act, to enter into and perform its obligations under the Ordinance and the Bond Purchase Agreement.

2. The City has full power and authority to consummate all transactions contemplated by the Series 2012 D Bonds, the Bond Purchase Agreement and any other agreements relating thereto, to which the City is a party and the City has complied with all requirements of the Act that must be satisfied in connection with the issuance of the Series 2012 D Bonds.

3. To the best of my knowledge following due inquiry, there is no litigation pending or threatened against the City, in any court, which in any way affects the existence of the City or the titles of its officers to their respective offices, or seeking to restrain or to enjoin the issuance or delivery of the Bonds, or the collection of revenues and assets of the City pledged or to be pledged to pay the principal of and interest on the Series 2012 D Bonds, or the pledge thereof, or in any way contesting or affecting the validity or enforceability of the Series 2012 D Bonds, the Ordinance, the Bond Purchase Agreement, or contesting the powers of the State of West Virginia with respect to the Series 2012 D Bonds, the Ordinance or the Bond Purchase Agreement or any transaction described in or contemplated by the Official Statement.

4. The Official Statement, as amended or supplemented to the date hereof, contains no untrue statement regarding the City of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein regarding the City, in light of the circumstances under which they were made, not misleading.

5. The statements contained in the Official Statement under the captions "The System", "Absence of Material Litigation", "Financial Statements", "Financing Plan", "Investment Considerations", and "Appendix B- The System", insofar as such statements contained under such captions purport to summarize certain matters set forth therein and certain provisions of the Ordinance, except for financial or statistical data therein or matters relating to the book entry system maintained by the Depository Trust Company as to which no opinion is hereby expressed, are accurate and present a fair summary of the matters referred to therein.

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

Very truly yours, ,

  
KEVIN SANSALONE, ESQUIRE



October 24, 2012

Crews & Associates, Inc.  
521 President Clinton Ave., Suite 800  
Little Rock, AR 72201

Re: \$25,555,000 City of Fairmont (West Virginia) Water  
Refunding Revenue Bonds, Series 2012 D

Ladies and Gentlemen:

We have acted as counsel to you (the “Underwriter”) in connection with the issuance and sale by the City of Fairmont (the “Issuer”) of its Water Refunding Revenue Bonds, Series 2012 D (the “Series 2012 Bonds”) in the aggregate principal amount of \$25,555,000. In connection with rendering this opinion, we have examined the Official Statement dated September 25, 2012, the Bond Purchase Agreement dated September 25, 2012 (the “Purchase Agreement”), the Continuing Disclosure Agreement between the Issuer and WesBanco Bank, Inc., as Disclosure Agent, dated as of the Closing Date (the “Undertaking”), and Rule 15c2-12 of the Securities Exchange Commission promulgated under the Securities Exchange Act of 1934, as amended (the “Rule”). Capitalized terms used but not defined herein shall have the meanings set forth in the Purchase Agreement.

Based upon the foregoing, we are of the opinion that:

(a) The Purchase Agreement has been duly authorized, executed and delivered on behalf of the Underwriter and (assuming due authorization, execution and delivery by the other parties and that it is a binding agreement in accordance with its terms) constitutes a binding agreement in accordance with its terms of the Underwriter; and

(b) The Undertaking complies as to form in all material respects with the requirements of paragraph (b)(5) of the Rule.

Based upon the information made available to us in the course of our participation in the preparation of the Official Statement and without having determined independently the accuracy or completeness of the statements contained in the Official Statement, but on the basis of our conferences with representatives of the Issuer, counsel for the Issuer, Bond Counsel and the Underwriter, and our examination of certain documents referred to in the Official Statement, nothing has come to our attention that would lead us to believe that the Official Statement (excluding therefrom the financial

{C2428928.1}

Crews & Associates, Inc.  
October 24, 2012  
Page 2

and statistical data included in the Official Statement, as to which we express no opinion) contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

This opinion is solely for the benefit of, and may be relied upon only by, the Underwriter; and it is not to be used, circulated, quoted or otherwise referred to for any other purpose, except that a copy hereof may be included in its transcript of closing documents pertaining to the delivery of the Series 2012 Bonds.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jack Kelly", followed by three horizontal lines.

City of Fairmont  
Water Refunding Revenue Bonds, Series 2012 D

GENERAL CERTIFICATE OF THE CITY OF FAIRMONT ON:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS
4. RATES
5. PUBLICATION OF NOTICES
6. AWARD OF BONDS; SIGNATURES
7. DELIVERY AND PAYMENT
8. CERTIFICATION OF DOCUMENTS
9. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
10. MEETINGS, ETC.
11. INCUMBENCY AND OFFICIAL NAME
12. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE
13. DEFEASANCE OF SERIES 1997 BONDS AND SERIES 1998 BONDS
14. SPECIMEN BONDS
15. NO FEDERAL GUARANTY
16. IRS INFORMATION RETURN
17. OFFICIAL STATEMENT CERTIFICATION
18. CERTIFICATIONS REGARDING BOND PURCHASE AGREEMENT
19. DESIGNATION OF REGISTRAR, PAYING AGENT AND DEPOSITORY BANK
20. CONTINUING DISCLOSURE
21. COUNTERPARTS

We, the undersigned MAYOR and CLERK of the City of Fairmont, West Virginia (the “Issuer”), hereby certify this 24th day of October, 2012, in connection with the City of Fairmont Water Refunding Revenue Bonds, Series 2012 D, issued in the aggregate principal amount of \$25,555,000 (the “Series 2012 D Bonds” or “Bonds”), as follows:

1. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined herein shall have the same meanings as set forth in the Bond Ordinance of the Issuer enacted March 27, 2012, as supplemented by a Supplemental Parameters Resolution of the Issuer adopted June 12, 2012, and a Second Supplemental Resolution of the Issuer adopted September 12, 2012 (collectively, the “Ordinance”).

2. NO LITIGATION: Except as otherwise disclosed in the Official Statement, no controversy or litigation of any nature is now pending or, to the knowledge of any of the undersigned, threatened, restraining, enjoining or affecting in any manner the issuance, sale and delivery of the Series 2012 D Bonds, the refunding of the Series 1997 Bonds, the Series 1998 Bonds and a portion of the Series 1999 Bonds, the collection or use of the revenues of the System, or the respective pledge thereof to the

payment of the principal and interest on the Series 2012 D Bonds, nor in any manner questioning the proceedings and authority by which the Issuer authorized the issuance and sale of the Series 2012 D Bonds, nor in any manner affecting the validity or enforceability of the Series 2012 D Bonds, the Ordinance or the Bond Purchase Agreement, dated September 25, 2012 (the "Bond Purchase Agreement"), by and between the Issuer and Crews & Associates, Inc., and Piper Jaffray and Co. (collectively, the "Underwriters") or any agreement or instrument relating thereto, used or contemplated by the Bond Purchase Agreement or any provisions made or authorized for the payment of the Series 2012 D Bonds; nor in any manner questioning the valid existence of the Issuer or the authority or titles of the Mayor, Clerk and the members of the Council and other officials of the Issuer to their respective offices; nor in any manner questioning any proceeding, procedure, action or thing followed, taken or done in connection with the issuance, sale and delivery of the Series 2012 D Bonds or the refunding and payment of the Series 1997 Bonds, the Series 1998 Bonds and a portion of the Series 1999 Bonds, which is not set forth in the Official Statement relating to the Series 2012 D Bonds.

3. GOVERNMENTAL APPROVALS: All applicable approvals and certificates required by law for operation of the System, including, without limitation, the imposition of rates and charges, and the issuance of the Series 2012 D Bonds, have been obtained as of the date hereof and remain in full force and effect.

4. RATES: The Issuer has duly enacted a water rate ordinance on February 10, 2009, as amended by Recommended Decision dated October 2, 2009, which became Final Order on October 22, 2009, and Commission Order dated November 3, 2009, in Case No. 09-0171-W-MA setting forth the respective rates and charges for the services of the System. The time for appeal of such Order has expired prior to the date hereof and is currently in effect.

5. PUBLICATION OF NOTICES: Notice of the public hearing upon the Ordinance was duly published as required by law. The Council of the Issuer approved the Ordinance, and the Ordinance became fully effective April 26, 2012 and remains in full force and effect on the date hereof. The Ordinance was supplemented by a Supplemental Parameters Resolution adopted by the Issuer on June 12, 2012.

6. AWARD OF BONDS; SIGNATURES: The Series 2012 D Bonds were awarded to the Underwriters upon a negotiated basis at the price of \$25,337,983.90 (par amount of \$25,555,000 plus original issue premium in the amount of \$242,973.90, and less Underwriter's discount of \$459,990). As of the date hereof, the Series 2012 D Bonds were duly signed by the manual signature of the Mayor, and the official seal of the Issuer, which seal is impressed upon this Certificate, was impressed or imprinted thereon and attested by the manual signature of the Clerk.

7. DELIVERY AND PAYMENT: On the date hereof the undersigned Mayor did deliver to the Underwriters the entire issue of the Series 2012 D Bonds, numbered DR-1 to DR-16.

At the time of delivery of the Series 2012 D Bonds, there was paid to the Issuer (or others, on behalf of the Issuer) the agreed price therefor as follows:

Par Amount of Series 2012 D Bonds	\$25,555,000.00
Plus: Original Issue Premium	\$242,973.90
Less: Underwriters' Discount	<u>(\$459,990.00)</u>
<b>Total</b>	<b><u>\$25,337,983.90</u></b>

8. CERTIFICATION OF DOCUMENTS: There are delivered herewith true and correct copies of the following documents, all which remain in full force and effect and have not been amended, modified, supplemented or repealed unless changed by the terms of other documents listed below:

Bond Ordinance

Supplemental Parameters Resolution

Second Supplemental Resolution

Tax and Non-Arbitrage Certificate

Certificate of Determinations

Specimen Series 2012 D Bond

City Charter

Rules of Procedure

Oaths of Office of Councilmembers

Minutes on Enactment of Bond Ordinance, Supplemental Parameters Resolution and Second Supplemental Resolution

Affidavit of Publication of Notice of Public Hearing

Water Rate Ordinance

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

Minutes on Adoption and Enactment of Water Rate Ordinance

Preliminary Official Statement

Official Statement

Bond Purchase Agreement

Continuing Disclosure Agreement

Rule 15c2-12 Certificate

DTC Blanket Letter of Representations

IRS Information Return (Form 8038-G)

Municipal Bond Commission New Issue Report

Prior Bonds Ordinances and Supplemental Resolutions

9. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS: Except as otherwise disclosed in the Official Statement, there has been no adverse change in the financial condition of the Issuer or the System since September 25, 2012. The Issuer has heretofore financed and refinanced the acquisition and construction of the System and certain additions, betterments and improvements thereto by the issuance of its bonds, of which there are presently outstanding its: (1) unrefunded portion of the Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000; (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000; (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618; (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618; (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000; and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (collectively, the “Prior Bonds”).

The Series 2012 D Bonds shall be issued on a parity with the Prior Bonds, all of which shall have a first lien position with respect to pledge and source of and security for payment and in all other respects. The Issuer has met the coverage requirements for issuance of parity bonds of the Prior Bonds and the Prior Ordinances and has substantially complied with all other parity requirements, except to the extent that noncompliance with any such other parity requirements is not of a material nature. The Issuer has obtained (i) the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met; and (ii) the written consent of the Holders of the Series 2008 A Bonds, Series 2010 A Bonds, Series 2010 B Bonds, Series 2010 C Bonds and Series 2010 D Bonds to the issuance of the Series 2012 D Bonds on a parity with the Prior Bonds. The Series 1999 Bonds do not require consent. Other than the Prior Bonds, there are no outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System. The Issuer is in compliance with the terms and provisions of the Prior Ordinances and no default exists with respect to the Prior Bonds.

10. MEETINGS, ETC.: All actions, ordinances, resolutions, orders and agreements taken by and entered into by or on behalf of the Issuer in any way connected with the issuance of the Series 2012 D Bonds were authorized or adopted at meetings of the Council of the Issuer duly and regularly called and held pursuant to the City Charter and City Council Rules of Procedure, and all applicable statutes, including Chapter 6, Article 9A of the Official West Virginia Code of 1931, as amended, and a quorum of duly elected, qualified and acting members of the council was present and acting at all times during all such meetings.

11. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Issuer is the “City of Fairmont” and it is a municipal corporation of the State of West Virginia, in Marion County of said state. The governing body of the Issuer is its Council, consisting of a Mayor and 9 council members. The names and terms of office of the members of Council, the Mayor and the Clerk are as follows:

<u>Name</u>		<u>Commencement Date</u>	<u>Termination Date</u>
William Burdick	Mayor	11/2011	11/2013
Robert Gribben	Councilmember	11/2011	11/2014
Robert Sapp	Councilmember	11/2009	11/2012
Deborah Seifrit	Councilmember	11/2011	11/2014
William Burdick	Councilmember	11/2009	11/2012
Chuck Warner	Councilmember	11/2011	11/2014
Daniel Weber	Councilmember	11/2009	11/2012
Robert Garcia	Councilmember	11/2009	11/2012
Robin Smith	Councilmember	11/2011	11/2014
Ron Straight	Councilmember	11/2011	11/2014

The duly appointed and acting Counsel to the Issuer is Kevin Sansalone. The duly appointed and acting Clerk is Janet Keller.

12. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE: Upon adoption of the Ordinance, an abstract thereof, determined by the Council of the Issuer 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 *Times West Virginia*, a newspaper of general circulation in the City of Fairmont, together with a notice to all persons concerned, stating that the Ordinance had been adopted and that the Issuer contemplated the issuance of the Series 2012 D Bonds described in such Ordinance, stating that any person interested may appear before the Council at the public hearing held at a public meeting of Council on the 27th day of March, 2012, at 7:00 p.m., in the Council Chambers of the City Hall of the City of Fairmont and present protests, and stating that a certified copy of the Ordinance was on file at the office of the Clerk of the Issuer for review by interested parties during the office hours of the Clerk. At such hearing all objections and

suggestions were heard by the Council of the Issuer and the Ordinance became finally adopted, enacted and effective as of the date of such public hearing, and remains in full force and effect.

13. DEFEASANCE OF SERIES 1997 BONDS AND SERIES 1998 BONDS: As of the date hereof, the Series 1997 Bonds and the Series 1998 Bonds have been prepaid and refunded and the liens and pledges securing the Series 1997 Bonds and the Series 1998 Bonds have been discharged and defeased.

14. SPECIMEN BONDS. Delivered concurrently herewith are true and accurate specimens of the Series 2012 D Bonds.

15. NO FEDERAL GUARANTY: The Series 2012 D Bonds are not, in whole or part, and will not be, directly or indirectly, federally guaranteed within the meaning of Section 149(b) of the Code.

16. IRS INFORMATION RETURN: On the date hereof, the undersigned Mayor did officially sign a properly completed IRS Form 8038-G and will cause such executed Form 8038-G to be filed in a timely manner with the Internal Revenue Service Center, Ogden, Utah, with respect to the Series 2012 D Bonds.

17. OFFICIAL STATEMENT CERTIFICATION: At and since the date of the Official Statement nothing has come to the attention of any signer hereof which would lead any such signer to believe that the Official Statement contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

18. CERTIFICATIONS REGARDING BOND PURCHASE AGREEMENT: In addition to the foregoing, the undersigned Mayor hereby certify in connection with Section 6(c)(vii) of the Bond Purchase Agreement as follows: (i) the Issuer has duly performed all of its obligations to be performed at or prior to the Closing and each of its representations and warranties contained in the Bond Purchase Agreement are true as of Closing, (ii) the Issuer has authorized, by all necessary action, the execution, delivery, receipt and due performance of the Series 2012 D Bonds, the Undertaking represented by the Continuing Disclosure Agreement, the Ordinance and any and all such other agreements and documents as may be required to be executed, and delivered to the Underwriters in order to carry out, give effect to and consummate the transactions contemplated by the Bond Purchase Agreement and by the Official Statement, (iii) to the Issuer's knowledge no litigation is pending or threatened which would restrain or enjoin the collection of the Gross Revenues, the pledge of the Gross Revenues to the Series 2012 D Bonds, the issuance or sale of the Series 2012 D Bonds or in any way affecting any authority for or the validity of the Series 2012 D Bonds or the Ordinance, (iv) the execution, delivery, receipt and due performance of the Series 2012 D Bonds, the Undertaking, the Ordinance and the other agreements contemplated by the Bond Purchase Agreement and by the Official Statement under the circumstances contemplated thereby and the Issuer's compliance with the provisions thereof will not conflict with or constitute on its part a breach of or a default under any existing law, court or administrative regulation, decree or order or any agreement, indenture, mortgage, lease or other instrument to which the Issuer is subject or by which the Issuer is or may be bound and (v) the Issuer is in

compliance with all covenants in its outstanding resolutions which authorized bonds secured by the Gross Revenues of the System.

19. DESIGNATION OF REGISTRAR, PAYING AGENT AND DEPOSITORY BANK: The Issuer hereby confirms the appointment of (a) WesBanco Bank, Inc., Wheeling, West Virginia, as Registrar and Depository Bank and (b) West Virginia Municipal Bond Commission, Charleston, West Virginia, as Paying Agent.

20. CONTINUING DISCLOSURE: The City is obligated by the Continuing Disclosure Agreement and except as provided in the Official Statement is in full compliance with all of its prior written continuing disclosure undertakings entered into pursuant to the provisions of Rule 15c2-12(b)(5).

21. COUNTERPARTS: This Certificate may be executed in counterparts, and all counterparts shall be deemed to be the Certificate.

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

[SEAL]

Signature

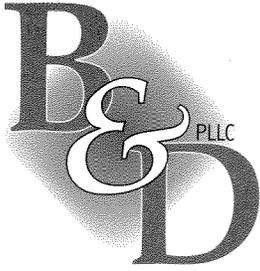
William H. Burdick

Official Title

Mayor

Janet L. Keller

Clerk



## Bennett & Dobbins PLLC

CERTIFIED PUBLIC ACCOUNTANTS

317 Cleveland Avenue  
Fairmont, WV 26554-1604  
Telephone: (304) 366-4295 Fax: (304) 366-4311

GARY K. BENNETT, MBA-CPA  
ZACHARY D. DOBBINS, CPA

October 24, 2012

City of Fairmont  
Water Refunding Revenue Bonds, Series 2012 D

City of Fairmont  
Fairmont, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

Ladies and Gentlemen:

Based upon the rates and charges set forth in the water rate ordinance of the City of Fairmont (the "Issuer"), enacted February 10, 2009, and projected operation and maintenance expenses and anticipated customer usage as furnished to us by the Issuer, it is our opinion that such rates and charges will be sufficient to provide revenues which, together with other revenues of the waterworks system (the "System") of the Issuer, will pay all repair, operation and maintenance expenses of the System and leave a balance each year equal to at least 120% of the maximum amount required in any year for debt service on the Issuer's Water Refunding Revenue Bonds, Series 2012 D, issued in the principal amount of \$25,555,000 (the "Bonds"), and all other obligations secured by or payable from the revenues of the System, on a parity with the Bonds, including the Issuer's: (1) unrefunded portion of the Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the "Series 1999 Bonds"); (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000 (the "Series 2008 A Bonds"); (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (the "Series 2010 A Bonds"); (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (the "Series 2010 B Bonds"); (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000 (the "Series 2010 C Bonds"); and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (the "Series 2010 D Bonds"), (collectively, the "Prior Bonds").

It is further our opinion that (i) the Net Revenues for the Fiscal Year preceding the year in which the Bonds are issued plus the estimated average increased annual Net Revenues to be received in each succeeding three years after the issuance of the Bonds will be at least 120% of the average annual debt service requirements on the Bonds and the Prior Bonds, and that (ii) the Net Revenues actually

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

Very truly yours,

*Bennett & Dobbins PLLC*

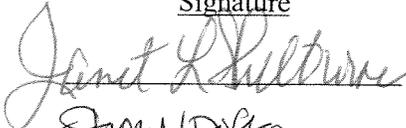
BENNETT & DOBBINS PLLC

City of Fairmont  
Water Refunding Revenue Bonds, Series 2012 D

**REGISTRAR'S CERTIFICATE**

WesBanco Bank, Inc., Wheeling, West Virginia (the "Bank"), as Registrar for the above-captioned Bonds (the "Bonds"), hereby certifies this 24th day of October, 2012, as follows, all capitalized terms used herein to have the same meanings set forth in the Ordinance of the City of Fairmont (the "Issuer") enacted March 27, 2012, as supplemented by a Supplemental Parameters Resolution adopted June 12, 2012 and a Second Supplemental Resolution adopted September 12, 2012 (collectively the "Ordinance"):

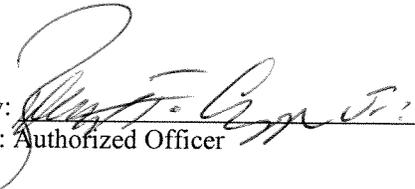
1. The Bank is a state banking corporation duly organized, validly existing, and in good standing under the laws of the State of West Virginia, may lawfully conduct business in West Virginia, and is lawfully empowered, pursuant to such laws, to accept the duties and obligations contemplated and as provided under the Ordinance and to serve in the capacity of Registrar under the Ordinance.
2. The Bank has duly authorized, by all necessary action, the authentication of the Bonds and the execution and delivery of this Certificate and the acceptance of all duties of Registrar under the Ordinance, and any and all other documents and agreements as may be required to be executed, delivered and received by the Bank in order to carry out, give effect to, and consummate the transactions contemplated thereby.
3. The person indicated in paragraph 4 below was at the time of the authentication of the Bonds, and is now, a duly appointed, qualified and acting incumbent in his or her office; and, pursuant to authorization from the Board of Directors of the Bank, attached hereto as EXHIBIT A, such person, in his or her official capacity, was and is authorized to authenticate the Bonds for and on behalf of the Bank.
4. Appearing opposite the name and title of the person indicated below is a true and correct specimen of his or her signature.

<u>Name</u>	<u>Title</u>	<u>Signature</u>
Janet L. Shelburne	Vice President	
Stacey L. Dofka	Assistant Trust Officer	

5. There have been filed with the Bank all of the documents listed in Section 3.12 of the Ordinance; the Bonds have been duly authenticated and delivered to the Original Purchaser, and proceeds of the Bonds have been deposited as required by the Ordinance.
6. Attached hereto as EXHIBIT B is a correct listing of the Bond numbers, CUSIP numbers, maturity dates, principal amounts, interest rates and yields of the Bonds.

WITNESS my signature on the day and year first written above.

WESBANCO BANK, INC.

By:   
Its: Authorized Officer

268460.00017

**WESBANCO BANK, INC.  
CERTIFICATE OF RESOLUTION**

I, LINDA M. WOODFIN, do hereby certify that I am the Assistant Secretary of WesBanco Bank, Inc., and that as such, I have access to the Minute Book of said corporation.

I do further certify that the following is a true and correct copy of a Resolution duly approved at a meeting of the Board of Directors of said corporation at a regular meeting held on the 19<sup>th</sup> day of April 2012, at which meeting a majority of the members were present and participating, and that said action has not been amended or rescinded, but is still in full force and effect:

RESOLVED, that the Board of Directors of WesBanco Bank, Inc. hereby authorizes any one of the following individuals, David B. Ellwood, Robert T. Cupp, Jr., Janet L. Shelburne, Janet W. Kendzierski or Stacey L. Dofka to accept and to execute documents on behalf of WesBanco Bank, Inc. in order to serve as Trustee, Registrar, Paying Agent and/or any other related capacity.

WITNESS my hand this 9<sup>th</sup> day of July, 2012.

  
Linda M. Woodfin  
Assistant Secretary

(Seal)

City of Fairmont  
Water Refunding Revenue Bonds, Series 2012 D

**CERTIFICATE OF UNDERWRITER**

The undersigned Gregory B. Isaacs, Senior Managing Director of CREWS & ASSOCIATES, INC. (the “Underwriter”), which is purchasing the entirety of the City of Fairmont (the “Issuer”) Water Refunding Revenue Bonds, Series 2012 D (the “Series 2012 D Bonds”) in the aggregate principal amount of \$25,555,000, dated October 24, 2012 (the “Bonds”), hereby certifies this 24th day of October, 2012, that:

1. The Underwriter and the Issuer on September 25, 2012 (the “Sale Date”) executed a Bond Purchase Agreement for the Bonds (the “Bond Purchase Agreement”). The Bond Purchase Agreement has not been modified since the execution thereof on the Sale Date. Capitalized terms used herein shall have the meanings set forth in the Bond Purchase Agreement.

2. The Underwriter certifies that the initial offering price of the Series 2012 D Bonds to the public (excluding bond houses, brokers and similar persons or organizations acting in the capacity of underwriters or wholesalers) at which a substantial amount of the Series 2012 D Bonds of that maturity (i.e., at least ten percent (10%) of such maturity) were reasonably expected to be sold as of the Sale Date is as follows for each of the maturities listed below:

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Initial Offering Price</u>	<u>Dollar Price</u>
07/01/2013	\$910,000	101.094%	\$919,955.40
07/01/2014	\$1,400,000	102.344%	\$1,432,816.00
07/01/2015	\$1,425,000	103.047%	\$1,468,419.75
07/01/2016	\$1,455,000	103.609%	\$1,507,510.95
07/01/2017	\$1,485,000	103.171%	\$1,532,089.35
07/01/2018	\$1,510,000	107.578%	\$1,624,427.80
07/01/2019	\$1,560,000	100.000%	\$1,560,000.00
07/01/2020	\$690,000	100.000%	\$690,000.00
07/01/2021	\$655,000	99.610%	\$652,445.50
07/01/2022	\$620,000	99.154%	\$614,754.80
07/01/2023	\$1,795,000	98.627%	\$1,770,354.65
07/01/2024	\$1,845,000	107.267%	\$1,979,076.15
07/01/2025	\$1,920,000	98.954%	\$1,899,916.80
07/01/2026	\$1,975,000	98.895%	\$1,953,176.25
07/01/2027	\$2,040,000	98.262%	\$2,004,544.80
07/01/2029	\$4,270,000	98.091%	\$4,188,485.70
		Total	\$25,797,973.90
		Accrued Interest	-0-
<b>TOTAL</b>			<u>\$ 25,797,973.90</u>

3. The Underwriter hereby confirms that all of the Bonds have been the subject of a bona fide initial offering to the public (excluding bond houses, brokers, or similar persons or organizations acting in the capacity of Underwriter, placement agents or wholesalers) at prices equal to those set forth in the Bond Purchase Agreement. Based upon the Underwriter's assessment of then prevailing market conditions, the purchase price of each Bond is not less than the fair market value of each Bond as of the Sale Date.

4. The Underwriter hereby confirms that the Reserve Fund for the Bonds in the amount of \$2,240,900 established under the Ordinance for the Bonds is reasonable, necessary and required for the marketability of the Bonds.

5. The Underwriter hereby confirms that the issue price of the Series 2012 D Bonds, calculated in accordance with Treas. Regs. Section 1.148-1(b) is \$25,797,973.90.

6. The Underwriter hereby confirms that the yield on the Series 2012 D Bonds, calculated in accordance with Treasury Regulations Section 1.148-4 is 2.9079872%.

7. The Underwriter hereby confirms that the weighted average maturity of the Series 2012 D Bonds, based on the issue price of the Series 2012 D Bonds from their date of issue (and not on the basis of the principal amount of the Series 2012 D Bonds from their dated date) is 9.554 years.

8. The Underwriter hereby confirms the maximum amount of principal and interest payable on the Series 2012 D Bonds in any year is \$2,240,900, and such amount is lesser than 10% of the principal amount of the Series 2012 D Bonds and 125% of the average annual debt service on the Series 2012 D Bonds payable in any year during the term of the Series 2012 D Bonds.

9. The Series 2012 D Bonds are issued as fixed-rate bonds.

10. The Underwriter has not and will not receive any compensation from the proceeds of the sale of the Series 2012 D Bonds, including investment earnings thereon, in excess of its underwriter's discount in the amount of \$459,990.

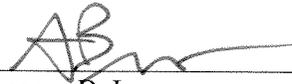
11. The terms used herein have the same meaning given them in Section 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations applicable thereunder or in the Tax and Non-Arbitrage Certificate for the Series 2012 D Bonds.

12. This certificate may be relied upon by the Issuer with respect to the Tax and Non-Arbitrage Certificate relating to the Series 2012 D Bonds and by Steptoe & Johnson PLLC in rendering its opinions with respect to the Series 2012 D Bonds. The undersigned is certifying only as to facts in existence on the date hereof.

[Remainder of Page Intentionally Blank]

Dated the day and year first written above.

CREWS & ASSOCIATES, INC.

By:   
\_\_\_\_\_  
Gregory B. Isaacs  
Its: Senior Managing Director

PRELIMINARY OFFICIAL STATEMENT DATED SEPTEMBER 20, 2012

NEW ISSUE-FULL BOOK ENTRY

Rating: (See "Ratings" herein)

In the opinion of Steptoe & Johnson PLLC, Bond Counsel, under existing laws, regulations, published rulings and judicial decisions of the United States of America, as presently written and applied, the interest on the Series 2012 D Bonds (i) is excludable from gross income of the owners thereof for Federal income tax purposes, assuming compliance with certain provisions described herein pertaining to the Internal Revenue Code of 1986, as amended, and (ii) is not a specific item of tax preference, under Section 57(a)5 of the Code, in computing the federal alternative minimum tax imposed on individuals and corporations, and (iii) under the laws of the State of West Virginia, the Series 2012 D Bonds are exempt from taxation by the State of West Virginia or any county, municipality or county commission, political subdivision or agency thereof, and the interest on the Series 2012 D Bonds is exempt from all taxation by the State of West Virginia or any county, municipality or county commission, political subdivision or agency thereof (see "TAX MATTERS" herein).

CITY OF FAIRMONT (WEST VIRGINIA)

\$26,235,000\*

WATER REFUNDING REVENUE BONDS, SERIES 2012 D

Dated: Date of Delivery

Due: July 1, as shown below

The City of Fairmont's (the "City") Water Refunding Revenue Bonds, Series 2012 D (the "Series 2012 D Bonds") are issuable only as fully registered bonds without coupons in denominations of \$5,000 and integral multiples thereof for any year of maturity. All of the Series 2012 D Bonds initially will be maintained under a book-entry system under which The Depository Trust Company, New York, New York ("DTC"), will act as securities depository. Purchases of the Series 2012 D Bonds will be in book-entry form only. Semiannual interest on the Series 2012 D Bonds is payable beginning January 1, 2013, and each January 1 and July 1 thereafter. So long as the Series 2012 D Bonds are maintained under a book-entry system, payments of the principal of, premium, if any, and interest on the Series 2012 D Bonds will be made when due by the West Virginia Municipal Bond Commission, Charleston, West Virginia, as Paying Agent, to DTC in accordance with the Ordinance and any Supplemental Resolutions, and the Paying Agent will have no obligation to make any payments to any beneficial owner of any Series 2012 D Bonds. See "THE SERIES 2012 D BONDS" herein and "APPENDIX G - BOOK-ENTRY ONLY SYSTEM."

The proceeds of the Series 2012 D Bonds shall be used, together with other available funds, to (i) finance the costs of currently refunding the City's Series 1997 Bonds, Series 1998 Bonds and a portion of the Series 1999 Bonds; (ii) fund the Series 2012 D Bonds Reserve Account; and (iii) pay costs of issuance of the Series 2012 D Bonds and related costs.

The Series 2012 D Bonds are payable from and secured by the Gross Revenues derived from the existing public waterworks system of the City and any extensions, improvements and betterments thereto on parity with the outstanding Prior Bonds, as herein defined, and from the funds on deposit in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Reserve Account therein with respect to the Series 2012 D Bonds, all as more fully described herein. The Series 2012 D Bonds do not constitute an indebtedness of the City within the meaning of any constitutional or statutory provisions or limitations, and the City shall not be obligated to pay the principal of, premium, if any, and interest on the Series 2012 D Bonds, except from the Gross Revenues and such respective funds on deposit with the Municipal Bond Commission. No Owner or Owners of the Series 2012 D Bonds issued shall ever have the right to compel the exercise of the taxing power of the City to pay the Series 2012 D Bonds or the interest thereon.

The Series 2012 D Bonds are subject to optional and mandatory sinking fund redemption prior to maturity as described herein.

The scheduled payment of principal of and interest on the Bonds when due will be guaranteed under an insurance policy to be issued concurrently with the delivery of the Bonds by ASSURED GUARANTY MUNICIPAL CORP.



This cover page contains certain information for quick reference only. It is not a summary of this issue. Investors must read the entire Official Statement to obtain information essential to making an informed investment decision.

The Series 2012 D Bonds are offered when, as and if issued and received by the Underwriters, subject to prior sale, to withdrawal or modification of the offering without notice and to the unqualified approval of legality by Steptoe & Johnson PLLC, Charleston, West Virginia, Bond Counsel. Kevin Sansalone, Esquire, Fairmont, West Virginia, as City Attorney, will pass on certain legal matters for the City. Jackson Kelly PLLC, Charleston, West Virginia, as counsel to the Underwriters, will pass upon certain legal matters for the Underwriters. It is expected that the Series 2012 D Bonds will be available for delivery through the facilities of The Depository Trust Company in New York, New York, on or about October \_\_, 2012.

Dated: \_\_\_\_\_, 2012

\*Preliminary, subject to change.



Piper Jaffray & Co.

This Preliminary Official Statement and the information contained herein are subject to completion and amendment. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of these securities, in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction. The City deems this Preliminary Official Statement to be final for the purposes of the Securities and Exchange Commission Rule 15c2-12(b)(4) except for certain information on the cover page hereof and certain pages herein which have been omitted in accordance with said Rule and which will be supplied in the final Official Statement.

\$26,235,000\*

MATURITIES, AMOUNTS, INTEREST RATES, PRICES, YIELDS AND CUSIPS\*\*

\$21,895,000 Series 2012 D Serial Bonds

<u>Maturity</u> <u>(July 1)</u>	<u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Price</u>	<u>Yield</u>	<u>CUSIP</u>	<u>Maturity</u>	<u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Price</u>	<u>Yield</u>	<u>CUSIP</u>
2013	\$1,050,000	____%	____%	____%		2021	\$680,000	____%	____%	____%	
2014	\$1,460,000	____%	____%	____%		2022	\$655,000	____%	____%	____%	
2015	\$1,475,000	____%	____%	____%		2023	\$1,830,000	____%	____%	____%	
2016	\$1,495,000	____%	____%	____%		2024	\$1,885,000	____%	____%	____%	
2017	\$1,515,000	____%	____%	____%		2025	\$1,940,000	____%	____%	____%	
2018	\$1,545,000	____%	____%	____%		2026	\$2,000,000	____%	____%	____%	
2019	\$1,580,000	____%	____%	____%		2027	\$2,065,000	____%	____%	____%	
2020	\$720,000	____%	____%	____%							

\$4,340,000 \_\_\_\_% Term Bonds, Due July 1, 2029 at \_\_\_\_%

\* Preliminary, subject to change.

\*\* CUSIP numbers have been assigned by an independent company not affiliated with the City and are included on this cover page solely for the convenience of the Owners of the Bonds only at the time of issuance of the Bonds. Neither the Underwriter nor the City makes any representation with respect to the accuracy of such CUSIP numbers as indicated in the above table or undertakes any responsibility for the selection of the CUSIP numbers or their accuracy now or at any time in the future. The CUSIP number for a specific maturity is subject to being changed after the issuance of the Bonds.

**CITY OF FAIRMONT, WEST VIRGINIA**

William Burdick, Mayor  
Robert Garcia, Deputy Mayor

**CITY COUNCIL**

Robert Gribben	Chuck Warner
Robert Sapp	Daniel Weber
Deborah Seifist	Robert Garcia
Ronald Straight	Robin Smith

**CITY MANAGER**

Jay Rogers

**CITY CLERK**

Janet L. Keller

**CITY ATTORNEY**

Kevin Sansalone, Esq.

**UTILITY MANAGER**

David Sago

**FINANCE DIRECTOR**

Eileen Layman

**BOND COUNSEL**

Steptoe & Johnson PLLC  
Charleston, West Virginia

**REGISTRAR**

WesBanco Bank, Inc.  
Wheeling, West Virginia

**PAYING AGENT**

West Virginia Municipal Bond Commission  
Charleston, West Virginia

**UNDERWRITERS**

Crews & Associates, Inc.  
Charleston, West Virginia  
Piper Jaffray & Co.  
Charleston, West Virginia

**UNDERWRITERS' COUNSEL**

Jackson Kelly PLLC  
Charleston, West Virginia

This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the Series 2012 D Bonds in any jurisdiction in which it is unlawful to make such offer, solicitation or sale. No dealer, broker, salesman or other person has been authorized by the City of Fairmont, West Virginia, or the Underwriters to give any information or to make any representations, other than as contained in this Official Statement. If given or made, such other information or representations must not be relied upon as having been authorized by any of the foregoing. The information set forth herein has been obtained from the City of Fairmont and other sources, which are believed to be reliable but is not guaranteed as to accuracy or completeness and is not to be construed as a representation by the Underwriters. The information and any expression of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall under any circumstances create any implication that there has been no change in the affairs of the City of Fairmont, West Virginia, as it relates to the System, since the date hereof. This Official Statement is submitted in connection with the sale of securities referred to herein, and may not be reproduced or used, in whole or in part, for any other purposes.

The information contained in this Official Statement has been obtained from the City and other sources believe to be reliable, but the accuracy or completeness of such information is not guaranteed by, and should not be construed as a promise by any of the foregoing. The presentation of such information is intended to show recent historic information and is not intended to indicate future or continuing trends. No representation is made that the past experience, as shown by such financial and other information, will necessarily continue or be repeated in the future. This Official Statement contains, in part, estimates and matters of opinion, whether or not expressly stated to be such, which are not intended as statements or representations of fact or certainty, and no representation is made as to the correctness of such estimates and opinions, or that they will be realized. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the City.

The Series 2012 D Bonds shall not be or constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter limitation of indebtedness but shall be payable solely from the Gross Revenues of the System, and from the funds on deposit in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Reserve Account therein with respect to the Series 2012 D Bonds and the unexpended proceeds of the Series 2012 D Bonds, with respect to the Series 2012 D Bonds all as herein provided. No Holder or Holders of the Series 2012 D Bonds issued hereunder shall ever have the right to compel the exercise of the taxing power of the City to pay the Series 2012 D Bonds or the interest thereon.

Assured Guaranty Municipal Corp. (“AGM”) makes no representation regarding the Bonds or the advisability of investing in the Bonds. In addition, AGM has not independently verified, makes no representation regarding, and does not accept any responsibility for the accuracy or completeness of this Official Statement or any information or disclosure contained herein, or omitted herefrom, other than with respect to the accuracy of the information regarding AGM supplied by AGM and presented under the heading “Bond Insurance” and “Appendix I - Specimen Municipal Bond Insurance Policy”.

#### Forward-Looking Statements

**This Official Statement contains statements relating to future results that are “forward-looking statements” as defined in the Private Securities Litigation Reform Act of**

1995. When used in this Official Statement, the words “estimated,” “forecasted,” “intended,” “expected,” “anticipated,” “projected” and similar expressions identify forward-looking statements. Such statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated in such forward-looking statements. Any forecast is subject to such uncertainties. Inevitably, some assumptions used to develop the forecasts will not be realized and unanticipated events and circumstances may occur. Therefore, there are likely to be differences between forecasts and actual results, and those differences may be material. For a discussion of certain of such risks and possible variations in results, see the information under “INVESTMENT CONSIDERATIONS.”

You should make your own decision whether this offering meets your investment objectives and risk tolerance level. No federal or state securities commission has approved, disapproved, endorsed or recommend this offering. No independent person has confirmed the accuracy or truthfulness of this disclosure, nor whether it is complete.

The Ordinance has not been qualified under the Trust Indenture Act of 1939, as amended because of available exemptions therefrom.

The following sentence has been provided by the Underwriters for inclusion in this Official Statement: The Underwriters have reviewed the information in this Official Statement in accordance with, and as a part of, their responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriters do not guarantee the accuracy or completeness of such information.

The Series 2012 D Bonds will not be registered under the Securities Act of 1933, as amended, or any state securities law, and will not be listed on any stock or other securities exchange. Neither the Securities and Exchange Commission nor any other federal, state or other governmental entity or agency has determined or confirmed the accuracy of this Official Statement.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITERS MAY OVERALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES 2012 D BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

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- APPENDIX E – Form of Continuing Disclosure Agreement
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- APPENDIX I – Specimen Municipal Bond Insurance Policy

## OFFICIAL STATEMENT

\$26,235,000\*

### CITY OF FAIRMONT (WEST VIRGINIA) WATER REFUNDING REVENUE BONDS, SERIES 2012 D

#### INTRODUCTION

This Official Statement, including the cover page and appendices, is provided for the purpose of setting forth certain information concerning the City of Fairmont, West Virginia (the "City"), the City's public waterworks system as hereinafter described in "APPENDIX B – SYSTEM" (the "System"), and the City's \$26,235,000\* in aggregate principal amount of Water Refunding Revenue Bonds, Series 2012 D (the "Series 2012 D Bonds" or the "Series 2012 Bonds"). The Series 2012 D Bonds are being issued pursuant to the Constitution and laws of the State of West Virginia (the "State"), specifically Chapter 8, Article 19 of the Code of West Virginia, 1931, as amended (the "Act"), and an Ordinance enacted by the City Council of the City on March 27, 2012 (the "Original Ordinance"), as supplemented by a Supplemental Resolution adopted by the City Council of the City on June 12, 2012, and September 12, 2012, (the "Supplemental Resolutions" and together with the Original Ordinance, the "Ordinance") and a Certificate of Determinations signed by the Mayor dated \_\_\_\_\_, 2012. See "APPENDIX F – FORM OF ORDINANCE, SUPPLEMENTAL PARAMETERS RESOLUTION AND SECOND SUPPLEMENTAL RESOLUTION."

The proceeds of the Series 2012 D Bonds will be used, together with other available funds, as follows: (i) to finance the costs of currently refunding the City's Waterworks Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of \$10,260,000 of which as of August 31, 2012 \$980,000 is outstanding (the "Series 1997 Bonds"), Water Revenue Bonds, Series 1998, dated December 15, 1998, issued in the original aggregate principal amount of \$9,600,000, of which as of August 31, 2012, \$8,270,000 is outstanding (the "Series 1998 Bonds") and \$16,945,000 of the Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 of which as of August 31, 2012, \$19,945,000 is outstanding (the "Series 1999 Bonds"); (ii) to fund the Series 2012 D Bonds Reserve Account, and (iii) to pay costs of issuance of the Series 2012 D Bonds and related costs. The City expects to call the Series 1997 Bonds, the Series 1998 Bonds and a portion of the Series 1999 Bonds for redemption on or about \_\_\_\_\_, 2012.

There are outstanding obligations (and the August 31, 2012 balances) of the City which will rank on a parity with the Series 2012 D Bonds as to liens, pledge, source of and security for payment from the Gross Revenues derived from the System (both as hereinafter defined), as follows:

- (1) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000, of which \$2,428,165 is outstanding (the "Series 2008 A Bonds");

---

\* Preliminary, subject to change.

(2) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618, for which principal amortization payments began March 1, 2012 (the "Series 2010 A Bonds");

(3) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618, which is subject to principal forgiveness (the "Series 2010 B Bonds");

(4) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000, for which principal amortization payments begin October 1, 2012 (the "Series 2010 C Bonds");

(5) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104, for which principal amortization payments began March 1, 2012 (the "Series 2010 D Bonds"); and

(6) The unrefunded portion of the Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 of which \$3,000,000 will be outstanding after issuance of the Series 2012 D Bonds (the "Unrefunded Series 1999 Bonds").

The Series 2008 A Bonds, the Series 2010 A Bonds, the Series 2010 B Bonds, the Series 2010 C Bonds, the Series 2010 D Bonds and the Unrefunded Series 1999 Bonds are hereinafter collectively called the "Prior Bonds." The ordinances which authorized the issuance of the Prior Bonds are herein collectively referred to as the "Prior Ordinances."

Additionally, in 2012, the City intends to issue bonds in an amount not to exceed \$4,780,000 to be purchased by the West Virginia Water Development Authority (the "WDA") at the direction of the West Virginia Bureau of Public Health/Drinking Water Treatment Revolving Fund (the "Water Revenue Bonds, Series 2012 A"), and in an amount not to exceed \$1,000,000 to be purchased by the WDA at the direction of the West Virginia Infrastructure and Jobs Development Council for the purpose of acquiring and constructing certain additions, betterments and improvements to the System (the "Water Revenue Bonds, Series 2012 B" and collectively with the Water Revenue Bonds, Series 2012 A, the "Series 2012 A/B Bonds"). See Appendix B. The Series 2012 A/B Bonds will be issued on a parity with the Series 2012 D Bonds and the Prior Bonds unless the parity test for the Prior Bonds and the Series 2012 D Bonds cannot be met. The City currently does not anticipate issuing Water Revenue Bonds, Series 2012 C.

The Series 2012 D Bonds are payable from and secured by the Gross Revenues derived from the System on parity with the Prior Bonds and if issued the Series 2012 A/B Bonds and from the funds on deposit in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Reserve Account therein. The Series 2012 D Bonds do not constitute an indebtedness of the City within the meaning of any constitutional or statutory provisions or limitations, and the City shall not be obligated to pay the Series 2012 D Bonds or premium, if any, or the interest thereon except as provided above. See "SECURITY FOR THE SERIES 2012 D BONDS."

Pursuant to the Ordinance, the City has covenanted and agreed to fix and establish, in a manner and form required by law, rates and charges for the use of the System and the services

rendered thereby sufficient (together with other revenues of the System) (i) to provide for all Operating Expenses of the System, and (ii) to leave a balance each year equal to at least 120% of the maximum amount required in any year to pay the principal of and interest on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds and the Series 2012 A/B Bonds (if and when issued). See “SECURITY FOR THE SERIES 2012 D BONDS – RATE COVENANT,” “BOND INSURANCE” and “APPENDIX F – FORM OF ORDINANCE, SUPPLEMENTAL PARAMETERS RESOLUTION AND SECOND SUPPLEMENTAL RESOLUTION.”

The Series 2012 D Bonds will be dated, will mature, will bear interest and will be subject to redemption prior to maturity as more fully described on the cover page and under the heading “THE SERIES 2012 D BONDS” herein. The Series 2012 D Bonds initially will be maintained under a book-entry system. So long as the Series 2012 D Bonds are maintained under a book-entry system, the manner of payment, the denominations, the transfer and exchange of ownership and the method of providing notice of redemption to the owners of the Series 2012 D Bonds shall be determined as described in “APPENDIX G – BOOK-ENTRY ONLY SYSTEM.” If the book-entry system is discontinued, principal of, interest, and premium, if any, on the Series 2012 D Bonds will be payable by the West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (the “Bond Commission” or “Paying Agent”), to the owners thereof at the addresses appearing in the books kept by WesBanco Bank, Inc., Wheeling, West Virginia, as bond registrar (the “Registrar”). For further information describing the method of payment and other matters in the event the book-entry system is discontinued, see “THE SERIES 2012 D BONDS” herein.

For a description of the exclusion of interest on the Series 2012 D Bonds from gross income for federal and state income tax purposes, see “TAX MATTERS” herein.

The City may issue additional bonds on parity with the Prior Bonds and with the Series 2012 D Bonds and with the Series 2012 A/B Bonds for the purposes of financing the costs of the design, acquisition or construction of extensions, additions, betterments or improvements to the System, of refunding all or a portion of the Series 2012 D Bonds issued pursuant to the Ordinance, or refunding the Prior Bonds, of paying claims which may exist against the revenues or facilities of the System, or of all such purposes, subject in each case to certain tests and conditions provided for by the Ordinance. See “SECURITY FOR THE SERIES 2012 D BONDS – ADDITIONAL PARITY BONDS.” See “APPENDIX F – FORM OF ORDINANCE, SUPPLEMENTAL PARAMETERS RESOLUTION AND SECOND SUPPLEMENTAL RESOLUTION.”

Brief descriptions of the Series 2012 D Bonds, the System, the City and certain provisions of the Ordinance and the Act are set forth in this Official Statement, as well as other information contained in the appendices hereto. Such descriptions and information do not purport to be comprehensive or definitive. All references herein to the Ordinance, provisions of the Act and other applicable laws of the State are qualified in their entirety by reference to each such document or law. References herein to the Series 2012 D Bonds are qualified in their entirety by reference to the form thereof included in the Ordinance and the information with respect thereto included in the aforesaid documents. Capitalized terms used and not otherwise defined in this Official Statement shall have the respective meanings given them in the Ordinance. Copies of the Ordinance and other applicable documents may be obtained from the City or, during the period of offering the Series 2012 D Bonds, from the Underwriters.

## Bond Insurance

Payments of principal of and interest on the Series 2012 D Bonds when due for payment and unpaid by reason of nonpayment under the circumstances hereinafter described, including any such payment of principal or interest made to any Registered Owner of Series 2012 D Bonds which has been recovered from such registered owner pursuant to the United States Bankruptcy Code by a trustee in bankruptcy in accordance with a final, non-appealable order of a court having competent jurisdiction, will be insured by municipal bond insurance policies to be issued by Assured Guaranty Municipal Corporation (the "Bond Insurer"). See "BOND INSURANCE" herein.

## FINANCING PLAN

The proceeds of the Series 2012 D Bonds will be used, together with other available funds, as follows: (i) to finance the costs of currently refunding the Series 1997 Bonds, the Series 1998 Bonds and \$16,945,000 of the Series 1999 Bonds; (ii) to fund the Series 2012 D Bonds Reserve Account, and (iii) to pay costs of issuance of the Series 2012 D Bonds and related costs. The City expects to call the Series 1997 Bonds, the Series 1998 Bonds and a portion of the Series 1999 Bonds for redemption on or about \_\_\_\_\_, 2012.

### Series 2012 D Bonds

#### Sources and Uses of Funds

##### Sources of Funds:

Principal Amount of Series 2012 D Bonds	\$[26,235,000.00]
Transfer from Sinking Funds	\$
Transfer from Bonds Reserve Account	\$
GIC Termination Payment	<u>\$</u>
Total Sources	\$

##### Uses of Funds:

Deposit to Current Refunding	\$
Deposit to Series 2012 D Bonds Reserve Account	\$
Original Issue Discount	\$
Costs of Issuance (1)	<u>\$</u>
Total Uses	\$

- (1) Includes legal and financing fees, bond counsel fees, underwriters' discount and underwriters' counsel fees, rounding, registrar's fee, premium of Bond Insurer and other miscellaneous expenses relating to the issuance of the Series 2012 D Bonds.

## THE SERIES 2012 D BONDS

### General

#### Series 2012 D Bonds

The Series 2012 D Bonds shall be dated the date of delivery, and shall bear interest from the interest payment date next preceding the date of authentication or, if authenticated after the Record Date but prior to the applicable interest payment date or on such interest payment date, from such interest payment date or, if no interest on such Series 2012 D Bonds has been paid, from the date thereof; provided however, that, if, as shown by the records of the Registrar, interest on such Series 2012 D Bonds shall be in default, Series 2012 D Bonds issued in exchange for a Series 2012 D Bonds surrendered for transfer or exchange shall bear interest from the date to which interest has been paid in full on the initial Series 2012 D Bonds surrendered. The Series 2012 D Bonds will bear interest from their date, payable semiannually on each January 1 and July 1, commencing January 1, 2013, upon original issuance, at the rates per annum and will mature on the dates and in the amounts set forth on the cover page of this Official Statement. Interest accruing on the Series 2012 D Bonds shall be payable by check or draft mailed by the West Virginia Bond Commission, Charleston, West Virginia, to the Registered Owner as of the applicable Record Date (each June 15 and December 15) or, in the event of a default in the payment of the Series 2012 D Bonds, that special record date to be fixed by the Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by the Registrar, or at the option of any Registered Owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid in any coin or currency when due upon presentation and surrender for payment at the office of the Paying Agent, in Charleston, West Virginia.

The Series 2012 D Bonds will be issued as fully registered bonds without coupons in denominations of \$5,000 or integral multiples thereof for any year of maturity. The Series 2012 D Bonds initially shall be maintained under a book-entry system; Beneficial Owners shall have no right to receive physical possession of the Series 2012 D Bonds and payments of principal of, redemption price if any, and interest on the Series 2012 D Bonds will be made as described in "APPENDIX G – BOOK-ENTRY ONLY SYSTEM." If the book-entry system is discontinued, interest on the Series 2012 D Bonds will be payable by check or draft made payable and mailed to the owners thereof at the addresses appearing in the books kept by the Registrar as of the 15th day of the month preceding such interest payment date (the "Record Date"). If the book-entry system is discontinued, principal of and premium, if any, on the Series 2012 D Bonds will be payable to the owner thereof upon surrender thereof at the office of the Paying Agent.

#### Optional Redemption

The Series 2012 D Bonds are subject to optional redemption prior to their stated maturity at any time on and after \_\_\_\_\_, at the option of the City at par, plus accrued interest thereon to the date set for redemption.

**Mandatory Sinking Fund Redemption**

The Series 2012 D Bonds maturing \_\_\_\_\_, are subject to annual mandatory redemption prior to their respective stated maturity dates, as set forth in the Ordinance, by random selection of the years as may be determined by the Registrar and in the principal amounts set forth below, at the Redemption Price of 100% of the principal amount of each bond so called for redemption plus interest accrued to the date fixed for redemption:

<u>Bonds Maturing _____</u>	
<u>Year (July 1)</u>	<u>Principal Amount</u>
2028	\$2,135,000
2029*	\$2,205,000

\*Final Maturity

So long as the Series 2012 D Bonds are maintained under a book-entry system, notice of the call for any redemption of the Series 2012 D Bonds shall be given as described in "APPENDIX G – BOOK-ENTRY ONLY SYSTEM."

**Notice of Redemption**

Unless waived by any Registered Owner of the Bonds to be redeemed, official notice of any redemption shall be given by the Registrar on behalf of the City by mailing a copy of an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the applicable Bond Insurer, if any, the Original Purchaser, and the Registered Owner of the Series 2012 Bond or Bonds, as applicable, to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such registered owner to the Registrar. Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of any proceedings for the redemption of the Series 2012 D Bonds, and failure to mail such notice shall not affect the validity of any such proceedings for the redemption of any portion of the Series 2012 D Bonds for which there was no failure. After notice of redemption has been given in the manner hereinabove and in the Ordinance described, and moneys necessary therefor have been deposited with the Paying Agent, the Series 2012 D Bonds specified in such notice shall on the date fixed for redemption be deemed paid, and interest thereon shall cease to accrue.

**SECURITY FOR THE SERIES 2012 D BONDS**

The Series 2012 D Bonds are special obligations of the City and are payable as to principal, premium, if any, and interest solely from the sources described below. The City is under no obligation to pay the Series 2012 D Bonds except from said sources.

**Sources of Payment**

The payment of the debt service on the Series 2012 D Bonds shall be secured forthwith equally and ratably by a first lien on and pledge of the Gross Revenues derived from the operation of the System on parity with each other and the Prior Bonds and the Series 2012 A/B

Bonds, if issued. The payment of the debt service on the Series 2012 D Bonds is also secured by the funds on deposit in the Series 2012 D Bonds Sinking Fund, including the Series 2012 D Bonds Reserve Account therein. See "APPENDIX H – ANNUAL DEBT SERVICE REQUIREMENTS" for more information. The Gross Revenues derived from the System are irrevocably pledged to the payment of the principal of and interest on the Prior Bonds, the Series 2012 A/B Bonds and the Series 2012 D Bonds as the same become due and for the other purposes provided in the Ordinance. The City has covenanted that the Gross Revenues shall be sufficient (1) to pay the principal of and interest on the Prior Bonds and the Series 2012 A/B Bonds, if issued, (2) to make the payments into the Series 2012 D Bonds Sinking Fund, (3) to make the payments into the Series 2012 D Bonds Reserve Account, the Prior Bonds Reserve Accounts and the Series 2012 A/B Bonds Reserve Accounts, and (4) to make all other payments provided for in the Ordinance. See "APPENDIX F – FORM OF ORDINANCE, SUPPLEMENTAL PARAMETERS RESOLUTION AND SECOND SUPPLEMENTAL RESOLUTION."

### **Rate Covenant**

The City has covenanted and agreed in the Ordinance to fix and establish, in a manner and form required by law, rates and charges for the use of the System, sufficient (together with other revenues of the System) (i) to provide for all Operating Expenses of the System, (ii) so long as the Series 1999 Bonds or Series 2012 D Bonds are outstanding, to leave a balance each year equal to at least 120% of the maximum amount required in any year to pay the principal of and interest on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds and the Series 2012 A/B Bonds, and (iii) so long as the Series 2008 A Bonds, Series 2010 A Bonds, Series 2010 B Bonds, Series 2010 C Bonds or Series 2010 D Bonds are outstanding, to leave a balance each year equal to at least 115% of the maximum amount required in any year to pay the principal of and interest on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds and the Series 2012 A/B Bonds. The City is required to commence enactment of such ordinances as may be required to increase such rates and charges within thirty (30) days following a determination by, or an annual audit report of, the Independent Accountant showing that less than the above-required coverage exists. See "APPENDIX F – FORM OF ORDINANCE, SUPPLEMENTAL PARAMETERS RESOLUTION AND SECOND SUPPLEMENTAL RESOLUTION."

### **Series 2012 D Bonds Reserve Account**

The Series 2012 D Bonds Reserve Account will be funded at closing. In the event funds in the Series 2012 D Bonds Sinking Fund is insufficient to pay the principal of and/or interest on the Series 2012 D Bonds, the Bond Commission shall withdraw from the Series 2012 D Bonds Reserve Account and transfer to the Series 2012 D Bonds Sinking Fund sufficient amounts to make payments of principal of and/or interest on the Series 2012 D Bonds as the same become due from cash on deposit in the Series 2012 D Bonds Reserve Account.

In the event of a transfer from a Series 2012 D Bonds Reserve Account to the respective Series 2012 D Bonds Sinking Fund as aforesaid, the City shall restore the balance to the respective Series 2012 D Bonds Reserve Account in an amount up to the respective Series 2012 D Bonds Reserve Requirement. Any deficiencies in a Series 2012 Reserve Account or any

Reserve Account required for the Prior Bonds or the Series 2012 A/B Bonds (except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required) shall be promptly eliminated with monies from the Renewal and Replacement Fund. The City shall restore any withdrawals from a Series 2012 D Bonds Reserve Account which have the effect of reducing the assets therein below the respective Series 2012 D Bonds Reserve Requirement, from the first Gross Revenues available after all required payments have been made in full in the order set forth in the Ordinance. See "APPENDIX F—FORM OF ORDINANCE, SUPPLEMENTAL PARAMETERS RESOLUTION AND SECOND SUPPLEMENTAL RESOLUTION."

Following the partial refunding of the Series 1999 Bonds, the reserve fund requirement for the Series 1999 Bonds Reserve Account will be \$300,000.

### **Application of Revenues**

The entire Gross Revenues derived from the operation of the System shall be deposited by the City in the Revenue Fund and shall be disposed of only in the following manner and order of priority:

(1) the City shall first, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission (i) for deposit in the Sinking Funds of the Prior Bonds the amounts required by the Prior Ordinances to pay the interest on the Unrefunded Series 1999 Bonds and the Series 2010 C Bonds; (ii) for deposit in the Sinking Funds of the Series 2012 A/B Bonds, the amounts required to pay interest on the Series 2012 A/B Bonds; and (iii) commencing 7 months prior to the first interest payment date of the Series 2012 D Bonds, for deposit in the Series 2012 D Bonds Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on the Series 2012 D Bonds on the next ensuing semiannual interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2012 D Bonds Sinking Fund and the next ensuing semiannual interest payment date is more or less than 7 months, then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date; and provided further that, the initial amount required to be transferred from the Revenue Fund and deposited in the Series 2012 D Bonds Sinking Fund shall be reduced by the amount of accrued interest on the Series 2012 D Bonds deposited therein, and subsequent amounts required to be transferred from the Revenue Fund and deposited in the Series 2012 D Bonds Sinking Fund shall be reduced by the amount of any earnings credited to the Series 2012 D Bonds Sinking Fund;

(2) the City shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission (i) for deposit in the Sinking Funds of the Prior Bonds the amounts required by the Prior Ordinances to pay the principal of the Prior Bonds; (ii) for deposit in the Sinking Funds of the Series 2012 A/B Bonds, the amounts required to pay the principal of the Series 2012 A/B Bonds; and (iii) commencing 13 months prior to the first principal payment date or mandatory Redemption Date of the Series 2012 D Bonds, for deposit in the Series 2012 D Bonds Sinking Fund and in the Series 2012 D Bonds Redemption Account therein in the case of the Term Bonds which are to be redeemed, a sum equal to 1/12th of the amount (or 1/6th of the amount if the Series 2012 D Bonds mature semiannually rather

than annually) of principal which will mature or be redeemed and become due on the Series 2012 D Bonds on the next ensuing principal payment date or mandatory Redemption Date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2012 D Bonds Sinking Fund and the next ensuing principal payment date or mandatory Redemption Date is more or less than 13 months (or 7 months if the Series 2012 D Bonds mature semiannually rather than annually), then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next ensuing principal payment date or mandatory Redemption Date, the required amount of principal coming due on such date, and provided further, that the amount of such deposits shall be reduced by the amount of any earnings credited to the Series 2012 D Bonds Sinking Fund and not previously credited pursuant to the preceding clause;

(3) the City shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission (i) for deposit in the respective Reserve Accounts of the Prior Bonds the amounts required by the Prior Ordinances; (ii) for deposit in the respective Reserve Accounts of the Series 2012 A/B Bonds, the amounts required to be deposited in the respective Reserve Accounts; and (iii) commencing 13 months prior to the first date of payment of principal of the Series 2012 D Bonds, if not fully funded upon issuance of the Series 2012 D bonds, for deposit in the Series 2012 D Bonds Reserve Account, an amount equal to 1/120<sup>th</sup> of the Series 2012 D Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2012 D Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2012 D Bonds Reserve Requirement, and thereafter the City shall deposit an amount sufficient to remedy any decrease in value of the Series 2012 D Bonds Reserve Account below the Series 2012 D Bonds Reserve Requirement or any withdrawal from the Series 2012 D Bonds Reserve Account, beginning with the first full calendar month following the date on which (a) the valuation of investments in the Series 2012 D Bonds Reserve Account results in a determination that the amount of moneys and the value of the Qualified Investments deposited to the credit of the Series 2012 D Bonds Reserve Account is less than the Series 2012 D Bonds Reserve Requirement, or (b) any amount is withdrawn from the Series 2012 D Bonds Reserve Account for deposit into the Series 2012 D Bonds Sinking Fund. To the extent Gross Revenues and any other legally available funds are available therefore, the amount so deposited shall be used to restore the amount of moneys on deposit in the Series 2012 D Bonds Reserve Account to an amount equal to the Series 2012 D Bonds Reserve Requirement to the full extent that such Gross Revenues are available; provided however, that if the shortfall in the Series 2012 D Bonds Reserve Account is due to a decrease in value of investments therein, such shortfall shall be replenished by not less than 6 equal monthly payments, and if such shortfall is due to a withdrawal from the Series 2012 D Bonds Reserve Account, such shortfall shall be replenished by not less than 12 equal monthly payments, and provided further, that no payments shall be required to be made into the Series 2012 D Bonds Reserve Account whenever and as long as the amount on deposit therein shall be equal to the Series 2012 D Bonds Reserve Requirement;

(4) the City shall next, each month, pay from the Revenue Fund the current Operating Expenses of the System;

(5) the City shall next, on the first day of each month, transfer from the monies remaining in the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund (as previously set forth in the Prior Ordinances and not in addition thereto), a

sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of any Reserve Account;

(6) if on any monthly payment date the revenues of the System are insufficient to make the required deposits in any of the funds and accounts as hereinabove provided, the deficiency shall be made up on the next ensuing payment dates by payments in addition to the payments which are otherwise required to be made into the funds on such ensuing payment dates; and

(7) the City may next, each month, after making the above required transfers of moneys from the Revenue Fund, apply any remaining revenues (“Surplus Revenues”) to the payment of debt service on any other subordinate Bonds, notes, certificates or other obligations of the System.

Principal and interest payments, and any payments made for the purpose of funding the Reserve Accounts, shall be made on a parity basis and pro-rata, with respect to the Prior Bonds, the Series 2012 A/B Bonds, the Series 2012 D Bonds and any parity Bonds hereinafter issued, in accordance with the respective principal amounts of each such series of Bonds then Outstanding, if less than the full amount required hereby.

Any Surplus Revenues then remaining in the Revenue Fund may be used for any lawful purpose of the System. See “APPENDIX F –FORM OF ORDINANCE, SUPPLEMENTAL PARAMETERS RESOLUTION AND SECOND SUPPLEMENTAL RESOLUTION.”

**Enforcement of Collections**

The City covenants in the Ordinance to diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals and other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia or other laws of the State. The City further covenants and agrees in the Ordinance that it will, subject to the laws of the State and regulations of the Public Service Commission of West Virginia, discontinue services to all delinquent users of services and facilities of the System, until such delinquent amounts, including penalties and reconnect fees, have been fully paid, or a payment agreement in compliance with the Public Service Commission of West Virginia regulations has been entered. (See “APPENDIX B – THE SYSTEM” and “APPENDIX F – FORM OF ORDINANCE, SUPPLEMENTAL PARAMETERS RESOLUTION AND SECOND SUPPLEMENTAL RESOLUTION”).

**Additional Parity Bonds**

So long as the Prior Bonds are Outstanding, the limitations and requirements on the issuance of parity obligations set forth in the Prior Ordinances shall be applicable. In addition, no additional parity Bonds, as defined in the Ordinance, payable out of the revenues of the System shall be issued after the issuance of the Series 2012 D Bonds pursuant to the Ordinance, except under the conditions and in the manner therein provided.

No such additional parity Bonds shall be issued except for the purpose of financing the costs of the design, acquisition or construction of extensions, additions, betterments or

improvements to the System, refunding all or a portion of one or more series of Bonds issued pursuant to the Ordinance, or refunding the Prior Bonds, to pay claims which may exist against the revenues or facilities of the System, or all of such purposes.

So long as the Series 1999 Bonds or Series 2012 D Bonds are outstanding, no such additional parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Clerk of the City a written statement by an Independent Accountant, reciting the conclusion that the Net Revenues actually derived from the System during the Fiscal Year preceding the date of the actual issuance of such additional parity Bonds, plus the estimated average increased annual Net Revenues expected to be received in each of the 3 succeeding years after the issuance of such parity Bonds, if any, shall not be less than 120% of the Maximum Annual Debt Service on the following:

- (1) The Prior Bonds then Outstanding;
- (2) The Series 2012 D Bonds then Outstanding;
- (3) Any additional parity Bonds theretofore issued pursuant to the provisions contained in the Ordinance then Outstanding; and
- (4) The additional parity Bonds then proposed to be issued.

So long as the Series 2008 A Bonds, Series 2010 A Bonds, Series 2010 B Bonds, Series 2010 C Bonds or Series 2010 D Bonds are outstanding, no such additional parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Clerk of the City a written statement by an Independent Accountant, reciting the conclusion that the Net Revenues actually derived from the System during any 12 consecutive months in the 18 months immediately preceding the date of the actual issuance of such additional parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall not be less than 115% of the Maximum Annual Debt Service on the following:

- (1) The Prior Bonds then Outstanding;
- (2) The Series 2012 D Bonds then Outstanding;
- (3) Any additional parity Bonds theretofore issued pursuant to the provisions contained in this Ordinance then Outstanding; and
- (4) The additional parity Bonds then proposed to be issued.

The Net Revenues actually derived from the System during the 12-consecutive month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Accountants, as stated in a certificate, on account of increased rates, rentals, fees and charges for the System enacted by the City, the time for appeal of which shall have expired (without successful appeal) prior to issuance of such Parity Bonds.

The term “additional parity Bonds,” as used in this section, shall be deemed to mean additional Bonds issued under the provisions and within the limitations of this section, payable from the Net Revenues of the System on a parity with the Series 2012 D Bonds, and all the covenants and other provisions of the Ordinance shall be for the equal benefit, protection and security of the Owners of the Series 2012 D Bonds, the Prior Bonds and the Owners of any additional parity Bonds theretofore or subsequently issued from time to time within the limitations of and in compliance with this section. All the Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Net Revenues of the System, and their source of and security for payment from said Net Revenues, without preference of any Bond over any other. The City shall comply fully with all the increased payments into the various funds and accounts created in the Ordinance required for and on account of such additional parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to the Ordinance.

The term “additional parity Bonds,” as used in this section, shall not be deemed to include Bonds, notes, certificates or other obligations subsequently issued, the lien on the Revenues of the System of which is subject to the prior and superior lien of the Bonds on such Revenues. Any such subordinate Bonds, notes, certificates or other obligations shall be payable from Surplus Revenues. The City shall not issue any obligations whatsoever payable from the Revenues of the System, or any part thereof, which rank prior to or equally, as to lien and source of and security for payment from such Revenues, with the Series 2012 D Bonds, except in the manner and under the conditions provided in this section.

No additional parity Bonds shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in the Ordinance on account of the Bonds then Outstanding, if any (excluding the Renewal and Replacement Fund), and any other payments provided for in the Ordinance shall have been made in full as required to the date of delivery of the additional parity Bonds. See “APPENDIX F – FORM OF ORDINANCE, SUPPLEMENTAL PARAMETERS RESOLUTION AND SECOND SUPPLEMENTAL RESOLUTION.”

## **BOND INSURANCE**

### **Bond Insurance Policy**

Concurrently with the issuance of the Bonds, Assured Guaranty Municipal Corp. ("AGM") will issue its Municipal Bond Insurance Policy for the Bonds (the "Policy"). The Policy guarantees the scheduled payment of principal of and interest on the Bonds when due as set forth in the form of the Policy included as an exhibit to this Official Statement.

The Policy is not covered by any insurance security or guaranty fund established under New York, California, Connecticut or Florida insurance law.

### **Assured Guaranty Municipal Corp.**

AGM is a New York domiciled financial guaranty insurance company and a wholly owned subsidiary of Assured Guaranty Municipal Holdings Inc. ("Holdings"). Holdings is an indirect subsidiary of Assured Guaranty Ltd. ("AGL"), a Bermuda-based holding company whose shares are publicly traded and are listed on the New York Stock Exchange under the

symbol “AGO”. AGL, through its operating subsidiaries, provides credit enhancement products to the U.S. and global public finance, infrastructure and structured finance markets. No shareholder of AGL, Holdings or AGM is liable for the obligations of AGM.

AGM’s financial strength is rated “AA-” (stable outlook) by Standard and Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business (“S&P”) and “Aa3” (on review for possible downgrade) by Moody’s Investors Service, Inc. (“Moody’s”). An explanation of the significance of the above ratings may be obtained from the applicable rating agency. The above ratings are not recommendations to buy, sell or hold any security, and such ratings are subject to revision or withdrawal at any time by the rating agencies, including withdrawal initiated at the request of AGM in its sole discretion. In addition, the rating agencies may at any time change AGM’s long-term rating outlooks or place such ratings on a watch list for possible downgrade in the near term. Any downward revision or withdrawal of any of the above ratings, the assignment of a negative outlook to such ratings or the placement of such ratings on a negative watch list may have an adverse effect on the market price of any security guaranteed by AGM. AGM only guarantees scheduled principal and scheduled interest payments payable by the issuer of bonds insured by AGM on the date(s) when such amounts were initially scheduled to become due and payable (subject to and in accordance with the terms of the relevant insurance policy), and does not guarantee the market price or liquidity of the securities it insures, nor does it guarantee that the ratings on such securities will not be revised or withdrawn.

### ***Current Financial Strength Ratings***

On March 20, 2012, Moody’s issued a press release stating that it had placed AGM’s “Aa3” insurance financial strength rating on review for possible downgrade. AGM can give no assurance as to any further ratings action that Moody’s may take. Reference is made to the press release, a copy of which is available at [www.moody.com](http://www.moody.com), for the complete text of Moody’s comments.

On November 30, 2011, S&P published a Research Update in which it downgraded AGM’s financial strength rating from “AA+” to “AA-“. At the same time, S&P removed the financial strength rating from CreditWatch negative and changed the outlook to stable. AGM can give no assurance as to any further ratings action that S&P may take. Reference is made to the Research Update, a copy of which is available at [www.standardandpoors.com](http://www.standardandpoors.com), for the complete text of S&P’s comments.

For more information regarding AGM’s financial strength ratings and the risks relating thereto, see AGL’s Annual Report on Form 10-K for the fiscal year ended December 31, 2011, its Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2012, and its Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2012.

### ***Capitalization of AGM***

At June 30, 2012, AGM’s consolidated policyholders’ surplus and contingency reserves were approximately \$3,169,404,271 and its total net unearned premium reserve was approximately \$2,204,572,593, in each case, in accordance with statutory accounting principles.

AGM’s statutory financial statements for the fiscal year ended December 31, 2011, for the quarterly period ended March 31, 2012, and for the quarterly period ended June 30, 2012,

which have been filed with the New York State Department of Financial Services and posted on AGL's website at <http://www.assuredguaranty.com>, are incorporated by reference into this Official Statement and shall be deemed to be a part hereof.

### ***Incorporation of Certain Documents by Reference***

Portions of the following documents filed by AGL with the Securities and Exchange Commission (the "SEC") that relate to AGM are incorporated by reference into this Official Statement and shall be deemed to be a part hereof:

(i) the Annual Report on Form 10-K for the fiscal year ended December 31, 2011 (filed by AGL with the SEC on February 29, 2012);

(ii) the Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2012 (filed by AGL with the SEC on May 10, 2012); and

(iii) the Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2012 (filed by AGL with the SEC on August 9, 2012).

All information relating to AGM included in, or as exhibits to, documents filed by AGL pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, after the filing of the last document referred to above and before the termination of the offering of the Bonds shall be deemed incorporated by reference into this Official Statement and to be a part hereof from the respective dates of filing such documents. Copies of materials incorporated by reference are available over the internet at the SEC's website at <http://www.sec.gov>, at AGL's website at <http://www.assuredguaranty.com>, or will be provided upon request to Assured Guaranty Municipal Corp., 31 West 52nd Street, New York, New York 10019, Attention: Communications Department (telephone (212) 826-0100).

Any information regarding AGM included herein under the caption "BOND INSURANCE – Assured Guaranty Municipal Corp." or included in a document incorporated by reference herein (collectively, the "AGM Information") shall be modified or superseded to the extent that any subsequently included AGM Information (either directly or through incorporation by reference) modifies or supersedes such previously included AGM Information. Any AGM Information so modified or superseded shall not constitute a part of this Official Statement, except as so modified or superseded.

### ***Miscellaneous Matters***

AGM or one of its affiliates may purchase a portion of the Bonds or any uninsured bonds offered under this Official Statement and may hold such Bonds or uninsured bonds for investment or may sell or otherwise dispose of such Bonds or uninsured bonds at any time or from time to time.

AGM makes no representation regarding the Bonds or the advisability of investing in the Bonds. In addition, AGM has not independently verified, makes no representation regarding, and does not accept any responsibility for the accuracy or completeness of this Official Statement or any information or disclosure contained herein, or omitted herefrom, other than

with respect to the accuracy of the information regarding AGM supplied by AGM and presented under the heading “BOND INSURANCE”.

## **THE SYSTEM**

The City has operated a water treatment and distribution system since 1902. The System is operated as a water system pursuant to Chapter 8, Article 19 of the Code of West Virginia, 1931, as amended. For additional information regarding the System, see “APPENDIX B – THE SYSTEM,” herein. For information regarding the City and Marion County in which the City is situated, see “APPENDIX A – GENERAL INFORMATION REGARDING FAIRMONT AND MARION COUNTY, WEST VIRGINIA.”

## **INVESTMENT CONSIDERATIONS**

### **Gross Revenue Pledge**

The Series 2012 D Bonds are secured solely by the Gross Revenues of the System. There can be no guarantee that current rates of the System will always produce revenue sufficient to pay the debt service on the Prior Bonds, the Series 2012 A/B Bonds and the Series 2012 D Bonds. The City has covenanted in the Ordinance to raise the rates of the System if the Gross Revenues of the System are not sufficient to provide the required coverage of the maximum annual debt service of the Series 2012 D Bonds and all bonds issued on a parity with the Series 2012 D Bonds, the Series 2012 A/B Bonds and the Prior Bonds. After enactment of a rate increase, however, if twenty-five percent or more of the City’s customers or one of the City’s wholesale customers file a petition protesting the rate increase, the Public Service Commission of West Virginia (the “PSC”) will have jurisdiction to review and modify the rates of the City. If a rate increase is appealed, there can be no assurance that the PSC will approve the increase of rates and charges to a level sufficient to generate revenues sufficient to pay the debt service on the Prior Bonds, the Series 2012 A/B Bonds and the Series 2012 D Bonds and meet the coverage requirements. The PSC is not expressly statutorily required to set rates sufficient to satisfy the bond covenants of any water utility.

Gross Revenues sufficient to pay the debt service on the Series 2012 D Bonds, the Series 2012 A/B Bonds and the Prior Bonds also depend on the retention of current customers by the City. An unexpected loss of customers by the City could have an adverse effect on the ability of the City to make the required payments on the Series 2012 D Bonds. Additionally, a significant reduction in the amount of water used by customers of the City may also have an adverse impact on the City’s ability to make the required payments on the Series 2012 D Bonds. The City does not have the authority to require citizens to accept service by the System. Accordingly, any further extensions by the City are dependent upon the City being able to obtain agreements with those potential customers to purchase water from the City. If the City is unable to obtain agreements from potential customers after an extension is constructed, it may have an adverse impact on the ability of the City to make the required payments on the Series 2012 D Bonds. The City has ten wholesale customers that purchase water from the City see “Appendix B – The System” herein. If a significant wholesale customer were to obtain water from some other source, it may have an adverse impact on the ability of the City to make the required payments on the Series 2012 D Bonds.

## **Future Legislation**

Current or future legislative proposals, if enacted into law, may cause interest on the Series 2012 D Bonds to be subject, directly or indirectly, to federal income taxation or otherwise prevent holders of the Series 2012 D Bonds from realizing the full current benefit of the tax status of such interest. The introduction or enactment of any such legislative proposals may also affect the market price for, or marketability of, the Series 2012 D Bonds. Prospective purchasers of the Series 2012 D Bonds should consult their own tax advisors regarding any such pending or proposed federal or state tax legislation, regulations or litigation, as to which Bond Counsel expresses no opinion.

It is not an event of default on the Series 2012 D Bonds if any legislation is enacted reducing or eliminating the exclusion of interest on state and local government bonds from gross income for federal income tax purposes.

## **Past Actions**

In 2004, due to an unexpected increase in operating costs caused by significant water breaks and an unexpected increase in project costs for the new filtration plant, the City was unable to pay debt service from the Revenue Fund and utilized surplus revenues from the City's general fund as a loan to the Water System in order to make its debt service payments. In 2005, such operating expenses continued to be unexpectedly high and the City was unable to pay debt service from the Revenue Fund. The City drew on its 1997, 1998 and 1999 Reserve Accounts (withdrew funds from the 1998 and 1999 forward agreements and drew on the 1997 Letter of Credit) in order to make the 2005 debt service payments. On July 1, 2005, the City increased rates by 15% which allowed it to replace the funds in the 1997, 1998 and 1999 Reserve Accounts.

In 2007, operating expenses were unexpectedly high again due to the new membrane-system plant being unable to meet daily usage demand. Due to the increase in operating expenses, the City was unable pay debt service on its water bonds from its Water Revenue Fund. The City utilized excess funds from its sewer fund and general fund as a loan to the Water System and drew on the 1997, 1998 and 1999 Reserve Accounts (withdrew funds from the 1998 and 1999 forward agreements and drew on the 1997 Letter of Credit) in order to make the 2007 debt service payments. On August 25, 2007, the PSC ordered a rate increase of 25.3% which allowed for the City to pay back the 1997, 1998 and 1999 Reserve Accounts. On April 27, 2009, the City implemented another rate increase of 23.9% which allowed for the repayment of the Sewer Fund and General Fund over five years and the purchase of additional equipment necessary for the System. Such rate increases have allowed the Water Revenue Fund to return to positive cash flow and was sufficient to provide funds to pay all debt service on water bonds since the rate increases. The PSC has also approved a long term corrective action project and a radio meter project that will help prevent future emergencies and thus reduce the chances for unexpectedly high operating costs.

## **The Public Service Commission of West Virginia**

In West Virginia, municipal water utilities such as the City are subject to regulatory oversight by the Public Service Commission of West Virginia (the "Commission") in certain situations. Specifically, pursuant to Chapter 24, Article 2, Section 11 of the Code of West

Virginia, 1931, as amended, utilities must obtain a certificate of public convenience and necessity prior to proceeding to construction for projects which are outside of “the normal course of business.” Additionally, rate increases approved by the Council of the City are subject to review for regulatory “notice” requirements and, under certain circumstances, the actual proposed rates. Municipal water utilities in West Virginia do not have the ability to adjust rates without the possibility of regulatory review. The parameters surrounding this review are discussed below. Such regulatory review may delay or halt the implementation of rate increases which could cause the utility to fail to meet rate covenants or produce revenue sufficient to pay debt service.

The Commission has two levels of review. Most cases are initially assigned to an administrative law judge (“ALJ”) for decision. The Commission employs a “staff” comprised of engineers, lawyers and financial analysts (the “Staff”) to review cases and make recommendations. The City is also permitted to make recommendations, as are other parties who are granted “intervenor” status. The ALJ may conduct a hearing, at which evidence is presented and witnesses for all parties may be cross-examined, after which a recommended decision is issued. Any party to the underlying proceeding, including a party granted intervenor status, may take exception to the recommended decision of the ALJ, in which case the matter is referred to the full Commission for decision.

### **Commission Regulatory Oversight of Rate Increases**

Pursuant to Chapter 8, Article 11, Section 4, Chapter 8, Article 19, Section 11 and Chapter 24, Article 2, Section 4b of the Code of West Virginia, 1931, as amended, the Council of the City has the ability to establish rates for the water utility through the enactment of an ordinance, following a public hearing on such ordinance. In the enactment of such an ordinance, the City must comply with regulations of the Commission related to providing notice of such proposed rate increase. The Commission reviews the compliance of the City with such regulations and, if the Commission determines that the City has failed to satisfy the requirements of the regulations, the Commission may declare the rate ordinance invalid.

In such instance, the City would have no choice but to reenact the ordinance.

### **Commission Review of Proposed Rate Increases**

Once enacted, the proposed rates are subject to review by the Commission under the following scenarios:

1. More than 25% of the customers of the City sign a petition asking that the Commission review the rates proposed by the City; or
2. A customer of the City, which resides within the municipal boundaries of the City, alleges in writing that the rates being proposed by the City are “discriminatory;” or
3. A customer of the City, which resides outside of the municipal boundaries of the City, alleges in writing that the rates being proposed by the City are “discriminatory.”

If any of the above occurs, the Commission then takes “jurisdiction” over the rates, initiating an investigation into the need for the proposed rates. Pursuant to Chapter 24, Article 2, Section 4b of the Code of West Virginia, 1931, as amended (the “PSC Act”), the rates enacted by the City are suspended for 120 days from the date the rates would otherwise have gone into effect (i.e., 45 days from enactment of the rate ordinance) and the new rates, if any, established by the Commission will go into effect at that end of the suspension period.

The Commission views the term “discrimination” to include more situations than those where a different rate is applied to resident and non-resident customers. The Supreme Court of Appeals of West Virginia previously affirmed the Commission’s interpretation of the term “discrimination” when the court held that verified allegations, “which included the failure of the [municipality] to perform a class cost of service study and the discriminatory imposition of certain costs to resale customers, were sufficient to meet the requirements” found in the PSC Act. *City of Wheeling v. Pub. Serv. Comm’n of W. Va.*, 199 W. Va. 252, 257, 483 S.E.2d 835, 840 (1997).

The City has 10 bulk water resale customers. Any one resale customer may allege “discrimination,” causing the Commission to take jurisdiction over any proposed rate increase. Likewise, any one customer located within the City limits may allege “discrimination,” also causing the Commission to take jurisdiction over any proposed rate ordinance.

#### **Potential Delays for the Enactment of Rate Increases**

Generally, the process of enacting a rate ordinance requires a minimum of two weeks (two readings by Council, separated by sufficient time to allow for the publication of a public hearing prior to the second reading, with the first publication for the public hearing being not less than 5 days prior to the date of the publication). Due to the local charter for the City, the process would actually take a minimum of four weeks. Pursuant to the PSC Act and regulations of the Commission, the rates cannot go into effect any sooner than 45 days from the date of enactment, provided that an appeal of the proposed rates does not occur. In the event that the Commission takes jurisdiction of the rate increase, the Commission will establish a decision due date for the ALJ, that is generally 30 days prior to the end of the 120-day suspension period. If any of the parties, however, appeal the ALJ’s recommended decision to the full Commission, the Commission will render its decision no later than the end of the 120-day suspension period. Additionally, a decision of the Commission may be appealed to the Supreme Court of Appeals of West Virginia, which has no statutory time frame within which to render a decision.

Consequently, the time period from the first reading of a rate ordinance to the increased rates being charged to the customers is a minimum of 60 days, and the Commission takes jurisdiction, can exceed 180 days (Commission approved rates are billable during an appeal to the Supreme Court of Appeals of West Virginia). Due to the local charter for the City, the time period from the first reading of a rate ordinance to the increased rates being charged to the customers is a minimum of 90 days. From the date the new rates begin to be charged, the City should realize revenues in approximately 45 to 60 days. Resale customers are required to obtain authorization from the Commission for any necessary increase in resale rates. Such increases are often granted by the Commission after the rates for the City go into effect, which means no assurance exists that resale customers will have sufficient revenues to being paying the increased

resale rates. The Commission can, and has on occasion, pre-approved resale rate increases in advance of the effective date of the new rates. As a result, resale customers may have the ability to begin charging the new resale rates of the City as soon as the rates go into effect.

### **Test Year**

If the Commission takes jurisdiction over a municipality's rate ordinance as described above, the regulations of the Commission require a municipality to file "financial justification" for the proposed rate increase. This financial justification must be based on financial data from the most recent actual audited or finally closed twelve-month period, also known as the "test year." Events which occur outside the test year are not generally permitted in the rate adjustment. A determination at the end of any twelve-month period that a rate increase is necessary may not result in increased rates and collections for nine months or more from the end of that period.

The City has the option to proceed with a rate increase at any time during the course of the year, however, the financials examined by the Commission will be the financials for the most recent full fiscal year, not the 12 month period immediately preceding the date of the request.

### **Reliance on "Known and Measurable" Adjustments**

When considering adjustments to the rates of a utility for costs occurring during the "test year," the Commission's regulations requires that the need for, and amount of, such adjustments be based on information that is "known and measurable." As a result, a change in revenues or expenses must, in most cases, have occurred in the test year being analyzed. If an increase in a cost, or a decline in revenue, is anticipated for the coming year, the Commission generally will not take such change into account for rate making purposes unless the change occurs during the test year.

As a result of the requirement that the support for adjustments be "known and measurable," the Commission will generally not allow multi-year rate increases to address anticipated inflation or drops in customer usage. Therefore, the City must initiate the rate ordinance process, and potential Commission review, whenever increased costs or decreased revenues necessitate a rate increase.

### **Emergency Rate Increase**

The PSC Act permits utilities to request "emergency rates" if the utility is in "financial distress." Financial distress has been defined by the Commission to mean the utility is unable to pay operation and maintenance expenses and the principal and interest on the utility's debt obligations. Such rates, however, are subject to refund, in the event the Commission determines that the emergency rates, or any portion thereof, are not warranted. Generally, emergency rates CANNOT be obtained to meet coverage requirements in bond documents.

### **Treatment of Renewal and Replacement Funds**

Most municipal water utilities in the state are required, pursuant to the terms of their outstanding bonds, to deposit 2.5% of gross revenues in a "Renewal and Replacement Fund" or

“Depreciation Account” each month. The purpose of this account is to provide monies for capital repairs and improvements, to construct extensions and to make up defeasance in the reserve funds. In recent years, the Commission has taken the position that while the deposits should be made into the Account each month, such deposits are to be included in the calculation of the City’s funds available for capital additions for the year. The Commission generally calculates funds available for capital additions by averaging capital additions for the last five years; provided, however, the Commission will consider a different calculation if the utility can demonstrate the need for a higher capital requirement. Consequently, the City is not permitted to accumulate funds to be used for unforeseen capital repairs and replacements, for needed extensions or to replenish draws from the reserve funds as the account is to be utilized each year as part of the ongoing capital expenditures for the system. The City’s inability to maintain funds for emergencies increases its risk of utilizing revenues to pay for emergency repairs leaving insufficient funds to pay debt service on the Bonds.

### **Annual Municipal Audit**

Pursuant to Chapter 6, Article 9 of the Code of West Virginia, 1931, as amended (the “Audit Act”), the State Auditor, as the chief inspector and supervisor of public offices (the “Chief Inspector”) is charged with the responsibility of (1) formulating, prescribing and installing a system of accountability for all local units of government in West Virginia, including municipalities and (2) examining the financial affairs of every local government office or political subdivision and all boards, commissions, authorities, agencies or other offices. The City is a local government under the Audit Act. Accordingly, pursuant to Section 7 of the Audit Act, an audit of the City’s finances must be accomplished by the Chief Inspector or any person appointed by him. The Chief Inspector has developed procedures which allow certain municipalities to obtain audit services from certain approved accounting firms. The City has been instructed by the Chief Auditor to procure audit services pursuant to such procedures. The procedures developed by the Chief Inspector to procure a CPA firm for the audit require written approval of all contracts and extensions to contracts by the Chief Inspector prior to the commencement of work on the audit by the CPA firm. Additionally, the Chief Inspector is authorized to unilaterally cancel any contract between the City and a CPA firm under certain conditions and elect to perform the audit. Accordingly, the actions or lack of actions of the Chief Inspector may adversely impact the ability of the selected CPA firm to timely complete the annual audited financial information required to be submitted to EMMA pursuant to the Continuing Disclosure Agreement. See “Continuing Disclosure” herein. Additionally, the City has no power to require the Chief Inspector to take any action required under such procedures that would ensure the completion of the audit to meet the timely filing of such information.

### **TAX MATTERS**

In the opinion of Steptoe & Johnson PLLC, Bond Counsel, under existing laws, regulations, published rulings and judicial decisions of the United States of America, as presently written and applied, the interest on the Series 2012 D Bonds [(including original issue discount properly allocable to holders of the Series 2012 D Bonds)] (i) is excludable from gross income of the holders thereof for Federal income tax purposes, assuming compliance with certain provisions described herein pertaining to the Internal Revenue Code of 1986, as amended (the “Code”), and (ii) is not a specific item of tax preference, under Section 57(a)5 of the Code, in computing the federal alternative minimum tax imposed on individuals and corporations, and

(iii) under the laws of the State of West Virginia, the Series 2012 D Bonds are exempt from taxation by the State of West Virginia or any county, municipality or county commission, political subdivision or agency thereof, and the interest on the Series 2012 D Bonds is exempt from taxation by the State of West Virginia or any county, municipality or county commission, political subdivision or agency thereof. It should be noted, however, that interest on the Series 2012 D Bonds is included in the adjusted current earnings of certain corporations for purposes of computing the alternative minimum tax that may be imposed with respect to corporations.

### **[Original Issue Discount/Original Issue Premium**

The original issue discount in the selling price of Series 2012 D Bonds maturing on \_\_\_\_\_ 1, \_\_\_\_ through \_\_\_\_\_ 1, \_\_\_\_ (the "Discount Bonds"), to the extent properly allocable to each owner of such Discount Bonds, is excluded from gross income for federal income tax purposes with respect to such owner. The original issue discount is the excess of the stated redemption price at maturity of such Discount Bond over its initial offering price to the public, excluding underwriters and other intermediaries, at which price a substantial amount of the Discount Bonds of such maturity were sold.

Under Section 1288 of the Code, original issue discount on tax-exempt bonds accrues on a compound basis. The amount of original issue discount that accrues to an owner of a Discount Bond during any accrual period generally equals (i) the issue price of such Discount Bond plus the amount of original issue discount accrued in all prior accrual periods, multiplied by (ii) the yield to maturity of such Discount Bond (determined on the basis of compounding at the close of each accrual period and properly adjusted for the length of the accrual period), minus (iii) any interest payable on such Discount Bond during such accrual period. The amount of original issue discount so accrued in a particular accrual period will be considered to be received ratably on each day of the accrual period, will be excludable from gross income for federal income tax purposes, and will increase the owner's tax basis in such Discount Bond.

Purchasers of any Discount Bond at any original issue discount should consult their tax advisors regarding the determination and treatment of original issue discount for federal income tax purposes, and with respect to state and local tax consequences of owning such Discount Bonds.

The Series 2012 D Bonds maturing on \_\_\_\_\_ 1, 20\_\_ through \_\_\_\_\_ 1, 20\_\_, ("OIP Bonds"), will be sold with an original issue premium ("OIP"). The original issue premium will be equal to the excess of a holder's tax basis in the OIP Bonds over the amount payable at maturity, or in the case of OIP Bonds subject to redemption, the amount payable on the redemption date. Under current law, the original issue premium for OIP Bonds must be amortized on an annual basis by the holder thereof. The amount of original issue premium amortized each year will not be deductible for federal income tax purposes. Further, Section 1016 of the Code requires that the amount of annual amortization for the OIP Bonds be deducted from the holder's tax basis in such OIP Bonds. This reduction in a holder's tax basis will affect the amount of capital gain or loss to be recognized by the holder when the OIP Bonds are sold or redeemed. Owners of OIP Bonds should consult their tax advisors with respect to the determination and treatment of amortizable original issue premium for federal income tax purposes, and with respect to the state and local tax consequences of owning such OIP Bonds.

The opinions described above are subject to the condition that the City complies on a continuing basis with all requirements of the Code, and regulations thereunder that must be satisfied subsequent to issuance of the Series 2012 D Bonds for interest thereon to be or continue to be excluded from gross income for federal income tax purposes. The City has covenanted to comply with each such requirement. Failure to comply with certain of such requirements could cause the interest on the Series 2012 D Bonds to be included in the gross income of the recipients thereof for purposes of federal income taxation retroactively to the date of issuance of the Series 2012 D Bonds.

The accrual or receipt of the interest on the Series 2012 D Bonds may otherwise affect the federal income tax liability of certain recipients. The extent of these and other consequences will depend upon the recipient's particular tax status or other items of income or deductions. Bond Counsel expresses no opinion regarding any such consequences, and investors should consult their tax advisors regarding the tax consequences of purchasing or holding the Series 2012 D Bonds.]

### **APPROVAL OF LEGALITY**

Legal matters incident to the authorization, sale and issuance of the Series 2012 D Bonds are subject to the unqualified approving opinions of Steptoe & Johnson PLLC, Charleston, West Virginia, Bond Counsel, the form of which is attached as APPENDIX D. Kevin Sansalone, Esquire, Fairmont, West Virginia, as City Attorney, will pass upon certain legal matters for the City. Jackson Kelly PLLC, Charleston, West Virginia, as counsel to the Underwriters, will pass upon certain legal matters for the Underwriters.

### **ABSENCE OF MATERIAL LITIGATION**

Other than as described below, there is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court, public board or body, now pending or, to the best knowledge of the City, threatened or affecting the City (or, to the City's knowledge, any basis therefor) wherein an unfavorable decision, ruling or finding would have a material adverse effect on the City's financial position or on the validity of the Series 2012 D Bonds, the Ordinance or any agreement to which the City is a party and which is a part of the issuance of the Series 2012 D Bonds.

The City is involved in certain litigation concerning a Lease-Purchase Agreement (the "Lease") entered into on September 8, 2009, with Comvest, Ltd., Inc. ("Comvest"), in relation to the purchase of equipment for the City's Water System. According to the Lease, Comvest was to provide the City \$1,070,600 for the purchase of equipment that would be leased to the City pursuant to the Lease. Comvest assigned the Lease to Page Valley Bank in return for Page Valley Bank providing \$1,070,600 to the City for the purchase of equipment. The City received \$563,776.94 pursuant to the Lease for the purchase of equipment. The City requested the remainder of the \$1,070,600 but was informed by Comvest that the remaining funds were no longer available to the City. Comvest shortly after filed bankruptcy. The City is participating in the Comvest bankruptcy proceeding in an effort to obtain the additional funds due under the Lease. Page Valley Bank has asserted that the City owes it \$1,070,600 under the Lease. The City disputes this claim because it was not provided the full \$1,070,600. The City has agreed to make payments under the Lease in an amount that it actually received for the purchase of equipment. Additionally, the City has filed an action against the principals of Comvest and the

West Virginia Municipal League (which the City alleges was a partner in the Comvest lease program) asserting negligence, breach of contract, breach of fiduciary duty and duty of trust and fraud. If all actions are resolved unfavorably to the City, the City believes that the maximum exposure to its Water System will be \$506,823.06 plus legal expenses.

Additionally, after the complaint against Comvest was filed in The Circuit Court of Marion County, West Virginia, the City was advised that on January 27, 2012, James R. Christie, secretary/treasurer of Comvest, had filed personal bankruptcy in the United States Bankruptcy Court for the Northern District of West Virginia. The case is styled In re: James R. Christie, and is assigned Case No. 12-00076. Christie did not list the City as a creditor on his bankruptcy schedules. Although the case was filed as a no-asset case, it has been converted to an asset case. The City has taken the following actions in Christie's bankruptcy case and a related adversary proceeding, Sheehan v. Christie, Case No. Ap. No. 1:12-ap-29, to protect the amounts alleged to be due from Christie and Comvest to the City's water fund: 1) filed a Motion to Lift Stay to permit the City to pursue state court action against Christie, which motion is pending; 2) timely filed a proof of claim against Christie for the amount due the City's water fund, identified as "Christie Bankruptcy Claim No. 5"; and 3) filed a Motion for Leave to Intervene in Sheehan v. Christie, Case No. Ap. No. 1:12-ap-29, which motion is pending.

## UNDERWRITING

The Series 2012 D Bonds are being purchased by the Underwriters named on the cover of this Official Statement. The Bond Purchase Agreement provides that the Underwriters will purchase the Series 2012 D Bonds, if any are purchased, at a total purchase price of \$ \_\_\_\_\_ (which is net of an underwriting discount of \$ \_\_\_\_\_ and net of an [original issue discount/original issue premium] of \$ \_\_\_\_\_). The obligation to make such purchase is subject to the terms and conditions set forth in the Bond Purchase Agreement, including the approval of certain legal matters by counsel. The Underwriters may change the initial public offering prices from time to time. The Underwriters may offer and sell Series 2012 D Bonds to certain dealers (including dealers depositing the Series 2012 D Bonds into investment trusts) and certain dealer banks acting as agents at prices lower than the public offering prices stated on the cover page hereof.

Piper Jaffray & Co. and Pershing LLC, a subsidiary of The Bank of New York Mellon Corporation, entered into an agreement (the "Agreement") which enables Pershing LLC to distribute certain new issue municipal securities underwritten by or allocated to Piper Jaffray & Co., including the Series 2012 D Bonds. Under the Agreement, Piper Jaffray & Co. will share with Pershing LLC a portion of the fee or commission paid to Piper Jaffray & Co.

## FINANCIAL STATEMENTS

Included in Appendix C are the audited financial statements of the City as of and for the twelve-month period ended June 30, 2011, and the report with respect to the audited financial statements as of and for the twelve-month period ended June 30, 2011, dated January 6, 2012, of Tetrick & Bartlett, Certified Public Accountants. The City has obtained the consent of Tetrick & Bartlett, Certified Public Accountants to publish the audited financial statements with this Official Statement.

## **RATINGS**

The Series 2012 D Bonds are rated “AA-” by Standard & Poor's Rating Services, a division of the McGraw-Hill Companies, Inc. (“S&P”) by virtue of a municipal bond insurance policy to be issued by Assured Guaranty Municipal Corp. (“AGM”). S&P has assigned an underlying rating of ‘A’ to the City. Any desired explanation of the significance of such ratings should be obtained from Standard & Poor’s. The Board did not apply for any other ratings. Such rating reflects only the views of such organization and reference is made to such organization for the meaning of such rating. There is no assurance that such rating will continue for any period of time or that such rating will not be revised downward or withdrawn entirely by the assigning rating agency, if in the judgment of such rating agency, circumstances so warrant. Any downward revision or withdrawal of such rating may have an adverse effect upon the market price or value of the Bonds.

Except as provided under “Continuing Disclosure” herein, neither the City nor the Underwriter have undertaken any responsibility to take any action with respect to possible changes in such rating or to bring any such changes to the attention of the Bondholders.

## **CONTINUING DISCLOSURE**

The City has agreed to execute and deliver contemporaneously with the issuance of the Series 2012 D Bonds an agreement to undertake for the benefit of the Registered Owners of the Series 2012 D Bonds to provide certain financial information (the “Annual Information”) not later than two hundred seventy (270) days following the end of the fiscal year of the City, commencing in 2012, and to provide the Annual Information to the Electronic Municipal Markets Access System (“EMMA”) and to provide notice of the occurrence of the enumerated events to EMMA as required by SEC Rule 15c2-12, as modified by certain amendments that became effective on December 1, 2010. See “APPENDIX E – FORM OF CONTINUING DISCLOSURE AGREEMENT.” The Annual Information and each notice of material events will be filed electronically by WesBanco Bank, Wheeling, West Virginia, as dissemination agent, on behalf of the City, with EMMA.

This continuing disclosure obligation is being undertaken by the City to assist the Underwriters in complying with Rule 15c2-12 promulgated by the SEC. The City has agreed to give notice in a timely manner to EMMA of any failure to supply the requested information. However, any such failure will not constitute a default under the terms of the Series 2012 D Bonds. Registered Owners may contact the Fairmont Manager at P.O. Box 428, Fairmont, West Virginia 26555-1428, (304) 366-6211, for more information. Under the Continuing Disclosure Agreement, a Bondholder’s sole remedy for such failure is to seek an order for specific performance. Any failure to comply with the continuing disclosure requirements described above shall not, however, constitute an event of default under the Ordinance.

The Continuing Disclosure Agreements for the Series 1997 Bonds, the Series 1998 Bonds and the Series 1999 Bonds required the City to file its continuing disclosure with nationally recognized municipal securities information repositories. The City filed its continuing disclosure with Bloomberg as required by such agreements. However, the City was not aware of the changes to EMMA and failed to timely file the June 30, 2009 annual financial information with EMMA. With the assistance of the Underwriters, the City timely filed its July 1, 2010 annual financial information. The City failed to timely file the June 30, 2011 audited financials

with EMMA until April 26, 2012. The City did not engage a dissemination agent to file the annual financial information for the Series 1997 Bonds, the Series 1998 Bonds and the Series 1999 Bonds. In an effort to ensure timely filing of future continuing disclosure obligations, the City is engaging WesBanco Bank, Wheeling, West Virginia, as dissemination agent pursuant to the Continuing Disclosure Agreement. See Appendix E.

#### **MISCELLANEOUS**

The foregoing summaries, explanations and quotations do not purport to be complete and are expressly made subject to the exact provisions of the complete documents. Purchasers are referred to the Act and the Ordinance for full and complete statements of their provisions.

Any statements in this Official Statement involving matters of opinion, whether or not expressly so stated, are intended as such and not as representation of fact. This Official Statement is not to be construed as a contract or agreement between the City and the purchasers or owners of any of the Series 2012 D Bonds. The City has authorized the execution and distribution of this Official Statement.

#### **CITY OF FAIRMONT, WEST VIRGINIA**

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

**APPENDIX A**  
 (sources include the City, US Census, City-Data.com)



**General Information Regarding Fairmont and Marion County, West Virginia**

The City of Fairmont, county seat of Marion County, West Virginia, was founded in 1820 and chartered as a city in 1899. The City is located in north central West Virginia, about 95 miles south of Pittsburgh, Pennsylvania, and 19 miles south of Morgantown, West Virginia. The Monongahela River begins in the City, making it the head of a great inland waterway system.

The City covers 5.32 square miles, of which 31 percent is used for single family housing, 4.8 percent for multi-family housing, 8.3 percent for commercial uses, 3 percent for industrial purposes and 7 percent for other land uses. Approximately 36 percent of the land in the City is vacant.

**Population Data**

Census Report	City Population	% Change
1940	23,105	- .2%
1950	29,346	+ 27.0%
1960	27,477	- 6.4%
1970	26,093	- 5.0%
1980	23,863	- 8.5%
1990	20,389	- 14.5%
2000	19,097	- 6.3%
2010	18,704	-2.5%

Source: U.S. Census Bureau

**Gender/Age/Race Data**

Median resident age: 36.8 years

WV median age: 41.3 years

White alone	16,637	(88.9%)
Black alone	1,411	(7.5%)
Two or more races	430	(2.3%)
Asian alone	113	(0.6%)
American Indian alone	39	(0.2%)
Other race alone	71	(0.4%)
Native Hawaiian and Other Pacific Islander alone	3	(0.02%)

**Household Data**

Average household size:  
 City: ██████████ 2.2 people  
 West Virginia: ██████████ 2.4 people

Percentage of family households:  
 City: ██████████ 54.49%  
 Whole state: ██████████ 66.19%

Residents with income below the poverty level in 2008:  
 City: ██████████ 22%  
 Whole state: ██████████ 17.4%

Source: U.S. Census Bureau

**County Population Data**

**MARION COUNTY POPULATION**

Census Report	County Population	% Change
1940	68,683	+ 3.0%
1950	71,521	+ 4.1%
1960	63,717	- 10.9%
1970	61,356	- 3.7%
1980	65,789	+ 7.2%
1990	57,249	- 13.0%
2000	56,598	- 1.1%
2010	56,418	- .3%

Source: U.S. Census Bureau

**Commerce and Industry**

The City has been an important trade area for North Central West Virginia. A downtown shopping area contains stores and specialty shops. Middletown Mall, located on the edge of the City, opened in 1972, and is now the location of the FBI offices and other area services entities. A major retail center (including Walmart and Sam's Warehouse) has located across from this facility. A 10 minute drive south on I-79 leads to both the Meadowbrook Mall, with its more than 100 places to shop and eat, and the Bridgeport Mall. Both the Morgantown Mall and Mountaineer Mall are within 20 miles of the City.

There is significant industrial activity in the area surrounding the City. Various industrial firms are located in the area. Within the City limits is the I-79 Technology Park which includes NASA and the High-Tech Consortium Building. The City is also in close proximity to the FBI fingerprint center.

Several private and public initiatives have revitalized the downtown area. The local Chamber of Commerce works cooperatively with the Harrison and Monongahela County Chambers to market the region.

The significant number of high technology public agencies and private firms now located in the area provides the foundation for growth. The high-tech companies include Lockheed-Martin, UNISYS, ManTech International, Electronic Warfare Associates, Computer Science Corporation, EG&G, and Hughes Information Systems. Several governmental agencies have located in the region and are providing the foundation upon which technology businesses are growing. These agencies include: NASA, the FBI, the Concurrent Engineering Research Center, and the Morgantown Energy Technology Center.

## Employment

### MAJOR EMPLOYERS (March, 2011)

<u>Employer</u>	<u>Service</u>
Marion County Board of Education	Education
Consolidation Coal Company	Coal
Fairmont State University	Education
Fairmont General Hospital, Inc.	Medical
Allegheny Power Service Corporation	Electrical Power
Wal-Mart	Retail
Eastern Associated Coal	Coal
Aegis Communications Group	Telemarketing
Ruskin Company	Ventilation Systems
Novelis Corporation	Recycling

Source: WV Bureau of Employment Programs, Labor & Economic Research

### MARION COUNTY UNEMPLOYMENT RATES

<u>Year</u>	<u>Unemployment Rate</u>
2002	6.0%
2003	5.7%
2004	4.9%
2005	4.3%
2006	4.1%
2007	3.9%
2008	3.5%
2009	5.9%
2010	7.7%
2011*	6.8%

Source: West Virginia Bureau of Employment Programs,  
Labor & Economic Research and U.S. Dept. of Labor

\*Preliminary

## **Transportation**

Marion County is bisected by Interstate 79 which connects with Interstate 68, 20 miles to the north. Other major highways in the area include US 250, US 19, US 73, WV 218 and WV 310. The County is also 20 minutes from US 50 and approximately 30 minutes from Corridor H.

Passenger air service is provided to Fairmont Municipal Airport, Benedum Airport in Bridgeport, West Virginia, 14 miles south, and Morgantown Municipal Airport, in Morgantown, West Virginia, 20 miles north. The major airport serving the County is Pittsburgh International Airport in Pittsburgh, Pennsylvania which is within a 90 minute drive.

Area rail service is provided by the Chessie System Railroad, the B&O Railroad and the Monongahela Railway Co. Passenger bus service is provided by Greyhound Buslines and Fairmont-Marion County Transit Authority for national and local service, respectively.

## **Utilities and Services**

Electric service to Marion County is provided by Allegheny Power. Cable service is provided locally by CVI/Time Warner Cable and telephone service is provided by Frontier Communications.

The City's regional wastewater collection and treatment system provides sewer service to the City and surrounding areas, including three municipalities and four public service districts.

## **Health Care**

Marion County is served by Fairmont General Hospital, located in Fairmont, which operates a 24-hour emergency room, inpatient care, a range of outpatient services, a center for behavioral medicine and addiction treatment, as well as a center for skilled nursing. Both MVA and MVA Hospice of Marion County provide in-home care services to the chronically and/or terminally ill utilizing a staff of both professional and volunteer caregivers. Also, the MVA Fairmont Clinic provides quality, multispecialty health care to the residents of North Central West Virginia. There are six nursing homes located in Marion County.

### **Hospital/medical centers in/near Fairmont:**

FAIRMONT GENERAL HOSPITAL (1325 LOCUST AVENUE)

H/S MOUNTAINVIEW REGIONAL REHAB HOSP (about 8 miles; MORGANTOWN, WV)

GRAFTON CITY HOSPITAL (about 13 miles; GRAFTON, WV)

MONONGALIA COUNTY GENERAL HOSPITAL (about 13 miles; MORGANTOWN, WV)

UNITED HOSPITAL CENTER (about 16 miles; BRIDGEPORT, WV)

WVU RUBY MEMORIAL HOSPITAL (about 13 miles; MORGANTOWN, WV)

## **Lodging Facilities**

- Comfort Inn & Suites, 1185 Airport Rd, Fairmont, WV 26554, Phone: (304) 367-1370, Fax: (304) 367-1806
- Clarion Inn, 930 E Grafton Rd, Fairmont, WV 26554, Phone: (304) 366-5500, Fax: (304) 363-3975
- Red Roof Inn, 42 Spencer Dr., White Hall, WV 26554, Phone: (304) 366-6800, Fax: (304) 366-6812
- Days Inn, 166 Middletown Rd, Fairmont, WV 26554, Phone: (304) 366-5995, Fax: (304) 366-6092
- Super 8 Motel, 2208 Pleasant Vly Rd, Fairmont, WV 26554, Phone: (304) 363-1488, Fax: (304) 363-1488
- Fairfield Inn & Suites, 27 Southland Dr, Fairmont, WV 26554, Phone: (304) 367-9150, Fax: (304) 367-9151
- Holiday Inn Express, 2256 Landing Lane, Fairmont, WV 26554, Phone: (800) 465-4329
- The Inn at Pettyjohn, 1117 Fairmont Ave., Fairmont, WV 26554, Phone: (304) 363-0100
- Country Club Motor Lodge, US 19 and Country Club Road, Fairmont, WV 26554, Phone: (304) 366-4141
- Belmont Motor Inn, 608 Belleview Blvd., Fairmont, WV 26554, Phone: (304) 363-5300
- Avenue Motel, 816 Fairmont Ave., Fairmont, WV 26554, Phone: (304) 366-4960

## **The Three Rivers Festival and Regatta and Other Festivals**

The City is host to various fairs and festivals beginning with the Three Rivers Festival and Regatta each spring, which draws a tourist crowd to participate in the river activities and parade. The City also annually sponsors the NHPA/Affiliated Horseshoe Pitchers Mixed Tournament, and the Family Festival at Palatine Park features an annual Civil War Reenactment.

Each summer, Fairmont is host to the Mountaineer Area Council Ox Roast benefiting the Boy Scouts of America of Marion, Taylor, Preston and Monongalia Counties. The Fall Festival Weekend kicks off early fall in the area and the year is rounded out with the Annual Christmas at Pricketts Fort festival.

## **Parks and Recreation**

Located in the City is Pricketts Fort State Park which is home to an historic fort originally built in 1774. Valley Falls State Park, a 1,145 acre day park along the Tygart River, offers fishing, hiking, cross country skiing and whitewater rafting. Also located close to the City are other West Virginia scenic and recreational areas including Blackwater Falls State Park, 3,860 acre Tygart Lake created by the Tygart Dam, ski areas of Tucker County, six other State parks

and the Monongahela National Forest. The Fairmont Dragway, a National Racing Association sanctioned drag strip for modern stock cars, is located in the County. The area is also home to the Old Schoolhouse Museum which showcases the Civil War era.

## **Secondary Education**

### ***Public high schools in Fairmont:***

East Fairmont High School (Students: 874; Location: 1993 AIRPORT ROAD; Grades: 9 - 12)

Fairmont Senior High School (Students: 826; Location: 1 LOOP PARK DRIVE; Grades: 9 - 12)

### ***Private high schools in Fairmont:***

CALVARY CHRISTIAN SCHOOL (Students: 79; Location: RT 3 BOX 342 B2; Grades: KG - 12)

APOSTOLIC CHRISTIAN TEMPLE SCH (Students: 23; Location: PO BOX 1757; Grades: PK - 12)

### ***Public elementary/middle schools in Fairmont:***

East Dale Elementary School (Students: 627; Location: RT. 3; Grades: PK - 6)

East Park Elementary School (Students: 399; Location: 1025 FAIRFAX STREET; Grades: PK - 6)

Watson Elementary School (Students: 393; Location: 1579 MARY LOU RETTON DR; Grades: PK - 4)

East Fairmont Junior High School (Students: 372; Location: 1 ORION LANE; Grades: 7 - 8)

Miller Junior High School (Students: 299; Location: 2 PENNSYLVANIA AVENUE; Grades: 7 - 8)

Jayenne Elementary School (Students: 289; Location: 1504 COUNTRY CLUB ROAD; Grades: PK - 4)

Dunbar Middle School (Students: 278; Location: 101 HIGH STREET; Grades: 5 - 6)

Pleasant Valley Elementary School (Students: 273; Location: 58 VALLEY SCHOOL ROAD; Grades: PK - 6)

White Hall Elementary School (Students: 205; Location: ROUTE 7, BOX 65; Grades: PK - 4)

### ***Private elementary/middle school in Fairmont:***

FAIRMONT CATHOLIC GRADE SCHOOL (Students: 206; Location: 416 A MADISON ST; Grades: KG - 8)

## Higher Education

FAIRMONT STATE UNIVERSITY (Full-time enrollment: 5,317; Location: 1201 LOCUST AVE; Public; Website: www.fscwv.edu)

THE INTERNATIONAL ACADEMY OF DESIGN AND TECHNOLOGY (FT enrollment: 179; Location: 2000 GREEN RIVER DR; Private, for-profit)

WEBSTER COLLEGE (FT enrollment: 72; Location: 102 BENONI AVE; Private, for-profit)

OPPORTUNITIES INDUSTRIALIZATION CENTER-N CTRL WV (FT enrollment: 36; Location: 120 JACKSON ST; Private, not-for-profit)

MARION COUNTY ADULT AND COMMUNITY EDUCATION (FT enrollment: 29; Location: 601 LOCUST AVE; Public)

BRENDA WHITE SCHOOL OF REAL ESTATE (Location: 603 MORGANTOWN AVE; Private, for-profit)

## Communications

News service is provided by the Times West Virginian, a daily newspaper located in the City, and the Mountain State Veteran and the Marion County Observer, both weekly publications. Other daily newspapers distributed in the area are the Clarksburg Exponent, Clarksburg Telegram and the Dominion Post (Morgantown).

WTUS 102.7 FM, WVUC-FM, WRLF-FM, WTCS-AM, WMMN-AM and WV Radio, Clarksburg are the local radio stations.

TV broadcast stations around Fairmont include WVFX (Channel 46; CLARKSBURG, WV), WBOY-TV (Channel 12; CLARKSBURG, WV) and WNPB-TV (Channel 24; MORGANTOWN, WV).

## Financial Institutions

Banking service in the City is provided by Huntington Bank, Monongahela Valley Bank, Inc., One Valley Bank, Inc., the First Exchange Bank, WesBanco Bank Wheeling and the Fairmont Federal Credit Union.

### **Banks with branches in Fairmont (2009 data):**

- Wesbanco Bank, Inc.
- The Huntington National Bank
- MVB Bank, Inc
- Branch Banking and Trust Company
- BCBank, Inc.
- First Exchange Bank
- Woodforest National Bank

**HOUSING:**

*Single-family new house construction building permits:*

- 2000: 16 buildings, average cost: \$67,800
- 2001: 16 buildings, average cost: \$67,800
- 2002: 17 buildings, average cost: \$67,800
- 2003: 20 buildings, average cost: \$67,800
- 2004: 22 buildings, average cost: \$67,800
- 2005: 24 buildings, average cost: \$67,800
- 2006: 12 buildings, average cost: \$102,300
- 2007: 10 buildings, average cost: \$102,300
- 2008: 6 buildings, average cost: \$102,300
- 2009: 4 buildings, average cost: \$102,300

**Airports located in Fairmont:**

Fairmont Muni-Frankman Field Airport (Runways: 1, Itinerant Ops: 1,400, Local Ops: 6,000, Military Ops: 500)  
 Carr Airport (Runways: 1)

<b>U.S. Census People QuickFacts</b>	<b>Marion County</b>	<b>West Virginia</b>
Population, 2011 estimate	NA	1,855,364
Population 2010	56,418	1,852,994
Population, percent change, 2000 to 2010	-0.3%	2.5%
Population, 2000	56,598	1,808,344
Persons under 5 years, percent, 2010	5.5%	5.6%
Persons under 18 years, percent, 2010	19.9%	20.9%
Persons 65 years and over, percent, 2010	16.9%	16.0%
Female persons, percent, 2010	51.2%	50.7%
White persons, percent, 2010 (a)	94.3%	93.9%
Black persons, percent, 2010 (a)	3.3%	3.4%
American Indian and Alaska Native persons, percent, 2010 (a)	0.2%	0.2%
Asian persons, percent, 2010 (a)	0.5%	0.7%
Persons reporting two or more races, percent, 2010	1.5%	1.5%
Persons of Hispanic or Latino origin, percent, 2010 (b)	0.9%	1.2%
White persons not	93.7%	93.2%
Living in same house 1 year & over, 2006-2010	88.4%	87.6%
Foreign born persons, percent, 2006-2010	1.2%	1.3%
Language other than English spoken at home, pct age 5+, 2006-2010	2.2%	2.3%
High school graduates, percent of persons age 25+, 2006-2010	86.4%	81.9%
Bachelor's degree or higher, pct of persons age 25+, 2006-2010	19.2%	17.3%
Veterans, 2006-2010	5,071	170,894
Mean travel time to work (minutes), workers age 16+, 2006-2010	25.4	25.4
Housing units, 2010	26,463	881,917
Homeownership rate, 2006-2010	75.1%	74.6%
Housing units in multi-unit structures, percent, 2006-2010	13.0%	12.1%
Median value of owner-occupied housing units, 2006-2010	\$87,500	\$94,500
Households, 2006-2010	22,744	740,874
Persons per household, 2006-2010	2.42	2.42
Per capita money income in past 12 months (2010 dollars) 2006-2010	\$20,752	\$21,232
Median household income 2006-2010	\$38,115	\$38,380

Persons below poverty level, percent, 2006-2010 16.8% 17.4%

<b>Business QuickFacts</b>	<b>Marion County</b>	<b>West Virginia</b>
Private nonfarm establishments, 2009	1,264	38,990 <sup>1</sup>
Private nonfarm employment, 2009	17,942	572,960 <sup>1</sup>
Private nonfarm employment, percent change 2000-2009	6.3%	2.6% <sup>1</sup>
Nonemployer establishments, 2009	2,645	88,081
Total number of firms, 2007	3,967	120,381
Women-owned firms, percent, 2007	29.5%	28.1%
Manufacturers shipments, 2007 (\$1000)	546,362	25,080,573
Retail sales, 2007 (\$1000)	614,884	20,538,829
Retail sales per capita, 2007	\$10,838	\$11,340
Accommodation and foodservices sales, 2007 (\$1000)	67,227	2,553,258
Building permits, 2010	5	2,395
Federal spending, 2009	578,946	20,464,822 <sup>1</sup>

<b>Geography QuickFacts</b>	<b>Marion County</b>	<b>West Virginia</b>
Land area in square miles, 2010	308.74	24,038.21
Persons per square mile, 2010	182.7	77.1

Source: U.S. Census Bureau

## APPENDIX B

### The System

#### History and Development

Development of the System began in 1902 with construction of a pump station on the Monongahela River and a related reservoir, serving the downtown area of the City with 12-inch water mains. Filtration at the reservoir site commenced in 1911 and chlorination began soon thereafter. The filtration plant, constructed in 1924, initially had a maximum capacity of four million gallons per day. In 1942 the existing raw water pump station was constructed on the Tygart Valley River. Provisions for increased filtration capacity plus addition of finished water storage tanks increased plant capacity to six million gallons per day by 1952. The eight million gallon per day capacity was achieved in 1963 with the installation of two additional filters and an additional storage tank. Emergency improvements at the water treatment plant were made to the clearwell, settling basins and flocculator basin in 1977.

In 1984, plant capacity was increased through improvements made to the plant as part of a 1980 improvement project. This increase was due to the construction of an additional 1.5 million gallons of storage, a new head house, upgraded piping and valves, computerized controls, a backwash tank and bulk chemical facilities.

In 2003, the City replaced its conventional water filtration plant with a plant providing four separate production trains utilizing an immersed ultra-filtration membrane system. Although the new plant produced water that met or exceeded standards, there were serious problems with occasional reductions of potable water production, particularly in 2007. Interim steps to alleviate the problems were taken in 2009. In 2010, the City began construction on a filtration plant corrective action program that includes additional production trains and pre-treatment and is expected to provide the intended plant capacity of 12 million gallons per day (the "CAP Project"). The CAP Project is projected to be completed by the Summer of 2012.

The City acquired and installed a fifth production train as part of the CAP Project. The equipment was initially financed by a lease-purchase agreement in the amount of \$1,070,600 through Comvest Ltd., Inc. The company has filed bankruptcy, and the City has filed a proof of claim for the amount of \$506,823.06. However, the City had sufficient funds in Capital Reserves to complete the acquisition and installation. The fifth train went on line in July, 2012.

Since 1987, the System has focused on internally upgrading the distribution system and lines and has significantly reduced the amount of unaccounted for water. In July 2009, the City adopted a resolution endorsing a long-term rate stabilization program to reduce and control unaccounted for water recommended by the Public Service Commission of West Virginia (the "PSC").

In 2008, the City expanded service of the System by constructing 70,748 linear feet of 12-inch and 16-inch water line along US Route 250, from the City's existing Cleveland Avenue main water line to the City of Mannington's 632,000-gallon water storage tank, including a 1,000-gallon-per-minute deluxe water booster pump station with booster chlorination, a master meter system, and a SCADA system for automated operation.

## **Properties and Services**

The primary functions of the System are raw water intake, water treatment, transmission and distribution, and administration.

The immediate source of raw water for the System is the Tygart Valley River which flows at a minimum rate of 34 cubic feet per second. Water flows to the point of System intake from the Tygart Dam, located in Grafton, West Virginia. The dam serves a watershed area of 878,720 acres and has a reservoir capacity of 298,550 acre feet.

The City's raw water intake facility and pumping station are located on the Tygart Valley River. Raw water is pumped through two 20-inch lines to a raw water reservoir and water treatment plant by two 1,800 gallons per minute and two 3,200 gallons per minute pumps. The water treatment plant consists of chemical feed equipment, chlorination equipment and immersed membrane filtration system and 1,500,000 gallon and one 2,000,000 gallon clearwells for finished water storage. The present processing capacity of the water treatment plant is ten million gallons per day and there is currently a project underway to expand capacity to 12-15 million gallons per day and a new pretreatment process for the plant.

The water treatment plant is constructed with the capability to completely treat water in accordance with Federal requirements under the Safe Drinking Water Act. The water quality for both raw water entering the water treatment plant and treated drinking water leaving the plant is continuously monitored by a complete bacteriological and chemical laboratory. Pertinent test data are certified and forwarded to the State Bureau of Public Health which monitors the City's compliance with applicable regulatory standards.

Other raw materials necessary for the production of drinking water include chemicals and power supply. Chemicals are purchased pursuant to annual contracts with reliable suppliers and the City has encountered no difficulties in obtaining adequate chemicals. The required electrical energy is furnished throughout the System by the Mon Power/First Energy Company, and while short electrical interruptions are occasionally experienced, these interruptions have not created any serious problems for the System.

The City owns the transmission mains used to transport water from the water treatment plant to retail customers throughout the City and to the wholesale distribution areas. The transmission system is comprised of approximately 21 miles of 16 to 20-inch mains, 34 miles of 10 to 12-inch mains, 104 miles of 6 to 8-inch mains and 108 miles of 2 to 4-inch mains. Water pressure in the transmission mains is maintained presently by gravity and five booster stations. As part of an improvement project undertaken in 1983-84, a transmission loop for the water treatment plant was completed, a System storage tank was constructed and primary distribution lines were upgraded. These improvements permit adequate pressure maintenance with decreased operation of energy intensive booster pumps.

The City has entered into Inter Utility Agreements with various entities providing sewer service requiring the City to terminate water service to customers in the event such customers fail to pay their sewer bill.

## **Organization and Administration**

Pursuant to the Act and the City Charter adopted in 1976, the City is governed under the council-manager form of municipal government, whereby the Council is the governmental

authority and the City Manager, who is appointed for an indefinite term by the Council, administers the government. The City Council is charged with the responsibility to establish, alter or abolish any City department, office or agency, regulate rates charged for services by a public utility and authorize the borrowing of money. The City Manager is charged with the responsibility to appoint and remove City employees, including department heads, to direct and supervise the administration of most departments, offices and agencies, to see that all laws and ordinances are faithfully executed and to prepare and submit the annual budget.

The System has been operated under the direct supervision of the City Manager since July 1, 1983. Immediately prior to that time, the custody, supervision, control and administration of the System was under the control of a water commission. Administrative duplication and cost, and lack of coordination between City and water commission projects, prompted the 1983 consolidation of System management under the City Manager.

System operations are organized as four functions and assigned on that basis to two departments of City government: the Municipal Utility Department is responsible for treatment plant and pump station operation, utility meter reading, and transmission and distribution line maintenance; and the City Finance Department is responsible for accounting, billing and collections. The officers and employees of the City responsible for these operations, and a discussion of the financial management of the System, are set forth separately below.

On August 29, 2010, the City Council enacted an ordinance that established the Fairmont Water Board to manage, control and supervise the System. The three members of the commission were appointed by the City Council on November 9, 2010. City Manager, Jay Rogers chairs the Board which conducts monthly meetings. All areas of the utility system are discussed with emphasis on the Utility Manager's report and Utility Controller financial assessment. The Board and staff have been active in policy decisions, major project analysis, and creation of a 5-year budget prospective. Future capitalization, customer service and billing technology enhancement, along with rate stabilization are all mission parameters on the Board's agenda moving forward.

### **Certain City Officers and Personnel**

**Jay Rogers** has served as City Manager since August 11, 2009. Jay has an Associate Arts Degree from Potomac State College, a Bachelor of Arts Degree in Political Science from West Virginia University, and a Masters in Public Administration from West Virginia University. Prior to serving as City Manager, Jay served as the Director of Planning and Development for the City from 1998 to 2009. Jay also serves as an Adjunct Professor at the West Virginia University Department of Administration for graduate level courses. From 1996 to 1998 Jay served as a Flood Recovery Mitigation Coordinator at Region VIII Planning and Development Council in Petersburg, West Virginia. In 2005, Jay received the Marion County Chamber of Commerce Public Servant of the Year Award. In 2006, Jay received the Times West Virginian Public Servant of the Year Award.

**David C. Sago** has served as Utility Manager for the City of Fairmont from May 12, 2002 to the present. He is responsible for the operation, maintenance and administration of the City's Water & Sanitary Sewer Departments. Prior to this, David served as the Wastewater Treatment Plant Manager for the City from November of 1994 to May 12, 2002. David has a Bachelor of Technology from Fairmont State College and a Bachelor of Arts in Biology from West Virginia University. David has served as an adjunct professor at Fairmont State University in the Civil Engineering and Safety Departments since 2001. In addition, David has served as an

Instructor at the West Virginia Environmental Training Center since 1994. David established a Safety Program that won the National Water Environmental Federation Awards in 1996. He won the "George W. Burke Jr. Award" for plant safety in 1997 and 2004 and won the "Governor's Safety Award" for small utilities in West Virginia in 1999, 2000, 2001, 2002 and 2003. David serves as the President of the West Virginia Municipal Water Quality Association and the West Virginia Water Environment Association.

**Eileen Layman** has been the Finance Director since July 24, 2001. Prior to this position she worked in the private sector for fourteen years and held positions of Accountant, Credit Manager, and Controller. She has also specialized in business consultations for in-depth analysis of financial statements and business plans. Early in her career, she taught school for four years. She holds a Bachelor of Arts Degree from Fairmont State University in Elementary Education with a concentration in French. Further, as a non-degree student at Fairmont State University, she completed courses in Accounting, EDP, and Business Law and fulfilled CPA requirement coursework in May, 1996. She has held an active CPA license (certificate #3803) in West Virginia since February, 1997.

**Mark Moore** has been the Water Utility Controller since June 17, 2010. Prior to this position he worked in the private sector for 20 years and held positions of Accountant, Controller, and CFO. He also spent 4 years as Finance Director of the Clarksburg Water Board. Mark holds a Bachelor of Science degree in Accounting and Business Administration from Fairmont State University. Further, along with various members of his family, they own and operate a corporation that has dealings in Marketing/Website Development, Accounting Software Programming, and Financial Management Consultation.

### **Other Employees**

Excluding the personnel named above and employees assigned to the City Manager or the City Finance Department, eight (8) persons are employed in water treatment plant and pump station operation, seven (7) persons are employed in the meter division of the Municipal Utility Department, and 12 persons are employed in transmission and distribution operations. All of these employees are members of the United Steelworkers Union of America, working pursuant to a Collective Bargaining Agreement with the City which expires October 23, 2014. The City considers its historical and current relationship with employees assigned to the System to be good.

### **Service Area**

The System provides both retail and wholesale service. The retail service area consists of the City, the Town of Barracksville and several unincorporated adjacent areas in Marion County. This retail service area occupies approximately 32 square miles and contains approximately 56,418 people. The System also serves ten wholesale customers which provide retail service in Marion County and parts of Monongalia and Harrison Counties, an aggregate area of approximately 200 square miles containing approximately 27,100 persons. Thus the aggregate area of the combined wholesale and retail service areas is approximately 232 square miles, and the population served by retail service and wholesale supply is approximately 83,518 persons.

The following table shows the historical and projected population of the service area and water consumption in millions of gallons per day (MGD), as a whole and on a retail and whole sale basis.

**POPULATION AND AVERAGE DAILY CONSUMPTION**

<u>Year Ended June 30</u>	<u>Retail Population</u>	<u>Retail Daily Consumption</u>	<u>Wholesale Population</u>	<u>Wholesale Daily Consumption</u>	<u>Total Population</u>	<u>Total Daily Consumption</u>
		(MGD)		(MGD)		(MGD)
2004	13,743	2,538	9	1,338	13,752	3,875
2005	13,672	2,467	9	1,302	13,681	3,769
2006	13,397	2,460	9	1,291	13,406	3,750
2007	13,350	2,386	9	1,338	13,359	3,724
2008	13,247	2,276	9	1,364	13,256	3,640
2009	13,322	2,216	9	1,376	13,331	3,592
2010	13,257	2,141	10	1,622	13,267	3,763
2011	13,265	2,183	10	1,668	13,275	3,851

Sources: City of Fairmont  
\*PSC Annual Reports

**Customer Statistics**

The average numbers of customers of the System for the past five Fiscal Years are as follows:

**CUSTOMER CATEGORY SUMMARY**

<u>Year Ended June 30</u>	<u>Residential and Commercial (1)</u>	<u>Industrial</u>	<u>Wholesale</u>	<u>Private Fire Protection</u>	<u>Total</u>
2004	13,719	24	9	98	13,850
2005	13,650	22	9	98	13,779
2006	13,375	22	9	95	13,501
2007	13,328	22	9	98	13,457
2008	13,225	22	9	100	13,356
2009	13,300	22	9	104	13,435
2010	13,233	24	10	104	13,371
2011	13,242	23,	10	108	13,383

Source: City billing records.

- (1) City records are available only as to the number of residential and commercial billing accounts. Therefore, the closing of any one account and the opening of a new account by any one residential or commercial user during any given fiscal year would be reflected in City records as two accounts and in the Customer Category Summary set forth above as two customers.

The City's customer count experiences seasonal fluctuation due to student activities.

The following table sets forth the major retail water customers of the System, their average daily consumption and the percentage of total average daily retail consumption and total average daily consumption represented by such consumption, for the fiscal year ended June 2011:

#### Major Retail Users

<u>Customer</u>	<u>Average Daily Consumption</u>	<u>% of Total Daily Retail Consumption</u>	<u>% of Total Daily Consumption</u>
	(gallons)		
SFK Pulp Recycling	95,960	4.27	1.50
Fairmont State University	67,592	3.01	1.09
Fairmont General Hospital	35,457	1.58	.60
Novelis Corp	16,227	.72	.26
WVU NASA FAC	16,080	.72	.26
Superior Industrial	14,921	.66	.24
East Park MHP	14,472	.64	.23
Pierpoint Center	11,971	.53	.19
Amrapour Hotels	10,115	.45	.16
The Arbors	9,349	.42	.15
Total:	295,144	13.03	4.68

Source: City billing records.

#### Wholesale Contracts

The City sells water to ten wholesale users, including three towns, five public service districts and two water associations, located throughout Marion County and in Monongalia and Harrison Counties, West Virginia. The terms of the sale and delivery of, and payment for, System water originally were established by separate contracts between the City and each of the respective wholesale users. While the provisions of such contracts were not uniform, they generally required that the City make available filtered water at a metered location in an amount sufficient to meet the demand of such wholesale user's retail customers, but subject to the adequacy of water supply for the City's retail and other wholesale customers. (Present System capacity of 12-15 million gallons per day substantially exceeds the average 2,246,000 million gallons per day demand of the City's retail customers. Wholesale demand averages 1,668,000 gallons per day, leaving current capacity in excess of average aggregate daily demand equal to 8,086,000 gallons per day.) The contracts generally did not require any minimum purchase or payment by the wholesale users. The contracts further generally provided for a monthly billing of each wholesale user with payment to be made within 10 days thereafter. The contracts generally permitted extension of the contract term at the option of the wholesale user to be expressed in writing.

At least four of the wholesale supply contracts have expired and have not been extended in writing. Those wholesale users whose contracts with the City have expired have continued to purchase water from the System, as indicated in the following Wholesale User Summary. The wholesale users have not made other provision for supplying water to their respective retail customers and any such alternative provision would entail substantial incurrence of capital expenditures for the construction of transmission mains to other water systems or the construction of a water treatment plant. The City continues to supply water to the wholesale customers substantially in the manner provided in the contracts, as discussed above. Although the City received two protests from its wholesale users to the rate increase described below, the City believes that its relationships with the wholesale users are good and does not anticipate cessation of use of System water by any of the wholesale users within the foreseeable future.

Wholesale users accounted for 43% of total average daily consumption during the fiscal year ended June 2011, and 18% of Revenues during the same period.

Although the contracts have expired, the provision of water to the wholesale users by the System is continued annually by agreement. The System is the only provider of these services in the region with the exception of Tri-County Water Association which can obtain water from the Clarksburg Water Board under a wholesale agreement and does so on occasion. The Fairmont wholesale water rate is lower than Clarksburg at the present time and is still the primary provider for Tri-County.

There follows a tabular summary of the System's wholesale users, and their respective water purchases from the City for the year ending June 2011.

**WHOLESALE USER SUMMARY  
(Fiscal Year Ended June 2011)**

Customer	Population Served	Number of Customers	Gallons of Water Purchased	Contract Revenues	Contract Date	Expires
Valley Falls PSD	N/A*	1,601	92,166,000	227,649	2005	40 years
TriCounty Water Assoc.	N/A*	905	63,312,000	156,381	1958	Expired
Monumental PSD	N/A	863	66,765,000	164,909	2005	40 years
Little Creek PSD	2,100	850	68,061,000	166,119	1972	Expired
Town of Rivesville	1,500	910	51,666,000	127,615	1925	Expired
Ice's Run PSD	800	603	31,971,000	78,969	1967	Expired
Town of Grant Town	N/A*	520	48,521,000	119,847	1953	Expired
Paw Paw PSD	1,500	539	36,447,000	90,023	1963	Expired
Montana Water Assoc.	500	278	92,166,000	227,649	2003	40 years
City of Mannington	2,400	955	63,312,000	156,381	2006	40 years

\* Not available.

\*\* Numbers reflect only 11 months of the prior year.

## **Rates**

The current schedule of rates and charges has been in place since May 25, 2012. The City has recently completed construction of the CAP Project which is being financed by the proceeds of the Series 2010 A Bonds, Series 2010 B Bonds, Series 2010 C Bonds and Series 2010 D Bonds (the "CAP Bonds"). The rates necessary to pay the debt service on the CAP Bonds were authorized by the Public Service Commission on June 4, 2012, effective upon the substantial completion of the CAP Project which was May 25, 2012.

Pursuant to the Act, the governing body of a municipality must fix minimum rates and charges for the use of its municipal water system and increase such rates whenever necessary. Such rates and charges are required by the Act to be sufficient at all times to provide for the payment of interest on all bonds issued pursuant to the Act and to create a sinking fund to pay the principal of such bonds as and when the same becomes due, and reasonable reserves therefor, and to provide for the repair, maintenance and operation of the waterworks system, and to provide an adequate depreciation fund, and to make any other payments required or provided for in the applicable bond ordinance.

Except as described below, rates charged by municipally operated utilities in West Virginia generally are not subject to regulatory approval. Section 24-2-4b of the Code of West Virginia of 1931, as amended, provides that rates and charges established by municipally operated utilities shall be just, reasonable, applied without unjust discrimination or preference and based primarily on the costs of providing service. Rates and charges set by such utilities must be filed with the PSC. Any customer of a municipally operated utility aggrieved by a rate change may present to the PSC within 30 days of the adoption of the ordinance providing for the rate change a petition signed by not less than 25 percent of the retail customers served by the utility. Within 100 days from the filing of any such petition a hearing examiner must issue an order approving, disapproving or modifying the rate increase. Such order has the full force and effect of an order issued by the PSC. Also, if a municipally operated utility serves customers outside the boundaries of the municipality, the PSC is empowered to review, approve or modify such rates if, within 30 days of the adoption of the ordinance providing such rates, a customer (including a wholesale user) alleges that such rates are discriminatory. The PSC may determine the method by which such rates are reviewed and may grant and conduct a hearing on the matter if the customer or the municipality requests such a hearing.

Prior to imposition of the current schedule of rates and charges, the System experienced several years of financial difficulties. The financial situation of the System required a loan from the City's general fund and led to the rate increase described below. According to System management, the financial deficits were caused in part by an increase in commodity costs, chemicals, electricity and manpower benefit costs, lack of a rate increase for several preceding years, and the problems with the filtration plant described above. To address the problems and provide for debt service on the CAP Bonds, the City Council enacted a rate ordinance in early 2009 that would have imposed a 49% rate increase. In addition to protests from various citizens, both Valley Falls Public Service District and the Town of Mannington protested the rates as discriminatory. In connection with the proceedings, the PSC by emergency order established an interim water rate increase of approximately 24%. The order also included a \$1.54 per month per customer surcharge to apply to accumulated accounts payable. In October 2009 the PSC

voided the City's rate ordinance and authorized the rates described below, which the City has since adopted as its own.

**Current Rates**

The following table sets forth the rates and charges put in place June 4, 2012, effective for service rendered on or after May 25, 2012.

**RETAIL WATER SYSTEM RATES AND CHARGES**  
Cost per 1,000 Gallons per Month

Availability. Available for general domestic, commercial and industrial service.

<u>Water Consumption</u> <u>(gallons used per month)</u>	<u>Rate</u> <u>(per 1000 gallons)</u>
First 25,000	\$8.87
Next 25,000	\$4.68
Next 25,000	\$3.82
All Over 75,000	\$3.77
 Resale Rate	 \$2.70

Minimum Rates. No bill shall be rendered for less than the following amounts, according to size of meter installed:

<u>Size of Meter</u> <u>(inches)</u>	<u>Rate (per month)</u>
5/8 or less	\$ 22.18
3/4	\$ 33.27
1	\$ 55.45
1-1/4	\$ 80.95
1-1/2	\$ 110.89
2	\$ 177.43
3	\$ 354.86
4	\$ 554.46
6	\$1,108.93
8	\$1,774.29

Tap Fee

Three Hundred Dollars (\$300)

Reconnection Service Charge

Twenty-Five Dollars (\$25)

Source: Public Service Commission - Tariff

## Billing and Collections

The City renders a monthly bill to 1,133 commercial and industrial customers of the System. Residential customers are billed once every two months. Payments are due 20 days after the billing date. If a bill remains unpaid beyond the due date, a 10 percent penalty is added to the delinquent account and delinquency procedures are initiated, including the mailing of one termination notice and termination of service 30 days after the initial due date. Service on delinquent accounts remains terminated until payment of the account is made. Upon reinstating service to a previously delinquent account, a reconnection charge of \$25 is required.

Termination procedures were established in July 1982. During the fiscal year ended June 30, 2011, service attributable to 2,640 delinquent accounts were terminated because of nonpayment.

The City has a policy of writing off accounts determined to be uncollectible. Also, the City has made a provision with respect to operating expenses on its balance sheets pertaining to the System for doubtful accounts, as follows:

### SUMMARY OF DOUBTFUL ACCOUNTS

<u>Year Ended June 30</u>	<u>Provision for Doubtful Accounts</u>	<u>Accounts Receivable Written Off</u>
2007	\$226,783.14	\$110,606.78
2008	271,815.24	76,749.09
2009	268,170.40	141,227.42
2010	304,558.69	109,537.75
2011	334,895.08	114,068.64

Source: Audited Financial Reports prepared by Tetrick & Bartlett, Certified Public Accountants and the Finance Department of the City.

Deferred payment plans are available for any residential customer who can demonstrate inability to pay a System bill in full and that service termination would be dangerous to such customer's health or safety.

## System Budget and Expenditure

The City Manager, City Finance Department and Municipal Utility Department prepare draft budgets for System operations under their respective managements. The City budget is compiled from these, and other, draft budgets by the City Manager and submitted to the City Council on or before February 15 of each year. The Utility Department budgets are prepared and submitted to their respective boards for approval. Upon Board approval, budgets are forwarded to City Council for final adoption. The City budget is required by Charter to indicate operating expenditures and capital expenditures proposed for the ensuing fiscal year, detailed by offices,

departments and agencies in terms of their respective work programs, and the method of financing such expenditures. The total of proposed expenditures may not exceed the total of estimated income. Prior to March 28 of each year, but following public hearing, the City Council is required to adopt the City budget. Supplemental appropriations, or a reduction of appropriations, may be made by the City Council upon certification by the City Manager of an excess or insufficiency of revenues. No payment may be made except in accordance with appropriations set forth in the budget. As a matter of City practice, purchase orders are approved by the purchasing officer and payments are approved by the City Manager prior to disbursement of funds by the City accounting office. Separate accounting records are kept by the water accounting clerk and reviewed by the City utility accountant each year. Water accounting records are balanced with the records of the City Finance Department on a monthly basis.

### **Method of Accounting**

The City maintains its accounts pertaining to the System on an accrual basis and in accordance with the guidelines of the PSC. The records of the City for the fiscal years ended June 30 of 2007, 2008, 2009, 2010 and 2011 have been audited and are available for public inspection at the City and online.

### **Retirement System**

All full-time City employees (185) and System employees (35) are covered under the West Virginia Public Employees Retirement System ("PERS"). Employees contribute 4.5% of gross income which contribution is matched by a 14.5% of gross income contribution by the City. As with many employers, the City is faced with significant other post-employment benefit obligations. PERS has charged the City an additional assessment; however, rather than depositing the assessment amount with PERS, the City has escrowed the funds with a bank. See Financial Statements attached as Exhibit C.

**APPENDIX C**

**Financial Statements of the City Of Fairmont**

**CITY OF FAIRMONT, WEST VIRGINIA  
A CLASS II MUNICIPALITY IN MARION COUNTY**

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**INDEPENDENT AUDITOR'S REPORT AND  
RELATED FINANCIAL STATEMENTS**

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**FOR THE YEAR ENDED JUNE 30, 2011**  
*RFP #10-129 (Marion County)*

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CITY OF FAIRMONT, WEST VIRGINIA  
MUNICIPAL OFFICIALS  
FOR THE YEAR ENDED JUNE 30, 2011

Office	Name	Term
	<i>Elective</i>	
Mayor:	William Burdick	01/01/07 – 12/31/10
Council Member:		
1 <sup>st</sup> District	Robert Gribben	01/01/11 – 12/31/14
2 <sup>nd</sup> District	Robert Sapp	01/01/09 – 12/31/12
3 <sup>rd</sup> District	Deborah Seifrit	01/01/11 – 12/31/14
4 <sup>th</sup> District	William Burdick	01/01/09 – 12/31/12
5 <sup>th</sup> District	Chuck Warner	01/01/11 – 12/31/14
6 <sup>th</sup> District	Daniel Weber	01/01/09 – 12/31/12
7 <sup>th</sup> District	Robert Garcia	01/01/09 – 12/31/12
8 <sup>th</sup> District	Robin Smith	01/01/11 – 12/31/14
9 <sup>th</sup> District	Ronald J. Straight	01/01/11 – 12/31/14
	<i>Appointive</i>	
City Manager:	Jay Rogers, III	
Finance Director:	Eileen Layman	
City Clerk:	Janet Keller	
Municipal Judge:	Anthony Julian	

CITY OF FAIRMONT, WEST VIRGINIA  
INDEX OF FUNDS  
FOR THE YEAR ENDED JUNE 30, 2011

**GOVERNMENTAL FUND TYPES**

*General Fund*

*Special Revenue Funds*

Coal Severance Tax  
Economic Development Grant Fund  
Special Purpose Grant Program  
Emergency Shelter Grant Program  
Police Fund  
Bureau of Justice Fund  
Boards and Commissions Fund  
Workers Compensation Fund  
Police Investigation Fund  
Urban Renewal Authority  
Municipal Financial Stabilization Rainy Day Fund  
Other Post Employment Benefits Fund

*Capital Project Funds*

Capital Reserve Fund  
Sharon Steel Redevelopment Fund

**PROPRIETARY FUND TYPE**

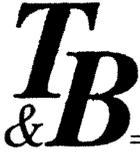
*Enterprise Funds*

Water  
Sanitary Sewer Board  
Parking  
Building Commission Fund  
Park Commission

**FIDUCIARY FUND TYPE**

*Trust Funds*

Policemen's Pension and Relief  
Firemen's Pension and Relief



## INDEPENDENT AUDITOR'S REPORT

The Honorable Mayor and Council  
City of Fairmont  
Fairmont, West Virginia

We have audited the accompanying financial statements of the governmental activities, the business-type activities, each major fund and the aggregate remaining fund information of the City of Fairmont, West Virginia, as of and for the year ended June 30, 2011, which collectively comprise the City's basic financial statements as listed in the table of contents. These financial statements are the responsibility of the City of Fairmont, West Virginia's management. Our responsibility is to express opinions on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinions.

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City of Fairmont, West Virginia, as of June 30, 2011, and the respective changes in financial position and cash flows, where applicable, thereof and the respective budgetary comparison for the General Fund and the Coal Severance Fund for the year then ended in conformity with accounting principles generally accepted in the United States of America.

As discussed in Note 1 to the financial statements, the City adopted the provisions of GASB Statement No. 54, *Fund Balance Reporting and Governmental Fund Type Definitions*, in the year ended June 30, 2011.

In accordance with *Government Auditing Standards*, we have also issued a report dated January 6, 2012, on our consideration of the City of Fairmont, West Virginia's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be considered in assessing the results of our audit.

Management has omitted the management's discussion and analysis that accounting principles generally accepted in the United States of America require to be presented to supplement the basic financial statements. Such missing information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. Our opinion on the basic financial statements is not affected by this missing information.

Accounting principles generally accepted in the United States of America require that the Schedule of Funding Progress – Policemen's Pension and Relief Fund (PPRF) and Firemen's Pension and Relief Fund (FPRF) be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Government Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the City of Fairmont, West Virginia's financial statements as a whole. The combining and individual nonmajor fund financial statements are presented for purposes of additional analysis and are not a required part of the financial statements. The accompanying schedule of expenditures of federal awards is presented for purposes of additional analysis as required by U.S. Office of Management and Budget Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*, and is also not a required part of the financial statements. The combining and individual nonmajor fund financial statements and the schedule of expenditures of federal awards are the responsibility of management and were derived from and relate directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the financial statements as a whole.

*T. J. ...*

January 6, 2012

CITY OF FAIRMONT, WEST VIRGINIA  
STATEMENT OF NET ASSETS  
JUNE 30, 2011

	<u>Governmental</u> <u>Activities</u>	<u>Business-Type</u> <u>Activities</u>	<u>Total</u>
<b>Assets</b>			
Cash	\$ 2,447,788	\$ 498,867	\$ 2,946,655
Investments	5,036,683	2,787,147	7,823,830
Receivables	2,029,706	2,560,678	4,590,384
Internal balances	671,500	( 671,500)	-0-
Inventory	9,593	193,596	203,189
Prepaid expenses	20,856	708	21,564
Restricted assets	9,855	7,159,217	7,169,072
Capital assets, net	5,930,711	72,923,417	78,854,128
Unamortized bond discount and issue cost	-0-	<u>452,962</u>	<u>452,962</u>
Total assets	<u>16,156,692</u>	<u>85,905,092</u>	<u>102,061,784</u>
<b>Liabilities</b>			
Accounts payable	99,071	1,758,366	1,857,437
Claims payable	121,450	-0-	121,450
Other accrued expenses	253,731	533,980	787,711
Accrued other post employment benefits	2,843,197	-0-	2,843,197
Deferred revenue	114,000	-0-	114,000
Customer deposits	8,680	70,405	79,085
Accrued interest payable	-0-	838,110	838,110
Long-term liabilities			
Due within one year	528,680	3,063,857	3,592,537
Due in more than one year	<u>14,584,071</u>	<u>46,441,543</u>	<u>61,025,614</u>
Total liabilities	<u>18,552,880</u>	<u>52,706,261</u>	<u>71,259,141</u>
<b>Net Assets</b>			
Invested in capital assets, net of related debt	4,935,196	24,180,288	29,115,484
Restricted	90,981	7,159,217	7,250,198
Unrestricted	<u>( 7,422,365)</u>	<u>1,859,326</u>	<u>( 5,563,039)</u>
Total Net Assets	<u>\$ ( 2,396,188)</u>	<u>\$ 33,198,831</u>	<u>\$ 30,802,643</u>

The accompanying notes are an integral part of this statement.

**CITY OF FAIRMONT, WEST VIRGINIA  
STATEMENT OF ACTIVITIES  
FOR THE YEAR ENDED JUNE 30, 2011**

<u>Function/Programs</u>	<u>Expenses</u>	<u>Charges for Services</u>	<u>Operating Grants and Contributions</u>	<u>Capital Grants and Contributions</u>	<u>Governmental Activities</u>	<u>Business-Type Activities</u>	<u>Total</u>
<b>Governmental Activities</b>							
General government	\$ 2,411,066	\$ 11,212	\$ 11,172	\$ -	\$( 2,388,682)	\$ -	\$( 2,388,682)
Public safety	7,743,824	1,417,631	174,315	-	( 6,151,878)	-	( 6,151,878)
Highways and streets	1,722,099	86,993	-	-	( 1,635,106)	-	( 1,635,106)
Sanitation	1,212,272	1,194,627	-	-	( 17,645)	-	( 17,645)
Culture and recreation	131,539	26,038	-	-	( 105,501)	-	( 105,501)
Social services	1,761	-	-	-	( 1,761)	-	( 1,761)
Community development	4,200	-	174,415	-	170,215	-	170,215
Benefits paid	36,477	-	150,545	-	114,068	-	114,068
Total governmental activities	<u>13,263,238</u>	<u>2,736,501</u>	<u>510,447</u>	<u>-</u>	<u>(10,016,290)</u>	<u>-</u>	<u>(10,016,290)</u>
<b>Business-Type Activities</b>							
Water	7,053,743	8,792,721	-	4,290,783	-	6,029,761	6,029,761
Sanitary sewer board	4,426,094	4,592,862	-	55,521	-	222,289	222,289
Building commission	470,136	100	-	-	-	( 470,036)	( 470,036)
Parking	93,832	117,985	-	-	-	24,153	24,153
Park commission	26,866	4,142	-	2,200	-	( 20,524)	( 20,524)
Total business-type activities	<u>\$ 12,079,671</u>	<u>\$ 13,507,810</u>	<u>\$ -</u>	<u>\$ 4,348,504</u>	<u>-</u>	<u>5,785,643</u>	<u>5,785,643</u>
<b>General Revenues</b>							
Taxes					8,969,960	-	8,969,960
Licenses and permits					165,725	-	165,725
Investment income					360,698	227,574	588,272
Franchise fees					275,461	-	275,461
Miscellaneous					384,920	59,840	444,760
Total general revenues					<u>10,156,764</u>	<u>287,414</u>	<u>10,444,178</u>
Change in net assets before transfers					140,474	6,073,057	6,213,531
Transfers between activities					( 449,522)	449,522	-
Change in net assets after transfers between activities					( 309,048)	6,522,579	6,213,531
Net assets -- beginning					( 2,087,140)	26,676,252	24,589,112
Net assets -- ending					<u>\$ (2,396,188)</u>	<u>\$ 33,198,831</u>	<u>\$ 30,802,643</u>

The accompanying notes are an integral part of this statement.

**CITY OF FAIRMONT, WEST VIRGINIA  
FUND BALANCE SHEETS  
GOVERNMENTAL FUNDS  
JUNE 30, 2011**

	<u>General Fund</u>	<u>Capital Reserve Fund</u>	<u>Coal Severance Fund</u>	<u>Other Governmental Funds</u>	<u>Total Governmental Funds</u>
<b>ASSETS</b>					
Cash	\$ 682,754	\$ 1,324,438	\$ 35,479	\$ 405,117	\$ 2,447,788
Investments	1,375,473	-0-	-0-	3,661,210	5,036,683
Receivables, net of allowances:					
Taxes	1,538,618	-0-	-0-	-0-	1,538,618
Accounts	290,438	-0-	-0-	-0-	290,438
Other	72,280	-0-	-0-	58,410	130,690
Interest	2,355	-0-	-0-	5,659	8,014
Due from (to):					
Other funds	259,363	464,904	-0-	( 52,767)	671,500
Other governments	61,946	-0-	-0-	-0-	61,946
Prepaid expenses	1,070	19,786	-0-	-0-	20,856
Inventory	9,593	-0-	-0-	-0-	9,593
Restricted:					
Customer deposits	<u>9,855</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>9,855</u>
<b>TOTAL ASSETS</b>	<b>\$ <u>4,303,745</u></b>	<b>\$ <u>1,809,128</u></b>	<b>\$ <u>35,479</u></b>	<b>\$ <u>4,077,629</u></b>	<b>\$ <u>10,225,981</u></b>
<b>LIABILITIES AND FUND BALANCES</b>					
<b>Liabilities</b>					
Accounts payable	\$ 44,297	\$ 6,336	\$ -0-	\$ 48,438	\$ 99,071
Claims payable	-0-	-0-	-0-	121,450	121,450
Other accrued expenses	185,298	68,433	-0-	-0-	253,731
Accrued compensated absences	239,268	-0-	-0-	-0-	239,268
Accrued other post employment benefits	596,507	-0-	-0-	2,246,690	2,843,197
Deferred revenue	315,024	-0-	-0-	-0-	315,024
Customer deposits	<u>8,680</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>8,680</u>
Total liabilities	<u>1,389,074</u>	<u>74,769</u>	<u>-0-</u>	<u>2,416,578</u>	<u>3,880,421</u>
<b>Fund Balances</b>					
Nonspendable	10,664	-0-	-0-	-0-	10,664
Committed	290,438	-0-	-0-	1,276,149	1,566,587
Restricted	37,010	68,433	-0-	87,531	192,974
Assigned	-0-	1,665,926	35,479	297,371	1,998,776
Unassigned	<u>2,576,559</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>2,576,559</u>
Total fund balance	<u>2,914,671</u>	<u>1,734,359</u>	<u>35,479</u>	<u>1,661,051</u>	<u>6,345,560</u>
<b>TOTAL LIABILITIES AND FUND BALANCES</b>	<b>\$ <u>4,303,745</u></b>	<b>\$ <u>1,809,128</u></b>	<b>\$ <u>35,479</u></b>	<b>\$ <u>4,077,629</u></b>	<b>\$ <u>10,225,981</u></b>

The accompanying notes are an integral part of this statement.

CITY OF FAIRMONT, WEST VIRGINIA  
 RECONCILIATION OF FUND BALANCE SHEETS OF  
 GOVERNMENTAL FUNDS TO STATEMENT OF NET ASSETS  
 JUNE 30, 2011

Fund balance, fund level statement June 30, 2011	\$ 6,345,560
<p>The total fund balance of the City of Fairmont's governmental funds differs from net assets of the governmental activities reported on the Statement of Net Assets as follows:</p>	
<p>Some liabilities are not due and payable in the current period and therefore, are not reported in the fund level statements:</p>	
Obligations under capital leases	( 995,516)
Unfunded pension and post retirement obligation	(12,930,710)
Accrued compensated absences	( 947,257)
Capital assets, that are used in governmental activities and are purchased or constructed, the costs of those assets are reported as expenditures in the governmental funds. However, the Statement of Net Assets includes those assets and their associated accumulated depreciation.	5,930,711
<p>Some assets do not provide current financial resources and are not reported as assets in the fund level statements:</p>	
Reduction in deferred revenue at June 30, 2011	<u>201,024</u>
Net assets of governmental activities	\$ <u>( 2,396,188)</u>

The accompanying notes are an integral part of this statement.

**CITY OF FAIRMONT, WEST VIRGINIA  
STATEMENT OF REVENUES, EXPENDITURES, AND  
CHANGES IN FUND BALANCES -  
GOVERNMENTAL FUNDS  
FOR THE YEAR ENDED JUNE 30, 2011**

	<u>General</u> <u>Fund</u>	<u>Capital</u> <u>Reserve</u> <u>Fund</u>	<u>Coal</u> <u>Severance</u> <u>Fund</u>	<u>Other</u> <u>Governmental</u> <u>Funds</u>	<u>Total</u> <u>Governmental</u> <u>Funds</u>
<b>Revenues</b>					
Taxes (including interest and penalties)	\$ 8,875,897	\$ -0-	\$ -0-	\$ -0-	\$ 8,875,897
Licenses and permits	165,725	-0-	-0-	-0-	165,725
Intergovernmental:					
Federal	117,385	-0-	-0-	154,869	272,254
State	40,895	-0-	97,275	30,002	168,172
Charges for services	2,350,040	-0-	-0-	-0-	2,350,040
Contributions:					
From employer	-0-	-0-	-0-	150,545	150,545
Fines and forfeits	-0-	-0-	-0-	386,461	386,461
Donations	11,172	442	-0-	5,579	16,751
Investment income	28,845	-0-	6	75,786	105,079
Franchise fees	275,461	-0-	-0-	-0-	275,461
Gain (loss) on investments	49,944	-0-	-0-	205,675	255,619
Miscellaneous	189,920	-0-	-0-	-0-	189,920
Total revenues	<u>12,105,284</u>	<u>442</u>	<u>97,281</u>	<u>1,008,917</u>	<u>13,211,924</u>
<b>Expenditures</b>					
General government	1,919,473	918	-0-	88,887	2,009,278
Public safety	6,238,164	-0-	-0-	141,252	6,379,416
Highways and streets	1,144,997	-0-	84,544	-0-	1,229,541
Sanitation	1,212,272	-0-	-0-	-0-	1,212,272
Culture and recreation	124,927	-0-	-0-	-0-	124,927
Social services	1,761	-0-	-0-	-0-	1,761
Community development	-0-	222,919	-0-	169,713	392,632
Police refunds and remittances	-0-	-0-	-0-	-0-	-0-
Retirement of debt service	-0-	331,972	-0-	-0-	331,972
Benefit payments	-0-	-0-	-0-	36,477	36,477
Total expenditures	<u>10,641,594</u>	<u>555,809</u>	<u>84,544</u>	<u>436,329</u>	<u>11,718,276</u>
Excess (deficiency) of revenues over (under) expenditures	<u>1,463,690</u>	<u>( 555,367)</u>	<u>12,737</u>	<u>572,588</u>	<u>1,493,648</u>
<b>Other Financing Sources (Uses)</b>					
Operating transfers in	196,675	1,801,367	-0-	1,470	1,999,512
Proceeds from debt service	-0-	195,000	-0-	-0-	195,000
Operating transfers (out)	<u>( 1,759,593)</u>	<u>( 434,884)</u>	<u>-0-</u>	<u>( 254,557)</u>	<u>( 2,449,034)</u>
Total other financing sources (uses)	<u>( 1,562,918)</u>	<u>1,561,483</u>	<u>-0-</u>	<u>( 253,087)</u>	<u>( 254,522)</u>
Excess (deficiency) of revenues and other financing sources over (under) expenditures and other financing sources	<u>( 99,228)</u>	<u>1,006,116</u>	<u>12,737</u>	<u>319,501</u>	<u>1,239,126</u>
Fund balance at beginning of year	<u>3,013,899</u>	<u>728,243</u>	<u>22,742</u>	<u>1,341,550</u>	<u>5,106,434</u>
Fund balance at end of year	\$ <u>2,914,671</u>	\$ <u>1,734,359</u>	\$ <u>35,479</u>	\$ <u>1,661,051</u>	\$ <u>6,345,560</u>

The accompanying notes are an integral part of this statement.

**CITY OF FAIRMONT, WEST VIRGINIA  
RECONCILIATION OF THE STATEMENT OF REVENUES,  
EXPENDITURES, AND CHANGES IN FUND BALANCES -  
GOVERNMENTAL FUNDS TO THE STATEMENT OF ACTIVITIES  
FOR THE YEAR ENDED JUNE 30, 2011**

Net change in fund balances – total governmental funds	\$ 1,239,126
Amounts reported for governmental activities in the Statement of Activities are different because:	
Governmental funds report capital outlays as expenditures while governmental activities report depreciation expense to allocate those expenditures over the life of the assets. This is the amount by which depreciation exceeded capital assets in the current period.	( 538,524)
Revenues in the Statement of Activities that do not provide current financial resources are not reported as revenues in the funds at June 30, 2011.	
Recognition of deferred income	( 3,211)
Capital leases and bonds provide current financial resources to governmental funds, but entering into capital leases increases long-term liabilities in the Statement of Net Assets. Repayment of capital lease obligations and bonds are an expenditure in the governmental funds, but the repayment reduces long-term liabilities in the Statement of Net Assets.	
Acquisition of capital assets from capital lease	( 197,907)
Repayment of obligation under capital lease	294,252
Some expenses reported in the Statement of Activities do not require the use of current financial resources and therefore are not reported as expenditures in governmental funds.	
Change in net pension obligations	(1,082,509)
Change in long-term accrued compensated absences	<u>( 20,275)</u>
Change in Net Assets of Governmental Activities	\$ ( <u>309,048</u> )

The accompanying notes are an integral part of this statement.

CITY OF FAIRMONT, WEST VIRGINIA  
 FUND BALANCE SHEETS  
 PROPRIETARY FUNDS  
 JUNE 30, 2011

	Business-Type Activities					Total
	<u>Water</u>	<u>Sanitary Sewer Board</u>	<u>Building Commission</u>	<u>Parking</u>	<u>Park Commission</u>	
<b>ASSETS</b>						
<b>Current Assets</b>						
Cash	\$ 179,984	\$ 173,483	\$ 36,344	\$ 105,094	\$ 3,962	\$ 498,867
Investments	1,580,209	1,003,844	203,094	-0-	-0-	2,787,147
Receivables, net of allowances:						
Accounts	589,620	423,167	109,116	5,241	-0-	1,127,144
Other	21,141	7,725	-0-	-0-	2,200	31,066
Grants	1,399,715	-0-	-0-	-0-	-0-	1,399,715
Interest	2,140	-0-	613	-0-	-0-	2,753
Due from (to) other funds	( 759,585)	90,283	-0-	( 2,198)	-0-	( 671,500)
Prepaid expenses	-0-	708	-0-	-0-	-0-	708
Inventory, at cost	<u>165,357</u>	<u>28,239</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>193,596</u>
Total current assets	<u>3,178,581</u>	<u>1,727,449</u>	<u>349,167</u>	<u>108,137</u>	<u>6,162</u>	<u>5,369,496</u>
<b>Noncurrent Assets</b>						
Restricted assets	<u>6,231,351</u>	<u>927,866</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>7,159,217</u>
<b>Capital Assets</b>						
Land	227,647	397,394	744,740	-0-	-0-	1,369,781
Buildings	-0-	-0-	3,770,144	137,440	207,794	4,115,378
Structures and improvements	7,024,186	278,763	4,600,593	16,148	-0-	11,919,690
Transmission and distribution	45,769,137	37,091,203	-0-	-0-	-0-	82,860,340
Machinery and equipment	6,724,514	3,916,978	16,193	129,412	-0-	10,787,097
Construction in progress	8,319,613	-0-	-0-	-0-	-0-	8,319,613
Less: Accumulated depreciation	<u>(24,559,116)</u>	<u>(20,268,275)</u>	<u>(1,414,255)</u>	<u>(156,621)</u>	<u>( 50,215)</u>	<u>(46,448,482)</u>
Total capital assets	<u>43,505,981</u>	<u>21,416,063</u>	<u>7,717,415</u>	<u>126,379</u>	<u>157,579</u>	<u>72,923,417</u>
<b>Other Assets</b>						
Unamortized bond discount and issue costs	<u>403,152</u>	<u>49,810</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>452,962</u>
<b>TOTAL ASSETS</b>	<b>\$ <u>53,319,065</u></b>	<b>\$ <u>24,121,188</u></b>	<b>\$ <u>8,066,582</u></b>	<b>\$ <u>234,516</u></b>	<b>\$ <u>163,741</u></b>	<b>\$ <u>85,905,092</u></b>

	Business-Type Activities					Total
	Water	Sanitary Sewer Board	Building Commission	Parking	Park Commission	
<b>LIABILITIES AND NET ASSETS</b>						
<b>Current Liabilities (payable from current assets)</b>						
Current portion obligation under capital lease	\$ 173,880	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ 173,880
Notes payable	132,861	81,217	100,000	-0-	-0-	314,078
Accounts payable	1,670,159	85,421	-0-	253	2,533	1,758,366
Other accrued expenses	56,570	477,410	-0-	-0-	-0-	533,980
Deferred revenue	-0-	-0-	-0-	-0-	-0-	-0-
Accrued compensated absences	100,900	67,454	-0-	-0-	-0-	168,354
Total current liabilities (payable from current assets)	<u>2,134,370</u>	<u>711,502</u>	<u>100,000</u>	<u>253</u>	<u>2,533</u>	<u>2,948,658</u>
<b>Current Liabilities (payable from restricted assets)</b>						
Revenue bonds payable	1,180,796	1,015,930	210,819	-0-	-0-	2,407,545
Accrued revenue bond interest payable	806,554	-0-	-0-	-0-	-0-	806,554
Accrued interest payable	112	-0-	31,444	-0-	-0-	31,556
Customer deposits	70,405	-0-	-0-	-0-	-0-	70,405
Total current liabilities (payable from restricted assets)	<u>2,057,867</u>	<u>1,015,930</u>	<u>242,263</u>	<u>-0-</u>	<u>-0-</u>	<u>3,316,060</u>
<b>Long-Term Liabilities (net of current portion)</b>						
Revenue bonds payable	35,864,590	5,109,092	4,068,644	-0-	-0-	45,042,326
Obligation under capital lease	173,636	-0-	-0-	-0-	-0-	173,636
Notes payable	631,664	-0-	-0-	-0-	-0-	631,664
Customer advances	-0-	323,918	-0-	-0-	-0-	323,918
Accrued compensated absences	143,163	126,836	-0-	-0-	-0-	269,999
Total long-term liabilities (net of current portion)	<u>36,813,053</u>	<u>5,559,846</u>	<u>4,068,644</u>	<u>-0-</u>	<u>-0-</u>	<u>46,441,543</u>
Total liabilities	<u>41,005,290</u>	<u>7,287,278</u>	<u>4,410,907</u>	<u>253</u>	<u>2,533</u>	<u>52,706,261</u>
<b>Net Assets</b>						
Invested in capital assets, net of related debt	5,348,554	15,209,824	3,337,952	126,379	157,579	24,180,288
Restricted	6,231,351	927,866	-0-	-0-	-0-	7,159,217
Unrestricted	733,870	696,220	317,723	107,884	3,629	1,859,326
Total net assets	<u>12,313,775</u>	<u>16,833,910</u>	<u>3,655,675</u>	<u>234,263</u>	<u>161,208</u>	<u>33,198,831</u>
<b>TOTAL LIABILITIES AND NET ASSETS</b>	<b>\$ <u>53,319,065</u></b>	<b>\$ <u>24,121,188</u></b>	<b>\$ <u>8,066,582</u></b>	<b>\$ <u>234,516</u></b>	<b>\$ <u>163,741</u></b>	<b>\$ <u>85,905,092</u></b>

The accompanying notes are an integral part of this statement.

**CITY OF FAIRMONT, WEST VIRGINIA**  
**STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET ASSET –**  
**PROPRIETARY FUNDS**  
**FOR THE YEAR ENDED JUNE 30, 2011**

	Business-Type Activities					
	Sanitary		Building Commission	Parking	Park Commission	Total
	Water	Sewer Board				
<b>Operating Revenues</b>						
Charges for services	\$ 8,574,244	\$ 4,591,962	\$ 100	\$ 117,985	\$ 4,142	\$ 13,288,433
Miscellaneous	<u>218,477</u>	<u>900</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>219,377</u>
Total operating revenues	<u>8,792,721</u>	<u>4,592,862</u>	<u>100</u>	<u>117,985</u>	<u>4,142</u>	<u>13,507,810</u>
<b>Operating Expenses</b>						
Purchases and materials	27,788	-0-	-0-	-0-	-0-	27,788
Pumping	353,834	554,168	-0-	-0-	-0-	908,002
Treatment and disposal	2,166,688	1,595,838	-0-	-0-	-0-	3,762,526
Billing and collection	714,190	205,550	-0-	-0-	-0-	919,740
General and administrative	391,383	727,583	3,450	-0-	3,550	1,125,966
Operating expenses	-0-	-0-	-0-	86,682	-0-	86,682
Depreciation	<u>1,652,235</u>	<u>1,107,513</u>	<u>261,148</u>	<u>7,150</u>	<u>23,316</u>	<u>3,051,362</u>
Total operating expenses	<u>5,306,118</u>	<u>4,190,652</u>	<u>264,598</u>	<u>93,832</u>	<u>26,866</u>	<u>9,882,066</u>
Operating income (loss)	<u>3,486,603</u>	<u>402,210</u>	<u>( 264,498)</u>	<u>24,153</u>	<u>( 22,724)</u>	<u>3,625,744</u>
<b>Nonoperating Revenues (Expenses)</b>						
Investment income	208,571	9,841	9,125	35	2	227,574
Miscellaneous income	56,207	-0-	-0-	-0-	-0-	56,207
Donations	-0-	-0-	-0-	-0-	-0-	-0-
Gain on disposal of capital assets	591	-0-	-0-	3,042	-0-	3,633
Interest and fiscal charges	( 1,699,082)	( 140,006)	( 205,538)	-0-	-0-	( 2,044,626)
Amortization of bond discount and issue costs	<u>( 48,543)</u>	<u>( 95,436)</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>( 143,979)</u>
Total nonoperating revenues (expenses)	<u>( 1,482,256)</u>	<u>( 225,601)</u>	<u>( 196,413)</u>	<u>3,077</u>	<u>2</u>	<u>( 1,901,191)</u>
Income (loss) before nonoperating grants and capital contributions	2,004,347	176,609	( 460,911)	27,230	( 22,722)	1,724,553
Contributions from other funds	-0-	-0-	408,148	223,919	-0-	632,067
Contributions to other funds	-0-	-0-	-0-	(182,545)	-0-	( 182,545)
Nonoperating grants and capital contributions	<u>4,290,783</u>	<u>55,521</u>	<u>-0-</u>	<u>-0-</u>	<u>2,200</u>	<u>4,348,504</u>
Change in net assets	6,295,130	232,130	( 52,763)	68,604	( 20,522)	6,522,579
Total net assets – beginning - restated	<u>6,018,645</u>	<u>16,601,780</u>	<u>3,708,438</u>	<u>165,659</u>	<u>181,730</u>	<u>26,676,252</u>
Total net assets – ending	\$ <u>12,313,775</u>	\$ <u>16,833,910</u>	\$ <u>3,655,675</u>	\$ <u>234,263</u>	\$ <u>161,208</u>	\$ <u>33,198,831</u>

The accompanying notes are an integral part of this statement.

CITY OF FAIRMONT, WEST VIRGINIA  
STATEMENT OF CASH FLOWS -  
PROPRIETARY FUNDS  
FOR THE YEAR ENDED JUNE 30, 2011

	Business-Type Activities					Total
	Water	Sanitary Sewer Board	Building Commission	Parking	Park Commission	
<b>Cash Flows From Operating Activities</b>						
Receipts from customers	\$ 8,678,106	\$ 4,594,016	\$ 100	\$ 117,659	\$ 4,142	\$ 13,394,023
Receipts from other sources	276,566	900	408,148	-0-	-0-	685,614
Payments to suppliers	(2,081,473)	(1,880,267)	( 3,450)	( 13,874)	( 3,833)	( 3,982,897)
Payments to employees	(1,283,850)	(1,047,815)	-0-	( 42,121)	-0-	( 2,373,786)
Net cash provided by operating activities	<u>5,589,349</u>	<u>1,666,834</u>	<u>404,798</u>	<u>61,664</u>	<u>309</u>	<u>7,722,954</u>
<b>Cash Flows From Capital and Related Financing Activities</b>						
(Increase) decrease in restricted assets	( 75,410)	( 113,226)	-0-	-0-	-0-	( 188,636)
Increase (decrease) in restricted liabilities	25,555	( 1,493)	-0-	-0-	-0-	24,062
Repayment of obligation under capital leases	( 171,025)	-0-	-0-	-0-	-0-	( 171,025)
Repayment of revenue bonds	(1,056,668)	(1,006,190)	(202,287)	-0-	-0-	( 2,265,145)
Proceeds from revenue bonds	454,146	30,350	-0-	-0-	-0-	484,496
Proceeds from notes payable	-0-	-0-	-0-	-0-	-0-	-0-
Repayment of notes payable	( 145,539)	( 135,735)	-0-	-0-	-0-	( 281,274)
Interest expense	(1,743,517)	( 140,006)	(198,661)	-0-	-0-	( 2,082,184)
Net cash (used in) provided by capital and related financing activities	<u>(2,712,458)</u>	<u>(1,366,300)</u>	<u>(400,948)</u>	<u>-0-</u>	<u>-0-</u>	<u>( 4,479,706)</u>
<b>Cash Flows From Investing Activities</b>						
(Increase) decrease in investments	( 427,558)	( 85,628)	( 4,036)	-0-	-0-	( 517,222)
Proceeds from nonoperating grants	3,587,566	55,521	-0-	-0-	2,200	3,645,287
Proceeds from disposal of capital assets	591	-0-	-0-	7,500	-0-	8,091
Acquisition of capital assets	(6,192,735)	( 526,014)	( 7,200)	( 16,148)	( 2,200)	( 6,744,297)
Interest on investments	<u>207,168</u>	<u>9,841</u>	<u>8,736</u>	<u>36</u>	<u>2</u>	<u>225,783</u>
Net cash (used in) provided by investing activities	<u>(2,824,968)</u>	<u>( 546,280)</u>	<u>( 2,500)</u>	<u>( 8,612)</u>	<u>2</u>	<u>( 3,382,358)</u>
Net (decrease) increase in cash	51,923	( 245,746)	1,350	53,052	311	( 139,110)
Cash at beginning of year	<u>128,061</u>	<u>419,229</u>	<u>34,994</u>	<u>52,042</u>	<u>3,651</u>	<u>637,977</u>
Cash at end of year	\$ <u>179,984</u>	\$ <u>173,483</u>	\$ <u>36,344</u>	\$ <u>105,094</u>	\$ <u>3,962</u>	\$ <u>498,867</u>

CITY OF FAIRMONT, WEST VIRGINIA  
STATEMENT OF CASH FLOWS (CONT'D)  
PROPRIETARY FUNDS  
FOR THE YEAR ENDED JUNE 30, 2011

	Business-Type Activities					Total
	Water	Sanitary Sewer Board	Building Commission	Parking	Park Commission	
Reconciliation of operating income (loss) to net cash provided by operating activities						
Operating income (loss)	\$ 3,486,603	\$ 402,210	\$(264,498)	\$ 24,153	\$(22,724)	\$ 3,625,744
Adjustments to reconcile operating income (loss) to net cash provided by operating activities:						
Depreciation and amortization	1,652,235	1,107,513	261,148	7,150	23,316	3,051,362
Loss on disposal of capital assets	-0-	3,675	-0-	-0-	-0-	3,675
Nonoperating miscellaneous income	56,208	-0-	-0-	-0-	-0-	56,208
Transfers (to) from other funds	-0-	-0-	408,148	41,374	-0-	449,522
(Increase) decrease in:						
Accounts receivable	103,862	2,054	-0-	( 326)	-0-	105,590
Other receivables	58,089	2,101	-0-	-0-	1,721	61,911
Due from (to) other funds	( 347,028)	175,661	-0-	( 71)	( 3,897)	( 175,335)
Prepaid expenses	-0-	( 483)	-0-	-0-	-0-	( 483)
Inventory	( 11,011)	( 5,802)	-0-	-0-	-0-	( 16,813)
Increase (decrease) in:						
Accounts payable	684,852	( 165,652)	-0-	( 9,074)	1,893	512,019
Other accrued expenses	( 100,288)	157,245	-0-	( 1,156)	-0-	55,801
Deferred revenue	-0-	-0-	-0-	-0-	-0-	-0-
Accrued compensated absences	5,827	( 11,688)	-0-	( 386)	-0-	( 6,247)
Net cash provided by operating activities	\$ <u>5,589,349</u>	\$ <u>1,666,834</u>	\$ <u>404,798</u>	\$ <u>61,664</u>	\$ <u>309</u>	\$ <u>7,722,954</u>

The accompanying notes are an integral part of this statement.

**CITY OF FAIRMONT, WEST VIRGINIA  
STATEMENT OF REVENUES, EXPENDITURES AND  
CHANGES IN FUND BALANCE – BUDGET AND ACTUAL –  
GENERAL FUND – BUDGETARY BASIS  
FOR THE YEAR ENDED JUNE 30, 2011**

	<u>Budgeted Amounts</u>		<u>Actual</u>	<u>Budget to</u>	<u>Actual</u>	<u>Variance</u>
	<u>Original</u>	<u>Final</u>	<u>(Budgetary</u> <u>Basis)</u>	<u>GAAP</u> <u>Difference</u>	<u>Amounts</u> <u>GAAP</u> <u>Basis</u>	<u>With Final</u> <u>Budget</u> <u>Favorable</u> <u>(Unfavorable)</u>
<b>Revenues</b>						
Taxes (including interest and penalties)	\$ 7,534,516	\$ 7,531,448	\$ 8,875,897	\$ ( 3,212)	\$ 8,872,685	\$ 1,344,449
Licenses and permits	207,000	207,000	165,725	-0-	165,725	( 41,275)
Charges for services	2,341,059	2,375,523	2,350,040	-0-	2,350,040	( 25,483)
Fines and forfeitures	190,000	190,000	195,105	-0-	195,105	5,105
Donations	-0-	11,172	11,172	-0-	11,172	-0-
Interest	2,000	2,000	1,406	-0-	1,406	( 594)
Franchise fees	270,000	276,280	275,461	-0-	275,461	( 819)
Intergovernmental:						
State	48,000	48,000	40,895	-0-	40,895	( 7,105)
Federal	104,724	104,724	117,385	-0-	117,385	12,661
Miscellaneous	281,976	298,557	189,920	-0-	189,920	( 108,637)
Total revenues	<u>10,979,275</u>	<u>11,044,704</u>	<u>12,223,006</u>	<u>( 3,212)</u>	<u>12,219,794</u>	<u>1,178,302</u>
<b>Expenditures</b>						
General government	2,068,661	1,281,218	1,253,493	69,407	1,322,900	27,725
Public safety	6,361,347	6,501,776	6,238,164	1,364,407	7,602,571	263,612
Highways and streets	1,222,552	1,252,878	1,144,997	492,558	1,637,555	107,881
Sanitation	1,165,721	1,213,273	1,212,272	-0-	1,212,272	1,001
Culture and recreation	158,594	127,233	124,927	6,612	131,539	2,306
Social services	2,400	1,832	1,761	-0-	1,761	71
Total expenditures	<u>10,979,275</u>	<u>10,378,210</u>	<u>9,975,614</u>	<u>1,932,984</u>	<u>11,908,598</u>	<u>402,596</u>
(Deficiency) excess of revenues (under) over expenditures	<u>-0-</u>	<u>666,494</u>	<u>2,247,392</u>	<u>(1,936,196)</u>	<u>311,196</u>	<u>1,580,898</u>
<b>Other Financing Sources (Uses)</b>						
Operating transfers in	-0-	639	1,570	-0-	1,570	931
Operating transfers (out)	<u>-0-</u>	<u>( 1,770,000)</u>	<u>( 1,759,593)</u>	<u>-0-</u>	<u>( 1,759,593)</u>	<u>10,407</u>
Total other financing sources (uses)	<u>-0-</u>	<u>( 1,769,361)</u>	<u>( 1,758,023)</u>	<u>-0-</u>	<u>( 1,758,023)</u>	<u>11,338</u>
Net change in fund balance	-0-	( 1,102,867)	489,369	(1,936,196)	( 1,446,827)	1,592,236
Fund balance at beginning of year	<u>-0-</u>	<u>1,102,867</u>	<u>2,574,222</u>	<u>(6,375,747)</u>	<u>( 3,801,525)</u>	<u>1,471,355</u>
Fund balance at end of year	\$ <u>-0-</u>	\$ <u>-0-</u>	\$ <u>3,063,591</u>	\$ <u>(8,311,943)</u>	\$ <u>( 5,248,352)</u>	\$ <u>3,063,591</u>

CITY OF FAIRMONT, WEST VIRGINIA  
STATEMENT OF REVENUES, EXPENDITURES AND  
CHANGES IN FUND BALANCE - BUDGET AND ACTUAL -  
GENERAL FUND - BUDGETARY BASIS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

**Explanation of Differences:**

- (1) The City budgets for capital expenditures as a current period expenditure rather than a capital expenditure on the accrual basis of accounting.
- (2) The amount reported as "fund balance" on the budgetary basis of accounting derives from the basis of accounting used in preparing the City's budget. This amount differs from the fund balance reported in the statement of revenues, expenditures, and changes in fund balances because of the cumulative effect of transactions such as those described above.

The accompanying notes are an integral part of this statement.

CITY OF FAIRMONT, WEST VIRGINIA  
STATEMENT OF REVENUES, EXPENDITURES AND  
CHANGES IN FUND BALANCE - BUDGET AND ACTUAL -  
COAL SEVERANCE FUND - BUDGETARY BASIS  
FOR THE YEAR ENDED JUNE 30, 2011

	<u>Budgeted Amounts</u>		<u>Actual</u>	<u>Budget to</u>	<u>Actual</u>	<u>Variance</u>
	<u>Original</u>	<u>Final</u>	<u>(Budgetary</u>	<u>GAAP</u>	<u>Amounts</u>	<u>With Final</u>
			<u>Basis)</u>	<u>Difference</u>	<u>GAAP</u>	<u>Budget</u>
					<u>Basis</u>	<u>Favorable</u>
						<u>(Unfavorable)</u>
<b>Revenues</b>						
Interest	\$ 40	\$ 40	\$ 6	\$ -0-	\$ 6	\$ ( 34)
Intergovernmental:						
State	<u>80,000</u>	<u>80,000</u>	<u>97,275</u>	<u>-0-</u>	<u>97,275</u>	<u>17,275</u>
Total revenues	<u>80,040</u>	<u>80,040</u>	<u>97,281</u>	<u>-0-</u>	<u>97,281</u>	<u>17,241</u>
<b>Expenditures</b>						
Highways and streets	<u>80,040</u>	<u>86,907</u>	<u>84,544</u>	<u>-0-</u>	<u>84,544</u>	<u>2,363</u>
Total expenditures	<u>80,040</u>	<u>86,907</u>	<u>84,544</u>	<u>-0-</u>	<u>84,544</u>	<u>2,363</u>
(Deficiency) excess of revenues (under) over expenditures	<u>-0-</u>	<u>( 6,867)</u>	<u>12,737</u>	<u>-0-</u>	<u>12,737</u>	<u>19,604</u>
<b>Other Financing Sources (Uses)</b>						
Operating transfers in	-0-	-0-	-0-	-0-	-0-	-0-
Operating transfers (out)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Total other financing sources (uses)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Net change in fund balance	-0-	( 6,867)	12,737	-0-	12,737	19,604
Fund balance at beginning of year	<u>-0-</u>	<u>6,867</u>	<u>22,742</u>	<u>-0-</u>	<u>22,742</u>	<u>15,875</u>
Fund balance at end of year	\$ <u>-0-</u>	\$ <u>-0-</u>	\$ <u>35,479</u>	\$ <u>-0-</u>	\$ <u>35,479</u>	\$ <u>35,479</u>

**Explanation of Differences:**

- (1) The City budgets for capital expenditures as a current period expenditure rather than a capital expenditure on the accrual basis of accounting.
- (2) The amount reported as "fund balance" on the budgetary basis of accounting derives from the basis of accounting used in preparing the City's budget. This amount differs from the fund balance reported in the statement of revenues, expenditures, and changes in fund balances because of the cumulative effect of transactions such as those described above.

The accompanying notes are an integral part of this statement.

CITY OF FAIRMONT, WEST VIRGINIA  
 FIDUCIARY RESONSIBILITIES  
 STATEMENT OF NET ASSETS  
 JUNE 30, 2011

	<u>Policemen's Pension and Relief</u>	<u>Firemen's Pension and Relief</u>	<u>Total</u>
<b>Assets</b>			
Cash	\$ 29,841	\$ 96,440	\$ 126,281
Investments	3,800,267	1,905,563	5,705,830
Receivables:			
Other	2,179	2,179	4,358
Interest	<u>7,762</u>	<u>5,599</u>	<u>13,361</u>
Total assets	<u>3,840,049</u>	<u>2,009,781</u>	<u>5,849,830</u>
<b>Liabilities</b>			
Accounts payable	<u>25</u>	<u>30</u>	<u>55</u>
<b>Net Assets</b>			
Held in trust for pension benefits	\$ <u>3,840,024</u>	\$ <u>2,009,751</u>	\$ <u>5,849,775</u>

The accompanying notes are an integral part of this statement.

CITY OF FAIRMONT, WEST VIRGINIA  
 FIDUCIARY RESPONSIBILITIES  
 STATEMENT OF CHANGES IN NET ASSETS  
 FOR THE YEAR ENDED JUNE 30, 2011

	<u>Policemen's Pension and Relief</u>	<u>Firemen's Pension and Relief</u>	<u>Total</u>
<b>Additions</b>			
Contributions:			
Employer			
Employees	\$ 505,841	\$ 687,492	\$ 1,193,333
Insurance premium tax allocation	108,901	156,674	265,575
Net contributions	<u>353,292</u>	<u>442,494</u>	<u>795,786</u>
Investment income:	<u>968,034</u>	<u>1,286,660</u>	<u>2,254,694</u>
Net appreciation in fair value of investments			
Interest income and dividends	( 4,728)	243,224	238,496
Capital gains	127,276	63,000	190,276
Net investment income	<u>458,378</u>	<u>5,739</u>	<u>464,117</u>
Miscellaneous	580,926	311,963	892,889
Total additions	<u>-0-</u>	<u>30</u>	<u>30</u>
	<u>1,548,960</u>	<u>1,598,653</u>	<u>3,147,613</u>
<b>Deductions</b>			
General and administrative			
Benefit payments	5,214	2,251	7,465
Total deductions	<u>1,072,349</u>	<u>1,457,177</u>	<u>2,529,526</u>
	<u>1,077,563</u>	<u>1,459,428</u>	<u>2,536,991</u>
Net increase	471,397	139,225	610,622
Net assets – beginning of year	<u>3,368,627</u>	<u>1,870,526</u>	<u>5,239,153</u>
Net assets – end of year	<u>\$ 3,840,024</u>	<u>\$ 2,009,751</u>	<u>\$ 5,849,775</u>

The accompanying notes are an integral part of this statement.

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS  
FOR THE YEAR ENDED JUNE 30, 2011

**1. Summary of Significant Accounting Policies**

The City of Fairmont, West Virginia complies with accounting principles generally accepted in the United States of America. The City's reporting entity applies all relevant Governmental Accounting Standards Board (GASB) pronouncements. Proprietary funds apply Financial Accounting Standards Board (FASB) pronouncements and Accounting Principles Board (APB) opinions issued on or before November 30, 1989, unless those pronouncements conflict with or contradict GASB pronouncements, in which case, GASB prevails.

The remainder of the Notes are organized to provide explanations, including required disclosures, of the City's financial activities for the fiscal year ended June 30, 2011.

The City of Fairmont, West Virginia is incorporated under the provisions of the State of West Virginia. The City operates under a Council - Manager form of government and provides the following services as authorized by its charter: public safety (police and fire), streets, sanitation, water, waste, recreation, education, public improvements, planning and zoning, and general administrative services.

In February 2009, Governmental Accounting Standards Board (GASB) issued Statement No. 54, *Fund Balance Reporting and Governmental Fund Type Definitions*, which is effective for periods that begin after June 15, 2010. The objective of GASB 54 is to enhance the usefulness of fund balance information by 1) clarifying existing governmental fund type definitions and 2) providing clearer fund balance classifications that can be more consistently applied. The City of Fairmont, West Virginia implemented GASB 54 for the year ended June 30, 2011.

In June 1999, the Government Accounting Standards Board (GASB) unanimously approved Statement No. 34, *Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments*. Certain of the significant changes in the Statement include the following:

A Management Discussion and Analysis (MD&A) section providing an analysis of the City's overall financial position and results of operation.

Financial statements prepared using the full accounting for all of the City's activities, including infrastructure (roads, bridges, etc.).

A change in the fund financial statements to focus on the major funds.

Statement 34 established standards for external financial reporting for all state and local governmental entities which includes a management's discussion and analysis section, a statement of net assets, a statement of activities and changes in net assets and a statement of cash flows. It requires the classification of net assets into three components – invested in capital assets, net of related debt; restricted; and unrestricted.

In June 2001, GASB issued Statement No. 37 "Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments; Omnibus" which amends Statement No. 34. The amendments clarify certain provisions that, in retrospect, may not be sufficiently clear for consistent application and modifies other provisions that GASB believes may have unintended consequences in some circumstances.

Also in June 2001, GASB issued Statement No. 38 "Certain Financial Statement Note Disclosures." Statement No. 38 modifies, establishes and rescinds certain financial statement disclosure requirements. Existing disclosures that are modified include interfund balances, debt service requirements, short-term debt activity, lease disclosures and expanded definitions and activity descriptions. Additional note disclosures established include certain interest rate disclosures, major components of receivables and payables and descriptions of interfund transfers.

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

The adoption of Statement 37 and 38 had no effect on the basic financial statements except for expanded disclosures for interfund activity.

These and other changes are reflected in the accompanying financial statements (including notes to financial statements). The City has elected to implement the general provisions of the Statement in the year ended June 30, 2003.

**Basic Financial Statements – Government Wide Statements**

The City's basic financial statements include both government-wide (reporting the City as a whole) and fund financial statements (reporting the City's major funds). Both the government-wide and fund financial statements categorize primary activities as either governmental or business type. The City's police and fire protection, parks, public works and general administrative services are classified as governmental activities. The City's water, sewer, parking, building commission and park commission services are classified as business-type activities.

In the government-wide Statement of Net Assets, both the governmental and business-type activities columns (a) are presented on a consolidated basis by column, (b) and are reported on a full accrual, economic resource basis, which recognizes all long-term assets and receivables as well as long-term debt and obligations. The City's net assets are reported in three parts – invested in capital assets, net of related debt; restricted net assets; and unrestricted net assets. The City first utilizes restricted resources to finance qualifying activities.

The government-wide Statement of Activities reports both the gross and net cost of each of the City's functions and business-type activities (police, fire, public works, etc.). The functions are also supported by general government revenues (taxes, certain intergovernmental revenues, fines, permits and charges, etc.). The Statement of Activities reduces gross expenses (including depreciation) by related program revenues, operating and capital grants. Program revenues must be directly associated with the function (police, public works, etc.) or a business-type activity. Operating grants include operating-specific and discretionary (either operating or capital) grants while the capital grants column reflects capital-specific grants.

The net costs (by function or business-type activity) are normally covered by general revenue (taxes, intergovernmental revenues, interest income, etc.).

The City does not allocate indirect costs. An administrative service fee is charged by the General Fund to the other operating funds that is eliminated like a reimbursement (reducing the revenue and expense in the General Fund) to recover the direct costs of General Fund services provided (finance, personnel, purchasing, etc.).

This government-wide focus is more on the sustainability of the City as an entity and the change in the City's net assets resulting from the current year's activities.

A summary of the significant accounting policies of the City of Fairmont, West Virginia, is presented below.

**(a) Reporting Entity**

The City's financial statements include the operations of all organizations for which the City Council exercises oversight responsibility. Oversight responsibility is demonstrated by financial interdependency, selection of governing authority, designation of management, ability to significantly influence operations, and accountability for fiscal matters.

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

(b) **Government-Wide Financial Statements**

The government-wide financial statements report information on all the nonfiduciary activities of the government. For the most part, the effect of internal activity has been removed from these statements. Government activities, which normally are supported by taxes and intergovernmental revenues, are reported separately from business-type activities, which rely to significant extent on fees and charges for support.

The Statement of Activities demonstrates the degree to which the direct expenses of a given function or segment are offset by program revenues. Direct expenses are those that are clearly identifiable with a specific function or segment. Program revenues include (1) charges to customers or applicants whose purchase, use or directly benefit from goods, services or privileges provided by a given function or segment and (2) grants and contributions that are restricted to meeting the operational or capital requirements of a particular function or segment. Taxes and other items not properly included among program revenues are reported instead as general revenues.

Separate financial statements are provided for governmental funds, proprietary funds and fiduciary funds, even though the latter are excluded from the governmental-wide statements. Major individual funds are reported as separate columns in the fund statements.

(c) **Measurement Focus and Financial Statement Presentation – Government-Wide Financial Statements**

Funds are classified into three categories: governmental, proprietary and fiduciary. Each category, in turn, is divided into separate “fund types”. Governmental funds are used to account for governmental activities, where the focus of attention is on the providing of services to the public as opposed to proprietary funds where the focus of attention is on recovering the cost of providing services to the public through service charges or user fees. Fiduciary funds are used to account for assets held by the City in a trustee or agency capacity. The fund types used by the City of Fairmont are described as follows:

**Governmental Fund Types**

*General Fund:* The General Fund is the general operating fund of the municipality. It is used to account for all financial resources except those required to be accounted for in another fund.

*Special Revenue Funds:* Special Revenue Funds are used to account for the proceeds of specific revenue sources (other than special assessments, expendable trusts, or major capital projects) that are legally restricted to expenditures for capital purposes.

*Capital Project Funds:* Capital Project Funds are used to account for the financial resources to be used for the acquisition or construction of major capital facilities which are not financed by Proprietary Funds.

**Proprietary Fund Types**

*Enterprise Funds:* Enterprise funds are used to account for operations (a) that are financed and operated in a manner similar to private business enterprises – where the intent of the governing body is that the costs (expenses including depreciation) of providing goods and services to the general public on a continuing basis be financed or recovered primarily through user charges; or (b) where the governing body has decided that periodic determination of revenues earned, expenses incurred, and/or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes.

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

The City of Fairmont reports the following major governmental funds:

The General Fund, Capital Reserve Fund and Coal Severance Fund.

*General Fund:* The General Fund is the general operating fund of the municipality.

The City of Fairmont reports the following major proprietary funds:

The Water Fund, the Sanitary Sewer Board, the Parking Fund, the Building Commission and the Park Commission.

**(d) Funds and Account Groups – Fund Financial Statements**

The accounts of the City are organized into funds and account groups, each of which is considered to be a separate accounting entity. The major fund categories and account groups for the fund financial statements are:

**Governmental Fund Types**

Governmental funds are accounted for using the current financial resources measurement focus. Only current assets and current liabilities are generally included on their balance sheets. Their operating statements present sources and uses of available resources during a given period.

*General Fund:* The General Fund is the general operating fund of the municipality. It is used to account for all financial resources except those required to be accounted for in another fund.

*Special Revenue Funds:* Special Revenue Funds are used to account for the proceeds of specific revenue sources (other than special assessments, expendable trusts, or major capital projects) that are legally restricted to expenditures for specified purposes.

*Capital Project Funds:* Capital Project Funds are used to account for the financial resources to be used for the acquisition or construction of major capital facilities which are not financed by Proprietary Funds.

**Proprietary Fund Types**

Proprietary funds are accounted for using the economic resources measurement focus; the accounting objectives are determination of net income, financial position, and cash flows. All assets and liabilities associated with a proprietary fund's activities are included on its balance sheet.

*Enterprise Funds:* Enterprise Funds are used to account for operations (a) that are financed and operated in a manner similar to private business enterprises - where the intent of the governing body is that the costs (expenses, including depreciation) of providing goods and services to the general public on a continuing basis be financed or recovered primarily through user charges; or (b) where the governing body has decided that periodic determination of revenues earned, expenses incurred, and/or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes.

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

**Fiduciary Funds**

Fiduciary funds account for assets held by the City in a trustee or agency capacity. Pension trust funds are accounted for in essentially the same manner as proprietary funds.

**(e) Cash, Cash Equivalents and Investments**

Cash on hand and deposits with banking institutions either in checking or savings accounts are presented as cash and cash equivalent in the accompanying financial statements.

State statutes authorize the government to invest in the State Investment Pool or the Municipal Bond Commission or to invest such funds in the following classes of securities: (a) obligations of the United States or any agency thereof, (b) certificates of deposit (which mature in less than one year), (c) general and direct obligations of the State of West Virginia, (d) obligations of the Federal National Mortgage Association, (e) indebtedness secured by first lien deed of trust for property situated within the State if the payment is substantially insured or guaranteed by the federal government, (f) pooled mortgage trusts (subject to limitations), (g) indebtedness of any private corporation that is properly graded as in the top two or three highest rating grades, (h) interest earning deposits which are fully insured or collateralized, and (i) mutual funds registered with the Security and Exchange Commission which have fund assets over three hundred million dollars. State statute limitations concerning the aforementioned investments include the following:

- (1) at no time can investment portfolios consist of more than seventy-five percent of the indebtedness of any private corporations nor can the portfolio have over twenty-five percent of its portfolio consisting of the indebtedness of a private corporation's debt which matures in less than one year.
- (2) at no time may more than nine percent of the portfolio be invested in securities issued by a single private corporation or association.
- (3) at no time can more than sixty percent of the portfolio be invested in equity mutual funds.

Investment risk is categorized as follows:

**Interest rate risk** – The risk that changes in interest rates will adversely affect the fair value of an investment.

**Credit risk** – The risk that an issuer or other counterparty to an investment will not fulfill its obligations.

**Custodial credit risk** – The risk that, in the event of the failure of the counterparty to a transaction, the City will not be able to recover the value of investment or collateral securities that are in the possession of an outside party.

**(f) Receivables**

All receivables are shown net of allowance for uncollectibles.

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

**(g) Capital Assets**

The accounting and reporting treatment applied to capital assets and long-term liabilities associated with a fund are determined by its measurement focus. The City of Fairmont records the purchase of capital assets used in governmental fund type operations as expenditures in the governmental funds. The government-wide financial statements of the City of Fairmont are accounted for on a cost of service or "capital maintenance" measurement focus. This means that all assets and all liabilities (whether current or noncurrent) associated with their activity are included on the statement of net assets.

All proprietary funds and pension trust funds are accounted for on a cost of services or "capital maintenance" measurement focus. This means that all assets and all liabilities (whether current or noncurrent) associated with their activity are included on the balance sheets. The reported fund equity (net total assets) is segregated into contributed capital and retained earnings components. Proprietary fund type operating statements present increase (revenues) and decreases (expenses) in net total assets.

Depreciation of all exhaustible capital assets is charged as an expense against operations. Accumulated depreciation is reported on the statements of net assets. Depreciation has been provided over the estimated useful lives using the straight line method. The estimated useful lives are as follows:

**Governmental Funds**

Buildings and improvements	20 - 50 years
Infrastructure	20 - 65 years
Machinery and equipment	5 - 20 years
Vehicles	8 - 10 years

**Proprietary Funds**

Buildings	25 - 50 years
Improvements	10 - 20 years
Utility plant	10 - 20 years
Equipment	3 - 10 years

**(h) Basis of Accounting**

**Fund Financial Statements**

**Modified Accrual Basis of Accounting**

The City used the modified accrual basis of accounting for governmental fund types. The modified accrual basis of accounting recognizes revenues when both "measurable and available." Measurable means that amount can be determined. Available means collectible within the current period or soon enough thereafter to pay current liabilities. Also, under the modified accrual basis of accounting, expenditures are recorded when the related fund liability is incurred.

Major revenue sources susceptible to accrual include: business & occupation tax, hotel/motel tax, wine tax, liquor tax, property taxes, fire service fees, intergovernmental revenues, and investment income.

**CITY OF FAIRMONT, WEST VIRGINIA**  
**NOTES TO THE FINANCIAL STATEMENTS (CONT'D)**  
**FOR THE YEAR ENDED JUNE 30, 2011**

**Accrual Basis of Accounting**

The accrual basis of accounting is used in proprietary fund types and the pension trust funds. The accrual basis of accounting recognizes revenues when earned. Expenses are recorded when incurred. Plan member contributions to the pension trust funds are recognized in the period in which the contributions are due. Employer contributions to the plan are recognized when due and the City has made a formal commitment to provide the contributions. Benefits and refunds are recognized when due and payable in accordance with the terms of the plan.

**Government-Wide Financial Statements**

The government-wide financial statements are reported using the economic resources measurement focus and the accrual basis of accounting, as are the proprietary funds (when appropriate) and fiduciary fund financial statements. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of related cash flows. Property taxes are recognized as revenues in the year in which they are levied. Grants and similar items are recognized as revenues as soon as all eligibility requirements imposed by the provider have been met.

Governmental fund financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Revenues are recognized as soon as they are both measurable and available. Revenues are considered to be available when they are collectible within the current period or soon enough thereafter to pay liabilities of the current period. For this purpose, the government considers revenues to be available if they are collected within 60 days after the end of the current fiscal year. Expenditures generally are recorded when a liability is incurred, as under accrual accounting. However, debt service expenditures, as well as expenditures related to compensated absences are recorded only when payment is due.

Taxes, grants and interest associated with the current fiscal period are all considered to be susceptible to accrual and so have been recognized as revenues of the current fiscal period. All other revenue items are considered to be measurable and available only when cash is received by the government.

**(i) Fund Equity**

In the fund financial statements, governmental funds report reservations of fund balance for amounts that are not available for appropriation or are legally restricted by outside parties for use for specific purpose. Designations of fund balance represents tentative management plans that are subject to change.

**(j) Budgets and Budgetary Accounting**

All municipalities within West Virginia, are required by statute to prepare annual budgets (levy estimates) on prescribed forms for the General and Coal Severance Funds and submit these for approval to the State Tax Commissioner. These budgets are prepared in accordance with the following procedures:

1. The governing body of the municipality is required to hold a meeting or meetings between the seventh and twenty-eighth days of March to ascertain the financial condition of the municipality and to prepare the levy estimate (budget) for the fiscal year commencing July 1.
2. The budget is then forthwith submitted to the State Tax Commissioner for approval.
3. The governing body then reconvenes on the third Tuesday in April to hear objections from the public and to formally lay the levy.

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

Revisions are authorized only with the prior written approval of the State Tax Commissioner. The budgeted amounts reflected in the accompanying financial statements are such approved amounts.

- A) Unused appropriations for all of the above annually budgeted funds lapse at the year end.
- B) The budget amounts shown in the financial statements are the final authorized amounts as revised during the year.

**(k) Committed – Fund Financial Statements**

Committed accounting is used for the General Fund and special revenue funds. Commitments are recorded when purchase orders are issued but are not considered expenditures until liabilities for payments are incurred. Commitments are reported as a reservation of fund balance on the balance sheet. Commitments do not lapse at the close of the fiscal year but are carried forward as reserved fund balance until liquidated.

**(l) Inventories**

The municipality considers inventories of materials and supplies utilized in governmental fund types operations as expended at the time of purchase therefore, they do not appear in the municipality's financial statements. Inventories of materials and supplies utilized in the proprietary fund type operation, are considered expended at the time of consumption; therefore, balances on hand at year end, valued at cost (first-in, first-out) are presented in the municipality's financial statements.

**(m) Amortization**

Debt discount and expense on bonds is amortized on the straight-line method from the date of issuance to the date of maturity. Amortization of debt discount and issue costs for fiscal year ended June 30, 2011 was \$143,979.

**(n) Compensated Absences**

The liability for compensated absences reported in the government-wide financial statements consists of unpaid, accumulated annual sick and accrued vacations. The liability has been calculated using the vesting method, in which leave amounts for both employees who currently are eligible to receive termination payments and other employees who are expected to become eligible in the future to receive such payment upon termination are included.

**(o) Pension Plans**

The City provides separate defined benefit pension plans for uniformed police and fire department personnel. It is the City's policy to fund the normal cost and amortization of the unfunded prior service cost.

All other eligible employees are covered under the West Virginia Public Employee Retirement System due to the City's electing to be a participating public employer.

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

**(p) Equity Classification**

Effective July 1, 2010, the City adopted GASB Statement No. 54 "Fund Balance Reporting and Governmental Fund Type Definitions," which establishes new standards for accounting and financial reporting that are intended to improve the clarity and consistency of the fund balance information provided to financial report users. The classifications are based primarily on the extent to which the City is bound to honor constraints on the specific purposes for which the amounts in those funds can be spent. Fund balances are reported in the following categories:

Government-wide net assets are divided into three components:

- a. Invested in capital assets, net of related debt – Consists of the historical cost of capital assets less accumulated depreciation and less any debt that remains outstanding that was used to finance those assets.
- b. Restricted net assets – Consists of net assets that are restricted by the City's creditors (for example through debt covenants), by the state enabling legislation (through restrictions on shared revenues), by grantors (both federal and state), and by other contributions.
- c. Unrestricted net assets – All other net assets are reported in this category.

In the governmental fund financial statements, fund balances are classified as follows:

- a. Nonspendable – Amounts that cannot be spent either because they are in a nonspendable form or because they are legally or contractually required to be maintained intact.
- b. Restricted – Amounts that can be spent only for specific purposes because of the City's code, state or federal laws, or externally imposed conditions by grantors or creditors.
- c. Committed – Amounts that can be used only for specific purposes determined by a formal action by the City's council.
- d. Assigned – Amounts that are designed by the City's council for a particular purpose but are not spendable until there is a majority vote approval by the City's council.
- e. Unassigned – All amounts not included in other spendable classifications.

**(q) Use of Estimates**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

(r) **Interfund Activity**

Interfund activity is reported as either loans, services provided, reimbursements or transfers. Loans are reported as interfund receivables and payables as appropriate and are subject to elimination upon consolidation. Services provided, deemed to be at market or near market rates, are treated as revenues and expenditures/expenses. Reimbursements are when one fund incurs a cost, charges the appropriate benefiting fund and reduces its related cost as a reimbursement. All other interfund transactions are treated as transfers. Transfers between governmental or proprietary funds are netted as part of the reconciliation to the government-wide financial statements.

(s) **Restricted Assets**

Certain proceeds of the water and sewer enterprise fund revenue bonds, as well as certain proceeds set aside for their repayment, are classified as restricted assets on the statement of net assets because their use is limited by applicable bond covenants.

**2. Reconciliation of Government-Wide and Fund Financial Statements**

The governmental fund balance sheet includes a reconciliation between fund balance – total governmental funds and net assets – governmental activities as reported on the government-wide statement of net assets. The governmental fund statement of revenues, expenditures, and changes in fund balance includes a reconciliation between net changes in fund balances – total governmental fund and changes in net assets of governmental activities as reported in the government – wide statement of activities. The individual elements of those reconciliations are included with the statements.

**3. Deposits and Investments**

The City reporting entity considers highly liquid investments with an original maturity of three months or less when purchased to be cash equivalents. Exceptions include the City of Fairmont, West Virginia's Policemen's Pension and Relief Fund and the Firemen's Pension and Relief Fund which classify only cash as cash equivalents in order to appropriately report investment activity.

**Deposits**

It is the City's policy for deposits to be 100% secured by collateral valued at market or par, whichever is lower, less the amount of the Federal Deposit Insurance Corporation insurance. The City's deposits are categorized to give an indication of the level of risk assumed by the City at June 30, 2011. The categories are described as follows:

**Category 1** - Insured or collateralized with securities held by the entity or by its agent in the entity's name.

**Category 2** - Collateralized with securities held by the pledging financial institution's trust department or agent in the entity's name.

**Category 3** - Uncollateralized.

CITY OF FAIRMONT, WEST VIRGINIA  
 NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
 FOR THE YEAR ENDED JUNE 30, 2011

<u>Non-Pooled Deposits</u>	<u>Bank</u> <u>Balance</u>	<u>1</u>	<u>Category</u> <u>2</u>	<u>3</u>	<u>Carrying</u> <u>Amount</u>
General Fund	\$ 1,882,116	\$ 115,977	\$ 1,766,139	\$ -0-	\$ 682,754
Special Revenue Funds	437,665	56,712	380,953	-0-	440,596
Capital Project Funds	1,317,128	81,162	1,235,966	-0-	1,324,438
Enterprise Funds	<u>460,086</u>	<u>36,068</u>	<u>424,018</u>	<u>-0-</u>	<u>498,867</u>
Total deposits	<u>\$ 4,096,995</u>	<u>\$ 289,919</u>	<u>\$ 3,807,076</u>	<u>\$ -0-</u>	<u>\$ 2,946,655</u>

	<u>Bank</u> <u>Balance</u>	<u>Category</u> <u>1</u>	<u>2</u>	<u>3</u>	<u>Carrying</u> <u>Amount</u>
Fiduciary Funds	<u>\$ 126,281</u>	<u>\$ 126,281</u>	<u>\$ -0-</u>	<u>\$ -0-</u>	<u>\$ 126,281</u>

**Investments**

Investment pools are under the custody of the City. Investing is performed in accordance with investment policies complying with State Statutes and the City Charter. Pooled funds may be invested in the State Investment Pool or the Municipal Bond Commission for investment purposes, or invested in the following classes of securities: Commercial paper rated A-1 by Standard & Poor's Corporation or P-1 by Moody's Commercial Paper Record, bankers' acceptances, repurchase agreements and reverse repurchase agreements. The pension trust fund is also authorized to invest in corporate bonds rated AA or better by Standard & Poor's Corporation or AA or better by Moody's Bond Rating.

The City's investments are categorized to give an indication of the level of risk assumed by the City at June 30, 2011. The categories are described as follows:

**Custodial Credit Risk**

For an investment, custodial credit risk is the risk that, in the event of the failure of the counterparty, the City will not be able to recover the value of its investments or collateral securities that are in the possession of an outside party.

Investments made by the City are summarized below. The investments that are presented by specific identifiable investment securities are classified as to credit risk by the three categories.

**Category 1** – Insured or registered, securities held by the City or its agent in the entity's name.

**Category 2** – Uninsured and unregistered, with securities held by the counterparty's trust department or agent in the entity's name.

**Category 3** – Uninsured and unregistered, with securities held by the counterparty, or by its trust department or agent but not in the entity's name.

**CITY OF FAIRMONT, WEST VIRGINIA**  
**NOTES TO THE FINANCIAL STATEMENTS (CONT'D)**  
**FOR THE YEAR ENDED JUNE 30, 2011**

<u>Type of Investments</u>	<u>Category</u>			<u>Market Value</u>	<u>Cost</u>
	<u>1</u>	<u>2</u>	<u>3</u>		
Cash equivalents	\$ 3,003,606	\$ -0-	\$ -0-	\$ 3,003,606	\$ 2,996,296
Certificates of deposit	1,116,155	-0-	-0-	1,116,155	1,118,000
Corporate equities	539,422	-0-	-0-	539,422	469,728
Mutual funds	<u>4,835,496</u>	<u>-0-</u>	<u>-0-</u>	<u>4,835,496</u>	<u>4,609,877</u>
Total investments	\$ <u>9,494,679</u>	\$ <u>-0-</u>	\$ <u>-0-</u>	9,494,679	9,193,901
Investments in municipal bond commission				<u>5,498,223</u>	<u>5,498,223</u>
Total investments				\$ <u>14,992,902</u>	\$ <u>14,692,124</u>

Deposits and investments are presented in the statement of net assets as follows:

Investments	\$ 7,823,830
Restricted assets	<u>7,169,072</u>
Total investments	\$ <u>14,992,902</u>

**Credit Risk**

State law limits investments. It is the government's policy that no investment be purchased which does not conform to the State of West Virginia Code Chapter 8. As of June 30, 2011, the government's investments were rated using Standard & Poor's and Fitch and Moody's Investment Services.

As of June 30, 2011, the City had the following investments:

<u>Investment Type</u>	<u>Fair Value</u>	<u>Credit Risk Rating</u>	
		<u>Standard &amp; Poor's and Fitch</u>	<u>Moody's Investment Services</u>
Money Market	\$ 3,003,606	AAA	AAA
Mutual funds	\$ 4,835,496	AAA	AAA
Certificates of deposit	\$ 1,116,155	N/A	N/A
Corporate equities	\$ 539,422	AAA	AAA

**Interest Rate Risk**

As of June 30, 2011, the City had the following investments and maturities exposed to interest rate risk.

<u>Investment Type</u>	<u>Fair Value</u>	<u>Less than 1</u>	<u>1 - 5</u>	<u>6 - 10</u>	<u>More than 10</u>
Certificates of deposit	\$ <u>1,116,155</u>	\$ <u>981,795</u>	\$ <u>134,360</u>	\$ <u>-0-</u>	\$ <u>-0-</u>

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

**Fiduciary Funds**

<u>Type of Investments</u>	<u>Category</u>			<u>Market Value</u>	<u>Cost</u>
	<u>1</u>	<u>2</u>	<u>3</u>		
Money Market	\$ 85,016	\$ -0-	\$ -0-	\$ 85,016	\$ 85,016
Mutual funds	4,147,864	-0-	-0-	4,147,864	3,441,237
Certificates of deposit	689,104	-0-	-0-	689,104	665,000
Corporate bonds and notes	700,673	-0-	-0-	700,673	690,000
Corporate stocks	79,285	-0-	-0-	79,285	130,237
U.S. Government obligations	<u>3,888</u>	<u>-0-</u>	<u>-0-</u>	<u>3,888</u>	<u>4,200</u>
Total investments	\$ <u>5,705,830</u>	\$ <u>-0-</u>	\$ <u>-0-</u>	\$ <u>5,705,830</u>	\$ <u>5,015,690</u>

**Credit Risk:** State law limits investments in corporate debt to commercial paper rated AA or better by Standard & Poor's Corporation or AA or better by Moody's Bond Rating.

**Interest Risk:** The pension investments are at risk of declines in market value due to interest rate risk.

**Custodial Credit Risk:** The City's investments were 100% insured by brokerage insurance and were not subject to custodial credit risk.

**Credit Risk**

State law limits investments. It is the government's policy that no investment be purchased which does not conform to the State of West Virginia Code Chapter 8. As of June 30, 2011, the government's investments were rated using Standard & Poor's and Fitch and Moody's Investment Services.

As of June 30, 2011, the City had the following investments:

<u>Investment Type</u>	<u>Fair Value</u>	<u>Credit Risk Rating</u>	
		<u>Standard &amp; Poor's and Fitch</u>	<u>Moody's Investment Services</u>
Money Market	\$ 85,016	AAA	AAA
Mutual funds	\$ 4,147,864	AAA	AAA
Certificates of deposit	\$ 689,104	N/A	N/A
Corporate bonds and notes	\$ 700,673	B+ - AAA	B3 - A3
Corporate stocks	\$ 79,285	N/A	N/A
U.S. Government obligations	\$ 3,888	AAA	AAA

**Interest Rate Risk**

As of June 30, 2011, the City had the following investments and maturities exposed to interest rate risk.

<u>Investment Type</u>	<u>Fair Value</u>	<u>Less than 1</u>	<u>1 - 5</u>	<u>6 - 10</u>	<u>More than 10</u>
Certificates of deposit	\$ 689,104	\$ 199,773	\$ 489,331	\$ -0-	\$ -0-
Corporate bonds and notes	\$ 700,673	\$ 74,234	\$ 408,185	\$ -0-	\$ 218,254
Federal obligations	\$ 3,888	\$ 152	\$ 1,868	\$ -0-	\$ 1,868

CITY OF FAIRMONT, WEST VIRGINIA  
 NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
 FOR THE YEAR ENDED JUNE 30, 2011

3. Property Taxes

The taxes on real property and the interest and other charges upon such taxes attach as an enforceable lien on the first day of July. There is no lien denominated as such on personal property; however, statutes provide that the sheriff of a county may distrain for delinquent taxes any goods and chattels belonging to a person assessed. All current taxes assessed on real and personal property may be paid in two installments; the first installment is payable on September first of the year for which the assessment is made, and become delinquent on October first, and the second installment is payable on the first day of the following March and becomes delinquent on April first. Taxes paid on or before the date when they are payable, including both first and second installments, are subject to a discount of two and one-half percent. If taxes are not paid on or before the date on which they become delinquent, including both first and second installments, interest at the rate of nine percent annum is added from the date they become delinquent until paid.

All municipalities within the state are authorized to levy taxes not in excess of the following maximum levies per \$100 of assessed valuation: On Class I property, twelve and five-tenths cents (12.5¢); on Class II property, twenty-five cents (25.0¢); and on Class IV property, fifty cents (50.0¢). In addition, municipalities may provide for an election to lay an excess levy, the rates not to exceed fifty percent of such authorized maximum levies, provided that at least sixty percent of the voters cast ballots in favor of the excess levy.

The levy rates levied by the City of Fairmont, West Virginia, per \$100 of assessed valuation for each class of property for the fiscal year ended June 30, 2011 were as follows:

<u>Class of Property</u>	<u>Assessed Valuations For Tax Purposes</u>	<u>Current Expense</u>
Class I	\$ -0-	11.05¢
Class II	\$ 258,760,924	22.10¢
Class IV	\$ 293,489,510	44.20¢

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

4. Capital Assets and Capital Assets Net of Depreciation

Capital asset activity for the year ended June 30, 2011 was as follows:

	<u>Beginning Balance</u>	<u>Additions</u>	<u>Retirements</u>	<u>Ending Balance</u>
<b>Governmental Activities</b>				
<i>Non-depreciable Assets</i>				
Land	\$ <u>149,635</u>	\$ <u>-0-</u>	\$ <u>-0-</u>	\$ <u>149,635</u>
Total non-depreciable assets	<u>149,635</u>	<u>-0-</u>	<u>-0-</u>	<u>149,635</u>
<i>Depreciable Assets</i>				
Buildings	971,258	-0-	-0-	971,258
Land improvements	530,906	-0-	-0-	530,906
Machinery and equipment	1,409,615	55,144	-0-	1,464,759
Building improvements	132,354	-0-	-0-	132,354
Office furniture and equipment	615,838	24,151	-0-	639,989
Vehicles	4,429,542	223,941	51,000	4,602,483
Infrastructure	<u>30,160,945</u>	<u>-0-</u>	<u>-0-</u>	<u>30,160,945</u>
Totals at historical cost	<u>38,250,458</u>	<u>303,236</u>	<u>51,000</u>	<u>38,502,694</u>
Less: Accumulated depreciation				
Buildings	677,265	13,813	-0-	691,078
Land improvements	102,149	26,289	-0-	128,438
Machinery and equipment	1,048,967	86,942	-0-	1,135,909
Building improvements	49,449	8,165	-0-	57,614
Office furniture and equipment	407,331	40,292	-0-	447,623
Vehicles	3,011,079	225,464	51,000	3,185,543
Infrastructure	<u>26,634,618</u>	<u>440,795</u>	<u>-0-</u>	<u>27,075,413</u>
Total accumulated depreciation	<u>31,930,858</u>	<u>841,760</u>	<u>51,000</u>	<u>32,721,618</u>
Total depreciable assets	<u>6,319,600</u>	<u>( 538,524)</u>	<u>-0-</u>	<u>5,781,076</u>
Governmental activities capital assets, net	\$ <u>6,469,235</u>	\$ <u>( 538,524)</u>	\$ <u>-0-</u>	\$ <u>5,930,711</u>

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

	<u>Beginning Balance</u>	<u>Additions</u>	<u>Retirements</u>	<u>Ending Balance</u>
<b>Business-Type Activities</b>				
<i>Non-depreciable Assets</i>				
Land	\$ 1,293,979	\$ 75,802	\$ -0-	\$ 1,369,781
Construction in progress	<u>2,625,876</u>	<u>5,693,737</u>	<u>-0-</u>	<u>8,319,613</u>
Total non-depreciable assets	<u>3,919,855</u>	<u>5,769,539</u>	<u>-0-</u>	<u>9,689,394</u>
<i>Depreciable Assets</i>				
Buildings	4,113,178	2,200	-0-	4,115,378
Structures and improvements	11,877,937	41,753	-0-	11,919,690
Transmission and distribution	82,156,548	851,556	147,764	82,860,340
Machinery and equipment	<u>10,740,105</u>	<u>83,263</u>	<u>36,271</u>	<u>10,787,097</u>
Totals at historical cost	<u>108,887,768</u>	<u>978,772</u>	<u>184,035</u>	<u>109,682,505</u>
Less: Accumulated depreciation				
Buildings	471,252	135,317	-0-	606,569
Structures and improvements	2,750,427	305,332	-0-	3,055,759
Transmission and distribution	35,570,040	2,199,751	147,774	37,622,017
Machinery and equipment	<u>4,777,287</u>	<u>410,962</u>	<u>24,112</u>	<u>5,164,137</u>
Total accumulated depreciation	<u>43,569,006</u>	<u>3,051,362</u>	<u>171,886</u>	<u>46,448,482</u>
Total depreciable assets	<u>65,318,762</u>	<u>(2,072,590)</u>	<u>12,149</u>	<u>63,234,023</u>
Business type activities capital assets, net	\$ <u>69,238,617</u>	\$ <u>3,696,949</u>	\$ <u>12,149</u>	\$ <u>72,923,417</u>

Depreciation expense was charged to governmental activities as follows:

General government	\$ 67,865
Public safety	266,273
Highways and streets	501,418
Culture and recreation	<u>6,204</u>
Total depreciation expense	\$ <u>841,760</u>

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

5. Long-Term Debt

Long-term liability activity for the year ended June 30, 2011 was as follows:

	<u>Beginning</u> <u>Balance</u>	<u>Additions</u>	<u>Reductions</u>	<u>Ending</u> <u>Balance</u>	<u>Amounts</u> <u>Due Within</u> <u>One Year</u>	<u>Amounts</u> <u>Due After</u> <u>One Year</u>
<b>Governmental Activities</b>						
Obligation under capital lease	\$ 1,091,861	\$ 197,907	\$ 294,252	\$ 995,516	\$ 289,412	\$ 706,104
Compensated absences	1,154,875	31,650	-0-	1,186,525	239,268	947,257
Net pension obligation	<u>11,848,201</u>	<u>1,082,509</u>	<u>-0-</u>	<u>12,930,710</u>	<u>-0-</u>	<u>12,930,710</u>
Governmental activities long-term liabilities	\$ <u>14,094,937</u>	\$ <u>1,312,066</u>	\$ <u>294,252</u>	\$ <u>15,112,751</u>	\$ <u>528,680</u>	\$ <u>14,584,071</u>

The General Fund of the City of Fairmont entered into a lease agreement to finance the acquisition of a Smeal Class A Pumper. This lease qualifies as a capital lease for accounting purposes and, therefore, has been recorded at the present value of the minimum lease payments as of the date of its inception. The following is a schedule of future minimum lease payments required under this capital lease and the present value of the net minimum lease payments at June 30, 2011:

Fiscal Year Ending June 30,

2012	\$ 41,987
2013	41,987
2014	41,987
2015	<u>41,987</u>
	167,948
Less: Amount representing interest	<u>19,716</u>
Present value of future minimum lease payments	\$ <u>148,232</u>

The General Fund of the City of Fairmont entered into a lease agreement on August 10, 2007 for the acquisition of a copier for the police and fire departments. This lease qualifies as a capital lease for accounting purposes and, therefore, has been recorded at the present value of the minimum lease payments as of the date of its inception. The following is a schedule of future minimum lease payments required under this capital lease and the present value of the net minimum lease payments at June 30, 2011:

Fiscal Year Ending June 30,

2012	\$ 2,954
2013	<u>246</u>
	3,200
Less: Amount representing interest	<u>-0-</u>
Present value of future minimum lease payments	\$ <u>3,200</u>

CITY OF FAIRMONT, WEST VIRGINIA  
 NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
 FOR THE YEAR ENDED JUNE 30, 2011

The General Fund of the City of Fairmont entered into a lease agreement on July 25, 2007 for the acquisition of a Pierce Aerial Platform Fire Truck. This lease qualifies as a capital lease for accounting purposes and, therefore, has been recorded at the present value of the minimum lease payments as of the date of its inception. The following is a schedule of future minimum lease payments required under this capital lease and the present value of the net minimum lease payments at June 30, 2011:

<u>Fiscal Year Ending June 30,</u>		
2012		\$ 99,364
2013		99,364
2014		99,364
2015		99,364
2016		99,364
2017		<u>99,364</u>
		596,184
Less: Amount representing interest		<u>85,820</u>
Present value of future minimum lease payments		\$ <u>510,364</u>

The General Fund of the City of Fairmont entered into a lease agreement on March 1, 2008 for the acquisition of a Pitney Bowes Stuffer DI245. This lease qualifies as a capital lease for accounting purposes and, therefore, has been recorded at the present value of the minimum lease payments as of the date of its inception. The following is a schedule of future minimum lease payments required under this capital lease and the present value of the net minimum lease payments at June 30, 2011:

<u>Fiscal Year Ending June 30,</u>		
2012		\$ 5,652
2013		<u>3,768</u>
		9,420
Less: Amount representing interest		<u>-0-</u>
Present value of future minimum lease payments		\$ <u>9,420</u>

The General Fund of the City of Fairmont entered into a lease agreement on June 13, 2008 for the acquisition of police department vehicles. This lease qualifies as a capital lease for accounting purposes and, therefore, has been recorded at the present value of the minimum lease payments as of the date of its inception. The following is a schedule of future minimum lease payments required under this capital lease and the present value of the net minimum lease payments at June 30, 2011:

<u>Fiscal Year Ending June 30,</u>		
2012		\$ 73,321
Less: Amount representing interest		<u>1,156</u>
Present value of future minimum lease payments		\$ <u>72,165</u>

CITY OF FAIRMONT, WEST VIRGINIA  
 NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
 FOR THE YEAR ENDED JUNE 30, 2011

The General Fund of the City of Fairmont entered into a lease agreement on October 30, 2008 for the acquisition of public works department vehicles. This lease qualifies as a capital lease for accounting purposes and, therefore, has been recorded at the present value of the minimum lease payments as of the date of its inception. The following is a schedule of future minimum lease payments required under this capital lease and the present value of the net minimum lease payments at June 30, 2011:

<u>Fiscal Year Ending June 30,</u>		
2012		\$ 67,328
2013		<u>22,443</u>
		89,771
Less: Amount representing interest		<u>2,725</u>
Present value of future minimum lease payments		\$ <u>87,046</u>

The General Fund of the City of Fairmont entered into a lease agreement on December 13, 2008 for the acquisition of a copier for City Hall. This lease qualifies as a capital lease for accounting purposes and therefore, has been recorded at the present value of the minimum lease payments as of the date of its inception. The following is a schedule of future minimum lease payments required under this capital lease and the present value of the net minimum lease payments at June 30, 2011:

<u>Fiscal Year Ending June 30,</u>		
2012		\$ 2,700
2013		2,700
2014		<u>1,350</u>
		6,750
Less: Amount representing interest		<u>-0-</u>
Present value of future minimum lease payments		\$ <u>6,750</u>

The General Fund of the City of Fairmont entered into a lease agreement on August 13, 2010 for the acquisition of a Street Sweeper. This lease qualifies as a capital lease for accounting purposes and, therefore, has been recorded at the present value of the minimum lease payments as of the date of its inception. The following is a schedule of future minimum lease payments required under this capital lease and the present value of the net minimum lease payments at June 30, 2011:

<u>Fiscal Year Ending June 30,</u>		
2012		\$ 51,043
2013		51,043
2014		51,043
2015		<u>8,508</u>
		161,637
Less: Amount representing interest		<u>5,817</u>
Present value of future minimum lease payments		\$ <u>155,820</u>

CITY OF FAIRMONT, WEST VIRGINIA  
 NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
 FOR THE YEAR ENDED JUNE 30, 2011

The General Fund of the City of Fairmont entered into a lease agreement on October 10, 2010 for the acquisition of a copier for the police department. This lease qualifies as a capital lease for accounting purposes and therefore, has been recorded at the present value of the minimum lease payments as of the date of its inception. The following is a schedule of future minimum lease payments required under this capital lease and the present value of the net minimum lease payments at June 30, 2011:

Fiscal Year Ending June 30,

2012		\$ 581
2013		581
2014		581
2015		581
2016		<u>195</u>
		2,519
Less: Amount representing interest		<u>-0-</u>
Present value of future minimum lease payments		\$ <u>2,519</u>

The following is a schedule of all future minimum lease payments together with the present value of net minimum lease payments as of June 30, 2011:

Fiscal Year Ending June 30,

2012		\$ 344,930
2013		222,132
2014		194,325
2015		150,440
2016		99,559
2017		<u>99,364</u>
		1,110,750
Less: Amount representing interest		<u>115,234</u>
Present value of future minimum lease payments		995,516
Less: Current portion		<u>289,412</u>
Non-current portion		\$ <u>706,104</u>

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

The following is a summary of bonds payable at June 30, 2011:

	<u>Beginning Balance</u>	<u>Additions</u>	<u>Reductions</u>	<u>Ending Balance</u>	<u>Amounts Due Within One Year</u>	<u>Amounts Due After One Year</u>
<b>Business-Type Activities</b>						
<b>Bonds and notes payable:</b>						
1988 Sewerage Bonds	\$ 1,515,000	\$ -0-	\$ 755,000	\$ 760,000	\$ 760,000	\$ -0-
1997 Waterworks Refunding Bonds	3,610,000	-0-	830,000	2,780,000	875,000	1,905,000
1998 Water Revenue Bonds	8,690,000	-0-	135,000	8,555,000	140,000	8,415,000
1999 Water Revenue Bonds	19,945,000	-0-	-0-	19,945,000	-0-	19,945,000
2003 Sewerage Bonds	392,462	-0-	16,184	376,278	16,188	360,090
2007 Sewerage Bonds	5,193,400	30,350	235,006	4,988,744	239,742	4,749,002
2008A Water Revenue Bonds	2,550,573	46,952	91,668	2,505,857	91,668	2,414,189
Veterans Plaza Parking Garage Series 1999	271,505	-0-	60,733	210,772	64,319	146,453
Municipal Building Lease Revenue Bonds Series B	261,955	-0-	51,183	210,772	53,268	157,504
Municipal Building Lease Revenue Bonds Series A	2,845,141	-0-	37,446	2,807,695	38,380	2,769,315
Parking Garage Lease Revenue Bonds Series 2005	1,103,149	-0-	52,925	1,050,224	54,852	995,372
West Virginia Housing Development Fund	100,000	-0-	-0-	100,000	100,000	-0-
Chase Bank	383,322	-0-	49,798	333,524	52,060	281,464
Chase Bank	216,952	-0-	135,735	81,217	81,217	-0-
2010A Water Revenue Bonds	155,836	1,103,693	-0-	1,259,529	74,128	1,185,401
2010C Water Revenue Bonds	2,000,000	-0-	-0-	2,000,000	-0-	2,000,000
2010D Water Revenue Bonds	-0-	-0-	-0-	-0-	-0-	-0-
Page Valley Bank	526,742	-0-	95,741	431,001	80,801	350,200
Total bonds and notes payable	<u>49,761,037</u>	<u>1,180,995</u>	<u>2,546,419</u>	<u>48,395,613</u>	<u>2,721,623</u>	<u>45,673,990</u>
<b>Other Long-Term Debt</b>						
Obligation under capital lease	518,541	-0-	171,025	347,516	173,880	173,636
Customer advances	325,411	-0-	1,493	323,918	-0-	323,918
Accrued compensated absences	444,600	-0-	6,247	438,353	168,354	269,999
Total other long-term debt	<u>1,288,552</u>	<u>-0-</u>	<u>178,765</u>	<u>1,109,787</u>	<u>342,234</u>	<u>767,553</u>
Total long-term debt	<u>\$ 51,049,589</u>	<u>\$ 1,180,995</u>	<u>\$ 2,725,184</u>	<u>\$ 49,505,400</u>	<u>\$ 3,063,857</u>	<u>\$ 46,441,543</u>

**a. 1988 Series - Sewerage System Refunding Revenue Capital Appreciation Bonds**

Series 1988 Sewerage System Refunding Revenue Capital Appreciation Bonds in the amount of \$11,065,000 were issued pursuant to an ordinance enacted by the City of Fairmont on October 25, 1988 and supplemented by a resolution adopted on October 25, 1988. The bonds dated November 30, 1988 and sold as of November 30, 1988 mature serially through 2011 with effective yields from 6.60% to 7.75% per the following schedule.

<u>Year</u>	<u>Amount</u>	<u>Effective Yield</u>
2012	\$ <u>760,000</u>	7.75

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

The 1988 bonds were issued by the City in order to: (1) advance refund a portion of the City's existing Sewerage System Revenue Refunding Bonds, Series 1985; (2) pay the costs of certain additions and improvements to the City's Sewerage System and; (3) pay all costs and expenses associated with such refunding and the issuance of the Series 1988 Bonds.

The 1988 bonds are secured by a lien on and pledge of the net revenues derived from the operation of the system. These bonds are insured by the AMBAC Indemnity Corporation unconditionally guaranteeing the timely payment of principal and interest on the 1988 Series Bonds.

The Series 1988 Bonds are not subject to optional redemption prior to maturity.

As required by the 1988 Revenue Bond Ordinance, a Sinking Fund has been established with the West Virginia Municipal Bond Commission. Moneys in the Sinking Fund are to be used only for the purpose of paying principal of and interest on the bonds. Beginning 13 months prior to the first principal payment of the Series 1988 Bonds, monthly payments are required to be made into the Sinking Fund in amounts equaling 1/12th of the amount of principal due on the next principal payment date. The sinking fund account balance at June 30 2011 was \$558,051.

No additional payments are required to be made into the Sinking Fund when the aggregate amount in the Sinking Fund is equal to the aggregate principal amount of bonds outstanding plus the amount of interest due or thereafter to become due on the bonds outstanding.

**b. 1997 Series - Waterworks Refunding Revenue Bonds**

Series 1997, Waterworks Refunding Revenue Bonds in the amount of \$10,260,000 were issued pursuant to an ordinance enacted by the City of Fairmont on April 8, 1997 and supplemented by a resolution adopted on June 5, 1997 and sold as of June 19, 1997 mature serially through 2013 and bear interest from 4.25% to 5.375% per the following schedule.

<u>Maturity</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2012	\$ 875,000	5.300%
2013	925,000	5.500%
2014	<u>980,000</u>	5.375%
	<u>\$ 2,780,000</u>	

The 1997 bonds were issued by the City in order to: (1) currently refund all of the Issuer's outstanding Waterworks Refunding Revenue Bonds, Series 1987, dated January 15, 1987; (2) fund a portion of the reserve account for the Bonds and to pay the initial premium for a debt service reserve account letter of credit for the balance thereof; and (3) pay costs of issuance thereof and other costs in connection with such refunding.

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

The 1997 bonds are secured by a lien on and pledge of the net revenues derived from the operation of the System. These bonds are insured by the National Public Finance Guarantee Corporation unconditionally guaranteeing the timely payment of principal and interest on the 1997 Series Bonds.

The Series 1997 bonds shall be redeemable prior to their stated dates of maturity at the option of the Issuer, as a whole at any time, or in part on any interest payment date, in inverse order of their maturities and by lot within a maturity, at the respective redemption prices as set forth in the bond ordinance.

As required by the 1997 Revenue Bond Ordinance, a sinking fund has been established with the West Virginia Municipal Bond Commission. Moneys in the sinking fund are to be used only for the purposes of paying principal of and interest on the bonds. Monthly payments are required to be made into the sinking fund of amounts equaling 1/6th of the amount of interest due on the next semiannual interest date plus 1/12th of the amount of principal due on the next principal payment date. The sinking fund account balance at June 30, 2011 was \$957,462.

No additional payments are required to be made into the sinking fund when the aggregate amount in the sinking fund, including the reserve account, is equal to the aggregate principal amount of bonds outstanding plus the amount of interest due or thereafter to become due on the bonds outstanding.

**c. 1998 Series - Water Revenue Bonds**

Series 1998, Water Revenue Bonds in the amount of \$9,600,000 were issued pursuant to an ordinance enacted by the City of Fairmont on November 10, 1998 and sold as of December 30, 1998. The bonds mature serially through 2029 and bear interest from 3.60% to 4.90% per the following schedule.

<u>Maturity</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2012	\$ 140,000	4.25%
2013	145,000	4.30%
2014	145,000	4.35%
2018	1,625,000	4.75%
2023	3,055,000	4.90%
2029	<u>3,445,000</u>	4.75%
	<b>\$ <u>8,555,000</u></b>	

The 1998 bonds were issued by the City in order to: (1) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing water system of the City, including capitalized interest on the Bonds; (2) to fund a reserve account in each of the sinking funds; and (3) to pay certain costs of issuance of the Bonds and related costs.

The 1998 bonds are secured by a lien on and pledge of the net revenues derived from the operation of the System. These bonds are insured by the Ambac Financial Group, Inc. unconditionally guaranteeing the timely payment of principal and interest on the 1998 Series Bonds.

CITY OF FAIRMONT, WEST VIRGINIA  
 NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
 FOR THE YEAR ENDED JUNE 30, 2011

The Series 1998 bonds shall be redeemable prior to their stated dates of maturity at the option of the Issuer, as a whole at any time, or in part on any interest payment date, in inverse order of their maturities and by lot within a maturity, at the respective redemption prices as set forth in the bond ordinance.

As required by the 1998 Revenue Bond Ordinance, a sinking fund has been established with the West Virginia Municipal Bond Commission. Moneys in the sinking fund are to be used only for the purposes of paying principal of and interest on the bonds. Monthly payments are required to be made into the sinking fund of amounts equaling 1/6th of the amount of interest due on the next semiannual interest date plus 1/12th of the amount of principal due on the next principal payment date. The sinking fund account balance at June 30, 2011 was \$1,329,407.

No additional payments are required to be made into the sinking fund when the aggregate amount in the sinking fund, including the reserve account, is equal to the aggregate principal amount of bonds outstanding plus the amount of interest due or thereafter to become due on the bonds outstanding.

**d. 1999 Series - Water Revenue Bonds**

Series 1999 Water Revenue Bonds in the amount of \$19,945,000 were issued pursuant to an ordinance enacted by the City of Fairmont on November 10, 1998 and sold as of December 30, 1998. The bonds mature serially through 2029 and bear interest from 4.50% to 5.25% per the following schedule.

<u>Maturity</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2015	\$ 1,825,000	5.25%
2017	2,020,000	5.25%
2019	2,235,000	5.00%
2022	3,000,000	5.25%
2024	2,500,000	4.50%
2029	<u>8,365,000</u>	5.00%
	<u>\$ 19,945,000</u>	

The 1999 bonds were issued by the City in order to: (1) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing water system of the City, including capitalized interest on the Bonds; (2) to fund a reserve account in each of the sinking funds; and (3) to pay certain costs of issuance of the Bonds and related costs.

The 1999 bonds are secured by a lien on and pledge of the net revenues derived from the operation of the System. These bonds are insured by the Ambac Financial Group, Inc. unconditionally guaranteeing the timely payment of principal and interest on the 1999 Series Bonds.

The Series 1999 bonds shall be redeemable prior to their stated dates of maturity at the option of the Issuer, as a whole at any time, or in part on any interest payment date, in inverse order of their maturities and by lot within a maturity, at the respective redemption prices as set forth in the bond ordinance.

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

As required by the 1999 Revenue Bond Ordinance, a sinking fund has been established with the West Virginia Municipal Bond Commission. Moneys in the sinking fund are to be used only for the purposes of paying principal of and interest on the bonds. Monthly payments are required to be made into the sinking fund of amounts equaling 1/6th of the amount of interest due on the next semiannual interest date plus 1/12th of the amount of principal due on the next principal payment date. The sinking fund account balance at June 30, 2011 was \$2,178,778.

No additional payments are required to be made into the sinking fund when the aggregate amount in the sinking fund, including the reserve account, is equal to the aggregate principal amount of bonds outstanding plus the amount of interest due or thereafter to become due on the bonds outstanding.

**e. Sewer Revenue Bond Series 2003A**

Series 2003A Sewer Revenue Bonds in the amount of \$600,000 are being issued pursuant to an ordinance enacted by the City of Fairmont on May 13, 2003. The bonds mature serially through September 1, 2034 and bear interest at 0%.

The 2003A bonds were issued by the City of Fairmont in order to: (1) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing sewerage system of the City; (2) to fund a reserve account in the sinking fund; and (3) to pay certain costs of issuance of the Bonds and related costs.

The 2003A bonds are secured by a lien on and pledge of the net revenues derived from the operation of the System.

The following is a schedule of future debt retirement based on current financing arrangements:

<u>Year Ending June 30,</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2012	\$ 16,188	\$ -0-	\$ 16,188
2013	16,188	-0-	16,188
2014	16,188	-0-	16,188
2015	16,188	-0-	16,188
2016	16,188	-0-	16,188
2017 – 2021	80,920	-0-	80,920
2022 – 2026	80,920	-0-	80,920
2027 – 2031	80,920	-0-	80,920
2032 – 2035	<u>52,578</u>	<u>-0-</u>	<u>52,578</u>
Total	<u>\$ 376,278</u>	<u>\$ -0-</u>	<u>\$ 376,278</u>

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

**f. Sewer Revenue Bonds Series 2007**

Series 2007 Sewer Revenue Bonds in the amount of \$5,577,760 are being issued pursuant to an ordinance enacted by the City of Fairmont. The bonds mature serially through March 1, 2029 and bear interest at 2%.

The 2007 bonds were issued by the City of Fairmont in order to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing sewerage system of the City.

The 2007 bonds are secured by a lien on and pledge of the net revenues derived from the operation of the System.

The following is a schedule of future debt retirement based on current financing arrangements:

<u>Year Ending June 30,</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2012	\$ 239,742	\$ 99,320	\$ 339,062
2013	244,573	94,489	339,062
2014	249,501	89,561	339,062
2015	254,529	84,533	339,062
2016	259,658	79,404	339,062
2017 – 2021	1,378,912	316,398	1,695,310
2022 – 2026	1,517,052	178,258	1,695,310
2027 – 2029	<u>844,777</u>	<u>106,956</u>	<u>951,733</u>
Total	<u>\$ 4,988,744</u>	<u>\$ 1,048,919</u>	<u>\$ 6,037,663</u>

**g. Water Revenue Bonds Series 2008A**

The Series 2008A bonds were issued by the City in order to (i) pay a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the waterworks system of the City of Fairmont, (ii) to fully fund the Series 2008A Bonds Reserve Account; and (iii) to pay certain costs of issuance hereof and related costs.

The 2008A bonds are secured by a lien on and pledge of the net revenues derived from the operations of the System. These bonds are insured by the Municipal Bond Insurance Association unconditionally guaranteeing the timely payment of principal and interest on the 2008A Series Bonds.

The Series 2008A bonds shall be redeemable prior to their stated dates of maturity upon written consent of the West Virginia Water Development Authority and the West Virginia Bureau for Public Health and upon payment of the redemption premium.

As required by the 2008A Revenue Bond Ordinance, a sinking fund has been established with the West Virginia Municipal Bond Commission. Moneys in the sinking fund are to be used only for the purposes of paying principal of and interest on the bonds. Monthly payments are required to be made into the sinking fund of amounts equaling 1/6<sup>th</sup> of the amount of interest due on the next semiannual interest date plus 1/12<sup>th</sup> of the amount of principal due on the next principal payment date. The sinking fund account balance at June 30, 2011 was \$100,806.

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

No additional payments are required to be made into the sinking fund when the aggregate amount in the sinking fund, including the reserve, is equal to the aggregate principal amount of bonds outstanding plus the amount of interest due or thereafter to become due on the bonds outstanding.

The following is a schedule of future debt retirement based on current financing arrangements:

<u>Year Ending June 30,</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2012	\$ 91,668	\$ -0-	\$ 91,668
2013	91,668	-0-	91,668
2014	91,668	-0-	91,668
2015	91,668	-0-	91,668
2016	91,668	-0-	91,668
2017 – 2021	458,340	-0-	458,340
2022 – 2026	458,340	-0-	458,340
2027 – 2031	458,340	-0-	458,340
2032 – 2036	458,340	-0-	458,340
2037 – 2039	<u>214,157</u>	<u>-0-</u>	<u>214,157</u>
Total	\$ <u>2,505,857</u>	\$ <u>-0-</u>	\$ <u>2,505,857</u>

**h. Veterans Plaza Parking Garage Bond Series 1999**

Series 1999 Veterans Plaza Parking Garage Bonds in the amount of \$750,000 were issued pursuant to an ordinance enacted by the City of Fairmont.

The bonds were issued by the City in order to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to a parking garage.

The 1999 bonds are secured by the rental income payable to the City pursuant to a lease agreement between the City and the Fairmont Building Commission dated June 29, 1999. The bonds pay interest at a rate of 5.75%.

The following is a schedule of future debt retirement based on current financing arrangements:

<u>Year Ending June 30,</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2012	\$ 64,319	\$ 10,441	\$ 74,760
2013	68,115	6,645	74,760
2014	72,137	2,623	74,760
2015	<u>6,201</u>	<u>31</u>	<u>6,232</u>
Total	\$ <u>210,772</u>	\$ <u>19,740</u>	\$ <u>230,512</u>

**CITY OF FAIRMONT, WEST VIRGINIA**  
**NOTES TO THE FINANCIAL STATEMENTS (CONT'D)**  
**FOR THE YEAR ENDED JUNE 30, 2011**

**i. Municipal Building Lease Revenue Bonds Series B**

On March 28, 2005, the Building Commission issued Municipal Building Lease Revenue Bonds, Series B in the amount of \$500,000 with Huntington Capital Corp as the holder. The bonds have an interest rate of 4% with principal and interest payable monthly for a term of 10 years. The proceeds of this financing, along with the USDA financing, were used to complete renovation of the Public Safety Building site at 500 Quincy Street.

The following is a schedule of future debt retirement based on current financing arrangements:

<u>Year Ending June 30,</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2012	\$ 53,268	\$ 7,479	\$ 60,747
2013	55,347	5,400	60,747
2014	57,642	3,105	60,747
2015	<u>44,515</u>	<u>1,045</u>	<u>45,560</u>
<b>Total</b>	<b>\$ <u>210,772</u></b>	<b>\$ <u>17,029</u></b>	<b>\$ <u>227,801</u></b>

**j. Municipal Building Lease Revenue Bonds Series A**

On March 28, 2005, the Building Commission issued Municipal Building Lease Revenue Bonds, Series A in the amount of \$2,999,450 with USDA Rural Development as the holder. The bonds have an interest rate of 4.25% with principal and interest payable monthly for a term of 40 years. The proceeds of this financing, along with the Huntington Capital Corp financing, were used for the purchase of the property at 500 Quincy Street for the new Public Safety Building and to complete the renovation of the site.

The following is a schedule of future debt retirement based on current financing arrangements:

<u>Year Ending June 30,</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2012	\$ 38,380	\$ 119,276	\$ 157,656
2013	40,778	116,878	157,656
2014	42,546	115,110	157,656
2015	44,389	113,267	157,656
2016	44,390	113,266	157,656
2017 - 2021	252,525	535,755	788,280
2022 - 2026	312,198	476,082	788,280
2027 - 2031	385,970	402,310	788,280
2032 - 2036	477,176	311,104	788,280
2037 - 2041	589,934	198,346	788,280
2042 - 2045	<u>579,409</u>	<u>103,936</u>	<u>683,345</u>
<b>Total</b>	<b>\$ <u>2,807,695</u></b>	<b>\$ <u>2,605,330</u></b>	<b>\$ <u>5,413,025</u></b>

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

**k. Parking Garage Lease Revenue Bonds Series 2005**

The Building Commission owns property situated at the corner of Adams and Madison Streets in Fairmont, West Virginia as conveyed by the City of Fairmont known as Elks Lot. On January 18, 2009 the Building Commission issued 20 year revenue bonds in the amount of \$1,345,000 to add to a \$2,000,000 State of West Virginia EDA grant to build a 250 space parking garage on this site. Monongahela Valley Bank is the registered owner of the Series 2005 lease revenue bonds. The bonds are subject to mandatory redemption on the eighteenth day of each month until and including January 18, 2025 in the amount of \$8,982 which includes a principal amount plus accrued interest to the date of mandatory redemption set forth in a debt service schedule. This bond is payable solely from the rent payable by the City pursuant to a lease agreement between the City and the Building Commission dated January 18, 2005. Upon expiration of the lease, the City has the option to purchase the property from the Building Commission for \$1. The bonds pay interest at the rate of 5.14%.

The following is a schedule of future debt retirement based on current financing arrangements:

<u>Year Ending June 30,</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2012	\$ 54,852	\$ 52,932	\$ 107,784
2013	57,987	49,797	107,784
2014	61,039	46,745	107,784
2015	64,252	43,532	107,784
2016	67,633	40,151	107,784
2017 – 2021	395,454	143,466	538,920
2022 – 2025	<u>349,008</u>	<u>33,246</u>	<u>382,254</u>
<b>Total</b>	<b>\$ <u>1,050,225</u></b>	<b>\$ <u>409,869</u></b>	<b>\$ <u>1,460,094</u></b>

**l. West Virginia Housing Development Fund**

On February 24, 2004 the Building Commission entered into a loan and pledge agreement and signed a promissory note with the West Virginia Housing Development Fund to participate in its demolition loan program. The Building Commission received \$100,000 in loan proceeds to be repaid on or before April 1, 2009 with interest as per the following schedule:

<u>Anniversary Date</u>	<u>Percent</u>
02/25/04 – 02/24/05	0.00%
02/25/05 – 02/24/06	2.00%
02/25/06 – 02/24/07	3.00%
02/25/07 – 02/24/08	4.00%
02/25/08 – 02/24/09	5.00%

These funds have been made available to businesses and individuals for their demolition needs. Currently, the Building Commission holds three notes totaling \$109,115.74 with interest accruing at 3% or 4% on each note. A deed of trust accompanies each note and all notes are due the sooner of the sale or transfer of the property or March 1, 2009.

These funds have been made available to businesses and individuals for their demolition needs.

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

**m. Chase Bank Note Payable**

On March 30, 2007, the Water Fund of the City of Fairmont purchased a water filtration system with loan proceeds from Chase Bank. The loan bears interest at a rate of 4.45% and is payable in monthly installments of \$7,579. The loan is secured by equipment.

Future debt retirement based on current financing arrangements at June 30, 2011 is as follows:

<u>Year Ending June 30,</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2012	\$ 52,060	\$ 13,788	\$ 65,848
2013	54,424	11,424	65,848
2014	56,896	8,952	65,848
2015	59,480	6,368	65,848
2016	62,182	3,666	65,848
2017	<u>48,482</u>	<u>904</u>	<u>49,386</u>
Total	\$ <u>333,524</u>	\$ <u>45,102</u>	\$ <u>378,626</u>

On January 31, 2008 the Sewer Fund of the City of Fairmont purchased vehicles with loan proceeds from Chase Bank. The loan bears interest at a rate of 3.22% and is payable in monthly installments of \$11,887. The loan is secured by vehicles.

<u>Year Ending June 30,</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2012	\$ <u>81,217</u>	\$ <u>875</u>	\$ <u>82,092</u>

**n. Water Revenue Bonds Series 2010A – West Virginia DWTRF Program**

Water Revenue Bonds Series 2010A – West Virginia DWTRF Program Bonds in the amount of \$4,447,618 were issued pursuant to an ordinance enacted by the City of Fairmont on December 15, 2009 and supplemented by a resolution adopted on January 15, 2010. The bonds were sold to the West Virginia Water Development Authority and mature serially through December 1, 2041 and bear interest at 0%.

The Series 2010A bonds were issued by the City in order to (i) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public waterworks system of the Issuer; and (ii) to pay certain costs of issuance of the Bonds and related costs.

The 2010A bonds were secured by a lien on and pledge of the net revenues derived from the operation of the system. The bond is issued on a parity with respect to the liens, pledges and source of and security for payment of prior issued Water Revenue Bonds of the City of Fairmont.

The 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 West Virginia Water Development Authority and the West Virginia Bureau for Public Health and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement by and between the Issuer and the Authority, on behalf of the West Virginia Bureau for Public Health, dated January 21, 2010.

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

As required by the 2010 Revenue Bond Ordinance, a Sinking Fund has been established with the West Virginia Municipal Bond Commission. Moneys in the Sinking Fund are to be used only for the purpose of paying principal of and interest on the bonds. The sinking fund account balance at June 30, 2011 was \$-0-.

At June 30, 2011 the City of Fairmont had drawn down \$1,259,529 of this bond issue.

The following is a schedule of future debt retirement based on current financing arrangement.

<u>Year Ending June 30,</u>	<u>Principal</u>	<u>Interest</u>
2012	\$ 74,128	\$ -0-
2013	148,256	-0-
2014	148,256	-0-
2015	148,256	-0-
2016	148,256	-0-
2017	148,256	-0-
2018	148,256	-0-
2019	148,256	-0-
2020	<u>147,609</u>	<u>-0-</u>
<b>Total</b>	<b>\$ <u>1,259,529</u></b>	<b>\$ <u>-0-</u></b>

**o. Water Revenue Bonds Series 2010C – West Virginia Development Authority**

Water Revenue Bonds Series 2010C – West Virginia Water Development Authority Bonds in the amount of \$2,000,000 were issued pursuant to an ordinance enacted by the City of Fairmont on December 15, 2009 and supplemented by a resolution adopted on January 15, 2010. The bonds were sold to the West Virginia Water Development Authority and mature serially through October 1, 2031 and bear interest at 5%.

The Series 2010C bonds were issued by the City in order to (i) pay prior notes; (ii) pay a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the existing public waterworks system of the Issuer; (iii) pay interest on the Series 2010C bonds during the construction of the project and for not more than 6 months thereafter; and (iv) pay certain costs of issuance hereof and related costs.

The 2010C bonds were secured by a lien on and pledge of the net revenues derived from the operation of the system. The bond is issued on a parity with respect to the liens, pledges and source of and security for payment of prior issued Water Revenue Bonds of the City of Fairmont.

The 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 West Virginia Water Development Authority and upon the terms and conditions prescribed by, and otherwise in compliance with, the agreement between the City of Fairmont and the West Virginia Water Development Authority dated January 21, 2010.

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

As required by the 2010 Revenue Bond Ordinance, a Sinking Fund has been established with the West Virginia Municipal Bond Commission. Moneys in the Sinking Fund are to be used only for the purpose of paying principal of and interest on the bonds. The sinking fund account balance at June 30, 2011 was \$100,040.

The following is a schedule of future debt retirement based on current financing arrangement.

<u>Year Ending June 30,</u>	<u>Principal</u>	<u>Interest</u>
2012		
2013	\$ -0-	\$ 100,000
2014	60,485	98,488
2015	63,509	95,388
2016	66,685	92,133
2017	70,019	93,716
2018	73,520	85,128
2019	77,196	81,360
2020	81,056	77,403
2021	85,109	73,249
2022	89,364	68,887
2023	93,832	64,307
2024	98,524	59,499
2025	103,450	54,449
2026	108,623	49,147
2027	114,054	43,580
2028	119,757	37,734
2029	125,744	31,597
2030	132,032	25,153
2031	138,633	18,386
2032	<u>152,843</u>	<u>3,821</u>
Total	\$ <u>2,000,000</u>	\$ <u>1,264,706</u>

**p. Water Revenue Bonds Series 2010D – West Virginia Infrastructure Fund**

Water Revenue Bonds Series 2010D – West Virginia Infrastructure Fund Bonds in the amount of \$1,250,104 were issued pursuant to an ordinance enacted by the City of Fairmont on December 15, 2009 and supplemented by a resolution adopted on January 15, 2010. The bonds were sold to the West Virginia Water Development Authority on behalf of the West Virginia Infrastructure Fund and mature serially through December 1, 2049 and bear interest at 0%.

The Series 2010D bonds were issued by the City in order to (i) pay a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the public waterworks system of the City; and (ii) to pay certain costs of issuance hereof and related costs.

The 2010D bonds were secured by a lien on and pledge of the net revenues derived from the operation of the system. The bond is issued on a parity with respect to the liens, pledges and source of and security for payment of prior issued Water Revenue Bonds of the City of Fairmont.

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

The 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 West Virginia Development Authority and the West Virginia Infrastructure and Jobs Development Council and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the City of Fairmont and the West Virginia Water Development Authority, on behalf of the West Virginia Infrastructure and Jobs Development Council dated January 21, 2010.

As required by the 2010 Revenue Bond Ordinance, a Sinking Fund has been established with the West Virginia Municipal Bond Commission. Moneys in the Sinking Fund are to be used only for the purpose of paying principal of and interest on the bonds. The sinking fund account balance at June 30, 2010 was \$-0-.

At June 30, 2011 the City of Fairmont had drawn down \$-0- of this bond issue.

**q. Page Valley Bank**

On September 9, 2009, the Water Fund of the City of Fairmont borrowed funds from Page Valley Bank through Comvest to finance the 2009 train #5 expansion. The loan bears interest at a rate of 4.60% and is payable in monthly installments of \$8,245.

Future debt retirement based on current financing arrangements at June 30, 2011 is as follows:

<u>Year Ending June 30,</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2012	\$ 80,801	\$ 18,137	\$ 98,938
2013	84,598	14,340	98,938
2014	88,572	10,366	98,938
2015	92,734	6,204	98,938
2016	<u>84,296</u>	<u>1,851</u>	<u>86,147</u>
Total	<u>\$ 431,001</u>	<u>\$ 50,898</u>	<u>\$ 481,899</u>

**r. Obligation Under Capital Lease**

On January 14, 2003 the City of Fairmont entered into a capital lease for the acquisition of water treatment equipment. The following is a schedule of future minimum lease payments together with the present value of net minimum lease payments as of June 30, 2011:

<u>Year ending June 30,</u>	
2012	\$ 188,654
2013	<u>178,575</u>
Minimum required lease payments	367,229
Less: Amount representing interest	<u>19,713</u>
Present value of minimum lease payment	<u>\$ 347,516</u>
Current portion	\$ 173,880
Non-current portion	<u>173,636</u>
	<u>\$ 347,516</u>

CITY OF FAIRMONT, WEST VIRGINIA  
 NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
 FOR THE YEAR ENDED JUNE 30, 2011

6. Employees Retirement System

*Plan Descriptions Contribution Information and Funding Policies*

**Public Employees' Retirement System (PERS)**

The City of Fairmont, West Virginia, participates in a state-wide, cost-sharing, multiple-employer defined benefit plan on behalf of general City employees. The system is administered by agencies of the State of West Virginia and funded by contributions from participants, employers, and state appropriations, as necessary.

The following is a summary of eligibility factors, contribution methods, and benefit provisions:

<u>Public Employees' Retirement System (PERS)</u>	
Eligibility to participate	All City full-time employees, except those covered by other pension plans.
Authority establishing contribution obligations and benefit provisions	State Statute
Plan member's contribution rate	4.50%
City's contribution rate	12.50%
Period required to vest	5 years
Benefits and eligibility for distribution	A member who has attained age 50 and has earned 5 years or more of contributing service, or age 55 if the sum of his/her age plus years of credited service is equal to or greater than 80. The final average salary (three highest consecutive years in the last 10) times the years of service times 2% equals the annual retirement benefit.
Deferred retirement portion	No
Provisions for:	
Cost of Living	No
Death Benefits	Yes

*Trend Information*

Public Employees' Retirement System (PERS)

<u>Fiscal Year</u>	<u>Annual Pension Cost</u>	<u>Percentage Contributed</u>
2011	\$ 489,721	100%
2010	\$ 392,849	100%
2009	\$ 385,146	100%

PERS issues a publicly available financial report that includes financial statements and required supplementary information. That information may be obtained by writing to the Public Employees' Retirement System, Building 5, Room 1000, 1900 Kanawha Boulevard East, Charleston, WV 25305

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

**Other Post Employment Benefits**

***Plan Description:***

The City of Fairmont, West Virginia contributes to the West Virginia Retiree Health Benefits Trust Fund (RHBT), a cost-sharing, multiple-employer defined benefit post-employment health care plan administered by the West Virginia Public Employees Insurance Agency (PEIA). RHBT provides medical benefits to eligible retired employees of participating employers. Eligibility is primarily established through participation in certain defined benefit plans. RHBT issues a publicly available financial report that includes financial statements and required supplementary information. That report may be obtained by writing to: West Virginia Retiree Health Benefits Trust, Building 5, Room 1001, 1900 Kanawha Boulevard East, Charleston, West Virginia 25305-0170.

***Authority Establishing the Plan and Fund Policy:***

Chapter 5, Article 16D of the West Virginia State Code assigns the authority to establish and amend benefits and provisions to the RHBT. Plan members are currently required to contribute \$461.06 per month per active health policy. Participating employers are contractually required to contribute at a rate assessed each year by RHBT. The RHBT board sets the employer contribution rate based on the annual required contributions of the plan (ARC), an amount actuarially determined in accordance with the parameters of Governmental Accounting Standards Board (GASB) Statement No. 45. The ARC represents a level of funding that, if paid on an ongoing basis, is projected to cover normal costs each year and amortize any unfunded actuarial liabilities (or funding excess) of the plan over a period not to exceed thirty years.

**Funding Policy:** The City's contribution is based on projected pay-as-you-go financing requirements. For fiscal year 2011, the City contributed \$-0- to the plan. Employees are not required to make contributions for basic life insurance.

**Annual OPEB Cost:** The City's annual OPEB cost (expense) for the plan is calculated based on the annual required contribution of the employer (ARC), an amount actuarially determined in accordance with the parameters of GASB Statement No. 45. The ARC represents a level of funding that, if paid on an ongoing basis, is projected to cover normal costs each year and to amortize any unfunded actuarial liabilities (or funding excess) over a period not to exceed thirty years.

Actuarial valuations of an ongoing plan involve estimates of the value of reported amounts and assumptions about the probability of occurrence of events far into the future. Examples include assumptions about future employment, mortality, and the healthcare cost trend. Amounts determined regarding the funded status of the plan and the annual required contributions of the employer are subject to continual revision as actual results are compared with past expectations and new estimates are made about the future. The schedule of funding progress presented as required supplementary information follow in the notes to the financial statements, presents multiyear trend information about whether the actuarial value of plan assets is increasing or decreasing over time relative to the actuarial accrued liabilities for benefits.

**Actuarial Methods and Assumptions:** Projections of benefits for financial reporting purposes are based on the substantive plan (the plan as understood by the employer and the plan members) and include the types of benefits provided at the time of each valuation and the historical pattern of sharing of benefit costs between the employer and plan members to that point. The actuarial methods and assumptions used include techniques that are designed to reduce the effects of short-term volatility in actuarial accrued liabilities and the actuarial value of assets, consistent with the long-term perspective of the calculations.

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

The following table shows the components of the Municipality's annual OPEB cost for the year, the amount actually contributed to the Plans, and changes in the Municipality's net OPEB obligations, as well as the assumptions used to calculate the net OPEB obligation for the covered active and retired employees.

Annual OPEB cost		\$ 414,225
Contributions made		<u>-0-</u>
Increase (decrease) in net OPEB obligation		414,225
Net OPEB obligation (asset) beginning of year		<u>1,078,016</u>
Net OPEB obligation (asset) end of year		<u>\$ 1,492,241</u>
Actuarial valuation date	6/30/2007	
Actuarial cost method	Entry age	
Amortization method	Level dollar	
Asset valuation method	Smoothed market approach	
Remaining amortization period	30 years	
Actuarial assumptions:		
Investment rate of return	4.50%	
Projected rate increase	4.60% - 5.60%	
Health care inflation rate	9.3% in 2008, grading to 6% in 2027	

**Three-Year Trend Information**

<u>Year Ending</u>	<u>Annual OPEB Cost (AOC)</u>	<u>Percentage of AOC Contributed</u>	<u>Net OPEB Obligation (Asset)</u>
June 30, 2011	\$ 414,225	0%	\$ 1,492,241
June 30, 2010	\$ 510,426	0%	\$ 1,078,016
June 30, 2009	\$ 342,301	0%	\$ 567,590

N/A – Not Applicable, 2008 is the implementation year for GASB Statement No. 45.

GASB Statement No. 45 was applied prospectively.

**CITY OF FAIRMONT, WEST VIRGINIA**  
**NOTES TO THE FINANCIAL STATEMENTS (CONT'D)**  
**FOR THE YEAR ENDED JUNE 30, 2011**

**Defined Benefit Pension Plans**

The City has established and maintains the following employees retirement and benefits funds, as authorized by West Virginia Code §8-22-1, et seq., for all eligible employees.

- (1) Policemen's Pension and Relief Fund
- (2) Firemen's Pension and Relief Fund

**Plan Descriptions**

At July 1, the plan's membership consisted of the following:

Retirees and beneficiaries currently receiving benefits and terminated employees entitled to benefits but not yet receiving them:

Firemen (July 1, 2008)	60
Policemen (July 1, 2008)	<u>50</u>
Total	<u>110</u>

Current employees:

Vested and nonvested:	
Firemen	41
Policemen	<u>34</u>
Total	<u>75</u>

Policemen's Pension Plan

Firemen's Pension Plan

Other plan details:

Eligibility	All paid members of the Police Department.	All paid members of the Fire Department.
Rate of employee contribution	7% of salary.	8.5% of salary.
Vesting period for normal retirement	20 years of service but no later than the date the participant reaches age 65.	20 years of service but no later than the date the participant reaches age 65.
Benefits	60% of average compensation, but not less than \$6,000, plus an additional 2% for each full year of credited service in excess of 20 years, but not in excess of 25 years, plus an additional 2% for each full year of credited service in excess of 25 years, but not in excess of 30 years. In addition, 1% is granted for each full year of military service up to 4 years. However, maximum benefit received may not exceed 75%.	60% of average compensation, but not less than \$6,000, plus an additional 2% for each full year of credited service in excess of 20 years, but not in excess of 25 years, plus an additional 1% for each full year of credited service in excess of 25 years, but not in excess of 30 years. In addition, 1% is granted for each full year of military service up to 4 years. However, maximum benefit received may not exceed 75%.

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

**Funding Status and Progress**

The amount shown on the following page as "pension benefit obligation" is a standardized disclosure measure of the present value of pension benefits, adjusted for the effects of projected salary increases, estimated to be payable in the future as a result of employee service to date. The measure is the actuarial present value of credited projected benefits and is intended to help users assess progress made in accumulating sufficient assets to pay benefits when due.

The pension benefit obligation was determined as part of an actuarial valuation of the plan as of July 1, 2010.

Significant actuarial assumptions used in determining the pension benefit obligation included: (1) a rate of return on the investment of present and future assets of 5.0 percent per year compounded annually for both the fire pension plan and the police pension plans, (2) the assumption that benefits will increase 3.0 percent per year after retirement, and (3) projected salary increases of 5.0 percent per year for the police plan and 4.0 percent for year for the fire plan.

The unfunded pension benefit obligations for the policemen's and firemen's pensions were \$24,238,478 and \$31,669,126, respectively.

**Firemen's Pension and Relief**

**Annual Pension Cost and Contributions**

Valuation Date	July 1, 2010
Valuation Interest Rate	5.00%
Cost-of-Living Adjustment	3.00%
Wage Inflation	4.00%
Salary Increase	5.00%
Actuarial Value of Assets	Market
Actuarial Cost Method	Entry Age Normal
Remaining Amortization Period	30 years, Level % of Pay

**Annual Pension Cost and Contributions**

Fiscal Year End	June 30, 2011
1. Annual Pension Cost for FYE June 30	
(a) Annual Required Contribution (ARC) for FYE June 30	\$ 1,678,376
(b) Interest on Net Pension Obligation (NPO) as of July 1 of FY	\$ 377,812
(c) Adjustment to ARC	\$ ( 288,375)
(d) Annual Pension Cost (a + b + c)	\$ 1,767,813
2. Net Pension Obligation as of FYE June 30	
(a) NPO as of July 1 of FY	\$ 7,556,235
(b) Annual Pension Cost for FY	\$ 1,767,813
(c) Employer Contribution	\$ 688,608
(d) STO Contributions	\$ 442,494
(d) NPO as of FYE (a + b - c - d)	\$ 8,192,946

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

**Pension Cost Summary**

Fiscal Year End	June 30, 2011
1. Annual Pension Cost	\$ 1,767,813
2. Employer Contribution	\$ 688,608
3. STO Contribution	\$ 442,494
4. Percentage of Annual Pension Cost Contributed [ (2 + 3)/1 ]	64%
5. Net Pension Obligation	\$ 8,192,946

**Policemen's Pension and Relief**

Valuation Date	July 1, 2010
Valuation Interest Rate	5.00%
Cost-of-Living Adjustment	3.00%
Wage Inflation	4.00%
Salary Increase	5.00%
Actuarial Value of Assets	Market
Actuarial Cost of Method	Entry Age Normal
Remaining Amortization Period	30 years, Level % of Pay

**Annual Pension Cost and Contributions**

Fiscal Year End	June 30, 2011
1. Annual Pension Cost for FYE June 30	
(a) Annual Required Contribution (ARC) for FYE June 30	\$ 1,255,246
(b) Interest on Net Pension Obligation (NPO) as of July 1 of FY	\$ 214,598
(c) Adjustment to ARC	\$( 163,798)
(d) Annual Pension Cost (a + b + c)	\$ 1,306,046
2. Net Pension Obligation as of FYE June 30	
(a) NPO as of July 1 of FY	\$ 4,291,966
(b) Annual Pension Cost for FY	\$ 1,306,046
(c) Employer Contribution	\$ 506,956
(d) STO Contributions	\$ 353,292
(d) NPO as of FYE (a + b - c - d)	\$ 4,737,764

CITY OF FAIRMONT, WEST VIRGINIA  
 NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
 FOR THE YEAR ENDED JUNE 30, 2011

**Pension Cost Summary**

Fiscal Year End	June 30, 2011
1. Annual Pension Cost	\$ 1,306,046
2. Employer Contribution	\$ 506,956
3. STO Contribution	\$ 353,292
4. Percentage of Annual Pension Cost Contributed [ (2 + 3)/1 ]	66%
5. Net Pension Obligation	\$ 4,737,764

**(a) Policemen's Pension and Relief Fund**

The Policemen's Pension and Relief Fund of the municipality covers all eligible employees of the police department paid on a full-time basis from public funds. The municipality's contribution for the fiscal year ended June 30, 2011, was \$505,841 and \$353,292 was provided by the insurance premium tax allocation, for a total contribution of \$859,133.

According to the latest actuarial study of the municipality's Policemen's Pension and Relief Fund, conducted by Gabriel Roeder Smith & Company, the unfunded past service liability as of July 1, 2010, was \$20,869,851.

As required by West Virginia Code §8-22-20, in no event will the municipality be allowed to contribute less than the greater of:

- (1) The average of the amounts contributed in the five fiscal years beginning fiscal year ending June 30, 1984.
- (2) One hundred and seven percent (107%) of the prior year's required city contribution.
- (3) The amount which, when added to the member contribution and the revenue from the state premium tax, equals the overall plans normal cost.

It was determined during this examination that the municipality did comply with the minimum required contribution per West Virginia Code §8-22-20 for the fiscal year ended June 30, 2011.

In presenting these recommended funding levels, Gabriel Roeder Smith & Company, assumed that the premium tax allocation will continue to be paid to the municipality and that it will remain at about the same level for the next three years.

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

**(b) Firemen's Pension and Relief Fund**

The Firemen's Pension and Relief Fund of the municipality covers all eligible employees of the fire department paid on a full-time basis from public funds. The municipality's contribution for the fiscal year ended June 30, 2011, was \$687,492 and \$442,494 was provided by the insurance premium tax allocation, for a total contribution of \$1,129,986.

According to the latest actuarial study of the municipality's Firemen's Pension and Relief Fund, conducted by Gabriel Roeder Smith & Company, the unfunded past service liability as of July 1, 2010 was \$29,798,600.

As required by West Virginia Code §8-22-20, in no event will the municipality be allowed to contribute less than the greater of:

- (1) The average of the amounts contributed in the five fiscal years beginning fiscal year ending June 30, 1984.
- (2) One hundred and seven percent (107%) of the prior year's required city contribution.
- (3) The amount which, when added to the member contribution and the revenue from the state premium tax, equals the overall plans normal cost.

It was determined during this examination that the municipality did comply with the minimum required contribution per West Virginia Code §8-22-20 for the fiscal year ended June 30, 2011.

In presenting these recommended funding levels, Gabriel Roeder Smith & Company, assumed that the premium tax allocation will continue to be paid to the municipality and that it will remain at about the same level for the next three years.

**7. Workers' Compensation Fund**

On July 5, 1983, the City of Fairmont adopted Ordinance No. 600 authorizing self-insured status for Workers' Compensation. This Ordinance provides for the payment to the West Virginia Workers' Compensation for costs of administering the fund, and the required amounts into a surplus fund for the coverage of catastrophe and second injury liability, and to pay all Workers' Compensation benefits anticipated to be payable that year. In addition, the Ordinance authorized all necessary procedures to insure that all Workers' Compensation payments are paid promptly to eligible employees. It further directed the purchase of excess insurance for the purpose of indemnifying the City against losses per accident in excess of a specific retention level and for the purpose of indemnifying the City against annual losses in the aggregate in excess of a specific retention level.

CITY OF FAIRMONT, WEST VIRGINIA  
 NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
 FOR THE YEAR ENDED JUNE 30, 2011

8. Lease

City of Fairmont is the lessor of land under an operating lease with an original lease term of 30 years expiring in 2014. The lease includes the option to renew for two (2) subsequent periods of ten years each, by giving notice of at least 30 days prior to the expiration of the lease. Minimum lease payments to be received as of June 30, 2011 for each of the next five years are:

<u>Year Ended June 30,</u>	<u>Amount</u>
2012	\$ 12,000
2013	12,000
2014	<u>12,000</u>
Total	\$ <u>36,000</u>

9. Interfund Balances

Individual fund interfund receivable and payable balances at June 30, 2011 for fund financial:

	<u>Due From</u> <u>Other Funds</u>	<u>Due to</u> <u>Other Funds</u>
General Fund	\$ 259,363	\$ -0-
<b>Special Revenue Funds</b>		
Bureau of Justice Fund	5,570	-0-
Police Fund	-0-	19,977
Police Investigating Fund	-0-	863
Economic Development Grant Fund	-0-	36,409
<b>Capital Project Funds</b>		
Capital Reserve Fund	464,904	-0-
Sharon Steel Redevelopment Fund	-0-	1,088
<b>Enterprise Funds</b>		
Water Fund	-0-	759,585
Sanitary Sewer Fund	90,283	-0-
Parking Fund	<u>-0-</u>	<u>2,198</u>
Total	\$ <u>820,120</u>	\$ <u>820,120</u>

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

**10. Debt Service Coverage**

The debt service coverage factor for the Sanitary Sewer Board Fund has been calculated as follows for the year ended June 30, 2011:

Operating revenues	\$ 4,592,862
Operating expenses	<u>4,190,652</u>
Operating income	402,210
Add: Depreciation expense	1,107,513
Interest income	<u>9,841</u>
Amount available for debt service and capital expenditures	\$ <u>1,519,564</u>
Maximum annual debt service	\$ <u>1,110,250</u>
Calculated debt service coverage factor	1.37
Required debt service coverage factor	1.25

Based on this calculation, it appears that the Sanitary Sewer Board was in compliance with the provisions set forth in its bond ordinances as of June 30, 2011.

The debt service coverage factor for the Water Fund has been calculated as follows for the year ended June 30, 2011:

Operating revenues	\$ 8,792,721
Operating expenses	<u>5,306,118</u>
Operating income	3,486,603
Add: Depreciation expense	1,652,235
Interest income	<u>208,571</u>
Amount available for debt service and capital expenditures	\$ <u>5,347,409</u>
Maximum annual debt service	\$ <u>3,054,525</u>
Calculated debt service coverage factor	1.75
Required debt service coverage factor	1.20

Based on this calculation, it appears that the Water Fund was in compliance with the provisions set forth in its bond ordinances as of June 30, 2011.

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

**11. Pending Litigation**

The City of Fairmont has been name defendant in several cases which in the opinion of the municipality's attorney will have no material adverse effect to the City.

**12. Restricted Assets**

Certain enterprise fund assets are restricted for repayment of long-term debt. Restricted net assets include the excess of assets over certain liabilities restricted for the debt service on revenue bonds.

**13. Restricted Net Assets**

It was determined during this examination that the net assets at the beginning of the year of the Water Fund required restatement as follows:

Net assets at beginning of year	\$ 5,862,809
Restatement: Reclassification of ARRA bond issue from debt to grant income	<u>155,836</u>
Net assets at beginning of year restated	\$ <u>6,018,645</u>

**14. Subsequent Events**

The City has considered all subsequent events through January 6, 2012, the date the financial statements were made available.

***REQUIRED SUPPLEMENTARY INFORMATION***

CITY OF FAIRMONT, WEST VIRGINIA  
 REQUIRED SUPPLEMENTAL INFORMATION  
 FOR THE FISCAL YEAR ENDED JUNE 30, 2011

1. Schedules of Funding Progress

Policemen's Pension and Relief Fund (PPFR)

<u>Actuarial Valuation Date</u>	<u>Actuarial Value of Assets (a)</u>	<u>Actuarial Accrued Liability (AAL) - Entry Age (b)</u>	<u>Unfunded AAL (UAAL) (b) - (a)</u>	<u>Funded Ratio (a) / (b)</u>	<u>Covered Payroll (c)</u>	<u>UAAL as a % Covered Payroll (b - a) / c</u>
7/1/2001	\$ 2,664,788	\$ 13,852,571	\$ 11,156,783	19.24%	\$ 1,207,014	924%
7/1/2004	\$ 3,100,970	\$ 16,044,620	\$ 12,943,650	19.33%	\$ 1,312,786	986%
7/1/2008	\$ 4,038,740	\$ 18,155,269	\$ 14,116,529	22.25%	\$ 1,356,042	954%
7/1/2010	\$ 3,368,627	\$ 24,238,478	\$ 20,869,851	13.90%	\$ 1,458,935	1430%

Firemen's Pension and Relief Fund (FPFR)

<u>Actuarial Valuation Date</u>	<u>Actuarial Value of Assets (a)</u>	<u>Actuarial Accrued Liability (AAL) - Entry Age (b)</u>	<u>Unfunded AAL (UAAL) (b) - (a)</u>	<u>Funded Ratio (a) / (b)</u>	<u>Covered Payroll (c)</u>	<u>UAAL as a % Covered Payroll (b - a) / c</u>
7/1/2002	\$ 3,353,845	\$ 21,031,260	\$ 17,677,415	15.95%	\$ 1,476,041	1198%
7/1/2005	\$ 2,986,375	\$ 22,414,167	\$ 19,427,792	13.32%	\$ 1,480,774	1312%
7/1/2008	\$ 2,483,747	\$ 24,349,397	\$ 21,865,650	10.20%	\$ 1,568,485	1394%
7/1/2010	\$ 1,870,356	\$ 31,669,126	\$ 29,798,600	5.91%	\$ 1,671,862	1782%

CITY OF FAIRMONT, WEST VIRGINIA  
 COMBINING FUND BALANCE SHEETS  
 NONMAJOR GOVERNMENTAL FUNDS  
 JUNE 30, 2011

	<u>Special Revenue</u> <u>Funds</u>	<u>Capital Project</u> <u>Funds</u>	<u>Total</u>
<b>ASSETS</b>			
Cash	\$ 405,117	\$ -0-	\$ 405,117
Investments	3,661,210	-0-	3,661,210
Receivables:			
Other	57,322	1,088	58,410
Interest	5,659	-0-	5,659
Due from (to):			
Other funds	( 51,679)	(1,088)	( 52,767)
<b>TOTAL ASSETS</b>	<b>\$ <u>4,077,629</u></b>	<b>\$ <u>-0-</u></b>	<b>\$ <u>4,077,629</u></b>
<b>LIABILITIES AND FUND BALANCES</b>			
<b>Liabilities</b>			
Accounts payable	\$ 48,438	\$ -0-	\$ 48,438
Claims payable	121,450	-0-	121,450
Accrued other post employment benefits	<u>2,246,690</u>	<u>-0-</u>	<u>2,246,690</u>
Total liabilities	<u>2,416,578</u>	<u>-0-</u>	<u>2,416,578</u>
<b>Fund Balances</b>			
Committed	1,276,149	-0-	1,276,149
Restricted	87,531	-0-	87,531
Assigned	<u>297,371</u>	<u>-0-</u>	<u>297,371</u>
Total fund balances	<u>1,661,051</u>	<u>-0-</u>	<u>1,661,051</u>
<b>TOTAL LIABILITIES AND FUND BALANCES</b>	<b>\$ <u>4,077,629</u></b>	<b>\$ <u>-0-</u></b>	<b>\$ <u>4,077,629</u></b>

The accompanying notes are an integral part of the combining financial statements.

**CITY OF FAIRMONT, WEST VIRGINIA  
 COMBINING STATEMENTS OF REVENUES, EXPENDITURES AND  
 CHANGES IN FUND BALANCES  
 NONMAJOR GOVERNMENTAL FUNDS  
 FOR THE YEAR ENDED JUNE 30, 2011**

	<u>Special Revenue</u> <u>Funds</u>	<u>Capital Project</u> <u>Funds</u>	<u>Total</u>
<b>Revenues</b>			
Intergovernmental:			
Federal	\$ 154,869	\$ -0-	\$ 154,869
State	30,002	-0-	30,002
Contributions:			
From employer	150,545	-0-	150,545
Fines and forfeits	386,461	-0-	386,461
Donations	3,502	2,077	5,579
Investment income	75,786	-0-	75,786
Gain (loss) on investments	<u>205,675</u>	<u>-0-</u>	<u>205,675</u>
Total revenues	<u>1,006,840</u>	<u>2,077</u>	<u>1,008,917</u>
<b>Expenditures</b>			
General government	88,887	-0-	88,887
Public safety	141,252	-0-	141,252
Community development	167,636	2,077	169,713
Benefit payments	<u>36,477</u>	<u>-0-</u>	<u>36,477</u>
Total expenditures	<u>434,252</u>	<u>2,077</u>	<u>436,329</u>
(Deficiency) excess of revenues (under) over expenditures	<u>572,588</u>	<u>-0-</u>	<u>572,588</u>
<b>Other Financing Sources (Uses)</b>			
Operating transfers in	1,470	-0-	1,470
Operating transfers (out)	( 254,557)	-0-	( 254,557)
Total other financing sources (uses)	<u>( 253,087)</u>	<u>-0-</u>	<u>( 253,087)</u>
(Deficiency) excess of revenues and other financing sources (under) over expenditures and other financing uses	319,501	-0-	319,501
Fund balance beginning of year	<u>1,341,550</u>	<u>-0-</u>	<u>1,341,550</u>
Fund balance end of year	\$ <u>1,661,051</u>	\$ <u>-0-</u>	\$ <u>1,661,051</u>

The accompanying notes are an integral part of the combining financial statements.

**CITY OF FAIRMONT, WEST VIRGINIA  
COMBINING FUND BALANCE SHEETS  
NONMAJOR GOVERNMENTAL FUNDS - SPECIAL REVENUE FUNDS  
JUNE 30, 2011**

	HUD Special Purpose Grant Program	Bureau of Justice Fund	Boards and Commissions Fund	Workers Compensation Fund	Police Investigative Fund	Urban Renewal Authority	Other Post Employment Benefits Fund	Economic Development Grant Fund	Total
<b>ASSETS</b>									
Cash	\$ -0-	\$ -0-	\$ 5,337	\$ 272,409	\$ 80,282	\$ 955	\$ -0-	\$ 10,578	\$ 405,117
Investments	-0-	-0-	4,573	1,281,171	-0-	-0-	2,375,466	-0-	3,661,210
Receivables:									
Other	-0-	-0-	-0-	-0-	698	-0-	-0-	56,624	57,322
Interest	-0-	-0-	-0-	1,870	-0-	-0-	3,789	-0-	5,659
Due from (to):									
Other funds	-0-	5,570	-0-	-0-	(863)	-0-	-0-	(36,409)	(51,679)
<b>TOTAL ASSETS</b>	\$ -0-	\$ 5,570	\$ 9,910	\$ 1,555,450	\$ 80,117	\$ 955	\$ 2,379,255	\$ 30,793	\$ 4,077,629
<b>LIABILITIES AND FUND BALANCES</b>									
<b>Liabilities</b>									
Accounts payable	\$ -0-	\$ -0-	\$ -0-	\$ 6,692	\$ 9,569	\$ -0-	\$ -0-	\$ 25,785	\$ 48,438
Claims payable	-0-	-0-	-0-	121,450	-0-	-0-	-0-	-0-	121,450
Accrued other post employment benefits	-0-	-0-	-0-	-0-	-0-	-0-	2,246,690	-0-	2,246,690
Total liabilities	-0-	-0-	-0-	128,142	9,569	-0-	2,246,690	25,785	2,416,578
<b>Fund Balances</b>									
Committed	-0-	-0-	-0-	1,276,149	-0-	-0-	-0-	-0-	1,276,149
Restricted	-0-	5,570	-0-	-0-	70,177	-0-	-0-	5,000	87,531
Assigned	-0-	-0-	9,910	151,159	371	955	132,565	8	297,371
Unassigned	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Total fund balances	-0-	5,570	9,910	1,427,308	70,548	955	132,565	5,008	1,661,051
<b>TOTAL LIABILITIES AND FUND BALANCES</b>	\$ -0-	\$ 5,570	\$ 9,910	\$ 1,555,450	\$ 80,117	\$ 955	\$ 2,379,255	\$ 30,793	\$ 4,077,629

The accompanying notes are an integral part of the combining financial statements.

**CITY OF FAIRMONT, WEST VIRGINIA**  
**COMBINING STATEMENT OF REVENUES, EXPENDITURES AND**  
**CHANGES IN FUND BALANCES**  
**NONMAJOR GOVERNMENTAL FUNDS - SPECIAL REVENUE FUNDS**  
**FOR THE YEAR ENDED JUNE 30, 2011**

	HUD Special Purpose Grant Program	Bureau of Justice Fund	Boards and Commissions Fund	Workers Compensation Fund	Police Fund	Police Investigative Fund	Urban Renewal Authority	Other Post Employment Benefits Fund	Economic Development Grant Fund	Total
<b>Revenues</b>										
Intergovernmental:										
Federal	\$ 12,477	\$ 15,035	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ 127,357	\$ 154,869
State	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	30,002	30,002
Contributions:										
From employer	-0-	-0-	-0-	147,187	-0-	-0-	-0-	3,358	-0-	150,545
Fines and forfeits	-0-	-0-	-0-	-0-	356,915	29,546	-0-	-0-	-0-	386,461
Donations	-0-	-0-	2,502	-0-	-0-	1,000	-0-	-0-	-0-	3,502
Investment income	-0-	-0-	37	41,228	17	371	-0-	34,127	6	75,786
Gain (loss) on investments	-0-	-0-	220	109,931	-0-	-0-	-0-	95,524	-0-	205,675
Total revenues	<u>12,477</u>	<u>15,035</u>	<u>2,759</u>	<u>298,346</u>	<u>356,932</u>	<u>30,917</u>	<u>-0-</u>	<u>133,009</u>	<u>157,365</u>	<u>1,006,840</u>
<b>Expenditures</b>										
General government	-0-	-0-	-0-	86,885	-0-	-0-	-0-	2,002	-0-	88,887
Public safety	-0-	16,935	-0-	-0-	96,192	28,125	-0-	-0-	-0-	141,252
Community development	12,477	-0-	2,280	-0-	-0-	-0-	-0-	-0-	152,879	167,636
Benefit payments	-0-	-0-	-0-	36,477	-0-	-0-	-0-	-0-	-0-	36,477
Total expenditures	<u>12,477</u>	<u>16,935</u>	<u>2,280</u>	<u>123,362</u>	<u>96,192</u>	<u>28,125</u>	<u>-0-</u>	<u>2,002</u>	<u>152,879</u>	<u>434,252</u>
(Deficiency) excess of revenues (under) over expenditures	-0-	(1,900)	479	174,984	260,740	2,792	-0-	131,007	4,486	572,588
<b>Other Financing Sources (Uses)</b>										
Operating transfers in	-0-	-0-	-0-	-0-	-0-	-0-	950	-0-	520	1,470
Operating transfers (out)	-0-	-0-	-0-	-0-	(254,557)	-0-	-0-	-0-	-0-	(254,557)
Total other financing sources (uses)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>(254,557)</u>	<u>-0-</u>	<u>950</u>	<u>-0-</u>	<u>520</u>	<u>(253,087)</u>
(Deficiency) excess of revenues and other financing sources (under) over expenditures and other financing uses	-0-	(1,900)	479	174,984	6,183	2,792	950	131,007	5,006	319,501
Fund balance beginning of year	-0-	7,470	9,431	1,252,324	3,004	67,756	5	1,558	2	1,341,550
Fund balance end of year	\$ -0-	\$ 5,570	\$ 9,910	\$ 1,427,308	\$ 9,187	\$ 70,548	\$ 955	\$ 132,565	\$ 5,008	\$ 1,661,051

The accompanying notes are an integral part of the combining financial statements.

CITY OF FAIRMONT, WEST VIRGINIA  
 COMBINING FUND BALANCE SHEETS  
 NONMAJOR GOVERNMENTAL FUNDS -  
 CAPITAL PROJECTS FUNDS  
 JUNE 30, 2011

Sharon Steel  
Redevelopment  
Fund

**ASSETS**

Accounts receivable	\$ 1,088
Due from (to):	
Other funds	(1,088)
<b>TOTAL ASSETS</b>	<b>\$ <u>-0-</u></b>

**LIABILITIES AND FUND BALANCES**

<b>Liabilities</b>	
Accounts payable	\$ <u>-0-</u>
Total liabilities	<u>-0-</u>
<b>Fund Balances</b>	
Unassigned	<u>-0-</u>
Total fund balances	<u>-0-</u>
<b>TOTAL LIABILITIES AND FUND BALANCES</b>	<b>\$ <u>-0-</u></b>

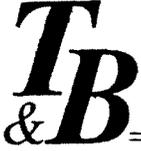
The accompanying notes are an integral part of the combining financial statements.

CITY OF FAIRMONT, WEST VIRGINIA  
 COMBINING STATEMENT OF REVENUES, EXPENDITURES AND  
 CHANGES IN FUND BALANCE  
 NONMAJOR GOVERNMENTAL FUNDS - CAPITAL PROJECT FUNDS  
 FOR THE YEAR ENDED JUNE 30, 2011

Sharon Steel  
 Redevelopment  
 Fund

<b>Revenues</b>	
Donations	\$ <u>2,077</u>
Total revenues	<u>2,077</u>
<b>Expenditures</b>	
Community development	<u>2,077</u>
Total expenditures	<u>2,077</u>
(Deficiency) excess of revenues (under) over expenditures	-0-
Fund balance beginning of year	<u>-0-</u>
Fund balance end of year	\$ <u><u>-0-</u></u>

The accompanying notes are an integral part of the combining financial statements.



**REPORT ON INTERNAL CONTROL OVER FINANCIAL  
REPORTING AND ON COMPLIANCE AND OTHER  
MATTERS BASED ON AN AUDIT OF FINANCIAL  
STATEMENTS PERFORMED IN ACCORDANCE WITH  
*GOVERNMENT AUDITING STANDARDS***

The Honorable Mayor and Council  
City of Fairmont  
Fairmont, West Virginia

We have audited the financial statements of the governmental activities, the business-type activities, each major fund and the aggregate remaining fund information of the City of Fairmont, West Virginia, as of and for the year ended June 30, 2011, which collectively comprise the City of Fairmont, West Virginia's basic financial statements and have issued our report thereon dated January 6, 2012. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

**Internal Control Over Financial Reporting**

In planning and performing our audit, we considered the City of Fairmont, West Virginia's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the City of Fairmont, West Virginia's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the City of Fairmont, West Virginia's internal control over financial reporting.

*A deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. *A material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be deficiencies, significant deficiencies, or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above.

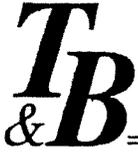
### Compliance and Other Matters

As part of obtaining reasonable assurance about whether the City of Fairmont, West Virginia's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

This report is intended solely for the information and use of management, Municipal Officials of the City of Fairmont, West Virginia, others within the entity and federal and state awarding agencies and pass-through entities and the West Virginia State Auditor's Office Chief Inspector Division and is not intended to be and should not be used by anyone other than these specified parties.

*T. Stuck · Banker, PLLC*

January 6, 2012



INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE WITH  
REQUIREMENTS THAT COULD HAVE A DIRECT AND MATERIAL  
EFFECT ON EACH MAJOR PROGRAM AND ON INTERNAL  
CONTROL OVER COMPLIANCE IN ACCORDANCE WITH  
*OMB CIRCULAR A-133*

The Honorable Mayor and Council  
City of Fairmont  
Fairmont, West Virginia

**Compliance**

We have audited the City of Fairmont, West Virginia's compliance with the types of compliance requirements described in the *OMB Circular A-133 Compliance Supplement* that could have a direct and material effect on each of the City of Fairmont, West Virginia's major federal programs for the year ended June 30, 2011. The City of Fairmont, West Virginia's major federal programs are identified in the summary of auditor's results section of the accompanying schedule of findings and questioned costs. Compliance with the requirements of laws, regulations, contracts, and grants applicable to each of its major federal programs is the responsibility of the City of Fairmont, West Virginia's management. Our responsibility is to express an opinion on the City of Fairmont, West Virginia's compliance based on our audit.

We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*. Those standards and OMB Circular A-133 require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the types of compliance requirements referred to above that could have a direct and material effect on a major federal program occurred. An audit includes examining, on a test basis, evidence about the City of Fairmont, West Virginia's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion. Our audit does not provide a legal determination of the City of Fairmont, West Virginia's compliance with those requirements.

In our opinion, the City of Fairmont, West Virginia complied, in all material respects, with the compliance requirements referred to above that could have a direct and material effect on each of its major federal programs for the year ended June 30, 2011.

## Internal Control Over Compliance

Management of the City of Fairmont, West Virginia is responsible for establishing and maintaining effective internal control over compliance with the requirements of laws, regulations, contracts, and grants applicable to federal programs. In planning and performing our audit we considered the City of Fairmont, West Virginia's internal control over compliance with the requirements that could have a direct and material effect on a major federal program to determine the auditing procedures for the purpose of expressing our opinion on compliance and to test and report on internal control over compliance in accordance with *OMB Circular A-133* but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of the City of Fairmont, West Virginia's internal control over compliance.

*A deficiency in internal control over compliance* exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. A *material weakness in internal control over compliance* is a deficiency or combination of deficiencies, in internal control over compliance such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis.

Our consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over compliance that might be deficiencies, significant deficiencies, or material weaknesses. We did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses, as defined above.

This report is intended solely for the information and use of management, Municipal Officials of the City of Fairmont, West Virginia, others within the entity, federal and state awarding agencies and pass-through entities and the West Virginia State Auditor's Office Chief Inspector's Division and is not intended to be and should not be used by anyone other than these specified parties. However, this report is a matter of public record.

*T. Stuckert • Bartlett, P.H.C.*

January 6, 2012

**CITY OF FAIRMONT, WEST VIRGINIA  
SCHEDULE OF FINDINGS AND QUESTIONED COSTS  
FOR THE YEAR ENDED JUNE 30, 2011**

**A. Summary of Audit Results**

1. The auditor's report expresses an unqualified opinion on the financial statements of the City of Fairmont, West Virginia.
2. No significant deficiencies relating to the audit of the financial statements are reported in the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with *Government Auditing Standards*.
3. No instances of noncompliance material to the financial statements of the City of Fairmont, West Virginia which would be required to be reported in accordance with *Government Auditing Standards*, were disclosed during the audit.
4. No significant deficiencies in internal control over major federal award programs were disclosed during the audit and reported in the independent auditor's report on compliance with requirements that could have a direct and material effect on each major program and on internal control over compliance in accordance with *OMB Circular A-133*.
5. The auditor's report on compliance for the major federal award programs for the City of Fairmont, West Virginia expresses an unqualified opinion on all major federal programs.
6. Audit findings that are required to be reported in accordance with Section 510(a) of *OMB Circular A-133* are reported in this schedule.
7. The programs tested as major programs are the United States Environmental Protection Agency, Office of Water, Capitalization Grants for Drinking Water State Revolving Funds – CFDA Number 66.468 and the United States Environmental Protection Agency, Office of Water, ARRA – Capitalization Grants for Drinking Water State Revolving Funds – CFDA Number 66.468.
8. The threshold used for distinguishing between Type A and B programs was \$300,000.
9. The City of Fairmont, West Virginia was not determined to be a low risk auditee.

**B. Findings - Financial Statements Audit**

There were no findings identified in the financial statements audit.

**C. Findings and Questioned Costs - Major Federal Award Program Audit**

There were no findings and questioned costs identified in the major federal award program audit.

**CITY OF FAIRMONT, WEST VIRGINIA**  
**SCHEDULE OF EXPENDITURES AND FEDERAL AWARDS**  
**FOR THE YEAR ENDED JUNE 30, 2011**

<u>Federal Grantor/Pass-Through Grantor Program Title</u>	<u>Federal CFDA Number</u>	<u>Grant Number</u>	<u>Program or Award Amount</u>	<u>Receipts or Revenues Recognized</u>	<u>Federal Disbursements/ Expenditures</u>
<b>United States Environmental Protection Agency/ Office of Water</b>					
<i>State of West Virginia Environmental Protection and West Virginia Water Development Authority</i>					
Capitalization Grants for Drinking Water State Revolving Funds	66.468		\$ 3,500,000	\$ 79,993	\$ 79,993
Capitalization Grants for Drinking Water State Revolving Funds	66.468		4,446,618	1,103,693	1,103,693
ARRA – Capitalization Grants for Drinking Water State Revolving Funds	66.468		4,446,618	4,290,783	4,290,783
				<u>5,474,469</u>	<u>5,474,469</u>
<b>United States Department of Housing and Urban Development/Office of Community Planning and Development</b>					
<i>State of West Virginia Office of Economic Opportunity</i>					
Emergency Shelter Grants Program	14.231	S-09-DC-54-0001	76,000	27,357	27,357
Emergency Shelter Grants Program	14.231	S-10-DC-54-0001	76,000	62,370	62,370
<b>United States Department of Housing and Urban Development/Office of Community Planning and Development</b>					
<i>West Virginia Development Office</i>					
Community Development Block Grants/Entitlement Grants	14.218	B-05-DC-54-0001	500,000	12,477	12,477
				<u>102,204</u>	<u>102,204</u>
<b>United States Department of Transportation/Federal Highway Administration</b>					
<i>West Virginia Department of Transportation Division of Highways</i>					
ARRA – Highway Planning and Construction	20.205	TEA-OH22(001)E	150,000	2,080	2,080
				<u>2,080</u>	<u>2,080</u>

**CITY OF FAIRMONT, WEST VIRGINIA**  
**SCHEDULE OF EXPENDITURES AND FEDERAL AWARDS (CONT'D)**  
**FOR THE YEAR ENDED JUNE 30, 2011**

<u>Federal Grantor/Pass-Through Grantor Program Title</u>	<u>Federal CFDA Number</u>	<u>Grant Number</u>	<u>Program or Award Amount</u>	<u>Receipts or Revenues Recognized</u>	<u>Federal Disbursements/ Expenditures</u>
<b>United States Department of Justice/Office of Community Oriented Policing Services</b>					
ARRA – Public Safety Partnership and Community Policing Grants	16.710	2009RKWX0923	\$ 347,100	\$ 117,385	\$ 117,385
<b>United States Department of Justice/Office of Justice Programs</b>					
ARRA – Edward Byrne Memorial Justice Assistance Grant (JAG) Program/ Grants to Units of Local Government	16.804	2009-SB-B9-2292	96,270	<u>15,035</u> <u>132,420</u>	<u>15,035</u> <u>132,420</u>
<b>United States Department of Energy</b>					
ARRA – Energy Efficiency and Conservation Block Grant Program (EECBG)	81.128	DE-EE0001811	87,100	<u>35,550</u> <u>35,550</u>	<u>35,550</u> <u>35,550</u>
<b>Total</b>				<b>\$ <u>5,746,723</u></b>	<b>\$ <u>5,746,723</u></b>

**Notes to Schedule of Expenditures of Federal Awards**

**Note 1 - Significant Accounting Policies**

The accompanying schedule of federal awards is a summary of the activity of the City of Fairmont, West Virginia's federal award programs and presents transactions that would be included in financial statements of the City presented on the accrual basis of accounting as contemplated by accounting principles generally accepted in the United States of America.

**CITY OF FAIRMONT, WEST VIRGINIA  
SUMMARY SCHEDULE OF PRIOR AUDIT FINDINGS  
FOR THE YEAR ENDED JUNE 30, 2011**

**United States Environmental Protection Agency, Office of Water Capitalization Grants for Clean Water State Revolving Funds – CFDA Number 55.458 for the fiscal year ended June 30, 2010; the United States Environmental Protection Agency, Office of Water, Capitalization Grants for Drinking Water State Revolving Funds – CFDA Number 66.468 for the fiscal year ended June 30, 2010; and the United States Environmental Protection Agency, Office of Water, ARRA – Capitalization Grants for Drinking Water State Revolving Funds – CFDA Number 66.468 for the fiscal year ended June 30, 2010.**

There were no prior year audit findings related to the major federal award programs.

## APPENDIX D

### Form of Opinion of Bond Counsel

October \_\_\_\_, 2012

City of Fairmont  
Water Refunding Revenue Bonds, Series 2012 D

City of Fairmont  
Fairmont, West Virginia

Assured Guaranty Municipal Corp.  
New York, New York

Crews & Associates, Inc.  
Charleston, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

Piper Jaffray & Co.  
Charleston, West Virginia

Ladies and Gentlemen:

We have examined a record of proceedings relating to the issuance by the City of Fairmont, West Virginia (the "Issuer") of its \$\_\_\_\_\_ aggregate principal amount of Water Refunding Revenue Bonds, Series 2012 D (the "Series 2012 D Bonds").

The Series 2012 D Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 8, Article 19 and Chapter 13, Article 2E of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Ordinance duly enacted by the Issuer on March 27, 2012, as supplemented by a Supplemental Parameters Resolution duly adopted by the Issuer on June 12, 2012 and a Second Supplemental Resolution duly adopted by the Issuer on September 12, 2012 (collectively, the "Ordinance"), and are subject to all the terms and conditions of the Ordinance. All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Ordinance when used herein.

The Series 2012 D Bonds are issued in fully registered form, are dated October \_\_\_\_, 2012, upon original issuance, mature on July 1 in the years and amounts and bear interest payable each January 1 and July 1, commencing \_\_\_\_, 2012, as set forth in the Ordinance.

The Series 2012 D Bonds shall be subject to optional redemption on or after \_\_\_\_\_  
1, 20\_\_\_\_\_, at par plus accrued interest thereon to the date set for redemption.

The Ordinance provides that the Series 2012 D Bonds are issued for the purpose of (i) currently refunding the Issuer's Waterworks Refunding Revenue Bonds, Series 1997 (the "Series 1997 Bonds"); (ii) currently refunding the Issuer's Water Revenue Bonds, Series 1998 (the "Series 1998 Bonds"); (iii) paying a portion of the Issuer's Water Revenue Bonds, Series 1999 (the "Series 1999 Bonds to be Refunded"); (iv) funding a debt service reserve account for the Series 2012 D Bonds; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs.

The Series 2012 D Bonds have been sold to Crews & Associates, Inc. and Piper Jaffray & Company (collectively, the "Original Purchasers"), pursuant to a Bond Purchase Agreement dated \_\_\_\_\_, 2012, and accepted by the Issuer (the "Bond Purchase Agreement").

As to questions of fact material to our opinion, we have relied upon representations of the Issuer, the Original Purchasers and other entities contained in the Ordinance, the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Tax Certificate and in the certified proceedings and other certifications of certain officials furnished to us without undertaking to verify the same by independent investigation.

Based upon the foregoing, and assuming compliance with the covenants and representations of the Issuer and others set forth in the Ordinance, the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Tax Certificate and such certifications, we are of the opinion, under existing law, that:

1. The Issuer is a duly organized and validly existing municipal corporation under and pursuant to the laws of the State of West Virginia, with full power and authority to adopt and enact the Ordinance, enter into the Bond Purchase Agreement, the Continuing Disclosure Agreement and Tax Certificate, perform its obligations under the terms and provisions thereof and to issue and sell the Series 2012 D Bonds, all under the provisions of the Act and other applicable provisions of law.

2. The Issuer, through its governing body, has legally and effectively adopted and enacted the Ordinance, has authorized, executed and delivered the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Tax Certificate, has authorized the distribution of the Official Statement in connection with the marketing and sale of the Series 2012 D Bonds, and has issued and delivered the Series 2012 D Bonds to the Original Purchasers pursuant to the Bond Purchase Agreement. The Ordinance is in full force and effect as of the date hereof.

3. Assuming due authorization, execution and delivery by the other parties thereto the Bond Purchase Agreement, the Continuing Disclosure Agreement and the Tax Certificate constitute valid, legal, binding and enforceable instruments of the Issuer in accordance with their respective terms.

4. The Series 2012 D Bonds have been duly authorized, executed and delivered by the Issuer and, assuming proper authentication, constitute valid and legally enforceable limited obligations of the Issuer, payable from, and secured by a lien on, the Gross Revenues of the System, on a parity with the Issuer's outstanding: (1) unrefunded portion of the Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000; (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000; (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618; (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618; (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000; and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (collectively, the "Prior Bonds"). The Series 2012 D Bonds are enforceable in accordance with their terms and the terms of the Ordinance, and are entitled to the benefits of the Ordinance and the Act.

5. The Series 1997 Bonds have been paid within the meaning and with the effect expressed in the ordinance, as supplemented, pursuant to which they were issued, and the covenants, agreements and other obligations of the Issuer to the holders and owners of the Series 1997 Bonds have been satisfied and discharged.

The Series 1998 Bonds have been paid within the meaning and with the effect expressed in the ordinance, as supplemented, pursuant to which they were issued, and the covenants, agreements and other obligations of the Issuer to the holders and owners of the Series 1998 Bonds have been satisfied and discharged.

The Series 1999 Bonds to be Refunded have been paid within the meaning and with the effect expressed in the ordinance, as supplemented, pursuant to which they were issued, and the covenants, agreements and other obligations of the Issuer to the holders and owners of the Series 1999 Bonds to be Refunded have been satisfied and discharged.

6. Under existing laws, regulations, published rulings and judicial decisions of the United States of America, as presently written and applied, the interest on the Series 2012 D Bonds (including any original issue discount properly allocable to owners of the Series 2012 D Bonds) is excludable from gross income of the holders thereof for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed upon individuals and corporations. It should be noted, however, that for the purpose of computing the alternative minimum tax on corporations (as defined for federal income tax purposes), such interest is taken into account in determining adjusted current earnings. Ownership of tax-exempt obligations, including the Series 2012 D Bonds, may result in collateral federal income tax consequences to certain taxpayers, including without limitation, financial institutions, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits, and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry such obligations. We offer no opinion as to such collateral tax consequences. The opinions set forth above are subject to the condition that the Issuer comply, on a continuing basis, with all requirements of the Internal Revenue Code of 1986, as amended, and regulations thereunder (collectively, the "Code") that must be satisfied subsequent to issuance of the Series 2012 D Bonds for interest thereon to be or continue to be excludable from gross income for federal income tax purposes and with all certifications, covenants and representations which may affect the excludability from gross income of the interest on the Series 2012 D Bonds set forth in the Ordinance, the Tax Certificate and the certifications of the Issuer and others. Failure to comply with such Code provisions or such certifications, covenants and representations could cause the interest on the Series 2012 D Bonds to be includable in gross income retroactive to the date of issuance of the Series 2012 D Bonds. We express no other opinion as to the federal tax consequences of purchasing, holding or disposing of the Series 2012 D Bonds. Prospective purchasers of the Series 2012 D Bonds should consult their own tax advisors as to such consequences.

7. Under the Act, the Series 2012 D Bonds and the interest thereon are exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

8. The Series 2012 D Bonds are exempted securities within the meaning of Section 3(a)(2) of the Securities Act of 1933, as amended, and the West Virginia Uniform Securities Act, as amended, and it is not necessary, in connection with the public offering and sale of the Series 2012 D Bonds, to register any securities under said Securities Acts.

It is to be understood that the rights of the holders of the Series 2012 D Bonds and the enforceability of the Series 2012 D Bonds, the Ordinance, the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Tax Certificate, and the liens, pledges, rights or remedies with respect thereto, are subject to and may be limited by any applicable bankruptcy, reorganization, insolvency, moratorium or other similar laws heretofore or hereafter enacted affecting creditors' rights or remedies generally and that their enforcement may also be subject to the application of public policy, general principles of equity and the exercise of judicial discretion in appropriate cases.

We do not express any opinion as to the sufficiency or accuracy of the material, information or financial statements which are set forth in the Official Statement prepared and used in connection with the offering and sale of the Series 2012 D Bonds.

We have examined the executed and authenticated Series 2012 D Bonds of said issue, and in our opinion, said Series 2012 D Bonds are in proper form and have been duly executed and authenticated.

Very truly yours,

STEPTOE & JOHNSON PLLC

268460.00017

## APPENDIX E

### Form of Continuing Disclosure Agreement

#### CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (the “Agreement”) is by and between the City of Fairmont (the “Issuer”), and WesBanco Bank, Inc. (the “Dissemination Agent”), in connection with the issuance of \$ \_\_\_\_\_ City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 A (Bank Qualified) and Water Refunding Revenue Bonds, Series 2012 B (Non-Bank Qualified) (collectively, the “Bonds”). The Bonds are being issued pursuant to the Ordinance enacted by the City Council of the City on March 27, 2012 (the “Original Ordinance”), as supplemented, amended and conformed by a Supplemental Parameters Resolution adopted by the City Council of the City on May 9, 2012 (the “Supplemental Resolution” and together with the Original Ordinance as conformed, the “Ordinance”). The Issuer and Dissemination Agent covenant and agree as follows:

SECTION 1. Purpose of Agreement. The Agreement is being executed and delivered by the Issuer and Dissemination Agent for the benefit of the holders and Beneficial Owners of the Bonds and in order to assist the Participating Underwriter in complying with SEC Rule 15c2-12(b)(5).

SECTION 2. Definitions. In addition to the definitions set forth in the Ordinance and the Bond Purchase Agreement dated \_\_\_\_\_, 2012, which apply to any capitalized term used in the Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“Annual Financial Information” means the financial information (which shall be based on financial statements prepared in accordance with generally accepted accounting principles (“GAAP”)) and operating data with respect to the Issuer, provided at least annually, of the type included in those sections of the final official statement with respect to the Bonds attached thereto as Appendix C, which Annual Financial Information shall include Audited Financial Statements if available on the Report Date, and, if not then available, unaudited financial statements.

“Audited Financial Statements” means the Issuer’s annual financial statements, prepared in accordance with GAAP, which financial statements shall have been audited by a firm of independent certified public accountants.

“Beneficial Owner” shall mean any person who has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries).

“Disclosure Representative” shall mean the current Mayor, City Manager, Utility Manager or Finance Director of the Issuer.

“Dissemination Agent” shall initially mean WesBanco Bank, Inc., or any successor Dissemination Agent designated in writing by the Issuer and which has filed with the Issuer a written acceptance of such designation.

“EMMA” means the Electronic Municipal Market Access System described in the 1934 Act Release No. 59062 and maintained by the Municipal Securities Rulemaking Board for purposes of the Rule.

“Listed Events” shall mean any of the events listed in Section 5(a) of the Agreement.

“National Repository” shall mean the Municipal Securities Rulemaking Board, Washington, D.C., the sole Nationally Recognized Municipal Securities Information Repository for purposes of the Rule, effective as of July 1, 2009.

“Participating Underwriter” shall mean the original underwriter(s) of the Bonds who are required to comply with the Rule in connection with offering of the Bonds.

“Repository” shall mean each National Repository.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“State” shall mean the State of West Virginia.

### SECTION 3. Provision of Annual Reports.

(a) The Issuer shall, or shall cause the Dissemination Agent to, not later than 270 days after the end of the Issuer’s fiscal year (presently June 30) (the “Due Date”), commencing with the report for the Fiscal Year ending June 30, 2012, provide to EMMA Annual Financial Information and Audited Financial Statements, which are consistent with the requirements of Section 4 of the Agreement. The Annual Financial Information and Audited Financial Statements may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of the Agreement. The Issuer shall provide the Dissemination Agent with a copy of each report filed under the Agreement. If the Issuer’s fiscal year changes, the Issuer shall give notice of such change in the same manner as for a Listed Event under Section 5(a). The Dissemination Agent shall send written notice to the Issuer thirty days prior to the Due Date of the Annual Financial Information and Audited Financial Statements that such information is due by the Due Date.

(b) Not later than fifteen (15) Business Days prior to the Due Date, the Issuer shall provide the Annual Financial Information and Audited Financial Statements to the Dissemination Agent. If by the Due Date the Dissemination Agent has not received a copy of the Annual Report, the Dissemination Agent shall contact the Issuer to determine if the Issuer is in compliance with the first sentence of this subsection (b). If the Dissemination Agent is unable to provide to EMMA its Annual Financial Information and Audited Financial Statements by the date required in subsection (a), the Dissemination Agent shall send a notice to EMMA in substantially the form attached as Exhibit A.

(c) The Dissemination Agent shall file a report with the Issuer certifying that the Annual Financial Information and Audited Financial Statements have been provided to EMMA pursuant to the Agreement and the date provided.

SECTION 4. Content of Annual Financial Information. Within 270 days of the Issuer's 2012 fiscal year-end, and each subsequent fiscal year, the Dissemination Agent shall submit to EMMA information and data of the Issuer for the prior fiscal year, including the Audited Financial Statements, prepared in accordance with generally accepted accounting principles in effect from time to time.

Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the Issuer or related public entities, which have been submitted to EMMA or the Securities and Exchange Commission. If the document included by reference is a final official statement it must be available from the Municipal Securities Rulemaking Board. The Issuer shall clearly identify each such other document so included by reference.

SECTION 5. Reporting of Significant Events.

(a) Pursuant to the provisions of this Section 5, the Issuer shall give, or cause to be given, notice of the occurrence of any of the following events, if applicable, with respect to the Bonds:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
7. Modifications to rights of security holders, if material;
8. Bond calls, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the Bonds, if material;
11. Rating changes;

12. Bankruptcy, insolvency, receivership, or similar event of the Issuer<sup>1</sup>;

13. The consummation of a merger, consolidation or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action; or the termination of a definitive agreement relating to any such actions, other than pursuant to its term, if material; and

14. Appointment of a successor or additional trustee or the change of name of a trustee, if material.

(b) The Dissemination Agent shall, within one (1) Business Day of obtaining actual knowledge of the occurrence of any of the Listed Events contact the Disclosure Representative, inform such person of the event, and request that the Issuer promptly notify the Dissemination Agent in writing whether or not to report the event pursuant to subsection (f).

(c) Whenever the Issuer obtains knowledge of the occurrence of a Listed Event, classified under Section 5(a) (2), (7), (8), (10), (13) or (14), because of a notice from the Dissemination Agent pursuant to subsection (b) or otherwise, the Issuer shall as soon as possible determine if such event would be material under applicable federal securities laws, in any event such determination must be made and submitted to the Dissemination Agent within two (2) business days.

(d) If the Issuer determines that knowledge of the occurrence of any of the Listed Events, classified under Section 5(a) (2), (7), (8), (10), (13) or (14), would be material under applicable federal securities laws pursuant to subsection (b) or the Issuer received notice of any Listed Event that does not require a finding of materiality classified under Section 5(a) (1), (3), (4), (5), (6), (9), (11) or (12), the Issuer shall promptly file with the Dissemination Agent a notice of such occurrence to be provided to EMMA.

(e) If in response to a request under subsection (b), the Issuer determines that the Listed Event, classified under Section 5(a) (2), (7), (8), (10), (13) or (14), would not be material under applicable federal securities laws, the Issuer shall so notify the Dissemination Agent in writing and instruct the Dissemination Agent not to report the occurrence pursuant to subsection (f).

(f) If the Dissemination Agent has been instructed by the Issuer to report the occurrence of a Listed Event, the Dissemination Agent shall file a notice of such occurrence with EMMA with a copy to the Issuer. The Dissemination Agent must file such notice with EMMA within ten (10) business days of the occurrence of such Listed Event.

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<sup>1</sup> For the purposes of the event identified in Section 5(a)(12) above, the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for an obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person.

SECTION 6. Termination of Reporting Obligation. The Issuer's obligations under the Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the Issuer shall give notice of such termination in the same manner as for any of the Listed Events under Section 5(a).

SECTION 7. Dissemination Agent. WesBanco Bank, Inc., is hereby appointed as Dissemination Agent. The Issuer may, from time to time, appoint or engage an alternate or successor Dissemination Agent to assist it in carrying out its obligations under the Agreement, and may discharge any such Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the Issuer pursuant to the Agreement.

SECTION 8. Amendment, Waiver. Notwithstanding any other provision of the Agreement, the Issuer may amend the Agreement, and any provision of the Agreement may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Sections 3(a), 4 or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances, and

(c) The amendment or waiver either (i) is approved by the Holders of the Bonds in the same manner as provided in the Ordinance for amendments to the Ordinance with the consent of Holders, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Holders or Beneficial Owners of the Bonds.

In the event of any amendment or waiver of a provision of the Agreement, the Issuer shall describe such amendment in the next Annual Financial Information and Audited Financial Statements, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the Issuer. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for any of the Listed Events under Section 5(a), and (ii) the Annual Financial Information and Audited Financial Statements for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

SECTION 9. Additional Information. Nothing in the Agreement shall be deemed to prevent the Issuer from disseminating any other information, using the means of dissemination

set forth in the Agreement or any other means of communication, or including any other information in any Annual Financial Information and Audited Financial Statements or notice of occurrence of any of the Listed Events, in addition to that which is required by the Agreement. If the Issuer chooses to include any information in any Annual Financial Information and Audited Financial Statements or notice of occurrence of any of the Listed Events in addition to that which is specifically required by the Agreement, the Issuer shall have no obligation under the Agreement to update such information or include it in any future Annual Financial Information and Audited Financial Statements or notice of occurrence of any of the Listed Events.

SECTION 10. Default. In the event of a failure of the Issuer or Dissemination Agent to comply with any provision of the Agreement (and, at the request of the Original Purchasers), the Dissemination Agent may or any Holder or Beneficial Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Issuer or Dissemination Agent to comply with its obligations under the Agreement. A default under the Agreement shall not be deemed an Event of Default under the Ordinance, and the sole remedy under the Agreement in the event of any failure of the Issuer or Dissemination Agent to comply with the Agreement shall be an action to compel performance.

SECTION 11. Duties, Immunities and Liabilities of Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in the Agreement, and the Issuer agrees to the extent allowed by State law to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys' fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's gross negligence or willful misconduct. The obligations of the Issuer under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

SECTION 12. Notices. Any notices or communications to or among any of the parties to the Agreement may be given as follows:

To the Issuer: City of Fairmont, West Virginia  
P.O. Box 1428  
Fairmont, WV 26555

To the Dissemination Agent: WesBanco Bank, Inc.  
ATTN: Corporate Trust  
1 Bank Plaza  
Wheeling, WV 26003

Any person may, by written notice to the other persons listed above, designate a different address or telephone number(s) to which subsequent notices or communications should be sent.

SECTION 13. Beneficiaries. The Agreement shall inure solely to the benefit of the Issuer, the Dissemination Agent, the Participating Underwriter and Holders and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

SECTION 14. Counterparts. The Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 15. Fees. The Issuer agrees to pay all fees and expenses of the Dissemination Agent including, without limitation, all reasonable expenses, charges, costs, attorney's fees and other disbursements in the administration and performance of the Dissemination Agent's duties.

SECTION 16. Right to Resign. The Dissemination Agent may resign at any time by providing thirty (30) days' written notice to the Issuer.

SECTION 17. Right to Counsel. The Dissemination Agent shall have the right to consult with counsel in carrying out its duties under the Agreement and to rely upon an opinion of counsel.

Date: \_\_\_\_\_, 2012

CITY OF FAIRMONT

By: \_\_\_\_\_  
Its: Mayor

WESBANCO BANK, INC.,  
as Dissemination Agent

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

EXHIBIT A

NOTICE TO REPOSITORIES OF FAILURE TO FILE ANNUAL REPORT

Name of Issuer:       City of Fairmont (West Virginia)

Name of Issue:       \$ \_\_\_\_\_ City of Fairmont (West Virginia) Water Refunding Revenue  
Bonds, Series 2012 A (Bank Qualified) and Water Refunding Revenue  
Bonds, Series 2012 B (Non-Bank Qualified)

Date of Issuance:    \_\_\_\_\_, 2012

Notice is hereby given that the Issuer has not provided an Annual Report with respect to the above-named Bonds as required by its covenant made in connection with the above-referenced bond issue. The Issuer anticipates that the Annual Report will be filed by \_\_\_\_\_.

Dated this \_\_\_\_\_.

CITY OF FAIRMONT

By: \_\_\_\_\_  
Its: Mayor

By: \_\_\_\_\_  
Its: City Manager

**APPENDIX F**

**FORM OF ORDINANCE, SUPPLEMENTAL PARAMETERS RESOLUTION AND  
SECOND SUPPLEMENTAL RESOLUTION (PROVIDED BY BOND COUNSEL)**

**CITY OF FAIRMONT  
(WEST VIRGINIA)**

**WATER REFUNDING REVENUE BONDS, SERIES 2012 C (BANK QUALIFIED); AND  
WATER REFUNDING REVENUE BONDS, SERIES 2012 D (NON-BANK QUALIFIED)**

**BOND ORDINANCE**

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**Bond Ordinance**

**CITY OF FAIRMONT  
(WEST VIRGINIA)**

AN ORDINANCE AUTHORIZING THE REFUNDING OF THE ISSUER'S OUTSTANDING WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997 A; WATER REVENUE BONDS, SERIES 1998 AND A PORTION OF THE WATER REVENUE BONDS, SERIES 1999 AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, AND PAYING COSTS OF ISSUANCE AND RELATED COSTS, THROUGH THE ISSUANCE OF WATER REFUNDING REVENUE BONDS, SERIES 2012 C (BANK QUALIFIED) OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$10,000,000; AND WATER REFUNDING REVENUE BONDS, SERIES 2012 D (NON-BANK QUALIFIED) OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$30,000,000 PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TAX AND NON-ARBITRAGE CERTIFICATE, AN OFFICIAL STATEMENT, A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER DOCUMENTS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, the City of Fairmont (the "Issuer" or the "City") presently owns and operates a water system (the "System") and has heretofore financed the acquisition and construction of the System and certain additions, betterments and improvements thereto through the issuance of several series of bonds or refunding bonds, of which there are presently outstanding the Prior Bonds, as hereinafter defined;

WHEREAS, all of the Prior Bonds were issued pursuant to ordinances of the Issuer previously enacted (such ordinances, as so amended and supplemented, collectively herein called the "Prior Ordinances");

WHEREAS, under the provisions of Chapter 8, Article 19 and Chapter 13, Article 2 of the Code of West Virginia, 1931, as amended (the "Act"), the Issuer is authorized to issue refunding revenue bonds for the purpose of refunding, paying or discharging all or any part of its outstanding revenue bonds, including interest thereon;

WHEREAS, the Issuer has determined and hereby determines that present value debt service savings would result from the Issuer's current refunding of its outstanding Waterworks Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of \$10,260,000 (the "Series 1997 Bonds");

WHEREAS, the Issuer has determined and hereby determines that present value debt service savings would result from the Issuer's current refunding of its outstanding Water Revenue Bonds, Series 1998, dated December 15, 1998, issued in the original aggregate principal amount of \$9,600,000 (the "Series 1998 Bonds");

WHEREAS, the Issuer has determined and hereby determines that present value debt service savings would result from the Issuer's current refunding of a portion of its outstanding Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the "Series 1999 Bonds");

WHEREAS, the Issuer has determined that it is in the best interests of the inhabitants of the City of Fairmont and other users of the System to currently refund its outstanding Series 1997 Bonds, Series 1998 Bonds and a portion of the Series 1999 Bonds;

WHEREAS, the Issuer has determined that the aforementioned refunding of the Series 1997 Bonds, Series 1998 Bonds and a portion of the Series 1999 Bonds should be financed with the proceeds from the issuance of the Water Refunding Revenue Bonds, Series 2012 C, in the original aggregate principal amount of not more than \$10,000,000 (the "Series 2012 C Bonds (Bank Qualified)"), and Water Refunding Revenue Bonds, Series 2012 D (Non-Bank Qualified), in the original aggregate principal amount of not more than \$30,000,000 (the "Series 2012 D Bonds"), (collectively, the Series 2012 C Bonds and Series 2012 D Bonds shall be known herein as the "Refunding Bonds") such Refunding Bonds to be secured by and payable from the Gross Revenues (as hereinafter defined) of the System; and

WHEREAS, the Issuer has determined and hereby determines that it is in the best interests of the residents of the City that its Refunding Bonds be sold to the Original Purchaser (as hereinafter defined) thereof pursuant to the terms and provisions of a bond purchase agreement (the "Bond Purchase Agreement") between the Issuer and the Original Purchaser.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF FAIRMONT  
HEREBY ORDAINS:

**ARTICLE I**  
**DEFINITIONS; STATUTORY AUTHORITY; FINDINGS**

Section 1.01.     Definitions. All capitalized terms used in this Ordinance and not otherwise defined in the recitals hereto shall have the meanings specified below, unless the context expressly requires otherwise:

"Act" means Chapter 8, Article 19 of the Code of West Virginia, 1931, as amended and in effect on the date of delivery of the Refunding Bonds.

"Authorized Newspaper" means a financial journal or newspaper of general circulation in the City of New York, New York, printed in the English language and customarily published on each business day of the Registrar, whether or not published on Saturdays, Sundays or legal holidays, and so long as so published, shall include The Bond Buyer.

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

"Bond Commission" or "Commission" means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia which succeeds to the functions of the Bond Commission.

"Bond Counsel" shall mean any law firm having a national reputation in the field of municipal law whose opinions are generally accepted by purchasers of municipal bonds, appointed by the Issuer, and shall initially mean Steptoe & Johnson PLLC, Charleston, West Virginia.

"Bondholder," "Holder," "Holder of the Bonds," "Owner of the Bonds," "Registered Owner," or any similar term means any person who shall be the registered owner of any outstanding Bond.

"Bond Insurer" means any entity, if any, which shall insure all or any portion of the payment of principal of and interest on any of the Bonds.

"Bond Register" means the books of the Issuer maintained by the Registrar for the registration and transfer of Bonds.

"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, collectively, the Refunding Bonds, the Prior Bonds remaining after the refunding, and any additional parity Bonds hereafter issued within the terms, restrictions and conditions contained herein.

"Business Day" means any day other than a Saturday, Sunday or a day on which national banking associations or West Virginia banking corporations are authorized by law to remain closed.

"Certificate of Authentication and Registration" means the Certificate of Authentication and Registration on the Refunding Bonds, substantially in the form set forth in EXHIBIT A - FORM OF SERIES 2012 C BONDS and EXHIBIT B - FORM OF SERIES 2012 D BONDS, attached hereto.

"City" or "Issuer" means the City of Fairmont, a municipal corporation and political subdivision of the State of West Virginia, in Marion County thereof, and, unless the context clearly indicates otherwise, includes the Governing Body and any other commission, board or department established by the Issuer to operate and maintain the System.

"Clerk" means the Clerk of the Issuer.

"Closing Date" means the date upon which there is an exchange of the Refunding Bonds for the proceeds representing the original purchase price thereof.

"Code" shall mean the Internal Revenue Code of 1986, as amended and supplemented from time to time, and Regulations thereunder.

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

"Consulting Engineers" means any qualified engineer or engineers or firm or firms of engineers that shall at any time now or hereafter be retained by the Issuer as Consulting Engineers for the System, or portion thereof.

"Costs" or similar terms means all those costs now or hereafter permitted by the Act to be financed with bonds issued pursuant hereto, including, without limitation, those costs described in Section 1.03E.

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

"Debt Service," with reference to a specified period, means the amount of principal, including any sinking fund payments, and interest payable with respect to the Bonds during such period.

"Depository Bank" means the bank or banks to be designated as such in the Supplemental Resolution, and any other bank or national banking association eligible under the laws of the State of West Virginia to receive deposits of state and municipal funds and insured by the FDIC that may hereafter be appointed by the Issuer as Depository Bank.

"DTC" means The Depository Trust Company, New York, New York or its successor.

"DTC-eligible" means, with respect to the Series 2012 C Bonds, meeting the qualifications prescribed by DTC.

"Event of Default" means any occurrence or event specified in Section 7.01.

"FDIC" means the Federal Deposit Insurance Corporation or any successor to the functions of the FDIC.

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

"Governing Body" means the City Council of the Issuer or any other governing body of the Issuer that succeeds to the functions of the City Council, as it may now or hereafter be constituted.

"Government Obligations" means certificates or interest-bearing notes or obligations of the United States, or those for which the full faith and credit of the United States are pledged for the payment of principal and interest.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts, and includes any proceeds from the sale or other disposition of capital assets, but does not include any increase in the value of capital assets (including Qualified Investments).

"Independent Accountants" means the West Virginia State Tax Department or any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any purpose except keeping the accounts of said System in the normal operations of its business and affairs.

"Investment Property" means any security (as said term is defined in Section 165(g)(2)(A) or (B) of the Code), obligation, annuity contract, investment-type property or residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan, excluding, however, obligations the interest on which is excluded from gross income, under Section 103 of the Code, for federal income tax purposes other than specified private activity bonds as defined in Section 57(a)(5)(C) of the Code.

"Issuer" or "City" means the City of Fairmont, a municipal corporation and political subdivision of the State of West Virginia, in Marion County thereof, and, unless the context clearly indicates otherwise, includes the Governing Body and any other commission, board or department established by the Issuer to operate and maintain the System.

"Maximum Annual Debt Service" means, at the time of computation, the greatest amount of Debt Service required to be paid on the Bonds for the then current or any succeeding Fiscal Year, assuming that the principal of any Term Bonds is deemed due on the earlier of their stated maturity date or the date on which they are required to be redeemed pursuant to mandatory sinking fund redemption.

"Mayor" means the Mayor of the Issuer.

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

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

"Nonpurpose Investment" means any Investment Property which is acquired with the gross proceeds of the Refunding Bonds and is not acquired in order to carry out the governmental purpose of the Refunding Bonds.

"Operating Expenses," unless qualified, means the current expenses, paid or accrued, of repair, operation and maintenance of the System, and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses (other than those capitalized as part of the costs of any project relating to the acquisition or construction of additions, betterments or improvements for the System), supplies, labor, wages, the cost of materials and supplies used for current operations, fees and expenses of fiscal agents and of the Depository Bank, Registrar and Paying Agent or Paying Agents, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles.

"Ordinance" regardless of whether preceded by the article "the" or "this," means this Ordinance, as it may hereafter from time to time be amended or supplemented, by ordinance or by resolution.

"Original Purchaser" means collectively, Crews & Associates, Inc., Charleston, West Virginia, and Raymond James, Charleston, West Virginia.

"Outstanding," when used with reference to Bonds and as of any particular date, describes all Bonds theretofore and thereupon being issued and delivered except (a) any Bond or Prior Bond canceled by the registrar for such Bond or Prior Bond at or prior to said date; (b) any Bond or Prior Bond for the payment of which moneys, equal to its principal amount, with interest to the date of maturity, shall be held in trust under this Ordinance and set aside for such payment (whether upon or prior to maturity); (c) any Bond deemed to have been paid as

provided by Section 9.01; and (d) with respect to determining the number or percentage of Bondholders or Bonds respectively, for the purpose of consents, notices and the like, any Bond registered to the Issuer. Notwithstanding the foregoing, in the event that a Bond Insurer has paid principal of and/or interest on any Bond, such Bond shall be deemed to be Outstanding until such time as such Bond Insurer has been reimbursed in full.

"Paying Agent" means the Bond Commission and any other paying agent for the Bonds which may be appointed by a resolution supplemental hereto, all in accordance with Section 8.12 hereof.

"Prior Bonds" means the, Series 2008 A Bonds, Series 2010 A Bonds, Series 2010 B Bonds, Series 2010 C Bonds, and Series 2010 D Bonds and, if not refunded, the Series 1997 Bonds, Series 1998 Bonds and Series 1999 Bonds.

"Prior Ordinances" means, collectively, the ordinances of the Issuer, authorizing the issuance of the Prior Bonds.

"Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and use as a member of the general public.

"Purchase Price," for the purpose of computation of the Yield of the Refunding Bonds, has the same meaning as the term "issue price" in Sections 1273(b) and 1274 of the Code, and, in general, means the initial offering price of the Refunding Bonds to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of the Bonds of each maturity is sold or, if the Refunding Bonds are privately placed, the price paid by the first buyer of the Refunding Bonds or the acquisition cost of the first buyer. "Purchase Price," for purposes of computing Yield of Nonpurpose Investments, means the fair market value of the Nonpurpose Investments on the date of use of Gross Proceeds of the Refunding Bonds for acquisition thereof, or if later, on the date that Investment Property constituting a Nonpurpose Investment becomes a Nonpurpose Investment of the Refunding Bonds.

"Qualified Investments" means and includes the investments set forth in the Supplemental Resolution and designated as such.

"Rebate Fund" means the Rebate Fund described in Section 4.01 hereof.

"Record Date" means the day of the month which shall be so stated in the Refunding Bonds, regardless of whether such day is a Saturday, Sunday or legal holiday.

"Redemption Date" means the date fixed for redemption of Bonds subject to redemption in any notice of redemption published or mailed in accordance herewith.

"Redemption Price" means the price at which the Bonds may be called for redemption and includes the principal amount of the Bonds to be redeemed, plus the premium, if any, required to be paid to effect such redemption.

"Registered Owner," "Bondholder," "Holder," "Owner" or any similar term means any person who shall be the registered owner of any outstanding Bond.

"Registrar" means the bank to be designated in the Supplemental Resolution as the registrar for the Refunding Bonds, and any successor thereto appointed in accordance with Section 8.08 hereof.

"Regulations" means temporary and permanent regulations promulgated under the Code, and includes applicable regulations promulgated under the Internal Revenue Code of 1954.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund created by the Prior Ordinances and continued by Section 4.02 hereof.

"Reserve Accounts" means, collectively, the respective reserve accounts created for the Refunding Bonds and the Prior Bonds.

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

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

"Series 1997 Bonds" means the Issuer's Waterworks Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of \$10,260,000.

"Series 1998 Bonds" means the Issuer's Water Revenue Bonds, Series 1998, dated December 15, 1998, issued in the original aggregate principal amount of \$9,600,000.

"Series 1999 Bonds" means the Issuer's Outstanding Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000.

"Series 2008 A Bonds" means the Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000.

"Series 2010 A Bonds" means the Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618.

“Series 2010 B Bonds” means the Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618.

“Series 2010 C Bonds” means the Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000.

“Series 2010 D Bonds” means the Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104.

"Series 2012 C Bonds" means the Water Refunding Revenue Bonds, Series 2012 C, of the Issuer, originally authorized to be issued pursuant to this Ordinance and the Supplemental Resolution.

"Series 2012 C Bonds Redemption Account" means the Series 2012 C Bonds Redemption Account established in the Series 2012 C Bonds Sinking Fund pursuant to Section 4.02 hereof.

"Series 2012 C Bonds Reserve Account" means the Series 2012 C Bonds Reserve Account established in the Series 2012 C Bonds Sinking Fund pursuant to Section 4.02 hereof.

"Series 2012 C Bonds Reserve Account Requirement" means an amount equal to the lesser of (i) 10% of the original principal amount of the Series 2012 C Bonds, (ii) Maximum Annual Debt Service at the time of original issuance of the Series 2012 C Bonds, or (iii) 125% of average annual Debt Service at the time of original issuance of the Series 2012 C Bonds, as determined in conjunction with the Series 2012 D Bonds.

"Series 2012 C Bonds Sinking Fund" means the Series 2012 C Bonds Sinking Fund established by Section 4.02 hereof.

"Series 2012 D Bonds" means the Water Refunding Revenue Bonds, Series 2012 D, of the Issuer, originally authorized to be issued pursuant to this Ordinance and the Supplemental Resolution.

"Series 2012 D Bonds Redemption Account" means the Series 2012 D Bonds Redemption Account established in the Series 2012 D Bonds Sinking Fund pursuant to Section 4.02 hereof.

"Series 2012 D Bonds Reserve Account" means the Series 2012 D Bonds Reserve Account established in the Series 2012 D Bonds Sinking Fund pursuant to Section 4.02 hereof.

"Series 2012 D Bonds Reserve Account Requirement" means an amount equal to the lesser of (i) 10% of the original principal amount of the Series 2012 D Bonds, (ii) Maximum

Annual Debt Service at the time of original issuance of the Series 2012 D Bonds, or (iii) 125% of average annual Debt Service at the time of original issuance of the Series 2012 D Bonds,

"Series 2012 D Bonds Sinking Fund" means the Series 2012 D Bonds Sinking Fund established by Section 4.02 hereof.

"Refunding Bonds" means, collectively, the Series 2012 C Bonds and the Series 2012 D Bonds.

"Refunding Bonds Costs of Issuance Fund" means the Costs of Issuance Fund created by Section 4.01 hereof.

"Sinking Funds" means, collectively, the respective sinking funds created for the Refunding Bonds and the Prior Bonds.

"State" means the State of West Virginia.

"Supplemental Resolution" means any ordinance or resolution amendatory hereof or supplemental hereto and, when preceded by the article "the," refers specifically to the Supplemental Resolution to be adopted by the Issuer following enactment of this Ordinance, setting forth the final amounts, maturities, interest rates and other terms of the Refunding Bonds and authorizing the sale of the Refunding Bonds to the Original Purchaser; provided, that any provision intended to be included in the Supplemental Resolution and not so included may be contained in any other Supplemental Resolution.

"Surplus Revenues" means the Gross Revenues not required by the Ordinance to be set aside and held for the payment of or security for the Bonds or any other obligations of the Issuer, including, without limitation, the funds and accounts established for the Prior Bonds or the Refunding Bonds.

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

"Term Bonds" means Refunding Bonds subject to mandatory sinking fund redemption, as described by Section 3.06 hereof.

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations and vice versa; and words importing the masculine gender shall include the feminine and neuter genders and vice versa.

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

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

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

Section 1.02. Authority for this Ordinance. This Ordinance is enacted pursuant to the provisions of the Act and other applicable provisions of law.

Section 1.03. Findings. The Council hereby finds and determines as follows:

A. The Issuer is a municipal corporation and political subdivision of the State of West Virginia, in Marion County of said State.

B. The Issuer now owns and operates a public waterworks system, the construction, extension and improvement of which it has financed or refinanced pursuant to the issuance of the Prior Bonds.

C. The Issuer has determined that present value debt service savings will result from the current refunding of its Outstanding Series 1997 Bonds, Series 1998 Bonds and a portion of the Series 1999 Bonds and that it is in the best interest of the residents of the Issuer and other users of the System to currently refund such Series 1997 Bonds, Series 1998 Bonds and a portion of the Series 1999 Bonds.

D. It is deemed necessary for the Issuer to issue its (i) Water Refunding Revenue Bonds, Series 2012 C, in the original aggregate principal amount of not more than \$10,000,000, (the "Series 2012 C Bonds"); and (ii) Water Refunding Revenue Bonds, Series 2012 D, in the original aggregate principal amount of not more than \$30,000,000 (the "Series 2012 D Bonds", and collectively with the Series 2012 C Bonds, the "Refunding Bonds") in order to (i) repay in full the remaining principal balance of and all accrued interest on the Series 1997 Bonds; (ii) repay in full the remaining principal balance of and all accrued interest on the Series 1998 Bonds; (iii) repay a portion of the remaining principal balance of and all accrued interest on the Series 1999 Bonds; and the proceeds of the Refunding Bonds may also be applied to funding the respective Refunding Bonds Reserve Accounts and the payment of underwriter's discount; legal expenses; expenses for estimates of costs and revenues; administrative expense; commitment fees; premiums for municipal bond insurance, reserve account insurance or reserve account surety bonds; letter of credit fees; discount; initial fees for the services of registrar's, paying agents, depositories or trustees or other costs in connection with the sale of the Refunding Bonds and such other expenses as may be necessary or incidental to the financing herein authorized; and the performance of the things herein required or permitted, in connection with any thereof, provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Refunding Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall also be permitted.

E. It is in the best interest of the Issuer that the Refunding Bonds be sold to the Original Purchaser pursuant to the terms and provisions of a Bond Purchase Agreement to be entered into by and between the Issuer and the Original Purchaser, as shall be approved by the Supplemental Resolution of the Issuer.

F. There are outstanding obligations of the Issuer which will rank on a parity with the Refunding Bonds as to liens, pledge, source of and security for payment, as follows: (1) a portion of the Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000; (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000; (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618; (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618; (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000; and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (collectively referred to herein as the "Prior Bonds").

The Refunding Bonds shall be issued on a parity with one another and with the Prior Bonds, all of which shall have a first lien position with respect to pledge and source of and security for payment and in all other respects. The Issuer has met the coverage requirements for issuance of parity bonds of the Prior Bonds and the Prior Ordinances and has substantially complied with all other parity requirements, except to the extent that noncompliance with any such other parity requirements is not of a material nature.

Prior to the issuance of the Refunding Bonds, the Issuer will obtain (i) the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met; and (ii) the written consent of the Registered Owners of the Prior Bonds to the issuance of the Refunding Bonds on a parity with such Prior Bonds if required by the Prior Ordinances.

Other than the Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

G. The Issuer derives revenues from the System which are pledged for payment of the Prior Bonds. Except for such pledge thereof to secure and pay the Prior Bonds, said revenues are not pledged or encumbered in any manner. The Issuer intends to issue the Refunding Bonds and to pledge for payment thereof, the Gross Revenues of the System. Upon issuance of the Refunding Bonds, the Refunding Bonds will be secured by a first lien on the Gross Revenues of the System, on a parity with the Prior Bonds.

H. The estimated revenues to be derived in each year after the date hereof from the operation of the System will be sufficient, to provide for repair, maintenance and operation of the System, the payment of interest on the Refunding Bonds and the Prior Bonds, and to create

sinking funds, as hereinafter provided, to pay the principal on the Refunding Bonds and the Prior Bonds as and when it becomes due and reasonable reserves therefore, to provide an adequate renewal and replacement fund, as hereinafter provided, and to make all other payments provided for in this Ordinance.

I. It is in the best interests of the Issuer, and the residents thereof, that the Issuer issue the Refunding Bonds, and secure the Refunding Bonds by a pledge and assignment of the Gross Revenues derived from the operation of the System, the monies in the Refunding Bonds Reserve Account, unexpended proceeds of the Refunding Bonds and as further set forth herein.

J. The Series 2012 C Bonds and the Certificate of Authentication and Registration to be endorsed thereon are to be in substantially the forms set forth in EXHIBIT A – FORM OF SERIES 2012 C BONDS, and the Series 2012 D Bonds and the Certificate of Authentication and Registration to be endorsed thereon are to be in substantially the forms set forth in EXHIBIT B – FORM OF SERIES 2012 D BONDS, attached hereto and incorporated herein by reference, with necessary and appropriate variations, omissions and insertions as permitted or required by this Ordinance or a Supplemental Resolution or as deemed necessary by the Registrar or the Issuer.

K. All things necessary to make the Refunding Bonds, when authenticated by the Registrar and issued as in this Ordinance provided, the valid, binding and legal special obligations of the Issuer according to the import thereof, and to validly pledge and assign those funds pledged hereby to the payment of the principal of and interest on the Refunding Bonds will be timely done and duly performed.

L. The enactment of this Ordinance, and the execution and issuance of the Refunding Bonds, subject to the terms thereof, will not result in any breach of, or constitute a default under, any instrument to which the Issuer is a party or by which it may be bound or affected.

M. The Issuer has complied with all requirements of West Virginia law relating to the operation of the System, the issuance of the Refunding Bonds and the refunding of the Series 1997 Bonds, Series 1998 Bonds and a portion of the Series 1999 Bonds or will have so complied prior to issuance of any thereof.

Section 1.04. Ordinance Constitutes Contract. In consideration of the acceptance of the Refunding Bonds by those who shall own or hold the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the Issuer and such Registered Owners and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the legal Registered Owners of any and all of such Refunding Bonds, all of which shall be of equal rank and without preference, priority or distinction between any one Series 2010 Bond and any other Series 2010 Bond, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

**ARTICLE II**  
**AUTHORIZATION OF REFUNDING**

Section 2.01. Authorization of Refunding. A. All Series 1997 Bonds Outstanding as of the date of issuance of the Refunding Bonds and all unpaid interest accrued thereon, if any, are hereby ordered to be refunded and paid in full and the pledge of Gross Revenues in favor of the Registered Owners of the Series 1997 Bonds imposed by the Prior Ordinance authorizing the issuance of the Series 1997 Bonds, the monies in the funds and accounts created by the Prior Ordinances pledged to payment of the Series 1997 Bonds, and any other funds pledged by the Prior Ordinances to payment of the Series 1997 Bonds are hereby ordered terminated, discharged and released upon such payment to the Registered Owners of the Series 1997 Bonds. Contemporaneously with the payment in full of the Series 1997 Bonds, the amounts on deposit in the sinking fund, and all other funds and accounts created and maintained on behalf of the Series 1997 Bonds, shall be released from the lien created by the Prior Ordinance authorizing the issuance of the Series 1997 Bonds. Monies held in the Series 1997 Bonds Sinking Fund and Series 1997 Bonds Reserve Fund shall be transferred as set forth in the Supplemental Parameters Resolution.

B. All Series 1998 Bonds Outstanding as of the date of issuance of the Refunding Bonds and all unpaid interest accrued thereon, if any, are hereby ordered to be refunded and paid in full and the pledge of Gross Revenues in favor of the Registered Owners of the Series 1998 Bonds imposed by the Prior Ordinance authorizing the issuance of the Series 1998 Bonds, the monies in the funds and accounts created by the Prior Ordinances pledged to payment of the Series 1998 Bonds, and any other funds pledged by the Prior Ordinances to payment of the Series 1998 Bonds are hereby ordered terminated, discharged and released upon such payment to the Registered Owners of the Series 1998 Bonds. Contemporaneously with the payment in full of the Series 1998 Bonds, the amounts on deposit in the sinking fund, and all other funds and accounts created and maintained on behalf of the Series 1998 Bonds, shall be released from the lien created by the Prior Ordinance authorizing the issuance of the Series 1998 Bonds. Monies held in the Series 1998 Bonds Sinking Fund and Series 1998 Bonds Reserve Fund shall be transferred as set forth in the Supplemental Parameters Resolution.

C. A portion of the Series 1999 Bonds Outstanding as of the date of issuance of the Refunding Bonds and the prorated unpaid interest accrued thereon, if any, are hereby ordered to be refunded and paid. At Closing, monies held in the Series 1999 Bonds Sinking Fund and Series 1999 Bonds Reserve Fund shall be transferred as set forth in the Supplemental Parameters Resolution. The Issuer covenants and agrees to transfer the monies remaining in the Series 1999 Bonds Reserve Account as provided in the Supplemental Resolution. The Issuer covenants and agrees not to use the Series 1999 Bonds Reserve Account for the final payment of the Series 1999 Bonds.

### **ARTICLE III THE BONDS**

Section 3.01. Form and Payment of Bonds. No Refunding Bonds shall be issued pursuant to this Ordinance except as provided in this Article III. Any Refunding Bonds issued pursuant to this Ordinance may be issued only as fully registered Refunding Bonds without coupons, in the denomination of \$5,000 or any integral multiple thereof for any year of maturity (or such other denominations as may be set forth in a Supplemental Resolution). All Refunding Bonds shall be dated as of the date provided in a Supplemental Resolution applicable to such series. All Refunding Bonds shall bear interest from the interest payment date next preceding the date of authentication or, if authenticated after the Record Date but prior to the applicable interest payment date or on such interest payment date, from such interest payment date or, if no interest on such Refunding Bonds has been paid, from the date thereof; provided however, that, if, as shown by the records of the Registrar, interest on such Refunding Bonds shall be in default, Refunding Bonds issued in exchange for Refunding Bonds surrendered for transfer or exchange shall bear interest from the date to which interest has been paid in full on the initial Refunding Bonds surrendered.

The principal of and the premium, if any, on the Refunding Bonds shall be payable in any coin or currency which, on the respective date of such payment, is legal tender for the payment of public and private debts under the laws of the United States of America upon surrender at the principal office of the Paying Agent. Interest on the Refunding Bonds shall be paid by check or draft made payable and mailed to the Registered Owner thereof at his address as it appears in the Bond Register at the close of business on the Record Date, or, if requested, in the case of a Registered Owner of \$1,000,000 or more of the Refunding Bonds, by wire transfer to a domestic bank account specified in writing at least 5 days prior to such interest payment date by such Registered Owner.

In the event any Refunding Bond is redeemed in part, such bond shall be surrendered to and canceled by the Registrar, and the Issuer shall execute, and the Registrar shall authenticate and deliver to the Registered Owner thereof, another Series 2012 Bond in the principal amount of said Refunding Bond then Outstanding.

Section 3.02. Execution of Bonds. The Refunding Bonds shall be executed in the name of the Issuer by the Mayor, by his or her manual or facsimile signatures, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Clerk by his or her manual or facsimile signature; provided, that, all such signatures and the seal may be by facsimile. In case any one or more of the officers who shall have signed or sealed any of the Refunding Bonds shall cease to be such officer of the Issuer before the Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Refunding Bonds 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 3.03. Authentication and Registration. A. No Series 2012 C Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in EXHIBIT A - FORM OF SERIES 2012 C BOND attached hereto and incorporated herein by reference with respect to such respective Series 2012 C Bond, shall have been duly manually executed by the Registrar. Any such manually executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Series 2012 C Bond has been authenticated, registered and delivered under this Ordinance. The Certificate of Authentication and Registration on any Series 2012 C Bond shall be deemed to have been executed by the Registrar if signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Series 2012 C Bonds issued hereunder.

B. No Series 2012 D Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in EXHIBIT B - FORM OF SERIES 2012 D BOND attached hereto and incorporated herein by reference with respect to such respective Series 2012 D Bond, shall have been duly manually executed by the Registrar. Any such manually executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Series 2012 D Bond has been authenticated, registered and delivered under this Ordinance. The Certificate of Authentication and Registration on any Series 2012 D Bond shall be deemed to have been executed by the Registrar if signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Series 2012 D Bonds issued hereunder.

Section 3.04. Negotiability and Registration. Subject to the requirements for transfer set forth below, the Refunding Bonds shall be, and have all of the qualities and incidents of, negotiable instruments under the Uniform Commercial Code of the State, and each successive Registered Owner, in accepting any of said Refunding Bonds, shall be conclusively deemed to have agreed that such Refunding Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State, and each successive Holder shall further be conclusively deemed to have agreed that said Refunding Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as any of the Refunding Bonds remain Outstanding, the Registrar shall keep and maintain books for the registration and transfer of the Refunding Bonds. The Refunding Bonds shall be transferable only by transfer of registration upon the Bond Register by the registered owner thereof in person or by his attorney or legal representative duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or such duly authorized attorney or legal representative. Upon transfer of a Refunding Bond, there shall be issued at the option of the Holder or the transferee another Bond or Bonds of the aggregate principal amount equal to the unpaid amount of the transferred Bond and of the same series, interest rate and maturity of said transferred Bond.

Upon surrender thereof at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar and duly executed by the registered owner or his attorney or legal representative duly authorized in writing, Refunding Bonds may at the option of the Holder thereof be exchanged for an equal aggregate principal amount of Bonds of the same series, maturity and interest rate, in any authorized denominations.

In all cases in which the privilege of transferring or exchanging a Series 2010 Bond is exercised, Refunding Bonds shall be delivered in accordance with the provisions of this Ordinance. All Refunding Bonds surrendered in any such transfer or exchange shall forthwith be canceled by the Registrar. Transfers of Refunding Bonds, the initial exchange of Refunding Bonds and exchanges of such Bonds in the event of partial redemption of fully registered Bonds shall be made by the Registrar without charge to the Holder or the transferee thereof, except as provided below. For other exchanges of Refunding Bonds, the Registrar may impose a service charge. For every such transfer or exchange of such Bonds, the Registrar may make a charge sufficient to reimburse its office for any tax or other governmental charge required to be paid with respect to such transfer or exchange, and such tax or governmental charge, and such service charge for exchange other than the initial exchange or in the event of partial redemption, shall be paid by the person requesting such transfer or exchange as a condition precedent to the exercise of the privilege of making such transfer or exchange. The Registrar shall not be obliged to make any such transfer or exchange of Refunding Bonds that have been called for redemption.

Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2010 Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may execute, in its discretion, and the Registrar shall authenticate, register and deliver any new Bond of like series, maturity and principal amount as the Bond so mutilated, destroyed, stolen or lost, in exchange and upon surrender and cancellation of, such mutilated Bond, or in lieu of and substitution for the Bond so destroyed, stolen or lost, and upon the Registered Owner furnishing the Issuer and the Registrar proof of his ownership thereof and that said Bond has been destroyed, stolen or lost and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer or the Registrar may prescribe and paying such expenses as the Issuer or the Registrar may incur. The name of the Registered Owner listed in the Bond Register shall constitute proof of ownership. All Bonds so surrendered shall be submitted to and canceled by the Registrar, and evidence of such cancellation shall be given to the Issuer. If such Bond shall have matured or be about to mature, instead of issuing a substitute Bond the Issuer, by and through the Registrar, may pay the same, upon being indemnified as aforesaid, and, if such Bond be lost, stolen or destroyed, without surrender thereof.

Any such duplicate Bonds issued pursuant to this section shall constitute original, additional contractual obligations on the part of the Issuer, whether or not the lost, stolen or destroyed Bonds be at any time found by any one, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien and source of and security for payment from the revenues pledged herein with all other Bonds issued hereunder.

Section 3.06. Term Bonds. In the event Term Bonds are issued as part of the Refunding Bonds issued pursuant to this Ordinance, the following provisions shall apply:

A. The amounts to be deposited, apportioned and set apart by the Issuer from the Revenue Fund and into the Refunding Bonds Redemption Account in accordance with Subsection 4.03(A)(2) shall include (after credit as provided below) on the first of each month, beginning on the first day of that month which is 13 months prior to the first mandatory redemption date of said Term Bonds, a sum equal to 1/12th of the amount required to redeem the principal amount of such Term Bonds which are to be redeemed as of the next ensuing mandatory redemption date, which amounts and dates, if any, with respect to a series of Bonds shall be set forth in the Supplemental Resolution relating thereto.

B. At its option, to be exercised on or before the 60th day next preceding any such mandatory redemption date, the Issuer may (a) deliver to the Registrar for cancellation such Term Bonds in any aggregate principal amount desired or (b) receive a credit in respect of its mandatory redemption obligation for any such Term Bonds which prior to said date have been redeemed (otherwise than pursuant to this section) and canceled by the Registrar and not theretofore applied as a credit against any such mandatory redemption obligation. Each Term Bond so delivered or previously redeemed shall be credited by the Registrar at 100% of the principal amount thereof against the obligation of the Issuer on such mandatory redemption date, and Term Bonds delivered in excess of such mandatory redemption obligation shall be credited against future mandatory redemption obligations in the order directed by the Issuer, and the principal amount of such Term Bonds to be redeemed pursuant to mandatory sinking fund redemption shall be accordingly reduced.

C. The Issuer shall on or before the 60th day next preceding each mandatory redemption date furnish the Registrar and the Bond Commission with its certificate indicating whether and to what extent the provisions of (a) and (b) of the preceding paragraph are to be utilized with respect to such mandatory redemption payment and stating, in the case of the credit provided for in (b) of the preceding paragraph, that such credit has not theretofore been applied against any mandatory redemption obligation.

D. After said 60th day but prior to the date on which the Registrar selects the Term Bonds to be redeemed, the Bond Commission may use the moneys in the Refunding Bonds Redemption Account to purchase Term Bonds at a price less than the par value thereof and accrued interest thereon. The Bond Commission shall advise the Issuer and the Registrar of any Term Bonds so purchased, and they shall be credited by the Registrar at 100% of the principal amount thereof against the obligation of the Issuer on such mandatory redemption date, and any excess shall be credited against future mandatory redemption obligations in the order directed by the Issuer, and the principal amount of such Term Bonds to be redeemed pursuant to mandatory sinking fund redemption shall be accordingly reduced.

E. The Registrar shall call for redemption, in the manner provided herein, an aggregate principal amount of such Term Bonds, at the principal amount thereof plus interest accrued to the redemption date (interest to be paid from the Sinking Fund), as will exhaust as nearly as practicable such Refunding Bonds Redemption Account payment designated to be made in accordance with paragraph (A) of this section. Such redemption shall be by random selection made on the 45th day preceding the mandatory redemption date, in such manner as may

be determined by the Registrar. For purposes of this section, "Term Bonds" shall include any portion of a fully registered Term Bond, in integrals of \$5,000.

Section 3.07. Notice of Redemption. Unless waived by any Registered Owner of the Bonds to be redeemed, official notice of any redemption shall be given by the Registrar on behalf of the Issuer by mailing a copy of an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the applicable Bond Insurer, if any, the Original Purchaser, and the Registered Owner of the Series 2010 Bond or Bonds, as applicable, to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such registered owner to the Bond Registrar.

All official notices of redemption shall be dated and shall state:

- (1) The Redemption Date,
- (2) The Redemption Price,
- (3) If less than all outstanding Refunding Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed,
- (4) That on the Redemption Date the Redemption Price and interest accrued will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date,
- (5) The place where such Bonds are to be surrendered for payment of the Redemption Price, which place of payment shall be the principal office of the Registrar, and
- (6) Such other information, if any, as shall be required for DTC-eligible Bonds.

Prior to any redemption date, the Issuer shall deposit with the Registrar an amount of money sufficient to pay the redemption price of all the Refunding Bonds or portions of such Bonds which are to be redeemed on that date.

Official notice of redemption having been given as aforesaid, the Refunding Bonds or portions of such Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Issuer shall default in the payment of the redemption price) such Refunding Bonds or portions of such Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Registrar at the Redemption Price. Installments of interest due on or prior to the Redemption Date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the registered owner a new Bond or Bonds of the same maturity in the amount of the unpaid principal. All Bonds which have been redeemed shall be canceled and destroyed by the Bond Registrar and shall not be reissued.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of Refunding Bonds, and failure to mail such notice shall not affect the validity of proceedings for the redemption of any portion of Bonds for which there was no such failure.

Section 3.08. Persons Treated as Owners. The Issuer, the Registrar and any agent of the Issuer or the Registrar may treat the person in whose name any Bond is registered as the owner of such Bond for the purpose of receiving payment of the principal of, and interest on, such Bond and (except as provided in Section 6.18) for all other purposes, whether or not such Bond is overdue.

Section 3.09. Temporary Bonds. Until Bonds of any series in definitive form are ready for delivery, the Issuer may execute and the Registrar shall authenticate, register, if applicable, and deliver, subject to the same provisions, limitations and conditions set forth in this Article III, one or more printed, lithographed or typewritten Bonds in temporary form, substantially in the form of the definitive Bonds of such series, with appropriate omissions, variations and insertions, and in authorized denominations. Until exchanged for Bonds in definitive form, such Bonds in temporary form shall be entitled to the lien and benefit created under this Ordinance. Upon the presentation and surrender of any Bond in temporary form, the Issuer shall, without unreasonable delay, prepare, execute and deliver to the Registrar, and the Registrar shall authenticate, register, if applicable, and deliver, in exchange therefore, a Bond or Bonds in definitive form. Such exchange shall be made by the Registrar without making any charge therefore to the Holder of such Bond in temporary form.

Section 3.10. Authorization of Bonds. A. For the purposes of (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds, and (ii) funding the Series 2012 C Bonds Reserve Account; and (iii) paying costs of issuance of the Series 2012 C Bonds and related costs, there shall be issued the Series 2012 C Bonds of the Issuer, in an aggregate principal amount of not more than \$10,000,000. The Series 2012 C Bonds shall be designated the "City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 C (Bank Qualified)" and shall be issued in fully registered form, in denominations of \$5,000 or any integral multiple thereof for any year of maturity (or such other denominations as may be set forth in the Supplemental Resolution), not exceeding the aggregate principal amount of Series 2012 C Bonds maturing in the year of maturity for which the denomination is to be specified. The Series 2012 C Bonds shall be numbered from CR-1 consecutively upward. The Series 2012 C Bonds shall be dated; shall be in such aggregate principal amount; shall bear interest at such rate or rates, not exceeding the then legally permissible rate, payable semiannually on such dates; shall mature on such dates and in such amounts; shall be subject to such mandatory and optional redemption provisions; and shall have such other terms, all as the Issuer shall prescribe herein and in the Supplemental Resolution.

B. For the purposes of (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying a portion of the outstanding principal of and the prorated accrued interest on the Series 1999 Bonds; (iii) funding the Series 2012 D Bonds Reserve Account; and (iv) paying costs of issuance of the Series 2012 C Bonds and the Series 2012 D Bonds and related costs, there shall be issued the Series 2012 D Bonds of

the Issuer, in an aggregate principal amount of not more than \$30,000,000. The Series 2012 D Bonds (Non Bank Qualified) shall be designated the "City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 D (Non Bank Qualified)" and shall be issued in fully registered form, in denominations of \$5,000 or any integral multiple thereof for any year of maturity (or such other denominations as may be set forth in the Supplemental Resolution), not exceeding the aggregate principal amount of Series 2012 D Bonds maturing in the year of maturity for which the denomination is to be specified. The Series 2012 D Bonds shall be numbered from DR-1 consecutively upward. The Series 2012 D Bonds shall be dated; shall be in such aggregate principal amount; shall bear interest at such rate or rates, not exceeding the then legally permissible rate, payable semiannually on such dates; shall mature on such dates and in such amounts; shall be subject to such mandatory and optional redemption provisions; and shall have such other terms, all as the Issuer shall prescribe herein and in the Supplemental Resolution.

Section 3.11. Book Entry System for Refunding Bonds. The Refunding Bonds (if purchased by the Original Purchaser) shall initially be issued in the form of one fully-registered bond for the aggregate principal amount of the Refunding Bonds of each maturity, and shall be registered in the name of Cede & Co., as nominee of DTC. Notwithstanding anything herein to the contrary contained, so long as the Refunding Bonds are so issued and registered, DTC (or its nominee) shall be treated as the sole Registered Owner for all purposes hereunder. Each Bond shall bear a legend substantially to the following effect "Except as otherwise provided in the Ordinance, this global bond may be transferred, in whole but not in part, only to another nominee of DTC (as defined in the Ordinance) or to a successor of DTC or to a nominee of a successor of DTC. Unless this certificate is presented by an authorized representative of DTC, to the Issuer or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the Registered Owner hereof, Cede & Co., has an interest herein."

With respect to Refunding Bonds registered in the records of the Registrar in the name of Cede & Co., as nominee of DTC, the Issuer and the Paying Agent shall have no responsibility or obligation to any other participant in DTC or to any Person on behalf of whom such a participant in DTC holds a beneficial interest in the Refunding Bonds. Without limiting the immediately preceding sentence, the Issuer and the Paying Agent shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any other participant in DTC with respect to any beneficial ownership interest in any Bond, (ii) the delivery to any other participant in DTC or any other Person, other than a Registered Owner, as shown in the records of the Registrar, of any notice with respect to any Refunding Bonds, including without limitation any notice of redemption, tender, purchase or any event which would or could give rise to a tender or purchase right or option with respect to any Bond, (iii) the payment to any other participant in DTC or any other Person, other than a Registered Owner, as shown in the records of the Registrar, of any amount with respect to principal of, premium, if any, or interest on, any Bond, or (iv) any consent given by DTC as Registered Owner. Notwithstanding any other provision of this Ordinance to the contrary, the Issuer and the Paying

Agent shall be entitled to treat and consider the Person in whose name each Bond is registered in the records of the Registrar as the absolute owner of such Bond for the purpose of payment of principal, premium, if any, and interest with respect to such Bond, for the purpose of giving notices of redemption, sale, purchase or any event which would or could give rise to a sale or purchase right or option with respect to any Bond for the purpose of making payment of any purchase price of such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Issuer and Paying Agent shall pay all principal of, premium, if any, and interest on the Refunding Bonds and the purchase price of any Bond only to or upon the order of the respective Registered Owners, as shown in the records of the Registrar as provided in this Ordinance, or their respective attorneys or legal representatives duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to payment of principal of, premium, if any, and interest on the Refunding Bonds to the extent of the sum or sums so paid. No Person other than a Registered Owner, as shown in the records of the Registrar, shall receive a Bond certificate evidencing the obligation of the Issuer to make payments of principal, premium, if any, and interest pursuant to this Ordinance.

The Registered Owners have no right to a depository for the Refunding Bonds. The Issuer may remove DTC or any successor thereto for any reason at any time. In such event or in the event DTC shall notify the Issuer that DTC is discontinuing its book-entry system for the Refunding Bonds, the Issuer shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities Exchange Act, notify DTC of the appointment of such successor securities depository and transfer one or more separate Bond certificates to such successor securities depository or (ii) notify DTC of the availability through the DTC of Bond certificates and transfer one or more separate Bond certificates to other participants or beneficial owners as DTC may direct. In such event, the Refunding Bonds shall no longer be restricted to being registered in the records of the Registrar in the name of Cede & Co., as nominee, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names other participants in DTC receiving Refunding Bonds shall designate, in accordance with the provisions of this Ordinance. The provisions of this Section applicable to DTC shall apply, mutatis mutandis, to any successor depository performing the same functions hereunder as DTC.

The Issuer represents hereby that it has executed a Letter of Representations, the terms of which are applicable to the issuance of the Refunding Bonds hereunder. Such Letter of Representations is for the purpose of effectuating the Book-Entry Only System only and shall not be deemed to amend, supersede or supplement the terms of this Ordinance which are intended to be complete without reference to the Letter of Representations. In the event of any conflict between the terms of the Letter of Representations and the terms of this Ordinance, the terms of this Ordinance shall control. DTC may exercise the rights of a Registered Owner hereunder only in accordance with the terms hereof applicable to the exercise of such rights.

Section 3.12. Delivery of Refunding Bonds. The Issuer shall execute and deliver the Refunding Bonds to the Registrar, and the Registrar shall authenticate, register and deliver the Refunding Bonds to the Original Purchaser upon receipt of the documents set forth below:

(1) If not registered in the name of DTC or its nominee, a list of the names in which the Refunding Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Registrar may reasonably require;

(2) A request and authorization to the Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Refunding Bonds to DTC for the benefit of the Original Purchaser;

(3) Copies of this Ordinance and the Supplemental Resolution certified by the Clerk;

(4) The unqualified approving opinion of Bond Counsel regarding the Refunding Bonds; and

(5) A copy of such other documents and certificates as the Original Purchaser may reasonably require.

Section 3.13. Form of Series 2012 C Bonds. A. The definitive Series 2012 C Bonds shall be in substantially the form set forth in EXHIBIT A – FORM OF SERIES 2012 C BOND attached hereto and incorporated herein by reference, with such necessary and appropriate omissions, insertions and variations as are approved by those officers executing such Series 2012 C Bonds on behalf of the Issuer and execution thereof by such officers shall constitute conclusive evidence of such approval, and the definitive Series 2012 C Bonds shall have the form of the opinion of Steptoe & Johnson PLLC, as Bond Counsel, attached thereto or printed on the reverse thereof.

B. The definitive Series 2012 D Bonds shall be in substantially the form set forth in EXHIBIT B – FORM OF SERIES 2012 D BOND attached hereto and incorporated herein by reference, with such necessary and appropriate omissions, insertions and variations as are approved by those officers executing such Series 2012 D Bonds on behalf of the Issuer and execution thereof by such officers shall constitute conclusive evidence of such approval, and the definitive Series 2012 D Bonds shall have the form of the opinion of Steptoe & Johnson PLLC, as Bond Counsel, attached thereto or printed on the reverse thereof.

Section 3.14. Disposition of Proceeds of Refunding Bonds. Upon the issuance and delivery of the Refunding Bonds, the Issuer shall forthwith deposit the proceeds thereof as follows:

1. All interest accrued on Series 2012 C Bonds from the date thereof to the date of delivery thereof shall be deposited in the Series 2012 C Bonds Sinking Fund and applied to payment of interest on the Series 2012 C Bonds at the first interest payment date.

2. All interest accrued on Series 2012 D Bonds from the date thereof to the date of delivery thereof shall be deposited in the Series 2012 D Bonds Sinking Fund and applied to payment of interest on the Series 2012 D Bonds at the first interest payment date.

3. An amount of the proceeds of the Series 2012 C Bonds equal to the amount, if any, set forth in the Supplemental Resolution shall be remitted to the Commission for deposit in the Series 2012 C Bonds Reserve Account.

4. An amount of the proceeds of the Series 2012 D Bonds equal to the amount, if any, set forth in the Supplemental Resolution shall be remitted to the Commission for deposit in the Series 2012 D Bonds Reserve Account.

5. An amount of the proceeds of the Series 2012 D Bonds equal to the entire outstanding principal of and all accrued interest on the Series 1997 Bonds, less the amounts transferred from the Series 1997 Bonds Sinking Fund and Series 1997 Bonds Reserve Fund, if any, as set forth in the Supplemental Resolution shall be remitted to the Bond Commission to pay the Series 1997 Bonds in full.

6. An amount of the proceeds of the Series 2012 C Bonds equal to the entire outstanding principal of and all accrued interest on the Series 1998 Bonds, less the amounts transferred from the Series 1998 Bonds Sinking Fund and Series 1998 Bonds Reserve Fund, if any, as set forth in the Supplemental Resolution shall be remitted to the Bond Commission to pay the Series 1998 Bonds in full.

7. An amount of the proceeds of the Series 2012 D Bonds equal to a portion of the principal of and the prorated accrued interest on the Series 1999 Bonds, less the amounts transferred from the Series 1999 Bonds Sinking Fund and Series 1999 Bonds Reserve Fund, if any, as set forth in the Supplemental Resolution shall be remitted to the Bond Commission to pay a portion of the Series 1999 Bonds.

8. An amount of Series 2012 D Bond proceeds which, together with other monies or securities deposited therein, shall be equal to the Costs of Issuance of the Series 2012 C Bonds and the Series 2012 D Bonds shall be deposited with the Depository Bank in the Costs of Issuance Fund and shall be drawn out, used and applied by the Issuer solely to pay costs of issuance of the Series 2012 C Bonds and the Series 2012 D Bonds at the written direction of the Issuer. Monies not to be applied immediately to pay such costs of issuance may be invested in accordance with this Ordinance, subject however, to applicable yield restrictions as may be in effect under the Code. If for any reason such proceeds, or any part thereof, are not necessary for, or are not applied to such purpose within 120 days following the Closing Date for the Series 2012 C Bonds and the Series 2012 D Bonds, such unapplied proceeds shall be transferred by the Issuer to the Series 2012 D Bonds Sinking Fund established in Section 4.02 hereof and applied to the next ensuing payment of interest on the Series 2012 D Bonds. All such proceeds shall constitute a trust fund for such purposes, and there hereby is created a lien upon such monies until so applied in favor of the Holders of the Series 2012 D Bonds from which such proceeds are derived.

**ARTICLE IV  
SYSTEM REVENUES; FUNDS AND ACCOUNTS**

Section 4.01. Establishment of Funds and Accounts with Depository Bank.  
Pursuant to this Article IV, the following special funds are created with (or continued if previously established by the Prior Ordinances), and shall be held by, the Depository Bank, segregated from all other funds and accounts of the Depository Bank or the Issuer and from each other and used solely for the purposes provided herein:

- (1) Revenue Fund (established by the Prior Ordinances);
- (2) Renewal and Replacement Fund (established by the Prior Ordinances);
- (3) Refunding Bonds Costs of Issuance Fund; and
- (4) Rebate Fund.

Section 4.02. Establishment of Funds and Accounts with Bond Commission.  
Pursuant to this Article IV, the following special funds and accounts are hereby established (or continued if previously established by the Prior Ordinances) with and shall be held by the Bond Commission, separate and apart from all other funds or accounts of the Bond Commission or the Issuer and from each other and used solely for the purposes provided herein:

- (1) Series 1999 Bonds Sinking Fund (established by Prior Ordinance);
- (2) Series 1999 Reserve Account (established by Prior Ordinance);
- (3) Series 1999 Bonds Redemption Account (established by Prior Ordinance);
- (4) Series 2008 A Bonds Sinking Fund (established by Prior Ordinance);
- (5) Series 2008 A Bonds Reserve Account (established by Prior Ordinance);
- (6) Series 2010 A Bonds Sinking Fund (established by Prior Ordinance);
- (7) Series 2010 A Bonds Reserve Account (established by Prior Ordinance);
- (8) Series 2010 B Bonds Sinking Fund (established by Prior Ordinance);
- (9) Series 2010 B Bonds Reserve Account (established by Prior Ordinance);
- (10) Series 2010 C Bonds Sinking Fund (established by Prior Ordinance);
- (11) Series 2010 C Bonds Reserve Account (established by Prior Ordinance);

- (12) Series 2010 D Bonds Sinking Fund (established by Prior Ordinance);
- (13) Series 2010 D Bonds Reserve Account (established by Prior Ordinance);
- (14) Series 2012 C Bonds Sinking Fund;
  - (a) Within the Series 2012 C Bonds Sinking Fund:
    - (i) Series 2012 C Bonds Reserve Account; and
    - (ii) Series 2012 C Bonds Redemption Account.
- (15) Series 2012 D Bonds Sinking Fund;
  - (a) Within the Series 2012 D Bonds Sinking Fund:
    - (i) Series 2012 D Bonds Reserve Account; and
    - (ii) Series 2012 D Bonds Redemption Account

Section 4.03. System Revenues and Application Thereof. So long as any of the Refunding Bonds shall be Outstanding and unpaid, the Issuer covenants as follows:

A. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited by the Issuer in the Revenue Fund. The Revenue Fund shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner herein provided. All Revenues at any time remaining on deposit in the Revenue Fund shall be disposed of only in the following manner and order of priority:

(1) The Issuer shall first, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission (i) the amounts required by the Prior Ordinances to pay the interest on the Series 2010 C Bonds and the Outstanding Series 1999 Bonds; (ii) commencing 7 months prior to the first interest payment date of the Series 2012 C Bonds, for deposit in the Series 2012 C Bonds Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on the Series 2012 C Bonds on the next ensuing semiannual interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2012 C Bonds Sinking Fund and the next ensuing semiannual interest payment date is more or less than 7 months, then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date; provided further that, the initial amount required to be transferred from the

Revenue Fund and deposited in the Series 2012 C Bonds Sinking Fund shall be reduced by the amount of accrued interest on the Series 2012 C Bonds deposited therein, and subsequent amounts required to be transferred from the Revenue Fund and deposited in the Series 2012 C Bonds Sinking Fund shall be reduced by the amount of any earnings credited to the Series 2012 C Bonds Sinking Fund; and (iii) commencing 7 months prior to the first interest payment date of the Series 2012 D Bonds, for deposit in the Series 2012 D Bonds Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on the Series 2012 D Bonds on the next ensuing semiannual interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2012 D Bonds Sinking Fund and the next ensuing semiannual interest payment date is more or less than 7 months, then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date; provided further that, the initial amount required to be transferred from the Revenue Fund and deposited in the Series 2012 D Bonds Sinking Fund shall be reduced by the amount of accrued interest on the Series 2012 D Bonds deposited therein, and subsequent amounts required to be transferred from the Revenue Fund and deposited in the Series 2012 D Bonds Sinking Fund shall be reduced by the amount of any earnings credited to the Series 2012 D Bonds Sinking Fund.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission (i) the amounts required by the Prior Ordinances to pay the principal of the Prior Bonds; (ii) commencing 13 months prior to the first principal payment date or mandatory Redemption Date of the Series 2012 C Bonds, for deposit in the Series 2012 C Bonds Sinking Fund and in the Series 2012 C Bonds Redemption Account therein in the case of the Term Bonds which are to be redeemed, a sum equal to 1/12th of the amount (or 1/6th of the amount if the Series 2012 C Bonds mature semiannually rather than annually) of principal which will mature or be redeemed and become due on the Series 2012 C Bonds on the next ensuing principal payment date or mandatory Redemption Date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2012 C Bonds Sinking Fund and the next ensuing principal payment date or mandatory Redemption Date is more or less than 13 months (or 7 months if the Series 2012 C Bonds mature semiannually rather than annually), then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next

ensuing principal payment date or mandatory Redemption Date, the required amount of principal coming due on such date, and provided further, that the amount of such deposits shall be reduced by the amount of any earnings credited to the Series 2012 C Bonds Sinking Fund and not previously credited pursuant to the preceding paragraph; and (iii) commencing 13 months prior to the first principal payment date or mandatory Redemption Date of the Series 2012 D Bonds, for deposit in the Series 2012 D Bonds Sinking Fund and in the Series 2012 D Bonds Redemption Account therein in the case of the Term Bonds which are to be redeemed, a sum equal to 1/12th of the amount (or 1/6th of the amount if the Series 2012 D Bonds mature semiannually rather than annually) of principal which will mature or be redeemed and become due on the Series 2012 D Bonds on the next ensuing principal payment date or mandatory Redemption Date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2012 D Bonds Sinking Fund and the next ensuing principal payment date or mandatory Redemption Date is more or less than 13 months (or 7 months if the Series 2012 D Bonds mature semiannually rather than annually), then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next ensuing principal payment date or mandatory Redemption Date, the required amount of principal coming due on such date, and provided further, that the amount of such deposits shall be reduced by the amount of any earnings credited to the Series 2012 D Bonds Sinking Fund and not previously credited pursuant to the preceding paragraph.

Moneys in the Series 2012 C Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2012 C Bonds, whether by maturity or redemption prior to maturity. Moneys on deposit in the Series 2012 C Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 2012 C Bonds when the funds on deposit in the Series 2012 C Bonds Sinking Fund are insufficient therefore, and for no other purpose. Pending such use, such moneys shall be invested in accordance with Article V.

Moneys in the Series 2012 D Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2012 D Bonds, whether by maturity or redemption prior to maturity. Moneys on deposit in the Series 2012 D Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 2012 D Bonds when the funds on deposit in the Series 2012 D Bonds Sinking Fund are insufficient therefore, and for no other purpose. Pending such use, such moneys shall be invested in accordance with Article V.

The Issuer shall not be required to make any further payments into the Series 2012 C Bonds Sinking Fund when the aggregate amount of funds therein, including the Series 2012 C Bonds Reserve Account therein, is at least equal to the aggregate principal amount of Series 2012 C Bonds then Outstanding, plus the amount of interest due or thereafter to become due on such Bonds then Outstanding.

The Issuer shall not be required to make any further payments into the Series 2012 D Bonds Sinking Fund when the aggregate amount of funds therein, including the Series 2012 D Bonds Reserve Account therein, is at least equal to the aggregate principal amount of Series 2012 D Bonds then Outstanding, plus the amount of interest due or thereafter to become due on such Bonds then Outstanding.

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

The payments into the Series 2012 C Bonds Sinking Fund and Series 2012 D Bonds Sinking Fund shall be made on the first day of each month, except that, when the first day of any month shall be a Saturday, Sunday or legal holiday, then such payments shall be made on the next succeeding Business Day, 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 Ordinance.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission (i) for deposit in the Reserve Accounts of the Prior Bonds the amounts required by the Prior Ordinances; (ii) commencing 13 months prior to the first date of payment of principal of the Series 2012 C Bonds, if not fully funded upon issuance of the Series 2012 C Bonds, for deposit in the Series 2012 C Bonds Reserve Account, an amount equal to 1/120th of the Series 2012 C Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2012 C Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2012 C Bonds Reserve Requirement, and thereafter the Issuer shall deposit in the Series 2012 C Bonds Reserve Account, an amount sufficient to remedy any decrease in value of the Series 2012 C Bonds Reserve Account below the Series 2012 C Bonds Reserve Requirement or any withdrawal from the Series 2012 C Bonds Reserve Account, beginning with the first full calendar month following the date on which (a) the valuation of investments in the Series 2012 C Bonds Reserve Account results in a determination that the amount of moneys and the value of the

Qualified Investments deposited to the credit of the Series 2012 C Bonds Reserve Account is less than the Series 2012 C Bonds Reserve Requirement, or (b) any amount is withdrawn from the Series 2012 C Bonds Reserve Account for deposit into the Series 2012 C Bonds Sinking Fund. To the extent Gross Revenues and any other legally available funds are available therefore, the amount so deposited shall be used to restore the amount of moneys on deposit in the Series 2012 C Bonds Reserve Account to an amount equal to the Series 2012 C Bonds Reserve Requirement to the full extent that such Gross Revenues are available; provided however, that if the shortfall in the Series 2012 C Bonds Reserve Account is due to a decrease in value of investments therein, such shortfall shall be replenished by not less than 6 equal monthly payments, and if such shortfall is due to a withdrawal from the Series 2012 C Bonds Reserve Account, such shortfall shall be replenished by not less than 12 equal monthly payments, and provided further, that no payments shall be required to be made into the Series 2012 C Bonds Reserve Account whenever and as long as the amount on deposit therein shall be equal to the Series 2012 C Bonds Reserve Requirement; and (iii) commencing 13 months prior to the first date of payment of principal of the Series 2012 D Bonds, if not fully funded upon issuance of the Series 2012 D Bonds, for deposit in the Series 2012 D Bonds Reserve Account, an amount equal to 1/120th of the Series 2012 D Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2012 D Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2012 D Bonds Reserve Requirement, and thereafter the Issuer shall deposit in the Series 2012 D Bonds Reserve Account, an amount sufficient to remedy any decrease in value of the Series 2012 D Bonds Reserve Account below the Series 2012 D Bonds Reserve Requirement or any withdrawal from the Series 2012 D Bonds Reserve Account, beginning with the first full calendar month following the date on which (a) the valuation of investments in the Series 2012 D Bonds Reserve Account results in a determination that the amount of moneys and the value of the Qualified Investments deposited to the credit of the Series 2012 D Bonds Reserve Account is less than the Series 2012 D Bonds Reserve Requirement, or (b) any amount is withdrawn from the Series 2012 D Bonds Reserve Account for deposit into the Series 2012 D Bonds Sinking Fund. To the extent Gross Revenues and any other legally available funds are available therefore, the amount so deposited shall be used to restore the amount of moneys on deposit in the Series 2012 D Bonds Reserve Account to an amount equal to the Series 2012 D Bonds Reserve Requirement to the full extent

that such Gross Revenues are available; provided however, that if the shortfall in the Series 2012 D Bonds Reserve Account is due to a decrease in value of investments therein, such shortfall shall be replenished by not less than 6 equal monthly payments, and if such shortfall is due to a withdrawal from the Series 2012 D Bonds Reserve Account, such shortfall shall be replenished by not less than 12 equal monthly payments, and provided further, that no payments shall be required to be made into the Series 2012 D Bonds Reserve Account whenever and as long as the amount on deposit therein shall be equal to the Series 2012 D Bonds Reserve Requirement.

Amounts in the Series 2012 C Bonds Reserve Account shall be used only for the purpose of making payments of principal of and interest on the Series 2012 C Bonds when due, when amounts in the Series 2012 C Bonds Sinking Fund are insufficient therefore and for no other purpose.

Amounts in the Series 2012 D Bonds Reserve Account shall be used only for the purpose of making payments of principal of and interest on the Series 2012 D Bonds when due, when amounts in the Series 2012 D Bonds Sinking Fund are insufficient therefore and for no other purpose.

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

(5) The Issuer shall next, on the first day of each month, transfer from the monies remaining in the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund (as previously set forth in the Prior Ordinances and not in addition thereto), a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of any Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Subject to the restrictions contained in the Prior Ordinances, so long as the Prior Bonds are outstanding, withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, or improvements or extensions to the System; provided, that any deficiency in any Reserve Account, except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof, shall be promptly eliminated with monies from the Renewal and Replacement Fund.

(6) If on any monthly payment date the revenues of the System are insufficient to make the required deposits in any of the funds and accounts as hereinabove provided, the deficiency shall be made up on the next ensuing payment dates by payments in addition to the payments which are otherwise required to be made into the funds on such ensuing payment dates.

(7) The Issuer may next, each month, after making the above required transfers of moneys from the Revenue Fund, apply any remaining revenues ("Surplus Revenues") to payment of debt service on any other subordinate bonds, notes, certificates or other obligations of the System. Any Surplus Revenues then remaining in the Revenue Fund may be used for any lawful purpose of the System.

B. The Bond Commission is hereby designated as the fiscal agent for the administration of the Sinking Funds created or continued hereunder, and all amounts required for said Sinking Funds shall be remitted to the Bond Commission from said Revenue Fund and from the proceeds of the sale of the Bonds, by the Issuer at the times and as otherwise provided herein. All remittances made by the Issuer to the Bond Commission shall clearly identify the fund or account into which each amount is to be deposited. Notwithstanding the foregoing, however, the Bond Commission shall deposit all remittances in the fund or account in the priority established by this Ordinance.

C. If on any monthly payment date the Gross 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 4.03 and the Gross Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

D. Principal and interest payments, and any payments made for the purpose of funding the Reserve Accounts, shall be made on a parity basis and prorated, with respect to the Prior Bonds, the Refunding Bonds and any parity Bonds hereinafter issued, in accordance with the respective principal amounts of each such series of Bonds then Outstanding, if less than the full amount required hereby.

**ARTICLE V**  
**INVESTMENTS; NON-ARBITRAGE**  
**REBATES AND CONTINUING DISCLOSURE CERTIFICATE**

Section 5.01. Investments. The Issuer shall invest and reinvest, and shall instruct the Bond Commission and the Depository Bank to invest and reinvest, any moneys held as a part of the funds and accounts created by this Ordinance in Qualified Investments to the fullest extent

possible under applicable laws, this Ordinance, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this section.

Except as provided below, any investment shall be held in and at all times deemed a part of the fund or account in which such 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 Issuer shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Issuer may make any and all investments permitted by this section through the bond department of the Depository Bank. The Depository Bank shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The following specific provisions shall apply with respect to any investments made under this section:

(A) Qualified Investments acquired for the Renewal and Replacement Fund or any Reserve Account shall mature or be subject to retirement at the option of the holder within not more than 3 years from the date of such investment.

(B) The Issuer shall, or shall cause the Bond Commission to, semiannually transfer from each Reserve Account to the corresponding Sinking Fund any earnings on the moneys deposited therein and any other funds in excess of the applicable Reserve Account Requirement; provided, however, that there shall at all times remain on deposit in each Reserve Account an amount at least equal to the applicable Reserve Account Requirement.

(C) In computing the amount in any fund or account, Qualified Investments shall be valued at the lower of the cost or the market price, exclusive of accrued interest. Valuation of all funds and accounts shall occur annually, except in the event of a withdrawal from a Reserve Account, whereupon it shall be valued immediately after such withdrawal. If amounts on deposit in a Reserve Account shall, at any time, be less than the applicable Reserve Requirement, the applicable Bond Insurer, if any, shall be notified immediately of such deficiency, and such deficiency shall be made up from the first available Gross Revenues after required deposits to the applicable Sinking Fund and otherwise in accordance with Section 4.03(3).

(D) All amounts representing accrued interest shall be held by the Bond Commission, pledged solely to the payment of interest on the Bonds and invested only in Government Obligations maturing at such times and in such amounts as are necessary to match the interest payments to which they are pledged.

(E) Notwithstanding the foregoing, all moneys deposited in any Sinking Fund may be invested by the Bond Commission in the West Virginia "consolidated fund" managed by the West Virginia Board of Treasury Investments pursuant to Chapter 12, Article 6C of the Code of West Virginia, 1931, as amended.

Section 5.02. Arbitrage. The Issuer covenants that (i) it will restrict the use of the proceeds of the Refunding Bonds in such manner and to such extent as may be necessary, so that such Refunding Bonds will not constitute "arbitrage bonds" under Section 148 of the Code and Regulations prescribed thereunder, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a Federal information return with respect to such Bonds) so that the interest on the Refunding Bonds will be and remain excluded from gross income for Federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 5.03. Tax Certificate, Rebates, and Rebate Fund. The Issuer shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of any series of Bonds. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Refunding Bonds as may be necessary in order to fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of this Ordinance.

The Issuer shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, the Issuer shall deposit, or cause to be deposited, in the Rebate Fund such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder and used only for payment of rebatable arbitrage to the United States. The Issuer shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States in the time and at the address prescribed by the Regulations as the same may be in time to time in effect with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefore. The Issuer at its expense, may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer may deem appropriate in order to assure compliance with this Section 5.03. The Issuer shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 5.03 in accordance with the requirements of Section 148(f) of the Code and such Regulations. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and other amounts, from lawfully available sources, and obtain a waiver

from the Internal Revenue Service, if necessary, in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes.

Section 5.04. Continuing Disclosure Certificate. The Issuer shall deliver a continuing disclosure certificate in form acceptable to the Original Purchaser sufficient to ensure compliance with SEC Rule 15c2-12, as it may be amended from time to time.

## **ARTICLE VI** **ADDITIONAL COVENANTS OF THE ISSUER**

Section 6.01. Covenants Binding and Irrevocable. All the covenants, agreements and provisions of this Ordinance shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Refunding Bonds, as prescribed by Article VII. In addition to the other covenants, agreements and provisions of this Ordinance, the Issuer hereby covenants and agrees with the Holders of the Refunding Bonds as hereinafter provided in this Article VI. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Refunding Bonds or the interest thereon, are Outstanding and unpaid.

Section 6.02. Bonds Not to be Indebtedness of the Issuer. The Refunding Bonds shall not be or constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness but shall be payable solely from the Gross Revenues of the System, the moneys in the Refunding Bonds Sinking Fund and the Refunding Bonds Reserve Account therein and the unexpended proceeds of the Refunding Bonds, all as herein provided. No Holder or Holders of the Refunding Bonds issued hereunder shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Refunding Bonds or the interest thereon.

Section 6.03. Refunding Bonds Secured by Parity Pledge of Gross Revenues; Lien Position with Respect to Prior Bonds. The payment of the debt service of all of the Refunding Bonds issued hereunder shall be secured forthwith equally and ratably with each other by a first lien on the Gross Revenues derived from the operation of the System, on a parity with the lien on the Gross Revenues in favor of the Holders of the Prior Bonds. The payment of the debt service on the Refunding Bonds shall also be secured by the moneys in the Refunding Bonds Sinking Funds, including the respective Refunding Bonds Reserve Accounts therein. The Gross Revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Prior Bonds and the Refunding Bonds herein authorized, and to make the payments into the Series 2012 C Bonds Sinking Fund and Series 2012 D Bonds Sinking Fund, all moneys and securities in the Series 2012 C Bonds Sinking Fund, including the Series 2012 C Bonds Reserve Account therein, the Series 2012 D Bonds Sinking Fund, including the Series 2012 D Bonds Reserve Account therein and all other payments provided for in this Ordinance, are hereby irrevocably pledged in the manner provided in this Ordinance to the payment of the principal of and interest on the Prior Bonds and the Refunding Bonds herein authorized as the same become due and for the other purposes provided in this Ordinance.

Section 6.04. Rates. Prior to the issuance of the Refunding Bonds, rates or charges for the use of the services and facilities of the System will be fixed and established, all in the manner and form required by law, and a copy of such rates and charges so fixed and established shall at all times be kept on file in the office of the Clerk of the Issuer, which copy will be open to inspection by all interested parties. The schedule or schedules of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to make the prescribed payments into the funds and accounts created hereunder. Such schedule or schedules of rates and charges shall be revised from time to time, whenever necessary, so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule or schedules of rates or charges from time to time in effect shall be sufficient (i) to provide for all Operating Expenses of the System, (ii) so long as the Series 1999 Bonds, Series 2012 C Bonds or Series 2012 D Bonds are outstanding to leave a balance each year equal to at least 120% of the Maximum Annual Debt Service on the Refunding Bonds, and all obligations issued on a parity with the Refunding Bonds, including the Prior Bonds; and (iii) so long as the Series 2008 A Bonds, Series 2010 A Bonds, Series 2010 B Bonds, Series 2010 C Bonds or Series 2010 D Bonds are outstanding to leave a balance each year equal to at least 115% of the Maximum Annual Debt Service on the Refunding Bonds, and all obligations issued on a parity with the Refunding Bonds, including the Prior Bonds. All such rates and charges, if not paid when due, shall constitute a lien upon the premises served by the System.

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

Section 6.05. Operation and Maintenance. The Issuer will maintain the System in good condition and will operate the same as a revenue-producing enterprise in an efficient and economical manner, making such expenditures for equipment and for renewal, repair and replacement as may be proper for the economical operation and maintenance thereof from the Revenues of said System in the manner provided in this Ordinance.

Section 6.06. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of or encumber the System except as provided in the Prior Ordinances. Additionally, so long as the Refunding Bonds are Outstanding, the System may be sold, mortgaged, leased or otherwise disposed of only as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding, or to defease the pledge created by this Ordinance and the Prior Ordinances. The proceeds from such sale, mortgage, lease or other disposition of the System shall be immediately remitted to the Bond Commission for deposit in the respective Sinking Funds, and otherwise as prescribed by Section 9.01. Any balance remaining after such defeasance shall be remitted to the Issuer by the Bond Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor is not in excess of \$250,000, the Issuer shall, in writing, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Issuer may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Revenue Fund. If the amount to be received from such sale, lease or other disposition of said property shall be in excess of \$250,000, the Issuer shall first, in writing, determine with the written approval of the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Issuer may then, if it be so advised, by resolution duly adopted, approve and concur in such finding and authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds derived from any such sale, lease or other disposition of such property, in excess of \$50,000 and not in excess of \$250,000, shall be deposited by the Issuer into the Renewal and Replacement Fund. Such payments of such proceeds into the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Ordinance.

No sale, lease or other disposition of all properties of the System shall be made by the Issuer if the proceeds to be derived therefrom shall be insufficient to defease the pledge created by this Ordinance, as provided by Section 9.01.

Section 6.07. Issuance of Other Obligations Payable out of Revenues and General Covenant Against Encumbrances. The Issuer shall not issue any other obligations whatsoever, except additional parity Bonds provided for in Section 6.08 hereof, payable from the Revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from the Gross Revenues with the Refunding Bonds; and all obligations hereafter issued by the Issuer payable from the revenues of the System, except such additional Bonds, shall contain an express statement that such obligations are junior and subordinate as to lien on and source of and security for payment from such revenues and in all other respects to the Bonds.

The Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or, except with respect to such additional parity Bonds, being on a parity with the lien of the Refunding Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Refunding Bonds and the interest thereon in this Ordinance or upon the System or any part thereof.

Section 6.08. Additional Parity Bonds. So long as the Prior Bonds are Outstanding, the limitations and requirements on the issuance of parity obligations set forth in the Prior Ordinances shall be applicable. In addition, no additional parity Bonds, as in this section defined, payable out of the revenues of the System shall be issued after the issuance of any Bonds pursuant to this Ordinance, except under the conditions and in the manner herein provided.

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

So long as the Series 1999 Bonds, Series 2012 C Bonds, or Series 2012 D Bonds are outstanding, no such additional parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Clerk of the Issuer a written statement by an Independent Accountant, reciting the conclusion that the Net Revenues actually derived from the System during the Fiscal Year preceding the date of the actual issuance of such additional parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the issuance of such Parity Bonds, if any, shall not be less than 120% of the Maximum Annual Debt Service on the following:

- (1) The Prior Bonds then Outstanding;
- (2) The Refunding Bonds then Outstanding;
- (3) Any additional parity Bonds theretofore issued pursuant to the provisions contained in this Ordinance then Outstanding; and
- (4) The additional parity Bonds then proposed to be issued.

So long as the Series 2008 A Bonds, Series 2010 A Bonds, Series 2010 B Bonds, Series 2010 C Bonds or Series 2010 D Bonds are outstanding, no such additional parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Clerk of the Issuer a written statement by an Independent Accountant, reciting the conclusion that the Net Revenues actually derived from the System during any 12 consecutive months in the 18 months immediately preceding the date of the actual issuance of such additional parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall not be less than 115% of the Maximum Annual Debt Service on the following:

- (1) The Prior Bonds then Outstanding;
- (2) The Refunding Bonds then Outstanding;
- (3) Any additional parity Bonds theretofore issued pursuant to the provisions contained in this Ordinance then Outstanding; and
- (4) The additional parity Bonds then proposed to be issued.

The Net Revenues actually derived from the System during the 12-consecutive month period hereinabove referred to may be adjusted by adding to such Net Revenues such

additional Net Revenues which would have been received, in the opinion of the Independent Accountants, as stated in a certificate, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to issuance of such Parity Bonds.

The term "additional parity Bonds," as used in this section, shall be deemed to mean additional Bonds issued under the provisions and within the limitations of this section, payable from the Net Revenues of the System on a parity with the Refunding Bonds, and all the covenants and other provisions of this Ordinance (except as to details of such additional parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Refunding Bonds, the Prior Bonds and the Holders of any additional parity Bonds theretofore or subsequently issued from time to time within the limitations of and in compliance with this section. All the Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Net Revenues of the System, and their source of and security for payment from said Net Revenues, without preference of any Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Ordinance required for and on account of such additional parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Ordinance.

The term "additional parity Bonds," as used in this section, shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien on the Revenues of the System of which is subject to the prior and superior lien of the Bonds on such Revenues. Any such subordinate bonds, notes, certificates or other obligations shall be payable from Surplus Revenues. The Issuer shall not issue any obligations whatsoever payable from the Revenues of the System, or any part thereof, which rank prior to or equally, as to lien and source of and security for payment from such Revenues, with the Refunding Bonds, except in the manner and under the conditions provided in this section.

No additional parity Bonds, as in this section defined, shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in this Ordinance on account of the Bonds then Outstanding, if any (excluding the Renewal and Replacement Fund), and any other payments provided for in this Ordinance shall have been made in full as required to the date of delivery of the additional parity Bonds.

Section 6.09. Insurance and Bonds. The Issuer hereby covenants and agrees, that so long as the Refunding Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance and bonds and worker's compensation coverage with a reputable insurance carrier or carriers or bonding company or companies covering the following risks and in the following amounts:

A. FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the greater of the fair appraised value or the original cost thereof. In the time of war the Issuer will also carry and maintain insurance to the extent available against risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged and

destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund.

B. PUBLIC LIABILITY INSURANCE, with limits of not less than \$1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than \$500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

C. WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT OR COMPLETION BONDS, such bonds to be in the amounts of not less than 100% of the amount of any construction contract and to be required of each contractor dealing directly with the Issuer and such payment bonds will be filed with the Clerk of the County Commission of the County in which such work is to be performed prior to commencement of construction of any additions, extensions or improvements for the System in compliance with West Virginia Code, Section 38-2-39.

D. FLOOD INSURANCE, to extent available at reasonable cost to the Issuer.

E. BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

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

Section 6.10. Connections. To the extent permitted by the laws of the State and rules and regulations of the Public Service Commission of West Virginia, the Issuer shall require every owner, tenant or occupant of any house, dwelling, or building intended to be served by the System to connect thereto.

Section 6.11. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System; and, in the event the Issuer or any department, agency, instrumentality, officer or employee thereof shall avail himself of the facilities or services provided by the System or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. Such charges shall be paid as they accrue, and the Issuer shall transfer from its general funds sufficient sums to pay such charges for service to any of its departments or properties. The revenues so received shall be deemed to be revenues derived from the operation of the System and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 6.12. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other

charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 20 days after the same shall become due and payable, the user of the services and facilities shall be delinquent until such time as all such rates and charges are fully paid and to the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, all delinquent rates, rentals and other charges, if not paid, shall become a lien on the premises served by the System. The Issuer further covenants and agree that it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services and facilities of the System to all delinquent users of services and facilities of the System and will not restore such services of the System until all billing for charges for the services and facilities of the System, including penalties and reconnect fees, have been fully paid, or a payment agreement in compliance with the West Virginia Public Service Commission regulations has been entered.

Section 6.13. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of any franchise or permit to any person, firm, corporation or body, or agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 6.14. Books and Records. The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds shall have the right at all reasonable times to inspect the System, and all parts thereof, and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles, to the extent allowable under and in accordance with the rules and regulations of the Public Service Commission of West Virginia and the Act. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner, on the forms, in the books and along with other bookkeeping records as prescribed by the Issuer. The Issuer shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Issuer shall be reported to such agent of the Issuer as it shall direct.

The Issuer shall file with the Original Purchaser and any Bond Insurer, and shall mail to any Holder of Bonds requesting the same, an annual report within 120 days following the end of each Fiscal Year containing a balance sheet, statement of revenues, expenses, and changes in retained earnings, and statement of cash flows, as prescribed by generally accepted accounting principles.

The Issuer shall also file with the Original Purchaser and any Bond Insurer, and mail to any Holder of Bonds requesting the same, a monthly unaudited report within 30 days following the end of each month containing the following:

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

(B) A statement of account balances in the Sinking Fund accounts provided for in this Ordinance and status of said funds.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be completely audited by Independent Accountants, shall mail upon request, and make available generally, the report of said Independent Accountants, or a summary thereof, to any Holder or Holders of Bonds issued pursuant to this Ordinance and shall file said report with the Original Purchaser.

Section 6.15. Operating Budget. The Issuer shall annually, at least 30 days preceding the beginning of each Fiscal Year, or at such earlier date required by its charter, prepare and adopt by resolution a detailed budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Original Purchaser and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Original Purchaser and to any Holder of Bonds or anyone acting for and in behalf of such Holder who requests the same.

Section 6.16. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Refunding Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on such Refunding Bonds during the term thereof is, under the terms of such Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) in the event that both (A) in excess of 5% of the Net Proceeds of the Refunding Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Refunding Bonds during the terms thereof is, under the terms of such Refunding Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Refunding Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the

System, or if the Refunding Bonds are for the purpose of financing more than one project, a portion of the System, and shall not exceed the proceeds used for the governmental use of that portion of the System to which such Private Business Use is related.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of the lesser of 5% of the Net Proceeds of the Refunding Bonds or \$5,000,000 are used, directly or indirectly, to make or finance a loan to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Refunding Bonds to be directly or indirectly "federally guaranteed" within the meaning of Section 149(b) of the Code and Regulations promulgated thereunder.

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

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

Section 6.17. Statutory Mortgage Lien. For the further protection of the Holders of the Refunding Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon the issuance of the Refunding Bonds and shall be on a parity with one another and with the statutory mortgage lien in favor of the Holders of the Prior Bonds.

Section 6.18. Designation of Series 2012 C Bonds as "Qualified Tax-Exempt Obligations".

The Series 1998 Bonds were designated by the Issuer as "qualified tax-exempt obligations" for purposes of Section 265(b)(3)(B) of the Code. As the Series 2012 C Bonds are refunding the Series 1998 Bonds, the Series 2012 C Bonds are "qualified tax-exempt obligations" for purposes of Section 265(b)(3)(B) of the Code.

## **ARTICLE VII** **DEFAULTS AND REMEDIES**

Section 7.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Refunding Bonds:

(A) If default by the Issuer occurs in the due and punctual payment of the principal of or interest on any Bond;

(B) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part in this Ordinance or any Supplemental Resolution or in the Bonds contained, and such default shall have continued for a period of 30 days after written notice specifying such default and requiring the same to be remedied shall have been given to the Issuer by any Registered Owner of any Bond;

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

(D) If the Issuer defaults on the Prior Bonds or the Prior Ordinances.

Section 7.02. Enforcement. Upon the happening and continuance of any Event of Default, any Registered Owner of any Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his rights and, in particular:

(A) Bring suit for any unpaid principal or interest then due;

(B) By mandamus or other appropriate proceeding enforce all rights of the Registered Owners, including the right to require the Issuer to perform its duties under the Act and this Ordinance;

(C) Bring suit upon the Bonds;

(D) By action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Bonds; and

(E) By action or bill in equity enjoin any acts in violation of this Ordinance or the rights of the Registered Owners of the Bonds; provided that, all rights and remedies of the Registered Owners of the Refunding Bonds shall be on a parity with those of the Registered Owners of the Prior Bonds.

No remedy by the terms of this Ordinance conferred upon or reserved to the Registered Owners is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Registered Owners hereunder or now or hereafter existing at law or by statute.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or Event of Default hereunder by the Registered Owners shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereto.

Section 7.03. Appointment of Receiver. If there be any Event of Default existing and continuing, any Registered Owner shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the principal of and interest on the Bonds, the deposits into the funds and accounts hereby established as herein provided and the payment of Operating Expenses of the System and to apply such rates, rentals, fees, charges or other Revenues in conformity with the provisions of this Ordinance and the Act.

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

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

Such receiver, in the performance of the powers hereinabove conferred upon him, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby and a successor receiver appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and the Registered Owners of the Bonds issued pursuant to this Ordinance. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System, for the sole purpose of the protection of both the Issuer and the Registered Owners of the Bonds, and the curing and making good of any default under the provisions of this Ordinance, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, mortgage or otherwise dispose of any assets of the System.

Section 7.04. Restoration of Issuer and Registered Owners. In case any Registered Owner shall have proceeded to enforce any right under this Ordinance by the appointment of a

receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer and such Registered Owners shall be restored to their former positions and rights hereunder, and all rights and remedies of such Registered Owners shall continue as if no such proceedings had been taken.

## **ARTICLE VIII** **REGISTRAR, PAYING AGENT AND DEPOSITORY BANK**

Section 8.01. Appointment of Registrar, Paying Agent and Depository Bank. The Registrar, Paying Agent and Depository Bank (collectively, the "Fiduciaries") for the Refunding Bonds shall be appointed pursuant to the Supplemental Resolution. The Issuer is hereby authorized and directed to enter into an agreement with the Fiduciaries, the substantial form of which agreement is to be approved by Supplemental Resolution.

Section 8.02. Responsibilities of Fiduciaries. The recitals of fact in the Refunding Bonds shall be taken as statements of the Issuer, and the Fiduciaries shall not be responsible for their accuracy. The Fiduciaries shall not be deemed to make any representation as to, and shall not incur any liability on account of, the validity of the execution of any Refunding Bonds by the Issuer. Notwithstanding the foregoing, the Registrar shall be responsible for any representation in its Certificate of Authentication on the Refunding Bonds. The Fiduciaries and any successor thereto shall agree to perform all the duties and responsibilities spelled out in this Ordinance and any other duties and responsibilities incident thereto, all as provided by said agreement described in Section 8.01.

Section 8.03. Evidence on Which Fiduciaries May Act. Except as otherwise provided by Section 10.02, the Fiduciaries shall be protected in acting upon any notice, resolution, request, consent, order, certificate, opinion or other document believed by them to be genuine and to have been signed or presented by the proper party or parties. Whenever any Fiduciary shall deem it necessary or desirable that a fact or matter be proved or established prior to taking or suffering any action, such fact or matter, unless other evidence is specifically prescribed, may be deemed to be conclusively proved and established by a certificate of an Authorized Officer of the Issuer, but in its discretion such Fiduciary may instead accept other evidence of such fact or matter.

Section 8.04. Compensation and Expenses. The Issuer shall pay to the Fiduciaries from time to time reasonable compensation for all services, including the transfer of registration of Refunding Bonds, the first exchange of Refunding Bonds and the exchange of Refunding Bonds in the event of partial redemption, incurred in the performance of their duties hereunder.

Section 8.05. Certain Permitted Acts. The Registrar may become the owner of or may deal in Refunding Bonds as fully and with the same rights it would have if it were not Registrar. To the extent permitted by law, the Registrar may act as depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Registered Owners or effect or aid in any

reorganization growing out of the enforcement of the Refunding Bonds or this Ordinance, whether or not any such committee shall represent the Registered Owners of a majority in principal amount of the Refunding Bonds Outstanding.

Section 8.06. Resignation of Registrar. The Registrar may at any time resign and be discharged of its duties and obligations under this Ordinance by giving not less than 60 days' written notice to the Issuer and publishing in an Authorized Newspaper notice (or mailing such notice to each Registered Owner in the event all Refunding Bonds are fully registered), specifying the date when such resignation shall take effect, within 20 days after the giving of such written notice. A copy of such notice shall also be mailed to each owner of a fully registered Bond or a coupon Bond registered as to principal (other than to bearer). Such resignation shall take effect upon the day specified in such notice unless a successor shall have been previously appointed by the Issuer or bondholders, in which event such resignation shall take effect immediately.

Section 8.07. Removal. The Registrar may be removed at any time by the Issuer or by the Registered Owners of a majority in principal amount of the Refunding Bonds then Outstanding by an instrument or concurrent instruments in writing signed and duly acknowledged by the Issuer or by such Registered Owners or their attorneys duly authorized in writing and delivered to the Issuer, as the case may be. Copies of each such instrument shall be delivered by the Issuer to the Registrar.

Section 8.08. Appointment of Successor. In case at any time the Registrar shall resign or shall be removed or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or if a receiver, liquidator or conservator of the Registrar or of its property shall be appointed, or if any public officer or court shall take charge or control of the Registrar or of its property or affairs, a successor may be appointed by the Registered Owners of a majority in principal amount of the Refunding Bonds then Outstanding by an instrument or concurrent instruments in writing signed by such Registered Owners or their attorneys duly authorized in writing and delivered to the Issuer and such successor Registrar, notification thereof being given to the predecessor Registrar. Pending such appointment, the Issuer shall forthwith appoint a Registrar to fill such vacancy until a successor Registrar shall be appointed by such Registered Owners. The Issuer shall publish in an Authorized Newspaper (or mail to each Registered Owner in the event all Refunding Bonds are fully registered) notice of any such appointment within 20 days after the effective date of such appointment. A copy of such notice shall also be mailed to each owner of a fully registered Bond or a coupon Bond registered as to principal (other than to bearer). Any successor Registrar appointed by the Issuer shall, immediately and without further act, be superseded by a Registrar appointed by such Registered Owners. If in a proper case no appointment of a successor Registrar shall be made within 45 days after the Registrar shall have given to the Issuer written notice of resignation or after the occurrence of any other event requiring such appointment, the Registrar or any Registered Owner may apply to any court of competent jurisdiction to appoint a successor. Any Registrar appointed under the provisions of this section shall be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this Ordinance.

Section 8.09. Transfer of Rights and Property to Successor. Any predecessor Registrar or Paying Agent shall pay over, assign and deliver any moneys, books and records held by it and relating to the Refunding Bonds to its successor.

Section 8.10. Merger or Consolidation. Any company into which the Registrar may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party, or any company to which the Registrar or any public officer or court may sell or transfer all or substantially all of its corporate trust business, shall be the successor to such Registrar without the execution or filing of any paper or the performance of any further act; provided, however, that such company shall be a bank, trust company or national banking association meeting the requirements set forth in Section 8.08.

Section 8.11. Adoption of Authentication. In case any of the Refunding Bonds shall have been authenticated but not delivered, any successor Registrar may adopt a Certificate of Authentication and Registration executed by any predecessor Registrar and deliver such Refunding Bonds so authenticated, and, in case any Refunding Bonds shall have been prepared but not authenticated, any successor Registrar may authenticate such Refunding Bonds in the name of the predecessor Registrar or in its own name.

Section 8.12. Paying Agent and Depository Bank. The Paying Agent shall be appointed pursuant to the Supplemental Resolution. The Paying Agent must be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this Ordinance. Such alternate Paying Agent shall signify its acceptance of the duties and obligations imposed upon it pursuant hereto by executing and delivering to the Issuer a written acceptance thereof. Any successor Paying Agent shall take such actions as may be necessary to ensure that the Refunding Bonds shall be and remain DTC-eligible.

Each Paying Agent shall be entitled to payment and reimbursement for reasonable fees for its services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by such Paying Agent in connection with such services solely from moneys available therefore.

Any bank, trust company or national banking association with or into which any Paying Agent may be merged or consolidated, or to which the assets and business of such Paying Agent may be sold, shall be deemed the successor of such Paying Agent for the purposes of this Ordinance. If the position of Paying Agent shall become vacant for any reason, the Issuer shall, within 30 days thereafter, appoint a bank, trust company or national banking association located in the same city as such Paying Agent to fill such vacancy; provided, however, that, if the Issuer shall fail to appoint such Paying Agent within said period, the Bond Commission, a court of competent jurisdiction or a majority of the Registered Owners may make such appointment.

The Paying Agents shall enjoy the same protective provisions in the performance of their duties hereunder as are specified in this Article VIII with respect to the Registrar, insofar as such provisions may be applicable.

Notice of the appointment of successor or additional Paying Agents or fiscal agents shall be given in the same manner as provided by Section 8.08 hereof with respect to the appointment of a successor Registrar.

All moneys received by the Paying Agents shall, until used or applied as provided in this Ordinance, be held in trust for the purposes for which they were received.

**ARTICLE IX**  
**DEFEASANCE; DISCHARGE OF PLEDGE OF ORDINANCE**

Section 9.01. Defeasance; Discharge of Pledge of Ordinance. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Registered Owners of all Refunding Bonds the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Ordinance, then this Ordinance and the pledges of the Gross Revenues and other moneys and securities pledged hereunder, and all covenants, agreements and other obligations of the Issuer on behalf of the Registered Owners of the Refunding Bonds made hereunder, shall thereupon cease, terminate and become void and be discharged and satisfied.

Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due the respective principal of and interest on such Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Refunding Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Bond Commission or an escrow trustee either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Bond Commission or said escrow trustee at the same or earlier time shall be sufficient, to pay when due the principal of, any redemption premium on and interest due and to become due on said Refunding Bonds on and prior to the maturity date thereof, or if the Issuer irrevocably determines to redeem any of said Refunding Bonds prior to the maturity thereof, on and prior to said redemption date. Neither securities nor moneys deposited with the Bond Commission or an escrow trustee pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and interest on said Refunding Bonds; provided, that any cash received from such principal, redemption premium, if any, and interest payments on such securities deposited with the Bond Commission or said escrow trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal of and redemption premium, if any, and interest to become due on said Bonds on and prior to such maturity or redemption dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the

Bond Commission or said escrow trustee, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

## ARTICLE X MISCELLANEOUS

Section 10.01. Amendment of Ordinance. This Ordinance and any Supplemental Resolution may be amended or modified without the consent of any Registered Owner or other person, solely for the purpose of maintaining the tax-exempt status of the Refunding Bonds, provided that, in the event any of the Refunding Bonds are insured, no such amendment or modification which adversely affects the security for such Refunding Bonds or the rights of the applicable Bond Insurer for such Refunding Bonds may be effected without the written consent of such Bond Insurer. Otherwise, no materially adverse amendment or modification to this Ordinance, or of any Supplemental Resolution, may be made without the written consent of the Registered Owners of 60% in aggregate principal amount of the Refunding Bonds then Outstanding and affected thereby and the Bond Insurer, which must be filed with the Clerk of the Issuer before any such modification or amendment may be made. No such modification or amendment shall extend the maturity of or reduce the interest rate on, or otherwise alter the terms of payment of the principal of or interest on, any Series 2010 Bond without the express written consent of the Registered Owner of such Bond, nor reduce the percentage of Refunding Bonds required for consent to any such modification or amendment.

Section 10.02. Evidence of Signatures of Registered Owners and Ownership of Refunding Bonds. Any request, consent, revocation of consent or other instrument which this Ordinance may require or permit to be signed and executed by Registered Owners may be in one or more instruments of similar tenor, and shall be signed or executed by such Registered Owners in person or by their attorneys duly authorized in writing. Proof of the execution of any such instrument, or of an instrument appointing or authorizing any such attorney, shall be sufficient for any purpose of this Ordinance if made in the following manner, or in any other manner satisfactory to the Issuer or the Registrar, as the case may be, which may nevertheless in its discretion require further or other proof in cases where it deems the same desirable:

A. The fact and date of the execution by any Registered Owner or his attorney of any such instrument may be proved (i) by the certificate of a notary public or other officer authorized to take acknowledgments of deeds to be recorded in the jurisdiction in which he purports to act that the person signing such instrument acknowledged to him the execution thereof, or by the affidavit of a witness of such execution, duly sworn to before such a notary public or other officer or (ii) by the certificate, which need not be acknowledged or verified, of an officer of a bank, a trust company or a financial firm or corporation satisfactory to the Issuer or the Registrar, as the case may be, that the person signing such instrument acknowledged to such bank, trust company, firm or corporation the execution thereof.

B. The authority of a person or persons to execute any such instrument on behalf of a corporate Holder may be established without further proof if such instrument is signed by a person purporting to be the president or treasurer or a vice-president or an assistant treasurer of

such corporation with a corporate seal affixed, and is attested by a person purporting to be its secretary or assistant secretary.

C. The amount of fully registered Refunding Bonds held by a person executing any instrument as a Registered Owner, the date of his holding such Refunding Bonds and the numbers and other identification thereof, shall be confirmed by the Bond Register.

Any request, consent or other instrument executed by the Registered Owner of any Bond shall bind all future Registered Owners of such Bond in respect of anything done or suffered to be done hereunder by the Issuer or the Registrar in accordance therewith.

Section 10.03. Preservation and Inspection of Documents. To the extent allowable under law, all reports, certificates, statements and other documents received by the Registrar under the provisions of this Ordinance shall be retained in its possession and shall be available at all reasonable times for the inspection of the Issuer or any Registered Owner, and their agents and their representatives, but any such reports, certificates, statements or other documents may, at the election of the Registrar, be destroyed or otherwise disposed of at any time after such date as the pledge created by this Ordinance shall be discharged as provided in Section 9.01.

Section 10.04. Cancellation of Refunding Bonds. All Refunding Bonds purchased or paid shall, if surrendered to the Issuer, be canceled and delivered to the Registrar, or, if surrendered to the Registrar, be canceled by it. No such Refunding Bonds shall be deemed Outstanding under this Ordinance and no Refunding Bonds shall be issued in lieu thereof. All such Refunding Bonds shall be canceled and upon order of the Issuer shall be destroyed, and a certificate evidencing such destruction shall be delivered to the Issuer.

Section 10.05. Failure to Present Refunding Bonds. Anything in this Ordinance to the contrary notwithstanding, any moneys held by the Bond Commission or a Paying Agent in trust for the payment and discharge of any of the Refunding Bonds which remain unclaimed for 1 year after the date on which such Refunding Bonds have become due and payable, whether by maturity or upon call for redemption, shall at the written request of the Issuer be paid by the Bond Commission or said Paying Agent to the Issuer as its absolute property and free from trust, and the Bond Commission or said Paying Agent shall thereupon be released and discharged with respect thereto, and the Registered Owners of such Refunding Bonds shall look only to the Issuer for the payment of such Refunding Bonds; provided, however, that, before making any such payment to the Issuer, the Registrar, if so advised by the Bond Commission, or said Paying Agent shall send to the Registered Owner, at the address listed on the Bond Register, by certified mail, a notice that such moneys remain unclaimed and that, after a date named in said notice, which date shall be not less than 30 days after the date of such notice is mailed, the balance of such moneys then unclaimed will be returned to the Issuer.

Section 10.06. Notices, Demands and Requests. Unless otherwise expressly provided, all notices, demands and requests to be given or made hereunder to or by the Issuer, the Registrar, the Depository Bank, or the Original Purchaser shall be in writing and shall be properly made if sent by United States mail, postage prepaid, and addressed as follows or if

hand-delivered to the individual to whom such notice, demand or request is required to be directed as indicated below:

CITY:

City of Fairmont  
500 Quincy Street  
Fairmont, West Virginia 26554  
Attention: Mayor

REGISTRAR:

[Name and address to be set forth in the Supplemental Resolution]

PAYING AGENT:

[Name and address to be set forth in the Supplemental Resolution]

DEPOSITORY BANK:

[Name and address to be set forth in the Supplemental Resolution]

ORIGINAL PURCHASERS:

Crews & Associates, Inc.  
300 Summers Street  
Suite 930  
Charleston, West Virginia 25301

Raymond James Financial Services  
#10 Hale Street, Suite 410  
Charleston, West Virginia 25301

Any party listed above may change such address listed for it at any time upon written notice of change sent by United States mail, postage prepaid, to the other parties.

Section 10.07. No Personal Liability. No member of the Council or officer or employee of the Issuer shall be individually or personally liable for the payment of the principal of or the interest on any Series 2010 Bond, but nothing herein contained shall relieve any such member, official or employee from the performance of any official duty provided by law or this Ordinance.

Section 10.08. Law Applicable. The laws of the State shall govern the construction of this Ordinance and of all Refunding Bonds issued hereunder.

Section 10.09. Parties Interested Herein. Nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon, or give to, any person or corporation, other than the Issuer, the Registrar, the Paying Agent, the Registered Owners of the Refunding Bonds and the Original Purchaser, any right, remedy or claim under or by reason of this Ordinance. All the covenants, stipulations, promises and agreements contained in this Ordinance by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the

Registrar, the Paying Agent, the Registered Owners of the Refunding Bonds and the Original Purchaser.

Section 10.10. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Ordinance.

Section 10.11. Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 10.12. Conflicting Provisions Repealed. All ordinances, orders, resolutions or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed, provided however, that the Prior Ordinances shall remain in full force and effect so long as any of the Prior Bonds are Outstanding.

Section 10.13. 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, Clerk and members of the Council 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 10.14. Procedure on Enactment of Ordinance; Public Hearing. Upon adoption of this Ordinance, the Clerk is hereby authorized and directed to have an abstract of this Ordinance, which abstract has been determined by the Council to contain sufficient information to give notice of the contents of such Ordinance, published once each week for 2 successive weeks, with not less than six full days between each publication, the first such publication to be not less than 10 days before the date stated below for the public hearing, in the *Times West Virginia*, a newspaper published and having a general circulation in the City of Fairmont, together with a notice to all persons concerned, stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Bonds described in this Ordinance and that any person interested may appear before the Council of the Issuer at the public hearing to be had at a public meeting of the Council on March 27, 2012, at 7:00 p.m., and present protests, and that a certified copy of this Ordinance is on file with the Clerk for review by interested parties during the office hours of the Clerk. At such hearing all protests and suggestions shall be heard by the Council and it shall then take such action as it shall deem proper in the premises.

First Reading:	February 28, 2012
Second Reading:	March 13, 2012
Passed on Final Reading	
Following Public	
Hearing:	March 27, 2012

Section 10.15. Effective Date. This Ordinance shall take effect on \_\_\_\_\_, 2012  
(30 days from enactment).

Enacted the 27th day of March, 2012.

[SEAL]

\_\_\_\_\_  
Mayor

CERTIFICATION

Certified a true, correct and complete copy of an Ordinance duly enacted by the Council of the CITY OF FAIRMONT at a regular meeting of the Council held on March 27, 2012, pursuant to proper notice, at which meeting a quorum was present and acting throughout, and which Ordinance was enacted following a public hearing thereon, notice of which public hearing was published once a week for two successive weeks in a newspaper published and having a general circulation in the City of Fairmont, the first publication having been not less than 10 days prior to such public hearing.

[SEAL]

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Clerk

EXHIBIT A – FORM OF SERIES 2012 C BOND

Except as otherwise provided in the Ordinance, this global bond may be transferred, in whole but not in part, only to another nominee of DTC (as defined in the Ordinance) or to a successor of DTC or to a nominee of a successor of DTC. Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. CR-\_\_\_\_\_

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

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT (WEST VIRGINIA)  
WATER REFUNDING REVENUE BOND, SERIES 2012 C

INTEREST RATE      MATURITY DATE      BOND DATE      CUSIP NO.

REGISTERED OWNER:                      CEDE & CO.

PRINCIPAL AMOUNT:                      \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefore, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date specified above, or, if and to the extent that the City shall default in the payment of interest on any Interest Payment Date, then this Bond shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Bond surrendered for transfer or exchange shall be dated as of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per annum specified above, semiannually, on \_\_\_\_\_ 1 and \_\_\_\_\_ 1, in each

year, beginning \_\_\_\_\_ 1, 20\_\_\_\_ (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Ordinance.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by \_\_\_\_\_, \_\_\_\_\_, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each \_\_\_\_\_ 15 and \_\_\_\_\_ 15) or, in the event of a default in the payment of Bonds, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by \_\_\_\_\_, \_\_\_\_\_, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal office of the Paying Agent, in \_\_\_\_\_, West Virginia.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of \$ \_\_\_\_\_ designated the "City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 C (Bank Qualified)" (the "Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated \_\_\_\_\_, 2012, the proceeds of which are to be used, along with other available funds, for the purpose of (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds, (ii) funding the Series 2012 D Bonds Reserve Account; and (iii) paying costs of issuance of the Series 2012 D Bonds and related costs. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 of the Code of West Virginia, 1931, as amended (the "Act"), and an ordinance duly enacted by the Council of the Issuer on \_\_\_\_\_, 2012, and supplemented by supplemental resolution adopted by said Council on \_\_\_\_\_, 2012, (hereinafter collectively referred to as the "Ordinance"), and is subject to all the terms and conditions of said Ordinance. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the Issuer, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the Clerk in the City of Fairmont, West Virginia.

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Ordinance and as set forth in the following lettered paragraphs:

(A) Optional Redemption. The Bonds maturing on or after \_\_\_\_\_, \_\_\_\_\_ are subject to redemption prior to maturity at the option of the Issuer on and after \_\_\_\_\_, \_\_\_\_\_, in whole or in part at any time, in such order of maturity as shall be designated to the Registrar by the Issuer and by lot within a maturity, at the following redemption prices (expressed as percentages of the principal amount of Bonds to be redeemed), plus interest accrued thereon to the date fixed for redemption:

Period During Which Redeemed (Dates Inclusive)	Redemption Price
_____ to _____	\$ _____
_____ to _____	\$ _____
_____ to _____	\$ _____

(B) Mandatory Sinking Fund Redemption. The Bonds maturing on \_\_\_\_\_, are subject to annual mandatory redemption prior to maturity by random selection on \_\_\_\_\_ of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

<u>Bonds Maturing</u>	
Year ( )	Principal Amount
_____	_____

<u>Bonds Maturing</u>	
Year ( )	Principal Amount
_____	_____

\* Final Maturity

If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and Maturity Dates.

Notice of any redemption of this Bond, unless waived, shall be given by the Registrar on behalf of the Issuer by mailing an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Registrar. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the redemption

price therein specified, and from and after such date (unless the Issuer shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of this Bond.

There are outstanding obligations of the Issuer which will rank on a parity with the Series 2012 C Bonds as to liens, pledge, source of and security for payment, as follows: (1) a portion of the Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the "Series 1999 Bonds"); (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000 (the "Series 2008 A Bonds"); (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (Series 2010 A Bonds"); (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (the "Series 2010 B Bonds"); (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000 (the "Series 2010 C Bonds"); and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (the "Series 2010 D Bonds") (collectively, the "Prior Bonds").

The Bonds and the interest thereon are payable only from and are secured by the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Prior Bonds and from moneys in the Series 2012 C Bonds Sinking Fund and the Series 2012 C Bonds Reserve Account established under the Ordinance, and the unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose and to make the other payments required by the Ordinance. This Bond does not constitute an indebtedness of the Issuer within any constitutional or statutory provision or limitation, nor shall the Issuer be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 2012 C Bonds Sinking Fund and the Series 2012 C Bonds Reserve Account and unexpended proceeds of the Bonds. Under the Ordinance, the Issuer has covenanted and agreed to fix, establish and collect just and equitable rates or charges for the use of the services and facilities of the System and to revise the same from time to time as will always be sufficient to pay all operating expenses of the System and to leave a balance each year equal to at least 120% of the maximum amount payable in any year for principal of and interest on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds, including the Series 2012 D Bonds and the Prior 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 Ordinance. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds except for accrued interest thereon shall be applied solely to (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds, (ii) funding the Series 2012 D Bonds Reserve Account; and

(iii) paying costs of issuance of the Series 2012 D Bonds and related costs, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the Registered Owners of the Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by said Issuer for the prompt payment of the principal of and interest on the Bonds of which this Bond is one.

This Bond, under the provisions of the Act is and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the Ordinance.

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

This Bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

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

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the CITY OF FAIRMONT has caused this Bond to be signed by its Mayor and, and its corporate seal to be imprinted hereon and attested by its Clerk, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

(Manual or Facsimile Signature)  
Mayor

ATTEST:

(Manual or Facsimile Signature)  
Clerk

CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION

This Bond is one of the fully registered Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto is the complete text of the opinion of Steptoe & Johnson PLLC, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Bonds.

Dated: \_\_\_\_\_, 2012.

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

By \_\_\_\_\_  
Its Authorized Officer

ASSIGNMENT

Social Security or Other Identifying Number of Assignee \_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_

the within Bond and does hereby irrevocably constitute and appoint

\_\_\_\_\_ to transfer  
the said Bond on the books kept for registration thereof with full power of substitution in the  
premises.

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

\_\_\_\_\_

SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

EXHIBIT B – FORM OF SERIES 2012 D BOND

Except as otherwise provided in the Ordinance, this global bond may be transferred, in whole but not in part, only to another nominee of DTC (as defined in the Ordinance) or to a successor of DTC or to a nominee of a successor of DTC. Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. DR- \_\_\_\_\_

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

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT (WEST VIRGINIA)  
WATER REFUNDING REVENUE BOND, SERIES 2012 D

INTEREST RATE      MATURITY DATE      BOND DATE      CUSIP NO.

REGISTERED OWNER:                      CEDE & CO.

PRINCIPAL AMOUNT:                      \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefore, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date specified above, or, if and to the extent that the City shall default in the payment of interest on any Interest Payment Date, then this Bond shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Bond surrendered for transfer or exchange shall be dated as of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per annum specified above, semiannually, on \_\_\_\_\_ 1 and \_\_\_\_\_ 1, in each

year, beginning \_\_\_\_\_ 1, 20\_\_\_\_ (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Ordinance.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by \_\_\_\_\_, \_\_\_\_\_, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each \_\_\_\_\_ 15 and \_\_\_\_\_ 15) or, in the event of a default in the payment of Bonds, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by \_\_\_\_\_, \_\_\_\_\_, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal office of the Paying Agent, in \_\_\_\_\_, West Virginia.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of \$\_\_\_\_\_ designated the "City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 D" (the "Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated \_\_\_\_\_, 2012, the proceeds of which are to be used, along with other available funds, for the purpose of (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds, (ii) paying a portion of the outstanding principal of and the prorated accrued interest on the Series 1999 Bonds; (iii) funding the Series 2012 C Bonds Reserve Account; and (iv) paying costs of issuance of the Series 2012 C Bonds and the Series 2012 D Bonds and related costs. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 of the Code of West Virginia, 1931, as amended (the "Act"), and an ordinance duly enacted by the Council of the Issuer on \_\_\_\_\_, 2012, and supplemented by supplemental resolution adopted by said Council on \_\_\_\_\_, 2012, (hereinafter collectively referred to as the "Ordinance"), and is subject to all the terms and conditions of said Ordinance. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the Issuer, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the Clerk in the City of Fairmont, West Virginia.

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Ordinance and as set forth in the following lettered paragraphs:

(A) Optional Redemption. The Bonds maturing on or after \_\_\_\_\_, \_\_\_\_\_ are subject to redemption prior to maturity at the option of the Issuer on and after \_\_\_\_\_, \_\_\_\_\_, in whole or in part at any time, in such order of maturity as shall be designated to the Registrar by the Issuer and by lot within a maturity, at the following redemption prices (expressed as percentages of the principal amount of Bonds to be redeemed), plus interest accrued thereon to the date fixed for redemption:

<u>Period During Which Redeemed</u> <u>(Dates Inclusive)</u>	<u>Redemption</u> <u>Price</u>
_____ to _____	\$ _____
_____ to _____	\$ _____
_____ to _____	\$ _____

(B) Mandatory Sinking Fund Redemption. The Bonds maturing on \_\_\_\_\_, are subject to annual mandatory redemption prior to maturity by random selection on \_\_\_\_\_ of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

<u>Bonds Maturing</u>	
<u>Year ( )</u>	<u>Principal Amount</u>
_____	_____

<u>Bonds Maturing</u>	
<u>Year ( )</u>	<u>Principal Amount</u>
_____	_____

\_\_\_\_\_  
\* Final Maturity

If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and Maturity Dates.

Notice of any redemption of this Bond, unless waived, shall be given by the Registrar on behalf of the Issuer by mailing an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Registrar. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the redemption

price therein specified, and from and after such date (unless the Issuer shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of this Bond.

There are outstanding obligations of the Issuer which will rank on a parity with the Series 2012 C Bonds as to liens, pledge, source of and security for payment, as follows: (1) a portion of Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the "Series 1999 Bonds"); (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000 (the "Series 2008 A Bonds"); (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (Series 2010 A Bonds"); (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (the "Series 2010 B Bonds"); (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000 (the "Series 2010 C Bonds"); and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (the "Series 2010 D Bonds") (collectively, the "Prior Bonds"); and (7) Water Refunding Revenue Bonds, Series 2012 C, dated \_\_\_\_\_, 2012, issued simultaneously herewith in the original aggregate principal amount of \$ \_\_\_\_\_ (the "Series 2012 C Bonds")

The Bonds and the interest thereon are payable only from and are secured by the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Prior Bonds and the Series 2012 C Bonds and from moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account established under the Ordinance, and the unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose and to make the other payments required by the Ordinance. This Bond does not constitute an indebtedness of the Issuer within any constitutional or statutory provision or limitation, nor shall the Issuer be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account and unexpended proceeds of the Bonds. Under the Ordinance, the Issuer has covenanted and agreed to fix, establish and collect just and equitable rates or charges for the use of the services and facilities of the System and to revise the same from time to time as will always be sufficient to pay all operating expenses of the System and to leave a balance each year equal to at least 120% of the maximum amount payable in any year for principal of and interest on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds, including the Series 2012 C Bonds and the Prior 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 Ordinance. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds except for accrued interest thereon shall be applied solely to (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds, (ii) paying a portion of the outstanding principal of and all accrued interest on the Series 1999 Bonds; (iii) funding the Series 2012 C Bonds Reserve Account; and (iv) paying costs of issuance of the Series 2012 C Bonds and the Series 2012 D Bonds and related costs, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the Registered Owners of the Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by said Issuer for the prompt payment of the principal of and interest on the Bonds of which this Bond is one.

This Bond, under the provisions of the Act is and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the Ordinance.

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

This Bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

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

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the CITY OF FAIRMONT has caused this Bond to be signed by its Mayor and, and its corporate seal to be imprinted hereon and attested by its Clerk, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

(Manual or Facsimile Signature)  
Mayor

ATTEST:

(Manual or Facsimile Signature)  
Clerk

CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION

This Bond is one of the fully registered Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto is the complete text of the opinion of Steptoe & Johnson PLLC, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Bonds.

Dated: \_\_\_\_\_, 2012.

\_\_\_\_\_,

as Registrar

By \_\_\_\_\_  
Its Authorized Officer

ASSIGNMENT

Social Security or Other Identifying Number of Assignee \_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_ the within Bond and does hereby irrevocably constitute and appoint

\_\_\_\_\_ to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

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

\_\_\_\_\_

SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

City of Fairmont, West Virginia  
Water Refunding Revenue Bonds, Series 2012 D

**SUPPLEMENTAL PARAMETERS RESOLUTION**

SUPPLEMENTAL RESOLUTION PROVIDING PARAMETERS AS TO THE PRINCIPAL AMOUNTS, DATES, MATURITY DATES, INTEREST RATES, INTEREST AND PRINCIPAL PAYMENT DATES AND OTHER TERMS OF THE WATER REFUNDING REVENUE BONDS, SERIES 2012 D; AUTHORIZING AND APPROVING A BOND PURCHASE AGREEMENT; A COMMITMENT FOR MUNICIPAL BOND INSURANCE; THE SALE AND DELIVERY OF SUCH BONDS TO THE ORIGINAL PURCHASER; APPOINTING A REGISTRAR AND PAYING AGENT FOR SUCH BONDS; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

**WHEREAS**, the City of Fairmont (the "Issuer") in the County of Marion, State of West Virginia, is a municipal corporation and political subdivision of said State, the governing body of which is its Council (the "Governing Body");

**WHEREAS**, the Governing Body has duly and officially enacted on March 27, 2012 which became effective on April 26, 2012, an Ordinance (the "Ordinance") entitled:

AN ORDINANCE AUTHORIZING THE REFUNDING OF THE ISSUER'S OUTSTANDING WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997 A; WATER REVENUE BONDS, SERIES 1998 AND A PORTION OF THE WATER REVENUE BONDS, SERIES 1999 AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, AND PAYING COSTS OF ISSUANCE AND RELATED COSTS, THROUGH THE ISSUANCE OF WATER REFUNDING REVENUE BONDS, SERIES 2012 C (BANK QUALIFIED) OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$10,000,000; AND WATER REFUNDING REVENUE BONDS, SERIES 2012 D (NON-BANK QUALIFIED) OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$30,000,000 PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TAX AND NON-ARBITRAGE CERTIFICATE, AN OFFICIAL STATEMENT, A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER DOCUMENTS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

**WHEREAS**, capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Ordinance (the “Bond Legislation”) when used herein;

**WHEREAS**, the Ordinance provides for the issuance by the Issuer of its Water Refunding Revenue Bonds, Series 2012 C in an aggregate principal amount not to exceed \$10,000,000 (the “Series 2012 C Bonds”) and Water Refunding Revenue Bonds, Series 2012 D in an aggregate principal amount not to exceed \$30,000,000 (the “Series 2012 D Bonds”), in accordance with Chapter 8, Article 19 and Chapter 13, Article 2 of the West Virginia Code of 1931, as amended (the “Act”);

**WHEREAS**, the Issuer is advised that current market conditions are such that interest savings would be realized from the current refunding of its outstanding Water Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of \$10,260,000 (the “Series 1997 Bonds”) and the Issuer has determined that it is currently in the best interest of its residents to currently refund the Series 1997 Bonds pursuant to the issuance of the Series 2012 D Bonds;

**WHEREAS**, the Issuer is advised that current market conditions are such that interest savings would be realized from the current partial refunding of its outstanding Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the “Series 1999 Bonds”) and the Issuer has determined that it is currently in the best interest of its residents to currently partially refund the Series 1999 Bonds pursuant to the issuance of the Series 2012 D Bonds;

**WHEREAS**, the Issuer is advised that current market conditions are such that interest savings would be realized from the current refunding of its outstanding Water Revenue Bonds, Series 1998, dated December 15, 1998, issued in the original aggregate principal amount of \$9,600,000 (the “Series 1998 Bonds”) and the Issuer has determined that it is currently in the best interest of its residents to currently refund the Series 1998 Bonds pursuant to the issuance of its Series 2012 D Bonds;

**WHEREAS**, the Ordinance further provided that the exact dates, amounts, maturities, interest rates, redemption provisions, purchase price and other terms of the Series 2012 D Bonds should be established by Supplemental Resolution or by Certificate of Determinations, that a Registrar, Paying Agent and Depository Bank be designated, that Bond Purchase Agreement, a Continuing Disclosure Agreement, Registrar Agreement and an Official Statement be approved and that other matters pertaining to the Series 2012 D Bonds be provided for by a Supplemental Resolution of the Governing Body or pursuant to a Certificate of Determinations, that additional covenants and provisions relating to the Series 2012 D Bonds be provided therein, and that other matters pertaining to the Series 2012 D Bonds be provided for by a supplemental resolution of this Governing Body or by Certificate of Determinations;

**WHEREAS**, the Series 2012 D Bonds are proposed to be purchased by Crews & Associates, Inc., Charleston, West Virginia and Piper Jaffray & Co., Charleston, West Virginia (collectively, the “Original Purchaser”), pursuant to a bond purchase agreement between the Original Purchaser and the Issuer, to be dated the date of execution thereof (the “Bond Purchase Agreement”);

**WHEREAS**, the Governing Body has determined that, in order to obtain the best possible savings for the City in the current interest rate environment, the Mayor shall be empowered and authorized to execute the Bond Purchase Agreement, within the parameters set forth herein, at such time as the Mayor shall determine most advantageous to the Issuer, or not at all; and

**WHEREAS**, the Governing Body deems it essential and desirable that this supplemental parameters resolution (the “Supplemental Parameters Resolution”) be adopted, that the Bond Purchase

Agreement, the Continuing Disclosure Agreement, the Tax and Non-Arbitrage Certificate and the Registrar Agreement hereinafter provided for be entered into by the Issuer, that the Official Statement relating to the Series 2012 D Bonds, hereinafter described, be approved, that the Mayor be authorized to enter into the Bond Purchase Agreement within the parameters hereby approved by the Governing Body, and that other matters relating to the Series 2012 D Bonds be herein provided for all in accordance with the Ordinance;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAIRMONT:**

SECTION 1. The Issuer hereby approves the substitution of Piper Jaffray & Co. for Raymond James Financials, Inc. as one of the purchasers of the Series 2012 D Bonds, along with Crews & Associates, Inc.

SECTION 2. For the purposes of (i) paying the entire outstanding principal balance of and all accrued interest on the Issuer's outstanding Series 1997 Bonds; (ii) paying the entire outstanding principal balance of and all accrued interest on the Issuer's outstanding Series 1998 Bonds; (iii) paying a portion of the outstanding principal balance of and all accrued interest on such principal, the Issuer's outstanding Series 1999 Bonds; (iv) funding a debt service reserve account for the Series 2012 D Bonds; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs, the Governing Body of the Issuer hereby authorizes and orders the issuance of the Series 2012 D Bonds in an aggregate principal amount not to exceed \$30,000,000, provided that the Net Present Value of the savings of such refunding shall not be less than 4.0%.

SECTION 3. The Issuer instructs the Commission to transfer moneys in the Series 1999 Bonds Reserve Account to the Series 2012 D Bonds Reserve Account when the Series 1999 Bonds are paid in full. The Issuer covenants and agrees not to use the Series 1999 Bonds Reserve Account for the final payment of the Series 1999 Bonds.

SECTION 4. Pursuant to the Ordinance and the Act, this Supplemental Parameters Resolution is adopted and there are hereby authorized and ordered to be issued the Series 2012 D Bonds. The Series 2012 D Bonds shall be issued in the aggregate principal amount not to exceed \$30,000,000, bear interest at a rate not to exceed 6.0%, payable semiannually on January 1 and July 1 of each year, and shall mature on July 1 in such years, shall be dated such date, upon original issuance, shall mature in such principal amounts on such dates (with final maturity no later than July 1, 2029) shall be subject to such redemption provisions, all as shall subsequently be approved by the Mayor pursuant to the execution and delivery by the Mayor of a Certificate of Determinations with respect to the Series 2012 D Bonds, dated the date of the Bond Purchase Agreement, the form of which is attached hereto as EXHIBIT A and approved hereby (the "Certificate of Determinations"); and shall be substantially in the form set forth in the Ordinance, provided however, that the specific terms of the Series 2012 D Bonds shall be as determined by the Mayor at the time of the execution of the Bond Purchase Agreement and as approved by the Mayor in the Certificate of Determinations. All other provisions relating to the Series 2012 D Bonds shall be as provided in the Ordinance.

SECTION 5. The Bond Purchase Agreement by and between the Original Purchaser and the Issuer, substantially in the forms to be approved pursuant to the execution and delivery by the Mayor of the Certificate of Determinations, and the execution and delivery (in multiple counterparts) by the Mayor thereof shall be and the same are hereby authorized, approved, and directed. The Mayor shall execute and deliver the Bond Purchase Agreement with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Bond Purchase Agreement by the Mayor shall be conclusive evidence of any approval required by this Section, and authorization of any action required by the Bond

Purchase Agreement relating to the issuance and sale of the Series 2012 D Bonds, including the payment of all necessary fees and expenses in connection therewith.

SECTION 6. Proceeds of the Series 2012 D Bonds shall be expended solely for the purposes set forth herein.

SECTION 7. The Issuer is advised and hereby finds that based upon the assumed principal amount, maturity schedule and interest rates for the Series 2012 D Bonds presented to the Issuer by the Original Purchaser, the Series 2012 D Bonds show a net present value debt service savings to the Issuer after deducting all expenses of the refunding of the Series 1997 Bonds, the Series 1998 Bonds and a portion of the Series 1999 Bonds and the costs of issuing the Series 2012 D Bonds.

SECTION 8. The Tax and Non-Arbitrage Certificate, to be dated the date of execution and delivery of the Series 2012 D Bonds (the "Tax Certificate"), and executed and delivered by the Issuer, substantially in the form to be approved pursuant to the execution and delivery by the Mayor of the Certificate of Determinations, and the execution and delivery (in multiple counterparts) by the Mayor thereof shall be and the same are hereby authorized, approved and directed. The Mayor shall execute and deliver the Tax Certificate with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Tax Certificate by the Mayor shall be conclusive evidence of any approval required by this Section.

SECTION 9. The Continuing Disclosure Agreement, to be dated the date of execution and delivery of the Series 2012 D Bonds (the "Disclosure Agreement"), by and between the Issuer and the Dissemination Agent named therein, substantially in the form to be approved pursuant to the execution and delivery by the Mayor of the Certificate of Determinations, and the execution and delivery (in multiple counterparts) by the Mayor thereof shall be and the same are hereby authorized, approved and directed. The Mayor shall execute and deliver the Disclosure Agreement with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Disclosure Agreement by the Mayor shall be conclusive evidence of any approval required by this Section.

SECTION 10. The distribution by the Original Purchaser of a Preliminary Official Statement (which is a "deemed final" official statement in accordance with SEC Rule 15c2-12), substantially in the form submitted to this meeting is hereby ratified and approved. The certificate of the Issuer relating to compliance with SEC Rule 15c2-12 and the execution and delivery thereof by the Mayor is hereby approved. The Official Statement to be substantially in the form of the Preliminary Official Statement, (with such changes, insertions and omissions as may be necessary or advisable in the opinion of the Mayor) and the distribution of counterparts or copies thereof by the Original Purchaser are hereby approved. The Mayor shall execute and deliver the Official Statement with such changes, insertions and omissions as may be approved. The execution of the Official Statement by the Mayor shall be conclusive evidence of any approval required by this Section.

SECTION 11. The Registrar Agreement by and between the Issuer and the Registrar designated herein, substantially in the form to be approved pursuant to the execution and delivery by the Mayor of the Certificate of Determinations, and the execution and delivery (in multiple counterparts) by the Mayor thereof shall be and the same are hereby authorized, approved and directed. The Mayor shall execute and deliver the Registrar Agreement with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Registrar Agreement by the Mayor shall be conclusive evidence of any approval required by this Section.

SECTION 12. The firm of Steptoe & Johnson PLLC, Charleston, West Virginia, is hereby appointed bond counsel to the Issuer in connection with the issuance of the Series 2012 D Bonds.

SECTION 13. The Issuer hereby appoints and designates the West Virginia Municipal Bond Commission, Charleston, West Virginia, as the Paying Agent for the Series 2012 D Bonds.

SECTION 14. The Issuer hereby appoints and designates WesBanco Bank, Inc., Wheeling, West Virginia, as the Depository Bank for the Series 2012 D Bonds.

SECTION 15. The Issuer hereby appoints and designates WesBanco Bank, Inc., Wheeling, West Virginia, as the Registrar.

SECTION 16. Upon approval by the Mayor, the Issuer may purchase insurance and in such case the covenants and provisions to be required by the Bond Insurer as a condition precedent to issuance of its Insurance Policy for the Bonds and shall be set forth in Exhibit A to the Certificate of Determinations.

SECTION 17. The Mayor and Clerk are hereby authorized and directed to execute and deliver such other documents and certificates, required or desirable in connection with the Series 2012 D Bonds to the end that the Series 2012 D Bonds may be delivered on a timely basis to the Original Purchaser pursuant to the Bond Purchase Agreement.

SECTION 18. The notice addresses for the Depository Bank, Paying Agent, Registrar and Original Purchaser shall be as follows:

PAYING AGENT

West Virginia Municipal Bond Commission  
1207 Quarrier Street, Suite 401  
Charleston, West Virginia 25301  
Attention: Executive Director

REGISTRAR/DEPOSITORY BANK

WesBanco Bank, Inc.  
One Bank Plaza  
Wheeling, West Virginia 26003  
Attention: Trust Department

ORIGINAL PURCHASER

Crews & Associates, Inc.  
300 Summers Street, Suite 930  
Charleston, West Virginia 25301-1631

Piper Jaffray & Co.  
405 Capitol Street, Suite 613  
Charleston, West Virginia 25301

SECTION 19. The issuance of the Series 2012 D Bonds is in the public interest, serves a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

SECTION 20. The Issuer hereby covenants and agrees that it will not permit at any time or times any of the proceeds of the Series 2012 D Bonds or any other funds of the Issuer to be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause any of the

Series 2012 D Bonds or Prior Bonds to be an "arbitrage bond" as defined in Section 148 of the Code, and the regulations promulgated pursuant thereto. The Mayor of the Issuer is authorized and directed to execute and deliver such further instruments or agreements as shall be required to provide further assurances of the Issuer's compliance with this covenant.

SECTION 21. The Mayor and Clerk, and all other appropriate officers and employees of the Issuer are hereby authorized, empowered and directed to do any and all things proper and necessary to cause the Series 2012 D Bonds to be duly and properly issued by the Issuer and delivered to the Original Purchaser as herein authorized and to otherwise facilitate the transaction contemplated by this Supplemental Parameters Resolution, and no further authority shall be necessary to authorize any such officers or employees to give such further assurance and do such further acts as may be legally required.

SECTION 22. This Supplemental Parameters Resolution shall be effective immediately following adoption hereof.

[Remainder of Page Intentionally Left Blank]

Adopted this 12th day of June, 2012.

CITY OF FAIRMONT

[SEAL]

By: \_\_\_\_\_  
Its: Mayor

CERTIFICATION

Certified a true copy of a Supplemental Parameters Resolution duly adopted by the Council of the CITY OF FAIRMONT on June 12, 2012, which Supplemental Parameters Resolution has not been repealed, rescinded, modified, amended or revoked, as of the date hereof.

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

268460.00017

**EXHIBIT B**

**FORM OF CERTIFICATE OF DETERMINATIONS**

City of Fairmont, West Virginia  
Water Refunding Revenue Bonds, Series 2012 D

**CERTIFICATE OF DETERMINATIONS**

The undersigned, William Burdick, Mayor of the City of Fairmont (the "Issuer"), in accordance with the Supplemental Parameters Resolution adopted by the Governing Body of the Issuer on June 12, 2012 (the "Supplemental Parameters Resolution"), with respect to the Issuer's Water Refunding Revenue Bonds, Series 2012 D (the "Series 2012 D Bonds") hereby finds and determines this \_\_\_\_\_ day of \_\_\_\_\_, 2012 Ds follows:

1. The Series 2012 D Bonds shall be dated \_\_\_\_\_, 2012 shall bear interest on January 1 and July 1 of each year commencing \_\_\_\_\_ 1, 20\_\_\_\_\_.
2. The Series 2012 D Bonds shall be issued in the aggregate principal amount of \$\_\_\_\_\_. The interest rates on the Series 2012 D Bonds do not exceed 6.0%, being the maximum interest rate authorized by the Supplemental Parameters Resolution. The Net Present Value of the savings realized from such refunding is not less than 4.0%.
3. The Series 2012 D Bonds shall mature in the amounts and on the dates and shall be subject to mandatory sinking fund redemption in the amounts and on the dates set forth on Schedule 1 attached hereto and incorporated herein.
4. The Series 2012 D Bonds shall bear interest at the rates and produce the yields set forth on Schedule 1 attached hereto and incorporated herein.
5. The Series 2012 D Bonds shall be subject to optional and mandatory redemption as set forth on Schedule 3 attached hereto and incorporated herein.
6. The Series 2012 D Bonds shall be sold to Crews & Associates, Inc. and Piper Jaffray & Co. (collectively, the "Underwriter"), pursuant to the terms of the Bond Purchase Agreement by and between the Underwriter and the Issuer, at an aggregate purchase price of \$\_\_\_\_\_ (representing par value less an Underwriter's discount of \$\_\_\_\_\_ and a net original issue discount of \$\_\_\_\_\_).
7. The forms of the Bond Purchase Agreement, the Tax Certificate, the Continuing Disclosure Agreement, the Official Statement, the Rule 15c2-12 Certificate and the Registrar Agreement attached hereto are hereby approved.
8. The covenants and provisions to be required by the Bond Insurer as a condition precedent to issuance of its Insurance Policy for the Bonds set forth in Exhibit A, and incorporated herein by reference as part hereof, such covenants and provisions to be supplemental and amendatory of, and controlling with respect to the Bond Legislation and applicable to the Bonds.

The undersigned hereby certifies that the foregoing terms and conditions of the Series 2012 D Bonds are within the parameters prescribed by the Supplemental Parameters Resolution, and the Series 2012 D Bonds may be issued with such terms and conditions as authorized by the Supplemental Parameters Resolution.

WITNESS my signature on the day and year first written above.

CITY OF FAIRMONT

By: \_\_\_\_\_  
Its: Mayor

268460.00017

**SCHEDULE 1**

**SERIES 2012 D BOND TERMS**

<u>Bond No.</u>	<u>Maturity Date</u> (December 1)	<u>Principal</u> <u>Amount</u> (thousands)	<u>Interest</u> <u>Rate</u>	<u>Price or</u> <u>Yield</u>
AR-1	20__	\$ ____	__ . ____ %	__ . ____ %

**SCHEDULE 2**

**SERIES 2012 D BONDS REDEMPTION PROVISIONS:**

[to be inserted after pricing]

City of Fairmont, West Virginia  
Water Refunding Revenue Bonds, Series 2012 D

**SECOND SUPPLEMENTAL RESOLUTION**

SECOND SUPPLEMENTAL RESOLUTION PROVIDING TERMS AND OTHER PROVISIONS RELATING TO A COMMITMENT FOR MUNICIPAL BOND INSURANCE FOR THE WATER REFUNDING REVENUE BONDS, SERIES 2012 D; APPROVING THE FORM OF THE PRELIMINARY OFFICIAL STATEMENT AND MAKING OTHER PROVISIONS AS TO THE BONDS.

**WHEREAS**, the City of Fairmont (the “Issuer”) in the County of Marion, State of West Virginia, is a municipal corporation and political subdivision of said State, the governing body of which is its Council (the “Governing Body”);

**WHEREAS**, the Governing Body has duly and officially enacted on March 27, 2012 which became effective on April 26, 2012, an Ordinance (the “Ordinance”) entitled:

AN ORDINANCE AUTHORIZING THE REFUNDING OF THE ISSUER’S OUTSTANDING WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997 A; WATER REVENUE BONDS, SERIES 1998 AND A PORTION OF THE WATER REVENUE BONDS, SERIES 1999 AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, AND PAYING COSTS OF ISSUANCE AND RELATED COSTS, THROUGH THE ISSUANCE OF WATER REFUNDING REVENUE BONDS, SERIES 2012 C (BANK QUALIFIED) OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$10,000,000; AND WATER REFUNDING REVENUE BONDS, SERIES 2012 D (NON-BANK QUALIFIED) OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$30,000,000 PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TAX AND NON-ARBITRAGE CERTIFICATE, AN OFFICIAL STATEMENT, A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER DOCUMENTS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

**WHEREAS**, the Governing Body has duly and officially adopted on June 12, 2012, a Supplemental Parameters Resolution (the “Supplemental Parameters Resolution”) entitled:

SUPPLEMENTAL RESOLUTION PROVIDING PARAMETERS AS TO THE PRINCIPAL AMOUNTS, DATES, MATURITY DATES, INTEREST RATES, INTEREST AND PRINCIPAL PAYMENT

DATES AND OTHER TERMS OF THE WATER REFUNDING REVENUE BONDS, SERIES 2012 D; AUTHORIZING AND APPROVING A BOND PURCHASE AGREEMENT; A COMMITMENT FOR MUNICIPAL BOND INSURANCE; THE SALE AND DELIVERY OF SUCH BONDS TO THE ORIGINAL PURCHASER; APPOINTING A REGISTRAR AND PAYING AGENT FOR SUCH BONDS; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

**WHEREAS**, capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Ordinance, as supplemented (collectively, the “Bond Legislation”) when used herein;

**WHEREAS**, the Bond Legislation provides for the purchase of insurance and the covenants and provisions to be required by the Bond Insurer as a condition precedent to issuance of its Insurance Policy for the Bonds and be set forth in an exhibit to the Certificate of Determinations, attached to the Supplemental Parameters Resolution;

**WHEREAS**, the covenants and provisions required by the Bond Insurer were not available at the adoption of the Supplemental Parameters Resolution and are now available and attached hereto as Exhibit A;

**WHEREAS**, the Governing Body has been provided the form of the Preliminary Official Statement for approval; attached hereto as Exhibit B and incorporated herein by reference; and

**WHEREAS**, the Governing Body deems it essential and desirable that this second supplemental resolution (the “Second Supplemental Resolution”) be adopted, that the covenants and provisions required by the Bond Insurer are hereby approved by the Governing Body, that the Preliminary Official Statement be approved and that other matters relating to the Series 2012 D Bonds herein provided for all in accordance with the Bond Legislation;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAIRMONT:**

**SECTION 1.** The Issuer hereby approves the purchase of insurance and the covenants and provisions to be required by the Bond Insurer as a condition precedent to issuance of its Insurance Policy for the Bonds as shall be set forth in Exhibit A attached hereto.

**SECTION 2.** The Issuer hereby approves the Preliminary Official Statement as set forth in Exhibit B attached hereto.

**SECTION 3.** This Second Supplemental Resolution shall be effective immediately following adoption hereof.

[Remainder of Page Intentionally Left Blank]

Adopted this 12th day of September, 2012.

CITY OF FAIRMONT

By: \_\_\_\_\_  
Its: Mayor

CERTIFICATION

Certified a true copy of a Second Supplemental Resolution duly adopted by the Council of the CITY OF FAIRMONT on September 12, 2012, which Second Supplemental Resolution has not been repealed, rescinded, modified, amended or revoked, as of the date hereof.

[SEAL]

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

268460.00017

**EXHIBIT A**  
**BOND INSURANCE COVENANTS**

**A.**           ORDINANCE REQUIREMENTS

The Ordinance shall incorporate the following requirements either in one section or article entitled "Provisions Relating to Bond Insurance" (or the like), **the provisions of which section or article shall be stated in the Ordinance to govern, notwithstanding anything to the contrary set forth in the Ordinance**, or individually in the appropriate sections:

- (a) "Insurance Policy" shall be defined as follows: "the insurance policy issued by the Insurer guaranteeing the scheduled payment of principal of and interest on the Bonds when due". "Insurer" shall be defined as follows: "Assured Guaranty Municipal Corp. , a New York stock insurance company, or any successor thereto or assignee thereof".
- (b) The prior written consent of the Insurer shall be a condition precedent to the deposit of any credit instrument provided in lieu of a cash deposit into the Debt Service Reserve Fund, if any. Notwithstanding anything to the contrary set forth in the Ordinance, amounts on deposit in the Debt Service Reserve Fund shall be applied solely to the payment of debt service due on the Bonds.
- (c) The Insurer shall be deemed to be the sole holder of the Insured Bonds for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the holders of the Bonds insured by it are entitled to take pursuant to the Ordinance pertaining to (i) defaults and remedies and (ii) the duties and obligations of the Paying Agent. Remedies granted to the Bondholders shall expressly include mandamus.
- (d) The security for the Bonds shall include a pledge of any agreement with any underlying obligor that is a source of payment for the Bonds and a default under any such agreement shall constitute an Event of Default under the Ordinance.
- (e) If acceleration is permitted under the Ordinance, the maturity of Bonds insured by the Insurer shall not be accelerated without the consent of the Insurer and in the event the maturity of the Bonds is accelerated, the Insurer may elect, in its sole discretion, to pay accelerated principal and interest accrued on such principal to the date of acceleration (to the extent unpaid by the Issuer) and the Paying Agent shall be required to accept such amounts. Upon payment of such accelerated principal and interest accrued to the acceleration date as provided above, the Insurer's obligations under the Insurance Policy with respect to such Bonds shall be fully discharged.
- (f) No grace period for a covenant default shall exceed 30 days or be extended for more than 60 days, without the prior written consent of the Insurer. No grace period shall be permitted for payment defaults.
- (g) The Insurer shall be included as a third party beneficiary to the Ordinance.
- (h) Upon the occurrence of an extraordinary optional, special or extraordinary mandatory redemption in part, the selection of Bonds to be redeemed shall be subject to the approval

of the Insurer. The exercise of any provision of the Ordinance which permits the purchase of Bonds in lieu of redemption shall require the prior written approval of the Insurer if any Bond so purchased is not cancelled upon purchase.

- (i) Any amendment, supplement, modification to, or waiver of, the Ordinance or any other transaction document, including any underlying security agreement (each a "Related Document"), that requires the consent of Bondowners or adversely affects the rights and interests of the Insurer shall be subject to the prior written consent of the Insurer.
- (j) Unless the Insurer otherwise directs, upon the occurrence and continuance of an Event of Default or an event which with notice or lapse of time would constitute an Event of Default, amounts on deposit in the Construction Fund shall not be disbursed, but shall instead be applied to the payment of debt service or redemption price of the Bonds.
- (k) The rights granted to the Insurer under the Ordinance or any other Related Document to request, consent to or direct any action are rights granted to the Insurer in consideration of its issuance of the Insurance Policy. Any exercise by the Insurer of such rights is merely an exercise of the Insurer's contractual rights and shall not be construed or deemed to be taken for the benefit, or on behalf, of the Bondholders and such action does not evidence any position of the Insurer, affirmative or negative, as to whether the consent of the Bondowners or any other person is required in addition to the consent of the Insurer.
- (l) Only (1) cash, (2) non-callable direct obligations of the United States of America ("Treasuries"), (3) evidences of ownership of proportionate interests in future interest and principal payments on Treasuries held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying Treasuries are not available to any person claiming through the custodian or to whom the custodian may be obligated, (4) subject to the prior written consent of the Insurer, pre-refunded municipal obligations rated "AAA" and "Aaa" by S&P and Moody's, respectively, or (5) subject to the prior written consent of the Insurer, securities eligible for "AAA" defeasance under then existing criteria of S & P or any combination thereof, shall be used to effect defeasance of the Bonds unless the Insurer otherwise approves.

To accomplish defeasance, the Issuer shall cause to be delivered (i) a report of an independent firm of nationally recognized certified public accountants or such other accountant as shall be acceptable to the Insurer ("Accountant") verifying the sufficiency of the escrow established to pay the Bonds in full on the maturity or redemption date ("Verification"), (ii) an Escrow Deposit Agreement (which shall be acceptable in form and substance to the Insurer), (iii) an opinion of nationally recognized bond counsel to the effect that the Bonds are no longer "Outstanding" under the Ordinance and (iv) a certificate of discharge of the Paying Agent with respect to the Bonds; each Verification and defeasance opinion shall be acceptable in form and substance, and addressed, to the Issuer, Paying Agent and Insurer. The Insurer shall be provided with final drafts of the above-referenced documentation not less than five business days prior to the funding of the escrow.

Bonds shall be deemed "Outstanding" under the Ordinance unless and until they are in fact paid and retired or the above criteria are met.

- (m) Amounts paid by the Insurer under the Insurance Policy shall not be deemed paid for purposes of the Ordinance and the Bonds relating to such payments shall remain Outstanding and continue to be due and owing until paid by the Issuer in accordance with the Ordinance. The Ordinance shall not be discharged unless all amounts due or to become due to the Insurer have been paid in full or duly provided for.
- (n) Each of the Issuer and Paying Agent covenant and agree to take such action (including, as applicable, filing of UCC financing statements and continuations thereof) as is necessary from time to time to preserve the priority of the pledge of the Trust Estate under applicable law.
- (o) Claims Upon the Insurance Policy and Payments by and to the Insurer.

If, on the third Business Day prior to the related scheduled interest payment date or principal payment date ("Payment Date") there is not on deposit with the Paying Agent, after making all transfers and deposits required under the Ordinance, moneys sufficient to pay the principal of and interest on the Bonds due on such Payment Date, the Paying Agent shall give notice to the Insurer and to its designated agent (if any) (the "Insurer's Fiscal Agent") by telephone or telecopy of the amount of such deficiency by 12:00 noon, New York City time, on such Business Day. If, on the second Business Day prior to the related Payment Date, there continues to be a deficiency in the amount available to pay the principal of and interest on the Bonds due on such Payment Date, the Paying Agent shall make a claim under the Insurance Policy and give notice to the Insurer and the Insurer's Fiscal Agent (if any) by telephone of the amount of such deficiency, and the allocation of such deficiency between the amount required to pay interest on the Bonds and the amount required to pay principal of the Bonds, confirmed in writing to the Insurer and the Insurer's Fiscal Agent by 12:00 noon, New York City time, on such second Business Day by filling in the form of Notice of Claim and Certificate delivered with the Insurance Policy.

The Paying Agent shall designate any portion of payment of principal on Bonds paid by the Insurer, whether by virtue of mandatory sinking fund redemption, maturity or other advancement of maturity, on its books as a reduction in the principal amount of Bonds registered to the then current Bondholder, whether DTC or its nominee or otherwise, and shall issue a replacement Bond to the Insurer, registered in the name of Assured Guaranty Municipal Corp., in a principal amount equal to the amount of principal so paid (without regard to authorized denominations); provided that the Paying Agent's failure to so designate any payment or issue any replacement Bond shall have no effect on the amount of principal or interest payable by the Issuer on any Bond or the subrogation rights of the Insurer.

The Paying Agent shall keep a complete and accurate record of all funds deposited by the Insurer into the Policy Payments Account (defined below) and the allocation of such funds to payment of interest on and principal of any Bond. The Insurer shall have the

right to inspect such records at reasonable times upon reasonable notice to the Paying Agent.

Upon payment of a claim under the Insurance Policy, the Paying Agent shall establish a separate special purpose trust account for the benefit of Bondholders referred to herein as the "Policy Payments Account" and over which the Paying Agent shall have exclusive control and sole right of withdrawal. The Paying Agent shall receive any amount paid under the Insurance Policy in trust on behalf of Bondholders and shall deposit any such amount in the Policy Payments Account and distribute such amount only for purposes of making the payments for which a claim was made. Such amounts shall be disbursed by the Paying Agent to Bondholders in the same manner as principal and interest payments are to be made with respect to the Bonds under the sections hereof regarding payment of Bonds. It shall not be necessary for such payments to be made by checks or wire transfers separate from the check or wire transfer used to pay debt service with other funds available to make such payments. Notwithstanding anything herein to the contrary, the Issuer agrees to pay to the Insurer (i) a sum equal to the total of all amounts paid by the Insurer under the Insurance Policy (the "Insurer Advances"); and (ii) interest on such Insurer Advances from the date paid by the Insurer until payment thereof in full, payable to the Insurer at the Late Payment Rate per annum (collectively, the "Insurer Reimbursement Amounts"). "Late Payment Rate" means the lesser of (a) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank at its principal office in The City of New York, as its prime or base lending rate (any change in such rate of interest to be effective on the date such change is announced by JPMorgan Chase Bank) plus 3%, and (ii) the then applicable highest rate of interest on the Bonds and (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Late Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. The Issuer hereby covenants and agrees that the Insurer Reimbursement Amounts are secured by a lien on and pledge of the Gross Revenues and payable from such Gross Revenues on a parity with debt service due on the Bonds.

Funds held in the Policy Payments Account shall not be invested by the Paying Agent and may not be applied to satisfy any costs, expenses or liabilities of the Paying Agent. Any funds remaining in the Policy Payments Account following a Bond payment date shall promptly be remitted to the Insurer.

- (p) The Insurer shall, to the extent it makes any payment of principal of or interest on the Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Insurance Policy. Each obligation of the Issuer to the Insurer under the Related Documents shall survive discharge or termination of such Related Documents.
- (q) The Issuer shall pay or reimburse the Insurer any and all charges, fees, costs and expenses that the Insurer may reasonably pay or incur in connection with (i) the administration, enforcement, defense or preservation of any rights or security in any Related Document; (ii) the pursuit of any remedies under the Ordinance or any other Related Document or otherwise afforded by law or equity, (iii) any amendment, waiver or other action with respect to, or related to, the Ordinance or any other Related

Document whether or not executed or completed, or (iv) any litigation or other dispute in connection with the Ordinance or any other Related Document or the transactions contemplated thereby, other than costs resulting from the failure of the Insurer to honor its obligations under the Insurance Policy. The Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect of the Ordinance or any other Related Document.

- (r) After payment of reasonable expenses of the Paying Agent, the application of funds realized upon default shall be applied to the payment of expenses of the Issuer or rebate only after the payment of past due and current debt service on the Bonds and amounts required to restore the Debt Service Reserve Fund to the Debt Service Reserve Requirement.
- (s) The Insurer shall be entitled to pay principal or interest on the Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Issuer (as such terms are defined in the Insurance Policy) and any amounts due on the Bonds as a result of acceleration of the maturity thereof in accordance with the Ordinance, whether or not the Insurer has received a Notice of Nonpayment (as such terms are defined in the Insurance Policy) or a claim upon the Insurance Policy.
- (t) The notice address of the Insurer is: Assured Guaranty Municipal Corp., 31 West 52nd Street, New York, New York 10019, Attention: Managing Director – Surveillance, Re: Policy No. \_\_\_\_, Telephone: (212) 826-0100; Telecopier: (212) 339-3556. In each case in which notice or other communication refers to an Event of Default, then a copy of such notice or other communication shall also be sent to the attention of the General Counsel and shall be marked to indicate "URGENT MATERIAL ENCLOSED."
- (u) The Insurer shall be provided with the following information by the Issuer or Paying Agent, as the case may be:
  - (i) Annual audited financial statements within 150 days after the end of the Issuer's fiscal year (together with a certification of the Issuer that it is not aware of any default or Event of Default under the Ordinance), and the Issuer's annual budget within 30 days after the approval thereof together with such other information, data or reports as the Insurer shall reasonably request from time to time;
  - (ii) Notice of any draw upon the Debt Service Reserve Fund within two Business Days after knowledge thereof other than (i) withdrawals of amounts in excess of the Debt Service Reserve Requirement and (ii) withdrawals in connection with a refunding of Bonds;
  - (iii) Notice of any default known to the Paying Agent or Issuer within five Business Days after knowledge thereof;
  - (iv) Prior notice of the advance refunding or redemption of any of the Bonds, including the principal amount, maturities and CUSIP numbers thereof;

- (v) Notice of the resignation or removal of the Paying Agent and Bond Registrar and the appointment of, and acceptance of duties by, any successor thereto;
- (vi) Notice of the commencement of any proceeding by or against the Issuer commenced under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an "Insolvency Proceeding");
- (vii) Notice of the making of any claim in connection with any Insolvency Proceeding seeking the avoidance as a preferential transfer of any payment of principal of, or interest on, the Bonds;
- (viii) A full original transcript of all proceedings relating to the execution of any amendment, supplement, or waiver to the Related Documents; and
- (ix) All reports, notices and correspondence to be delivered to Bondholders under the terms of the Related Documents.

In addition, to the extent that the Issuer has entered into a continuing disclosure agreement, covenant or undertaking with respect to the Bonds, all information furnished pursuant to such agreements shall also be provided to the Insurer, simultaneously with the furnishing of such information.

- (v) The Insurer shall have the right to receive such additional information as it may reasonably request.
- (w) The Issuer will permit the Insurer to discuss the affairs, finances and accounts of the Issuer or any information the Insurer may reasonably request regarding the security for the Bonds with appropriate officers of the Issuer and will use commercially reasonable efforts to enable the Insurer to have access to the facilities, books and records of the Issuer on any business day upon reasonable prior notice.
- (x) The Issuer shall notify the Insurer of any failure of the Issuer to provide notices, certificates and other information under the transaction documents.
- (y) Notwithstanding satisfaction of the other conditions to the issuance of Additional Bonds set forth in the Ordinance, no such issuance may occur (1) if an Event of Default (or any event which, once all notice or grace periods have passed, would constitute an Event of Default) exists unless such default shall be cured upon such issuance and (2) unless the Debt Service Reserve Fund is fully funded at the Debt Service Reserve Requirement (including the proposed issue) upon the issuance of such Additional Bonds, in either case unless otherwise permitted by the Insurer.
- (z) In determining whether any amendment, consent, waiver or other action to be taken, or any failure to take action, under the Ordinance would adversely affect the security for the

Bonds or the rights of the Bondholders, the Paying Agent shall consider the effect of any such amendment, consent, waiver, action or inaction as if there were no Insurance Policy.

- (aa) No contract shall be entered into or any action taken by which the rights of the Insurer or security for or sources of payment of the Bonds may be impaired or prejudiced in any material respect except upon obtaining the prior written consent of the Insurer.
- (bb) If the Bonds are issued for refunding purposes, there shall be delivered an opinion of Bond Counsel addressed to the Insurer (or a reliance letter relating thereto), or a certificate of discharge of the Paying Agent for the Refunded Bonds, to the effect that, upon the making of the required deposit to the escrow, the legal defeasance of the Refunded Bonds shall have occurred. If the Refunded Bonds are insured by Assured Guaranty Municipal Corp., at least three business days prior to the proposed date for delivery of the Policy with respect to the Refunding Bonds, the Insurer shall also receive (i) the verification letter, of which the Insurer shall be an addressee, by an independent firm of certified public accountants which is either nationally recognized or otherwise acceptable to the Insurer, of the adequacy of the escrow established to provide for the payment of the Refunded Bonds in accordance with the terms and provisions of the Escrow Deposit Agreement, and (ii) the form of an opinion of Bond Counsel addressed to the Insurer (or a reliance letter relating thereto) to the effect that the Escrow Deposit Agreement is a valid and binding obligation of the parties thereto, enforceable in accordance with its terms (such Escrow Deposit Agreement shall provide that no amendments are permitted without the prior written consent of the Insurer). An executed copy of each of such opinion and reliance letter, if applicable, or Paying Agent's discharge certificate, as the case may be, shall be forwarded to the Insurer prior to delivery of the Bonds.
- (cc) Any interest rate exchange agreement ("Swap Agreement") entered into by the Issuer shall meet the following conditions: (i) the Swap Agreement must be entered into to manage interest costs related to, or a hedge against (a) assets then held, or (b) debt then outstanding, or (iii) debt reasonably expected to be issued within the next twelve (12) months, and (ii) the Swap Agreement shall not contain any leverage element or multiplier component greater than 1.0x unless there is a matching hedge arrangement which effectively off-sets the exposure from any such element or component. Unless otherwise consented to in writing by the Insurer, any uninsured net settlement, breakage or other termination amount then in effect shall be subordinate to debt service on the Bonds and on any debt on parity with the Bonds. The Issuer shall not terminate a Swap Agreement unless it demonstrates to the satisfaction of the Insurer prior to the payment of any such termination amount that such payment will not cause the Issuer to be in default under the Related Documents, including but not limited to, any monetary obligations thereunder. All counterparties or guarantors to any Swap Agreement must have a rating of at least "A-" and "A3" by Standard & Poor's ("S&P") and Moody's Investors Service ("Moody's"). If the counterparty or guarantor's rating falls below "A-" or "A3" by either S&P or Moody's, the counterparty or guarantor shall execute a credit support annex to the Swap Agreement, which credit support annex shall be acceptable to the Insurer. If the counterparty or the guarantor's long term unsecured rating falls below "Baa1" or "BBB+" by either Moody's or S&P, a replacement counterparty or guarantor, acceptable to the Insurer, shall be required.

**EXHIBIT B**  
**PRELIMINARY OFFICIAL STATEMENT**

**EXHIBIT A**  
**BOND INSURANCE COVENANTS**

## APPENDIX G

### Book-Entry Only System

1. The Depository Trust Company (“DTC”), New York, NY, will act as securities depository for the securities (the “Securities”). The Securities will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Security certificate will be issued for the Securities, in the aggregate principal amount of such issue, and will be deposited with DTC.
2. DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has a Standard & Poor’s rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).
3. Purchases of Securities under the DTC system must be made by or through Direct Participants, which will receive a credit for the Securities on DTC’s records. The ownership interest of each actual purchaser of each Security (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Securities are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Securities, except in the event that use of the book-entry system for the Securities is discontinued.

4. To facilitate subsequent transfers, all Securities deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Securities with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Securities; DTC's records reflect only the identity of the Direct Participants to whose accounts such Securities are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

5. Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Securities may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Securities, such as redemptions, tenders, defaults, and proposed amendments to the Security documents. For example, Beneficial Owners of Securities may wish to ascertain that the nominee holding the Securities for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

6. Redemption notices shall be sent to DTC. If less than all of the Securities within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

7. Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Securities unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to City as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Securities are credited on the record date (identified in a listing attached to the Omnibus Proxy).

8. Redemption proceeds, distributions, and dividend payments on the Securities will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from City or Agent, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, Agent, or City, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of City or Agent, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

9. DTC may discontinue providing its services as depository with respect to the Securities at any time by giving reasonable notice to City or Agent. Under such circumstances, in the event that a successor depository is not obtained, Security certificates are required to be printed and delivered.

10. City may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Security certificates will be printed and delivered to DTC.

11. The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that City believes to be reliable, but City takes no responsibility for the accuracy thereof.

**APPENDIX H**  
**Annual Debt Service**

APPENDIX I

Specimen Municipal Bond Insurance Policy



MUNICIPAL BOND INSURANCE POLICY

ISSUER:

BONDS: \$ in aggregate principal amount of

Policy No: -N

Effective Date:

Premium: \$

ASSURED GUARANTY MUNICIPAL CORP. ("AGM"), for consideration received, hereby UNCONDITIONALLY AND IRREVOCABLY agrees to pay to the trustee (the "Trustee") or paying agent (the "Paying Agent") (as set forth in the documentation providing for the issuance of and securing the Bonds) for the Bonds, for the benefit of the Owners or, at the election of AGM, directly to each Owner, subject only to the terms of this Policy (which includes each endorsement hereto), that portion of the principal of and interest on the Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Issuer.

On the later of the day on which such principal and interest becomes Due for Payment or the Business Day next following the Business Day on which AGM shall have received Notice of Nonpayment, AGM will disburse to or for the benefit of each Owner of a Bond the face amount of principal of and interest on the Bond that is then Due for Payment but is then unpaid by reason of Nonpayment by the Issuer, but only upon receipt by AGM, in a form reasonably satisfactory to it, of (a) evidence of the Owner's right to receive payment of the principal or interest then Due for Payment and (b) evidence, including any appropriate instruments of assignment, that all of the Owner's rights with respect to payment of such principal or interest that is Due for Payment shall thereupon vest in AGM. A Notice of Nonpayment will be deemed received on a given Business Day if it is received prior to 1:00 p.m. (New York time) on such Business Day; otherwise, it will be deemed received on the next Business Day. If any Notice of Nonpayment received by AGM is incomplete, it shall be deemed not to have been received by AGM for purposes of the preceding sentence and AGM shall promptly so advise the Trustee, Paying Agent or Owner, as appropriate, who may submit an amended Notice of Nonpayment. Upon disbursement in respect of a Bond, AGM shall become the owner of the Bond, any appurtenant coupon to the Bond or right to receipt of payment of principal or interest on the Bond and shall be fully subrogated to the rights of the Owner, including the Owner's right to receive payments under the Bond, to the extent of any payment by AGM hereunder. Payment by AGM to the Trustee or Paying Agent for the benefit of the Owners shall, to the extent thereof, discharge the obligation of AGM under this Policy.

Except to the extent expressly modified by an endorsement hereto, the following terms shall have the meanings specified for all purposes of this Policy. "Business Day" means any day other than (a) a Saturday or Sunday or (b) a day on which banking institutions in the State of New York or the Insurer's Fiscal Agent are authorized or required by law or executive order to remain closed. "Due for Payment" means (a) when referring to the principal of a Bond, payable on the stated maturity date thereof or the date on which the same shall have been duly called for mandatory sinking fund redemption and does not refer to any earlier date on which payment is due by reason of call for redemption (other than by mandatory sinking fund redemption), acceleration or other advancement of maturity unless AGM shall elect, in its sole discretion, to pay such principal due upon such acceleration together with any accrued interest to the date of acceleration and (b) when referring to interest on a Bond, payable on the stated date for payment of interest. "Nonpayment" means, in respect of a Bond, the failure of the Issuer to have provided sufficient funds to the Trustee or, if there is no Trustee, to the Paying Agent for payment in full of all principal and interest that is Due for Payment on such Bond. "Nonpayment" shall also include, in respect of a Bond, any payment of principal or interest that is Due for Payment made to an Owner by or on behalf of the Issuer which has been recovered from such Owner pursuant to the

United States Bankruptcy Code by a trustee in bankruptcy in accordance with a final, nonappealable order of a court having competent jurisdiction. "Notice" means telephonic or telecopied notice, subsequently confirmed in a signed writing, or written notice by registered or certified mail, from an Owner, the Trustee or the Paying Agent to AGM which notice shall specify (a) the person or entity making the claim, (b) the Policy Number, (c) the claimed amount and (d) the date such claimed amount became Due for Payment. "Owner" means, in respect of a Bond, the person or entity who, at the time of Nonpayment, is entitled under the terms of such Bond to payment thereof, except that "Owner" shall not include the Issuer or any person or entity whose direct or indirect obligation constitutes the underlying security for the Bonds.

AGM may appoint a fiscal agent (the "Insurer's Fiscal Agent") for purposes of this Policy by giving written notice to the Trustee and the Paying Agent specifying the name and notice address of the Insurer's Fiscal Agent. From and after the date of receipt of such notice by the Trustee and the Paying Agent, (a) copies of all notices required to be delivered to AGM pursuant to this Policy shall be simultaneously delivered to the Insurer's Fiscal Agent and to AGM and shall not be deemed received until received by both and (b) all payments required to be made by AGM under this Policy may be made directly by AGM or by the Insurer's Fiscal Agent on behalf of AGM. The Insurer's Fiscal Agent is the agent of AGM only and the Insurer's Fiscal Agent shall in no event be liable to any Owner for any act of the Insurer's Fiscal Agent or any failure of AGM to deposit or cause to be deposited sufficient funds to make payments due under this Policy.

To the fullest extent permitted by applicable law, AGM agrees not to assert, and hereby waives, only for the benefit of each Owner, all rights (whether by counterclaim, setoff or otherwise) and defenses (including, without limitation, the defense of fraud), whether acquired by subrogation, assignment or otherwise, to the extent that such rights and defenses may be available to AGM to avoid payment of its obligations under this Policy in accordance with the express provisions of this Policy.

This Policy sets forth in full the undertaking of AGM, and shall not be modified, altered or affected by any other agreement or instrument, including any modification or amendment thereto. Except to the extent expressly modified by an endorsement hereto, (a) any premium paid in respect of this Policy is nonrefundable for any reason whatsoever, including payment or provision being made for payment, of the Bonds prior to maturity and (b) this Policy may not be canceled or revoked. THIS POLICY IS NOT COVERED BY THE PROPERTY/CASUALTY INSURANCE SECURITY FUND SPECIFIED IN ARTICLE 78 OF THE NEW YORK INSURANCE LAW.

In witness whereof, ASSURED GUARANTY MUNICIPAL CORP. has caused this Policy to be executed on its behalf by its Authorized Officer.

ASSURED GUARANTY MUNICIPAL CORP.

By \_\_\_\_\_  
Authorized Officer

NEW ISSUE-FULL BOOK ENTRY

*In the opinion of Steptoe & Johnson PLLC, Bond Counsel, under existing laws, regulations, published rulings and judicial decisions of the United States of America, as presently written and applied, the interest (including any original issue discount properly allocable to owners of the Series 2012 D Bonds) on the Series 2012 D Bonds (i) is excludable from gross income of the owners thereof for Federal income tax purposes, assuming compliance with certain provisions described herein pertaining to the Internal Revenue Code of 1986, as amended, and (ii) is not a specific item of tax preference, under Section 57(a)5 of the Code, in computing the federal alternative minimum tax imposed on individuals and corporations, and (iii) under the laws of the State of West Virginia, the Series 2012 D Bonds are exempt from taxation by the State of West Virginia or any county, municipality or county commission, political subdivision or agency thereof, and the interest on the Series 2012 D Bonds is exempt from all taxation by the State of West Virginia or any county, municipality or county commission, political subdivision or agency thereof (see "TAX MATTERS" herein).*

Rating: (See "Ratings" herein)

**CITY OF FAIRMONT (WEST VIRGINIA)**  
**\$25,555,000**  
**WATER REFUNDING REVENUE BONDS, SERIES 2012 D**

Dated: Date of Delivery

Due: July 1, as shown below

The City of Fairmont's (the "City") Water Refunding Revenue Bonds, Series 2012 D (the "Series 2012 D Bonds") are issuable only as fully registered bonds without coupons in denominations of \$5,000 and integral multiples thereof for any year of maturity. All of the Series 2012 D Bonds initially will be maintained under a book-entry system under which The Depository Trust Company, New York, New York ("DTC"), will act as securities depository. Purchases of the Series 2012 D Bonds will be in book-entry form only. Semiannual interest on the Series 2012 D Bonds is payable beginning January 1, 2013, and each January 1 and July 1 thereafter. So long as the Series 2012 D Bonds are maintained under a book-entry system, payments of the principal of, premium, if any, and interest on the Series 2012 D Bonds will be made when due by the West Virginia Municipal Bond Commission, Charleston, West Virginia, as Paying Agent, to DTC in accordance with the Ordinance and any Supplemental Resolutions, and the Paying Agent will have no obligation to make any payments to any beneficial owner of any Series 2012 D Bonds. See "THE SERIES 2012 D BONDS" herein and "APPENDIX G – BOOK-ENTRY ONLY SYSTEM."

The proceeds of the Series 2012 D Bonds shall be used, together with other available funds, to (i) finance the costs of currently refunding the City's Series 1997 Bonds, Series 1998 Bonds and a portion of the Series 1999 Bonds; (ii) fund the Series 2012 D Bonds Reserve Account; and (iii) pay costs of issuance of the Series 2012 D Bonds and related costs.

The Series 2012 D Bonds are payable from and secured by the Gross Revenues derived from the existing public waterworks system of the City and any extensions, improvements and betterments thereto on parity with the outstanding Prior Bonds, as herein defined, and from the funds on deposit in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Reserve Account therein with respect to the Series 2012 D Bonds, all as more fully described herein. The Series 2012 D Bonds do not constitute an indebtedness of the City within the meaning of any constitutional or statutory provisions or limitations, and the City shall not be obligated to pay the principal of, premium, if any, and interest on the Series 2012 D Bonds, except from the Gross Revenues and such respective funds on deposit with the Municipal Bond Commission. No Owner or Owners of the Series 2012 D Bonds issued shall ever have the right to compel the exercise of the taxing power of the City to pay the Series 2012 D Bonds or the interest thereon.

The Series 2012 D Bonds are subject to optional and mandatory sinking fund redemption prior to maturity as described herein.

The scheduled payment of principal of and interest on the Bonds when due will be guaranteed under an insurance policy to be issued concurrently with the delivery of the Bonds by ASSURED GUARANTY MUNICIPAL CORP.

**ASSURED**  
**GUARANTY**  
MUNICIPAL

This cover page contains certain information for quick reference only. It is not a summary of this issue. Investors must read the entire Official Statement to obtain information essential to making an informed investment decision.

The Series 2012 D Bonds are offered when, as and if issued and received by the Underwriters, subject to prior sale, to withdrawal or modification of the offering without notice and to the unqualified approval of legality by Steptoe & Johnson PLLC, Charleston, West Virginia, Bond Counsel. Kevin Sansalone, Esquire, Fairmont, West Virginia, as City Attorney, will pass on certain legal matters for the City. Jackson Kelly PLLC, Charleston, West Virginia, as counsel to the Underwriters, will pass upon certain legal matters for the Underwriters. It is expected that the Series 2012 D Bonds will be available for delivery through the facilities of The Depository Trust Company in New York, New York, on or about October 24, 2012.

Dated: September 25, 2012

 **Crews & Associates**  
Member First Security Bancorp

**Piper Jaffray & Co.**

**\$25,555,000**  
**MATURITIES, AMOUNTS, INTEREST RATES, PRICES, YIELDS AND CUSIPS\***

**\$21,285,000 Series 2012 D Serial Bonds**

<b>Maturity (July 1)</b>	<b>Amount</b>	<b>Interest Rate</b>	<b>Price</b>	<b>Yield</b>	<b>CUSIP</b>
2013	\$910,000	2.00%	101.094%	0.40%	305459EU9
2014	\$1,400,000	2.00%	102.344%	0.60%	305459EV7
2015	\$1,425,000	2.00%	103.047%	0.85%	305459EW5
2016	\$1,455,000	2.00%	103.609%	1.00%	305459EX3
2017	\$1,485,000	2.00%	103.171%	1.30%	305459EY1
2018	\$1,510,000	3.00%	107.578%	1.60%	305459EZ8
2019	\$1,560,000	2.00%	100.000%	2.00%	305459FA2
2020	\$690,000	2.25%	100.000%	2.25%	305459FB0
2021	\$655,000	2.50%	99.610%	2.55%	305459FC8
2022	\$620,000	2.70%	99.154%	2.80%	305459FD6
2023	\$1,795,000	2.75%	98.627%	2.90%	305459FE4
2024	\$1,845,000	4.00%	107.267%	2.80%	305459FF1
2025	\$1,920,000	3.00%	98.954%	3.10%	305459FG9
2026	\$1,975,000	3.10%	98.895%	3.20%	305459FH7
2027	\$2,040,000	3.15%	98.262%	3.30%	305459FJ3

**\$4,270,000 3.20% Term Bonds, Due July 1, 2029, at 98.091%, CUSIP: 305459FK0**

\* CUSIP numbers have been assigned by an independent company not affiliated with the City and are included on this cover page solely for the convenience of the Owners of the Bonds only at the time of issuance of the Bonds. Neither the Underwriter nor the City makes any representation with respect to the accuracy of such CUSIP numbers as indicated in the above table or undertakes any responsibility for the selection of the CUSIP numbers or their accuracy now or at any time in the future. The CUSIP number for a specific maturity is subject to being changed after the issuance of the Bonds.

**CITY OF FAIRMONT, WEST VIRGINIA**

William Burdick, Mayor  
Robert Garcia, Deputy Mayor

**CITY COUNCIL**

Robert Gribben	Chuck Warner
Robert Sapp	Daniel Weber
Deborah Seifist	Robert Garcia
Ronald Straight	Robin Smith

**CITY MANAGER**

Jay Rogers

**CITY CLERK**

Janet L. Keller

**CITY ATTORNEY**

Kevin Sansalone, Esq.

**UTILITY MANAGER**

David Sago

**FINANCE DIRECTOR**

Eileen Layman

**BOND COUNSEL**

Steptoe & Johnson PLLC  
Charleston, West Virginia

**REGISTRAR**

WesBanco Bank, Inc.  
Wheeling, West Virginia

**PAYING AGENT**

West Virginia Municipal Bond Commission  
Charleston, West Virginia

**UNDERWRITERS**

Crews & Associates, Inc.  
Charleston, West Virginia  
Piper Jaffray & Co.  
Charleston, West Virginia

**UNDERWRITERS' COUNSEL**

Jackson Kelly PLLC  
Charleston, West Virginia

This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the Series 2012 D Bonds in any jurisdiction in which it is unlawful to make such offer, solicitation or sale. No dealer, broker, salesman or other person has been authorized by the City of Fairmont, West Virginia, or the Underwriters to give any information or to make any representations, other than as contained in this Official Statement. If given or made, such other information or representations must not be relied upon as having been authorized by any of the foregoing. The information set forth herein has been obtained from the City of Fairmont and other sources, which are believed to be reliable but is not guaranteed as to accuracy or completeness and is not to be construed as a representation by the Underwriters. The information and any expression of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall under any circumstances create any implication that there has been no change in the affairs of the City of Fairmont, West Virginia, as it relates to the System, since the date hereof. This Official Statement is submitted in connection with the sale of securities referred to herein, and may not be reproduced or used, in whole or in part, for any other purposes.

The information contained in this Official Statement has been obtained from the City and other sources believe to be reliable, but the accuracy or completeness of such information is not guaranteed by, and should not be construed as a promise by any of the foregoing. The presentation of such information is intended to show recent historic information and is not intended to indicate future or continuing trends. No representation is made that the past experience, as shown by such financial and other information, will necessarily continue or be repeated in the future. This Official Statement contains, in part, estimates and matters of opinion, whether or not expressly stated to be such, which are not intended as statements or representations of fact or certainty, and no representation is made as to the correctness of such estimates and opinions, or that they will be realized. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the City.

The Series 2012 D Bonds shall not be or constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter limitation of indebtedness but shall be payable solely from the Gross Revenues of the System, and from the funds on deposit in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Reserve Account therein with respect to the Series 2012 D Bonds and the unexpended proceeds of the Series 2012 D Bonds, with respect to the Series 2012 D Bonds all as herein provided. No Holder or Holders of the Series 2012 D Bonds issued hereunder shall ever have the right to compel the exercise of the taxing power of the City to pay the Series 2012 D Bonds or the interest thereon.

Assured Guaranty Municipal Corp. (“AGM”) makes no representation regarding the Bonds or the advisability of investing in the Bonds. In addition, AGM has not independently verified, makes no representation regarding, and does not accept any responsibility for the accuracy or completeness of this Official Statement or any information or disclosure contained herein, or omitted herefrom, other than with respect to the accuracy of the information regarding AGM supplied by AGM and presented under the heading “Bond Insurance” and “Appendix I - Specimen Municipal Bond Insurance Policy”.

#### Forward-Looking Statements

**This Official Statement contains statements relating to future results that are “forward-looking statements” as defined in the Private Securities Litigation Reform Act of**

1995. When used in this Official Statement, the words “estimated,” “forecasted,” “intended,” “expected,” “anticipated,” “projected” and similar expressions identify forward-looking statements. Such statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated in such forward-looking statements. Any forecast is subject to such uncertainties. Inevitably, some assumptions used to develop the forecasts will not be realized and unanticipated events and circumstances may occur. Therefore, there are likely to be differences between forecasts and actual results, and those differences may be material. For a discussion of certain of such risks and possible variations in results, see the information under “INVESTMENT CONSIDERATIONS.”

You should make your own decision whether this offering meets your investment objectives and risk tolerance level. No federal or state securities commission has approved, disapproved, endorsed or recommend this offering. No independent person has confirmed the accuracy or truthfulness of this disclosure, nor whether it is complete.

The Ordinance has not been qualified under the Trust Indenture Act of 1939, as amended because of available exemptions therefrom.

The following sentence has been provided by the Underwriters for inclusion in this Official Statement: The Underwriters have reviewed the information in this Official Statement in accordance with, and as a part of, their responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriters do not guarantee the accuracy or completeness of such information.

The Series 2012 D Bonds will not be registered under the Securities Act of 1933, as amended, or any state securities law, and will not be listed on any stock or other securities exchange. Neither the Securities and Exchange Commission nor any other federal, state or other governmental entity or agency has determined or confirmed the accuracy of this Official Statement.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITERS MAY OVERALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES 2012 D BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

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## OFFICIAL STATEMENT

\$25,555,000

### CITY OF FAIRMONT (WEST VIRGINIA) WATER REFUNDING REVENUE BONDS, SERIES 2012 D

#### INTRODUCTION

This Official Statement, including the cover page and appendices, is provided for the purpose of setting forth certain information concerning the City of Fairmont, West Virginia (the "City"), the City's public waterworks system as hereinafter described in "APPENDIX B – SYSTEM" (the "System"), and the City's \$25,555,000 in aggregate principal amount of Water Refunding Revenue Bonds, Series 2012 D (the "Series 2012 D Bonds" or the "Series 2012 Bonds"). The Series 2012 D Bonds are being issued pursuant to the Constitution and laws of the State of West Virginia (the "State"), specifically Chapter 8, Article 19 and Chapter 13, Article 2 of the Code of West Virginia, 1931, as amended (collectively, the "Act"), and an Ordinance enacted by the City Council of the City on March 27, 2012 (the "Original Ordinance"), as supplemented by a Supplemental Resolution adopted by the City Council of the City on June 12, 2012, and September 12, 2012, (the "Supplemental Resolutions" and together with the Original Ordinance, the "Ordinance") and a Certificate of Determinations signed by the Mayor dated September 25, 2012. See "APPENDIX F – FORM OF ORDINANCE, SUPPLEMENTAL PARAMETERS RESOLUTION AND SECOND SUPPLEMENTAL RESOLUTION."

The proceeds of the Series 2012 D Bonds will be used, together with other available funds, as follows: (i) to finance the costs of currently refunding the City's Waterworks Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of \$10,260,000 of which as of August 31, 2012, \$980,000 is outstanding (the "Series 1997 Bonds"), Water Revenue Bonds, Series 1998, dated December 15, 1998, issued in the original aggregate principal amount of \$9,600,000, of which as of August 31, 2012, \$8,270,000 is outstanding (the "Series 1998 Bonds") and \$16,945,000 of the Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 of which as of August 31, 2012, \$19,945,000 is outstanding (the "Series 1999 Bonds"); (ii) to fund the Series 2012 D Bonds Reserve Account, and (iii) to pay costs of issuance of the Series 2012 D Bonds and related costs. The City expects to call the Series 1997 Bonds, the Series 1998 Bonds and a portion of the Series 1999 Bonds for redemption on or about October 25, 2012.

There are outstanding obligations (and the August 31, 2012 balances) of the City which will rank on a parity with the Series 2012 D Bonds as to liens, pledge, source of and security for payment from the Gross Revenues derived from the System (both as hereinafter defined), as follows:

- (1) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000, of which \$2,428,165 is outstanding (the "Series 2008 A Bonds");

- (2) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618, for which principal amortization payments began March 1, 2012 (the “Series 2010 A Bonds”);
- (3) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618, which is subject to principal forgiveness (the “Series 2010 B Bonds”);
- (4) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000, for which principal amortization payments begin October 1, 2012 (the “Series 2010 C Bonds”);
- (5) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104, for which principal amortization payments began March 1, 2012 (the “Series 2010 D Bonds”); and
- (6) The unrefunded portion of the Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 of which \$3,000,000 will be outstanding after issuance of the Series 2012 D Bonds (the “Unrefunded Series 1999 Bonds”).

The Series 2008 A Bonds, the Series 2010 A Bonds, the Series 2010 B Bonds, the Series 2010 C Bonds, the Series 2010 D Bonds and the Unrefunded Series 1999 Bonds are hereinafter collectively called the “Prior Bonds.” The ordinances which authorized the issuance of the Prior Bonds are herein collectively referred to as the “Prior Ordinances.”

Additionally, in 2012, the City intends to issue bonds in an amount not to exceed \$4,780,000 to be purchased by the West Virginia Water Development Authority (the “WDA”) at the direction of the West Virginia Bureau of Public Health/Drinking Water Treatment Revolving Fund (the “Water Revenue Bonds, Series 2012 A”), and in an amount not to exceed \$1,000,000 to be purchased by the WDA at the direction of the West Virginia Infrastructure and Jobs Development Council for the purpose of acquiring and constructing certain additions, betterments and improvements to the System (the “Water Revenue Bonds, Series 2012 B” and collectively with the Water Revenue Bonds, Series 2012 A, the “Series 2012 A/B Bonds”). See Appendix B. The Series 2012 A/B Bonds will be issued on a parity with the Series 2012 D Bonds and the Prior Bonds unless the parity test for the Prior Bonds and the Series 2012 D Bonds cannot be met. The City currently does not anticipate issuing Water Revenue Bonds, Series 2012 C.

The Series 2012 D Bonds are payable from and secured by the Gross Revenues derived from the System on parity with the Prior Bonds and if issued the Series 2012 A/B Bonds and from the funds on deposit in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Reserve Account therein. The Series 2012 D Bonds do not constitute an indebtedness of the City within the meaning of any constitutional or statutory provisions or limitations, and the City shall not be obligated to pay the Series 2012 D Bonds or premium, if any, or the interest thereon except as provided above. See “SECURITY FOR THE SERIES 2012 D BONDS.”

Pursuant to the Ordinance, the City has covenanted and agreed to fix and establish, in a manner and form required by law, rates and charges for the use of the System and the services rendered thereby sufficient (together with other revenues of the System) (i) to provide for all Operating Expenses of the System, and (ii) to leave a balance each year equal to at least 120% of the maximum amount required in any year to pay the principal of and interest on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds and the Series 2012 A/B Bonds (if and when issued). See “SECURITY FOR THE SERIES 2012 D BONDS – RATE COVENANT,” “BOND INSURANCE” and “APPENDIX F – FORM OF ORDINANCE, SUPPLEMENTAL PARAMETERS RESOLUTION AND SECOND SUPPLEMENTAL RESOLUTION.”

The Series 2012 D Bonds will be dated, will mature, will bear interest and will be subject to redemption prior to maturity as more fully described on the cover page and under the heading “THE SERIES 2012 D BONDS” herein. The Series 2012 D Bonds initially will be maintained under a book-entry system. So long as the Series 2012 D Bonds are maintained under a book-entry system, the manner of payment, the denominations, the transfer and exchange of ownership and the method of providing notice of redemption to the owners of the Series 2012 D Bonds shall be determined as described in “APPENDIX G – BOOK-ENTRY ONLY SYSTEM.” If the book-entry system is discontinued, principal of, interest, and premium, if any, on the Series 2012 D Bonds will be payable by the West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (the “Bond Commission” or “Paying Agent”), to the owners thereof at the addresses appearing in the books kept by WesBanco Bank, Inc., Wheeling, West Virginia, as bond registrar (the “Registrar”). For further information describing the method of payment and other matters in the event the book-entry system is discontinued, see “THE SERIES 2012 D BONDS” herein.

For a description of the exclusion of interest on the Series 2012 D Bonds from gross income for federal and state income tax purposes, see “TAX MATTERS” herein.

The City may issue additional bonds on parity with the Prior Bonds and with the Series 2012 D Bonds and with the Series 2012 A/B Bonds for the purposes of financing the costs of the design, acquisition or construction of extensions, additions, betterments or improvements to the System, of refunding all or a portion of the Series 2012 D Bonds issued pursuant to the Ordinance, or refunding the Prior Bonds, of paying claims which may exist against the revenues or facilities of the System, or of all such purposes, subject in each case to certain tests and conditions provided for by the Ordinance. See “SECURITY FOR THE SERIES 2012 D BONDS – ADDITIONAL PARITY BONDS” and “APPENDIX F – FORM OF ORDINANCE, SUPPLEMENTAL PARAMETERS RESOLUTION AND SECOND SUPPLEMENTAL RESOLUTION.”

Brief descriptions of the Series 2012 D Bonds, the System, the City and certain provisions of the Ordinance and the Act are set forth in this Official Statement, as well as other information contained in the appendices hereto. Such descriptions and information do not purport to be comprehensive or definitive. All references herein to the Ordinance, provisions of the Act and other applicable laws of the State are qualified in their entirety by reference to each such document or law. References herein to the Series 2012 D Bonds are qualified in their entirety by reference to the form thereof included in the Ordinance and the information with respect thereto included in the aforesaid documents. Capitalized terms used and not otherwise

defined in this Official Statement shall have the respective meanings given them in the Ordinance. Copies of the Ordinance and other applicable documents may be obtained from the City or, during the period of offering the Series 2012 D Bonds, from the Underwriters.

**Bond Insurance**

Payments of principal of and interest on the Series 2012 D Bonds when due for payment and unpaid by reason of nonpayment under the circumstances hereinafter described, including any such payment of principal or interest made to any Registered Owner of Series 2012 D Bonds which has been recovered from such registered owner pursuant to the United States Bankruptcy Code by a trustee in bankruptcy in accordance with a final, non-appealable order of a court having competent jurisdiction, will be insured by municipal bond insurance policies to be issued by Assured Guaranty Municipal Corporation (the “Bond Insurer”). See “BOND INSURANCE” herein.

**FINANCING PLAN**

The proceeds of the Series 2012 D Bonds will be used, together with other available funds, as follows: (i) to finance the costs of currently refunding the Series 1997 Bonds, the Series 1998 Bonds and \$16,945,000 of the Series 1999 Bonds; (ii) to fund the Series 2012 D Bonds Reserve Account, and (iii) to pay costs of issuance of the Series 2012 D Bonds and related costs. The City expects to call the Series 1997 Bonds, the Series 1998 Bonds and a portion of the Series 1999 Bonds for redemption on or about October 25, 2012.

**Series 2012 D Bonds**

Sources and Uses of Funds

Sources of Funds:

Principal Amount of Series 2012 D Bonds	\$25,555,000.00
Net Original Issue Premium	\$ 242,973.90
Transfer from Sinking Funds	\$ 806,288.29
Transfer from Bonds Reserve Account	\$ 2,302,193.07
GIC Termination Payment	<u>\$ 744,000.00</u>
 Total Sources	 \$29,650,455.26

Uses of Funds:

Deposit to MBC for Current Refunding	\$26,604,723.92
Deposit to Series 2012 D Bonds Reserve Account	\$ 2,240,900.00
Costs of Issuance (1)	<u>\$ 804,831.34</u>
 Total Uses	 \$29,650,455.26

(1) Includes legal and financing fees, bond counsel fees, underwriters’ discount and underwriters’ counsel fees, rounding, registrar’s fee, premium of Bond Insurer and other miscellaneous expenses relating to the issuance of the Series 2012 D Bonds.

## THE SERIES 2012 D BONDS

### General

#### Series 2012 D Bonds

The Series 2012 D Bonds shall be dated the date of delivery, and shall bear interest from the interest payment date next preceding the date of authentication or, if authenticated after the Record Date but prior to the applicable interest payment date or on such interest payment date, from such interest payment date or, if no interest on such Series 2012 D Bonds has been paid, from the date thereof; provided however, that, if, as shown by the records of the Registrar, interest on such Series 2012 D Bonds shall be in default, Series 2012 D Bonds issued in exchange for a Series 2012 D Bonds surrendered for transfer or exchange shall bear interest from the date to which interest has been paid in full on the initial Series 2012 D Bonds surrendered. The Series 2012 D Bonds will bear interest from their date, payable semiannually on each January 1 and July 1, commencing January 1, 2013, upon original issuance, at the rates per annum and will mature on the dates and in the amounts set forth on the cover page of this Official Statement. Interest accruing on the Series 2012 D Bonds shall be payable by check or draft mailed by the West Virginia Bond Commission, Charleston, West Virginia, to the Registered Owner as of the applicable Record Date (each June 15 and December 15) or, in the event of a default in the payment of the Series 2012 D Bonds, that special record date to be fixed by the Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by the Registrar, or at the option of any Registered Owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid in any coin or currency when due upon presentation and surrender for payment at the office of the Paying Agent, in Charleston, West Virginia.

The Series 2012 D Bonds will be issued as fully registered bonds without coupons in denominations of \$5,000 or integral multiples thereof for any year of maturity. The Series 2012 D Bonds initially shall be maintained under a book-entry system; Beneficial Owners shall have no right to receive physical possession of the Series 2012 D Bonds and payments of principal of, redemption price if any, and interest on the Series 2012 D Bonds will be made as described in "APPENDIX G – BOOK-ENTRY ONLY SYSTEM." If the book-entry system is discontinued, interest on the Series 2012 D Bonds will be payable by check or draft made payable and mailed to the owners thereof at the addresses appearing in the books kept by the Registrar as of the 15th day of the month preceding such interest payment date (the "Record Date"). If the book-entry system is discontinued, principal of and premium, if any, on the Series 2012 D Bonds will be payable to the owner thereof upon surrender thereof at the office of the Paying Agent.

#### Optional Redemption

The Series 2012 D Bonds are subject to optional redemption prior to their stated maturity at any time on and after July 1, 2019, at the option of the City at par, plus accrued interest thereon to the date set for redemption.

**Mandatory Sinking Fund Redemption**

The Series 2012 D Bonds maturing July 1, 2029, are subject to annual mandatory redemption prior to their respective stated maturity dates, as set forth in the Ordinance, by random selection of the years as may be determined by the Registrar and in the principal amounts set forth below, at the Redemption Price of 100% of the principal amount of each bond so called for redemption plus interest accrued to the date fixed for redemption:

Bonds Maturing 2029

<u>Year (July 1)</u>	<u>Principal Amount</u>
2028	\$2,100,000
2029*	\$2,170,000

\*Final Maturity

So long as the Series 2012 D Bonds are maintained under a book-entry system, notice of the call for any redemption of the Series 2012 D Bonds shall be given as described in “APPENDIX G – BOOK-ENTRY ONLY SYSTEM.”

**Notice of Redemption**

Unless waived by any Registered Owner of the Bonds to be redeemed, official notice of any redemption shall be given by the Registrar on behalf of the City by mailing a copy of an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the applicable Bond Insurer, if any, the Original Purchaser, and the Registered Owner of the Series 2012 Bond or Bonds, as applicable, to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such registered owner to the Registrar. Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of any proceedings for the redemption of the Series 2012 D Bonds, and failure to mail such notice shall not affect the validity of any such proceedings for the redemption of any portion of the Series 2012 D Bonds for which there was no failure. After notice of redemption has been given in the manner hereinabove and in the Ordinance described, and moneys necessary therefor have been deposited with the Paying Agent, the Series 2012 D Bonds specified in such notice shall on the date fixed for redemption be deemed paid, and interest thereon shall cease to accrue.

**SECURITY FOR THE SERIES 2012 D BONDS**

The Series 2012 D Bonds are special obligations of the City and are payable as to principal, premium, if any, and interest solely from the sources described below. The City is under no obligation to pay the Series 2012 D Bonds except from said sources.

## **Sources of Payment**

The payment of the debt service on the Series 2012 D Bonds shall be secured forthwith equally and ratably by a first lien on and pledge of the Gross Revenues derived from the operation of the System on parity with each other and the Prior Bonds and the Series 2012 A/B Bonds, if issued. The payment of the debt service on the Series 2012 D Bonds is also secured by the funds on deposit in the Series 2012 D Bonds Sinking Fund, including the Series 2012 D Bonds Reserve Account therein. See "APPENDIX H – ANNUAL DEBT SERVICE REQUIREMENTS" for more information. The Gross Revenues derived from the System are irrevocably pledged to the payment of the principal of and interest on the Prior Bonds, the Series 2012 A/B Bonds and the Series 2012 D Bonds as the same become due and for the other purposes provided in the Ordinance. The City has covenanted that the Gross Revenues shall be sufficient (1) to pay the principal of and interest on the Prior Bonds and the Series 2012 A/B Bonds, if issued, (2) to make the payments into the Series 2012 D Bonds Sinking Fund, (3) to make the payments into the Series 2012 D Bonds Reserve Account, the Prior Bonds Reserve Accounts and the Series 2012 A/B Bonds Reserve Accounts, and (4) to make all other payments provided for in the Ordinance. See "APPENDIX F – FORM OF ORDINANCE, SUPPLEMENTAL PARAMETERS RESOLUTION AND SECOND SUPPLEMENTAL RESOLUTION."

## **Rate Covenant**

The City has covenanted and agreed in the Ordinance to fix and establish, in a manner and form required by law, rates and charges for the use of the System, sufficient (together with other revenues of the System) (i) to provide for all Operating Expenses of the System, (ii) so long as the Series 1999 Bonds or Series 2012 D Bonds are outstanding, to leave a balance each year equal to at least 120% of the maximum amount required in any year to pay the principal of and interest on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds and the Series 2012 A/B Bonds, and (iii) so long as the Series 2008 A Bonds, Series 2010 A Bonds, Series 2010 B Bonds, Series 2010 C Bonds or Series 2010 D Bonds are outstanding, to leave a balance each year equal to at least 115% of the maximum amount required in any year to pay the principal of and interest on the Series 2012 D Bonds, and all obligations issued on a parity with the Series 2012 D Bonds, including the Prior Bonds and the Series 2012 A/B Bonds. The City is required to commence enactment of such ordinances as may be required to increase such rates and charges within thirty (30) days following a determination by, or an annual audit report of, the Independent Accountant showing that less than the above-required coverage exists. See "APPENDIX F – FORM OF ORDINANCE, SUPPLEMENTAL PARAMETERS RESOLUTION AND SECOND SUPPLEMENTAL RESOLUTION."

## **Series 2012 D Bonds Reserve Account**

The Series 2012 D Bonds Reserve Account will be funded at closing. In the event funds in the Series 2012 D Bonds Sinking Fund is insufficient to pay the principal of and/or interest on the Series 2012 D Bonds, the Bond Commission shall withdraw from the Series 2012 D Bonds Reserve Account and transfer to the Series 2012 D Bonds Sinking Fund sufficient amounts to

make payments of principal of and/or interest on the Series 2012 D Bonds as the same become due from cash on deposit in the Series 2012 D Bonds Reserve Account.

In the event of a transfer from a Series 2012 D Bonds Reserve Account to the respective Series 2012 D Bonds Sinking Fund as aforesaid, the City shall restore the balance to the respective Series 2012 D Bonds Reserve Account in an amount up to the respective Series 2012 D Bonds Reserve Requirement. Any deficiencies in a Series 2012 Reserve Account or any Reserve Account required for the Prior Bonds or the Series 2012 A/B Bonds (except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required) shall be promptly eliminated with monies from the Renewal and Replacement Fund. The City shall restore any withdrawals from a Series 2012 D Bonds Reserve Account which have the effect of reducing the assets therein below the respective Series 2012 D Bonds Reserve Requirement, from the first Gross Revenues available after all required payments have been made in full in the order set forth in the Ordinance. See "APPENDIX F—FORM OF ORDINANCE, SUPPLEMENTAL PARAMETERS RESOLUTION AND SECOND SUPPLEMENTAL RESOLUTION."

Following the partial refunding of the Series 1999 Bonds, the reserve fund requirement for the Series 1999 Bonds Reserve Account will be \$300,000.

### **Application of Revenues**

The entire Gross Revenues derived from the operation of the System shall be deposited by the City in the Revenue Fund and shall be disposed of only in the following manner and order of priority:

(1) the City shall first, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission (i) for deposit in the Sinking Funds of the Prior Bonds the amounts required by the Prior Ordinances to pay the interest on the Unrefunded Series 1999 Bonds and the Series 2010 C Bonds; (ii) for deposit in the Sinking Funds of the Series 2012 A/B Bonds, the amounts required to pay interest on the Series 2012 A/B Bonds; and (iii) commencing 7 months prior to the first interest payment date of the Series 2012 D Bonds, for deposit in the Series 2012 D Bonds Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on the Series 2012 D Bonds on the next ensuing semiannual interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2012 D Bonds Sinking Fund and the next ensuing semiannual interest payment date is more or less than 7 months, then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date; and provided further that, the initial amount required to be transferred from the Revenue Fund and deposited in the Series 2012 D Bonds Sinking Fund shall be reduced by the amount of accrued interest on the Series 2012 D Bonds deposited therein, and subsequent amounts required to be transferred from the Revenue Fund and deposited in the Series 2012 D Bonds Sinking Fund shall be reduced by the amount of any earnings credited to the Series 2012 D Bonds Sinking Fund;

(2) the City shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission (i) for deposit in the Sinking Funds of the Prior Bonds the amounts required by the Prior Ordinances to pay the principal of the Prior Bonds; (ii) for deposit in the Sinking Funds of the Series 2012 A/B Bonds, the amounts required to pay the principal of the Series 2012 A/B Bonds; and (iii) commencing 13 months prior to the first principal payment date or mandatory Redemption Date of the Series 2012 D Bonds, for deposit in the Series 2012 D Bonds Sinking Fund and in the Series 2012 D Bonds Redemption Account therein in the case of the Term Bonds which are to be redeemed, a sum equal to 1/12th of the amount (or 1/6th of the amount if the Series 2012 D Bonds mature semiannually rather than annually) of principal which will mature or be redeemed and become due on the Series 2012 D Bonds on the next ensuing principal payment date or mandatory Redemption Date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2012 D Bonds Sinking Fund and the next ensuing principal payment date or mandatory Redemption Date is more or less than 13 months (or 7 months if the Series 2012 D Bonds mature semiannually rather than annually), then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next ensuing principal payment date or mandatory Redemption Date, the required amount of principal coming due on such date, and provided further, that the amount of such deposits shall be reduced by the amount of any earnings credited to the Series 2012 D Bonds Sinking Fund and not previously credited pursuant to the preceding clause;

(3) the City shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission (i) for deposit in the respective Reserve Accounts of the Prior Bonds the amounts required by the Prior Ordinances; (ii) for deposit in the respective Reserve Accounts of the Series 2012 A/B Bonds, the amounts required to be deposited in the respective Reserve Accounts; and (iii) commencing 13 months prior to the first date of payment of principal of the Series 2012 D Bonds, if not fully funded upon issuance of the Series 2012 D bonds, for deposit in the Series 2012 D Bonds Reserve Account, an amount equal to 1/120<sup>th</sup> of the Series 2012 D Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2012 D Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2012 D Bonds Reserve Requirement, and thereafter the City shall deposit an amount sufficient to remedy any decrease in value of the Series 2012 D Bonds Reserve Account below the Series 2012 D Bonds Reserve Requirement or any withdrawal from the Series 2012 D Bonds Reserve Account, beginning with the first full calendar month following the date on which (a) the valuation of investments in the Series 2012 D Bonds Reserve Account results in a determination that the amount of moneys and the value of the Qualified Investments deposited to the credit of the Series 2012 D Bonds Reserve Account is less than the Series 2012 D Bonds Reserve Requirement, or (b) any amount is withdrawn from the Series 2012 D Bonds Reserve Account for deposit into the Series 2012 D Bonds Sinking Fund. To the extent Gross Revenues and any other legally available funds are available therefore, the amount so deposited shall be used to restore the amount of moneys on deposit in the Series 2012 D Bonds Reserve Account to an amount equal to the Series 2012 D Bonds Reserve Requirement to the full extent that such Gross Revenues are available; provided however, that if the shortfall in the Series 2012 D Bonds Reserve Account is due to a decrease in value of investments therein, such shortfall shall be replenished by not less than 6 equal monthly payments, and if such shortfall is due to a withdrawal from the Series 2012 D Bonds Reserve Account, such shortfall shall be replenished

by not less than 12 equal monthly payments, and provided further, that no payments shall be required to be made into the Series 2012 D Bonds Reserve Account whenever and as long as the amount on deposit therein shall be equal to the Series 2012 D Bonds Reserve Requirement;

(4) the City shall next, each month, pay from the Revenue Fund the current Operating Expenses of the System;

(5) the City shall next, on the first day of each month, transfer from the monies remaining in the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund (as previously set forth in the Prior Ordinances and not in addition thereto), a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of any Reserve Account;

(6) if on any monthly payment date the revenues of the System are insufficient to make the required deposits in any of the funds and accounts as hereinabove provided, the deficiency shall be made up on the next ensuing payment dates by payments in addition to the payments which are otherwise required to be made into the funds on such ensuing payment dates; and

(7) the City may next, each month, after making the above required transfers of moneys from the Revenue Fund, apply any remaining revenues ("Surplus Revenues") to the payment of debt service on any other subordinate Bonds, notes, certificates or other obligations of the System.

Principal and interest payments, and any payments made for the purpose of funding the Reserve Accounts, shall be made on a parity basis and pro-rata, with respect to the Prior Bonds, the Series 2012 A/B Bonds, the Series 2012 D Bonds and any parity Bonds hereinafter issued, in accordance with the respective principal amounts of each such series of Bonds then Outstanding, if less than the full amount required hereby.

Any Surplus Revenues then remaining in the Revenue Fund may be used for any lawful purpose of the System. See "APPENDIX F –FORM OF ORDINANCE, SUPPLEMENTAL PARAMETERS RESOLUTION AND SECOND SUPPLEMENTAL RESOLUTION."

### **Enforcement of Collections**

The City covenants in the Ordinance to diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals and other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia or other laws of the State. The City further covenants and agrees in the Ordinance that it will, subject to the laws of the State and regulations of the Public Service Commission of West Virginia, discontinue services to all delinquent users of services and facilities of the System, until such delinquent amounts, including penalties and reconnect fees, have been fully paid, or a payment agreement in compliance with the Public Service Commission of West Virginia regulations has been entered. (See "APPENDIX B – THE SYSTEM" and "APPENDIX F – FORM OF ORDINANCE,

SUPPLEMENTAL PARAMETERS RESOLUTION AND SECOND SUPPLEMENTAL RESOLUTION”).

**Additional Parity Bonds**

So long as the Prior Bonds are Outstanding, the limitations and requirements on the issuance of parity obligations set forth in the Prior Ordinances shall be applicable. In addition, no additional parity Bonds, as defined in the Ordinance, payable out of the revenues of the System shall be issued after the issuance of the Series 2012 D Bonds pursuant to the Ordinance, except under the conditions and in the manner therein provided.

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

So long as the Series 1999 Bonds or Series 2012 D Bonds are outstanding, no such additional parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Clerk of the City a written statement by an Independent Accountant, reciting the conclusion that the Net Revenues actually derived from the System during the Fiscal Year preceding the date of the actual issuance of such additional parity Bonds, plus the estimated average increased annual Net Revenues expected to be received in each of the 3 succeeding years after the issuance of such parity Bonds, if any, shall not be less than 120% of the Maximum Annual Debt Service on the following:

- (1) The Prior Bonds then Outstanding;
- (2) The Series 2012 D Bonds then Outstanding;
- (3) Any additional parity Bonds theretofore issued pursuant to the provisions contained in the Ordinance then Outstanding; and
- (4) The additional parity Bonds then proposed to be issued.

So long as the Series 2008 A Bonds, Series 2010 A Bonds, Series 2010 B Bonds, Series 2010 C Bonds or Series 2010 D Bonds are outstanding, no such additional parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Clerk of the City a written statement by an Independent Accountant, reciting the conclusion that the Net Revenues actually derived from the System during any 12 consecutive months in the 18 months immediately preceding the date of the actual issuance of such additional parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall not be less than 115% of the Maximum Annual Debt Service on the following:

- (1) The Prior Bonds then Outstanding;

(2) The Series 2012 D Bonds then Outstanding;

(3) Any additional parity Bonds theretofore issued pursuant to the provisions contained in this Ordinance then Outstanding; and

(4) The additional parity Bonds then proposed to be issued.

The Net Revenues actually derived from the System during the 12-consecutive month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Accountants, as stated in a certificate, on account of increased rates, rentals, fees and charges for the System enacted by the City, the time for appeal of which shall have expired (without successful appeal) prior to issuance of such Parity Bonds.

The term “additional parity Bonds,” as used in this section, shall be deemed to mean additional Bonds issued under the provisions and within the limitations of this section, payable from the Net Revenues of the System on a parity with the Series 2012 D Bonds, and all the covenants and other provisions of the Ordinance shall be for the equal benefit, protection and security of the Owners of the Series 2012 D Bonds, the Prior Bonds and the Owners of any additional parity Bonds theretofore or subsequently issued from time to time within the limitations of and in compliance with this section. All the Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Net Revenues of the System, and their source of and security for payment from said Net Revenues, without preference of any Bond over any other. The City shall comply fully with all the increased payments into the various funds and accounts created in the Ordinance required for and on account of such additional parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to the Ordinance.

The term “additional parity Bonds,” as used in this section, shall not be deemed to include Bonds, notes, certificates or other obligations subsequently issued, the lien on the Revenues of the System of which is subject to the prior and superior lien of the Bonds on such Revenues. Any such subordinate Bonds, notes, certificates or other obligations shall be payable from Surplus Revenues. The City shall not issue any obligations whatsoever payable from the Revenues of the System, or any part thereof, which rank prior to or equally, as to lien and source of and security for payment from such Revenues, with the Series 2012 D Bonds, except in the manner and under the conditions provided in this section.

No additional parity Bonds shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in the Ordinance on account of the Bonds then Outstanding, if any (excluding the Renewal and Replacement Fund), and any other payments provided for in the Ordinance shall have been made in full as required to the date of delivery of the additional parity Bonds. See “APPENDIX F – FORM OF ORDINANCE, SUPPLEMENTAL PARAMETERS RESOLUTION AND SECOND SUPPLEMENTAL RESOLUTION.”

## BOND INSURANCE

### **Bond Insurance Policy**

Concurrently with the issuance of the Bonds, Assured Guaranty Municipal Corp. ("AGM") will issue its Municipal Bond Insurance Policy for the Bonds (the "Policy"). The Policy guarantees the scheduled payment of principal of and interest on the Bonds when due as set forth in the form of the Policy included as an exhibit to this Official Statement.

The Policy is not covered by any insurance security or guaranty fund established under New York, California, Connecticut or Florida insurance law.

### **Assured Guaranty Municipal Corp.**

AGM is a New York domiciled financial guaranty insurance company and a wholly owned subsidiary of Assured Guaranty Municipal Holdings Inc. ("Holdings"). Holdings is an indirect subsidiary of Assured Guaranty Ltd. ("AGL"), a Bermuda-based holding company whose shares are publicly traded and are listed on the New York Stock Exchange under the symbol "AGO". AGL, through its operating subsidiaries, provides credit enhancement products to the U.S. and global public finance, infrastructure and structured finance markets. No shareholder of AGL, Holdings or AGM is liable for the obligations of AGM.

AGM's financial strength is rated "AA-" (stable outlook) by Standard and Poor's Ratings Services, a Standard & Poor's Financial Services LLC business ("S&P") and "Aa3" (on review for possible downgrade) by Moody's Investors Service, Inc. ("Moody's"). An explanation of the significance of the above ratings may be obtained from the applicable rating agency. The above ratings are not recommendations to buy, sell or hold any security, and such ratings are subject to revision or withdrawal at any time by the rating agencies, including withdrawal initiated at the request of AGM in its sole discretion. In addition, the rating agencies may at any time change AGM's long-term rating outlooks or place such ratings on a watch list for possible downgrade in the near term. Any downward revision or withdrawal of any of the above ratings, the assignment of a negative outlook to such ratings or the placement of such ratings on a negative watch list may have an adverse effect on the market price of any security guaranteed by AGM. AGM only guarantees scheduled principal and scheduled interest payments payable by the issuer of bonds insured by AGM on the date(s) when such amounts were initially scheduled to become due and payable (subject to and in accordance with the terms of the relevant insurance policy), and does not guarantee the market price or liquidity of the securities it insures, nor does it guarantee that the ratings on such securities will not be revised or withdrawn.

### ***Current Financial Strength Ratings***

On March 20, 2012, Moody's issued a press release stating that it had placed AGM's "Aa3" insurance financial strength rating on review for possible downgrade. AGM can give no assurance as to any further ratings action that Moody's may take. Reference is made to the press release, a copy of which is available at [www.moody.com](http://www.moody.com), for the complete text of Moody's comments.

On November 30, 2011, S&P published a Research Update in which it downgraded AGM's financial strength rating from "AA+" to "AA-". At the same time, S&P removed the financial strength rating from CreditWatch negative and changed the outlook to stable. AGM can give no assurance as to any further ratings action that S&P may take. Reference is made to the Research Update, a copy of which is available at [www.standardandpoors.com](http://www.standardandpoors.com), for the complete text of S&P's comments.

For more information regarding AGM's financial strength ratings and the risks relating thereto, see AGL's Annual Report on Form 10-K for the fiscal year ended December 31, 2011, its Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2012, and its Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2012.

### ***Capitalization of AGM***

At June 30, 2012, AGM's consolidated policyholders' surplus and contingency reserves were approximately \$3,169,404,271 and its total net unearned premium reserve was approximately \$2,204,572,593, in each case, in accordance with statutory accounting principles.

AGM's statutory financial statements for the fiscal year ended December 31, 2011, for the quarterly period ended March 31, 2012, and for the quarterly period ended June 30, 2012, which have been filed with the New York State Department of Financial Services and posted on AGL's website at <http://www.assuredguaranty.com>, are incorporated by reference into this Official Statement and shall be deemed to be a part hereof.

### ***Incorporation of Certain Documents by Reference***

Portions of the following documents filed by AGL with the Securities and Exchange Commission (the "SEC") that relate to AGM are incorporated by reference into this Official Statement and shall be deemed to be a part hereof:

- (i) the Annual Report on Form 10-K for the fiscal year ended December 31, 2011 (filed by AGL with the SEC on February 29, 2012);
- (ii) the Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2012 (filed by AGL with the SEC on May 10, 2012); and
- (iii) the Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2012 (filed by AGL with the SEC on August 9, 2012).

All information relating to AGM included in, or as exhibits to, documents filed by AGL pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, after the filing of the last document referred to above and before the termination of the offering of the Bonds shall be deemed incorporated by reference into this Official Statement and to be a part hereof from the respective dates of filing such documents. Copies of materials incorporated by reference are available over the internet at the SEC's website at <http://www.sec.gov>, at AGL's website at <http://www.assuredguaranty.com>, or will be provided upon request to Assured Guaranty Municipal Corp., 31 West 52nd Street, New York, New York 10019, Attention: Communications Department (telephone (212) 826-0100).

Any information regarding AGM included herein under the caption “BOND INSURANCE – Assured Guaranty Municipal Corp.” or included in a document incorporated by reference herein (collectively, the “AGM Information”) shall be modified or superseded to the extent that any subsequently included AGM Information (either directly or through incorporation by reference) modifies or supersedes such previously included AGM Information. Any AGM Information so modified or superseded shall not constitute a part of this Official Statement, except as so modified or superseded.

### ***Miscellaneous Matters***

AGM or one of its affiliates may purchase a portion of the Bonds or any uninsured bonds offered under this Official Statement and may hold such Bonds or uninsured bonds for investment or may sell or otherwise dispose of such Bonds or uninsured bonds at any time or from time to time.

AGM makes no representation regarding the Bonds or the advisability of investing in the Bonds. In addition, AGM has not independently verified, makes no representation regarding, and does not accept any responsibility for the accuracy or completeness of this Official Statement or any information or disclosure contained herein, or omitted herefrom, other than with respect to the accuracy of the information regarding AGM supplied by AGM and presented under the heading “BOND INSURANCE”.

## **THE SYSTEM**

The City has operated a water treatment and distribution system since 1902. The System is operated as a water system pursuant to Chapter 8, Article 19 of the Code of West Virginia, 1931, as amended. For additional information regarding the System, see “APPENDIX B – THE SYSTEM,” herein. For information regarding the City and Marion County in which the City is situated, see “APPENDIX A – GENERAL INFORMATION REGARDING FAIRMONT AND MARION COUNTY, WEST VIRGINIA.”

## **INVESTMENT CONSIDERATIONS**

### **Gross Revenue Pledge**

The Series 2012 D Bonds are secured solely by the Gross Revenues of the System. There can be no guarantee that current rates of the System will always produce revenue sufficient to pay the debt service on the Prior Bonds, the Series 2012 A/B Bonds and the Series 2012 D Bonds. The City has covenanted in the Ordinance to raise the rates of the System if the Gross Revenues of the System are not sufficient to provide the required coverage of the maximum annual debt service of the Series 2012 D Bonds and all bonds issued on a parity with the Series 2012 D Bonds, the Series 2012 A/B Bonds and the Prior Bonds. After enactment of a rate increase, however, if twenty-five percent or more of the City’s customers or one of the City’s wholesale customers file a petition protesting the rate increase, the Public Service Commission of West Virginia (the “PSC”) will have jurisdiction to review and modify the rates of the City. If a rate increase is appealed, there can be no assurance that the PSC will approve the increase of rates and charges to a level sufficient to generate revenues sufficient to pay the debt service on the Prior Bonds, the Series 2012 A/B Bonds and the Series 2012 D Bonds and meet the coverage

requirements. The PSC is not expressly statutorily required to set rates sufficient to satisfy the bond covenants of any water utility.

Gross Revenues sufficient to pay the debt service on the Series 2012 D Bonds, the Series 2012 A/B Bonds and the Prior Bonds also depend on the retention of current customers by the City. An unexpected loss of customers by the City could have an adverse effect on the ability of the City to make the required payments on the Series 2012 D Bonds. Additionally, a significant reduction in the amount of water used by customers of the City may also have an adverse impact on the City's ability to make the required payments on the Series 2012 D Bonds. The City does not have the authority to require citizens to accept service by the System. Accordingly, any further extensions by the City are dependent upon the City being able to obtain agreements with those potential customers to purchase water from the City. If the City is unable to obtain agreements from potential customers after an extension is constructed, it may have an adverse impact on the ability of the City to make the required payments on the Series 2012 D Bonds. The City has ten wholesale customers that purchase water from the City see "Appendix B – The System" herein. If a significant wholesale customer were to obtain water from some other source, it may have an adverse impact on the ability of the City to make the required payments on the Series 2012 D Bonds.

### **Future Legislation**

Current or future legislative proposals, if enacted into law, may cause interest on the Series 2012 D Bonds to be subject, directly or indirectly, to federal income taxation or otherwise prevent holders of the Series 2012 D Bonds from realizing the full current benefit of the tax status of such interest. The introduction or enactment of any such legislative proposals may also affect the market price for, or marketability of, the Series 2012 D Bonds. Prospective purchasers of the Series 2012 D Bonds should consult their own tax advisors regarding any such pending or proposed federal or state tax legislation, regulations or litigation, as to which Bond Counsel expresses no opinion.

It is not an event of default on the Series 2012 D Bonds if any legislation is enacted reducing or eliminating the exclusion of interest on state and local government bonds from gross income for federal income tax purposes.

### **Past Actions**

In 2004, due to an unexpected increase in operating costs caused by significant water breaks and an unexpected increase in project costs for the new filtration plant, the City was unable to pay debt service from the Revenue Fund and utilized surplus revenues from the City's general fund as a loan to the Water System in order to make its debt service payments. In 2005, such operating expenses continued to be unexpectedly high and the City was unable to pay debt service from the Revenue Fund. The City drew on its 1997, 1998 and 1999 Reserve Accounts (withdrew funds from the 1998 and 1999 forward agreements and drew on the 1997 Letter of Credit) in order to make the 2005 debt service payments. On July 1, 2005, the City increased rates by 15% which allowed it to replace the funds in the 1997, 1998 and 1999 Reserve Accounts.

In 2007, operating expenses were unexpectedly high again due to the new membrane-system plant being unable to meet daily usage demand. Due to the increase in operating expenses, the City was unable pay debt service on its water bonds from its Water Revenue Fund. The City utilized excess funds from its sewer fund and general fund as a loan to the Water System and drew on the 1997, 1998 and 1999 Reserve Accounts (withdrew funds from the 1998 and 1999 forward agreements and drew on the 1997 Letter of Credit) in order to make the 2007 debt service payments. On August 25, 2007, the PSC ordered a rate increase of 25.3% which allowed for the City to pay back the 1997, 1998 and 1999 Reserve Accounts. On April 27, 2009, the City implemented another rate increase of 23.9% which allowed for the repayment of the Sewer Fund and General Fund over five years and the purchase of additional equipment necessary for the System. Such rate increases have allowed the Water Revenue Fund to return to positive cash flow and was sufficient to provide funds to pay all debt service on water bonds since the rate increases. The PSC has also approved a long term corrective action project and a radio meter project that will help prevent future emergencies and thus reduce the chances for unexpectedly high operating costs.

### **The Public Service Commission of West Virginia**

In West Virginia, municipal water utilities such as the City are subject to regulatory oversight by the Public Service Commission of West Virginia (the "Commission") in certain situations. Specifically, pursuant to Chapter 24, Article 2, Section 11 of the Code of West Virginia, 1931, as amended, utilities must obtain a certificate of public convenience and necessity prior to proceeding to construction for projects which are outside of "the normal course of business." Additionally, rate increases approved by the Council of the City are subject to review for regulatory "notice" requirements and, under certain circumstances, the actual proposed rates. Municipal water utilities in West Virginia do not have the ability to adjust rates without the possibility of regulatory review. The parameters surrounding this review are discussed below. Such regulatory review may delay or halt the implementation of rate increases which could cause the utility to fail to meet rate covenants or produce revenue sufficient to pay debt service.

The Commission has two levels of review. Most cases are initially assigned to an administrative law judge ("ALJ") for decision. The Commission employs a "staff" comprised of engineers, lawyers and financial analysts (the "Staff") to review cases and make recommendations. The City is also permitted to make recommendations, as are other parties who are granted "intervenor" status. The ALJ may conduct a hearing, at which evidence is presented and witnesses for all parties may be cross-examined, after which a recommended decision is issued. Any party to the underlying proceeding, including a party granted intervenor status, may take exception to the recommended decision of the ALJ, in which case the matter is referred to the full Commission for decision.

### **Commission Regulatory Oversight of Rate Increases**

Pursuant to Chapter 8, Article 11, Section 4, Chapter 8, Article 19, Section 11 and Chapter 24, Article 2, Section 4b of the Code of West Virginia, 1931, as amended, the Council of the City has the ability to establish rates for the water utility through the enactment of an ordinance, following a public hearing on such ordinance. In the enactment of such an ordinance,

the City must comply with regulations of the Commission related to providing notice of such proposed rate increase. The Commission reviews the compliance of the City with such regulations and, if the Commission determines that the City has failed to satisfy the requirements of the regulations, the Commission may declare the rate ordinance invalid.

In such instance, the City would have no choice but to reenact the ordinance.

### **Commission Review of Proposed Rate Increases**

Once enacted, the proposed rates are subject to review by the Commission under the following scenarios:

1. More than 25% of the customers of the City sign a petition asking that the Commission review the rates proposed by the City; or
2. A customer of the City, which resides within the municipal boundaries of the City, alleges in writing that the rates being proposed by the City are “discriminatory;” or
3. A customer of the City, which resides outside of the municipal boundaries of the City, alleges in writing that the rates being proposed by the City are “discriminatory.”

If any of the above occurs, the Commission then takes “jurisdiction” over the rates, initiating an investigation into the need for the proposed rates. Pursuant to Chapter 24, Article 2, Section 4b of the Code of West Virginia, 1931, as amended (the “PSC Act”), the rates enacted by the City are suspended for 120 days from the date the rates would otherwise have gone into effect (i.e., 45 days from enactment of the rate ordinance) and the new rates, if any, established by the Commission will go into effect at that end of the suspension period.

The Commission views the term “discrimination” to include more situations than those where a different rate is applied to resident and non-resident customers. The Supreme Court of Appeals of West Virginia previously affirmed the Commission’s interpretation of the term “discrimination” when the court held that verified allegations, “which included the failure of the [municipality] to perform a class cost of service study and the discriminatory imposition of certain costs to resale customers, were sufficient to meet the requirements” found in the PSC Act. *City of Wheeling v. Pub. Serv. Comm’n of W. Va.*, 199 W. Va. 252, 257, 483 S.E.2d 835, 840 (1997).

The City has 10 bulk water resale customers. Any one resale customer may allege “discrimination,” causing the Commission to take jurisdiction over any proposed rate increase. Likewise, any one customer located within the City limits may allege “discrimination,” also causing the Commission to take jurisdiction over any proposed rate ordinance.

## **Potential Delays for the Enactment of Rate Increases**

Generally, the process of enacting a rate ordinance requires a minimum of two weeks (two readings by Council, separated by sufficient time to allow for the publication of a public hearing prior to the second reading, with the first publication for the public hearing being not less than 5 days prior to the date of the publication). Due to the local charter for the City, the process would actually take a minimum of four weeks. Pursuant to the PSC Act and regulations of the Commission, the rates cannot go into effect any sooner than 45 days from the date of enactment, provided that an appeal of the proposed rates does not occur. In the event that the Commission takes jurisdiction of the rate increase, the Commission will establish a decision due date for the ALJ, that is generally 30 days prior to the end of the 120-day suspension period. If any of the parties, however, appeal the ALJ's recommended decision to the full Commission, the Commission will render its decision no later than the end of the 120-day suspension period. Additionally, a decision of the Commission may be appealed to the Supreme Court of Appeals of West Virginia, which has no statutory time frame within which to render a decision.

Consequently, the time period from the first reading of a rate ordinance to the increased rates being charged to the customers is a minimum of 60 days, and the Commission takes jurisdiction, can exceed 180 days (Commission approved rates are billable during an appeal to the Supreme Court of Appeals of West Virginia). Due to the local charter for the City, the time period from the first reading of a rate ordinance to the increased rates being charged to the customers is a minimum of 90 days. From the date the new rates begin to be charged, the City should realize revenues in approximately 45 to 60 days. Resale customers are required to obtain authorization from the Commission for any necessary increase in resale rates. Such increases are often granted by the Commission after the rates for the City go into effect, which means no assurance exists that resale customers will have sufficient revenues to being paying the increased resale rates. The Commission can, and has on occasion, pre-approved resale rate increases in advance of the effective date of the new rates. As a result, resale customers may have the ability to begin charging the new resale rates of the City as soon as the rates go into effect.

## **Test Year**

If the Commission takes jurisdiction over a municipality's rate ordinance as described above, the regulations of the Commission require a municipality to file "financial justification" for the proposed rate increase. This financial justification must be based on financial data from the most recent actual audited or finally closed twelve-month period, also known as the "test year." Events which occur outside the test year are not generally permitted in the rate adjustment. A determination at the end of any twelve-month period that a rate increase is necessary may not result in increased rates and collections for nine months or more from the end of that period.

The City has the option to proceed with a rate increase at any time during the course of the year, however, the financials examined by the Commission will be the financials for the most recent full fiscal year, not the 12 month period immediately preceding the date of the request.

### **Reliance on “Known and Measurable” Adjustments**

When considering adjustments to the rates of a utility for costs occurring during the “test year,” the Commission’s regulations requires that the need for, and amount of, such adjustments be based on information that is “known and measurable.” As a result, a change in revenues or expenses must, in most cases, have occurred in the test year being analyzed. If an increase in a cost, or a decline in revenue, is anticipated for the coming year, the Commission generally will not take such change into account for rate making purposes unless the change occurs during the test year.

As a result of the requirement that the support for adjustments be “known and measurable,” the Commission will generally not allow multi-year rate increases to address anticipated inflation or drops in customer usage. Therefore, the City must initiate the rate ordinance process, and potential Commission review, whenever increased costs or decreased revenues necessitate a rate increase.

### **Emergency Rate Increase**

The PSC Act permits utilities to request “emergency rates” if the utility is in “financial distress.” Financial distress has been defined by the Commission to mean the utility is unable to pay operation and maintenance expenses and the principal and interest on the utility’s debt obligations. Such rates, however, are subject to refund, in the event the Commission determines that the emergency rates, or any portion thereof, are not warranted. Generally, emergency rates CANNOT be obtained to meet coverage requirements in bond documents.

### **Treatment of Renewal and Replacement Funds**

Most municipal water utilities in the state are required, pursuant to the terms of their outstanding bonds, to deposit 2.5% of gross revenues in a “Renewal and Replacement Fund” or “Depreciation Account” each month. The purpose of this account is to provide monies for capital repairs and improvements, to construct extensions and to make up defeasance in the reserve funds. In recent years, the Commission has taken the position that while the deposits should be made into the Account each month, such deposits are to be included in the calculation of the City’s funds available for capital additions for the year. The Commission generally calculates funds available for capital additions by averaging capital additions for the last five years; provided, however, the Commission will consider a different calculation if the utility can demonstrate the need for a higher capital requirement. Consequently, the City is not permitted to accumulate funds to be used for unforeseen capital repairs and replacements, for needed extensions or to replenish draws from the reserve funds as the account is to be utilized each year as part of the ongoing capital expenditures for the system. The City’s inability to maintain funds for emergencies increases its risk of utilizing revenues to pay for emergency repairs leaving insufficient funds to pay debt service on the Bonds.

### **Annual Municipal Audit**

Pursuant to Chapter 6, Article 9 of the Code of West Virginia, 1931, as amended (the “Audit Act”), the State Auditor, as the chief inspector and supervisor of public offices (the

“Chief Inspector”) is charged with the responsibility of (1) formulating, prescribing and installing a system of accountability for all local units of government in West Virginia, including municipalities and (2) examining the financial affairs of every local government office or political subdivision and all boards, commissions, authorities, agencies or other offices. The City is a local government under the Audit Act. Accordingly, pursuant to Section 7 of the Audit Act, an audit of the City’s finances must be accomplished by the Chief Inspector or any person appointed by him. The Chief Inspector has developed procedures which allow certain municipalities to obtain audit services from certain approved accounting firms. The City has been instructed by the Chief Auditor to procure audit services pursuant to such procedures. The procedures developed by the Chief Inspector to procure a CPA firm for the audit require written approval of all contracts and extensions to contracts by the Chief Inspector prior to the commencement of work on the audit by the CPA firm. Additionally, the Chief Inspector is authorized to unilaterally cancel any contract between the City and a CPA firm under certain conditions and elect to perform the audit. Accordingly, the actions or lack of actions of the Chief Inspector may adversely impact the ability of the selected CPA firm to timely complete the annual audited financial information required to be submitted to EMMA pursuant to the Continuing Disclosure Agreement. See “Continuing Disclosure” herein. Additionally, the City has no power to require the Chief Inspector to take any action required under such procedures that would ensure the completion of the audit to meet the timely filing of such information.

## **TAX MATTERS**

In the opinion of Steptoe & Johnson PLLC, Bond Counsel, under existing laws, regulations, published rulings and judicial decisions of the United States of America, as presently written and applied, the interest on the Series 2012 D Bonds (including original issue discount properly allocable to holders of the Series 2012 D Bonds) (i) is excludable from gross income of the holders thereof for Federal income tax purposes, assuming compliance with certain provisions described herein pertaining to the Internal Revenue Code of 1986, as amended (the “Code”), and (ii) is not a specific item of tax preference, under Section 57(a)5 of the Code, in computing the federal alternative minimum tax imposed on individuals and corporations, and (iii) under the laws of the State of West Virginia, the Series 2012 D Bonds are exempt from taxation by the State of West Virginia or any county, municipality or county commission, political subdivision or agency thereof, and the interest on the Series 2012 D Bonds is exempt from taxation by the State of West Virginia or any county, municipality or county commission, political subdivision or agency thereof. It should be noted, however, that interest on the Series 2012 D Bonds is included in the adjusted current earnings of certain corporations for purposes of computing the alternative minimum tax that may be imposed with respect to corporations.

### **Original Issue Discount/Original Issue Premium**

The original issue discount in the selling price of Series 2012 D Bonds maturing on July 1, 2021, through July 1, 2023, July 1, 2025, through July 1, 2027, and July 1, 2029 (collectively, the “Discount Bonds”), to the extent properly allocable to each owner of such Discount Bonds, is excluded from gross income for federal income tax purposes with respect to such owner. The original issue discount is the excess of the stated redemption price at maturity of such Discount Bond over its initial offering price to the public, excluding underwriters and other intermediaries, at which price a substantial amount of the Discount Bonds of such maturity were sold.

Under Section 1288 of the Code, original issue discount on tax-exempt bonds accrues on a compound basis. The amount of original issue discount that accrues to an owner of a Discount Bond during any accrual period generally equals (i) the issue price of such Discount Bond plus the amount of original issue discount accrued in all prior accrual periods, multiplied by (ii) the yield to maturity of such Discount Bond (determined on the basis of compounding at the close of each accrual period and properly adjusted for the length of the accrual period), minus (iii) any interest payable on such Discount Bond during such accrual period. The amount of original issue discount so accrued in a particular accrual period will be considered to be received ratably on each day of the accrual period, will be excludable from gross income for federal income tax purposes, and will increase the owner's tax basis in such Discount Bond.

Purchasers of any Discount Bond at any original issue discount should consult their tax advisors regarding the determination and treatment of original issue discount for federal income tax purposes, and with respect to state and local tax consequences of owning such Discount Bonds.

The Series 2012 D Bonds maturing on July 1, 2013, through July 1, 2018, and July 1, 2024 (collectively, the "OIP Bonds"), will be sold with an original issue premium ("OIP"). The original issue premium will be equal to the excess of a holder's tax basis in the OIP Bonds over the amount payable at maturity, or in the case of OIP Bonds subject to redemption, the amount payable on the redemption date. Under current law, the original issue premium for OIP Bonds must be amortized on an annual basis by the holder thereof. The amount of original issue premium amortized each year will not be deductible for federal income tax purposes. Further, Section 1016 of the Code requires that the amount of annual amortization for the OIP Bonds be deducted from the holder's tax basis in such OIP Bonds. This reduction in a holder's tax basis will affect the amount of capital gain or loss to be recognized by the holder when the OIP Bonds are sold or redeemed. Owners of OIP Bonds should consult their tax advisors with respect to the determination and treatment of amortizable original issue premium for federal income tax purposes, and with respect to the state and local tax consequences of owning such OIP Bonds.

The opinions described above are subject to the condition that the City complies on a continuing basis with all requirements of the Code, and regulations thereunder that must be satisfied subsequent to issuance of the Series 2012 D Bonds for interest thereon to be or continue to be excluded from gross income for federal income tax purposes. The City has covenanted to comply with each such requirement. Failure to comply with certain of such requirements could cause the interest on the Series 2012 D Bonds to be included in the gross income of the recipients thereof for purposes of federal income taxation retroactively to the date of issuance of the Series 2012 D Bonds.

The accrual or receipt of the interest on the Series 2012 D Bonds may otherwise affect the federal income tax liability of certain recipients. The extent of these and other consequences will depend upon the recipient's particular tax status or other items of income or deductions. Bond Counsel expresses no opinion regarding any such consequences, and investors should consult their tax advisors regarding the tax consequences of purchasing or holding the Series 2012 D Bonds.

## APPROVAL OF LEGALITY

Legal matters incident to the authorization, sale and issuance of the Series 2012 D Bonds are subject to the unqualified approving opinions of Steptoe & Johnson PLLC, Charleston, West Virginia, Bond Counsel, the form of which is attached as APPENDIX D. Kevin Sansalone, Esquire, Fairmont, West Virginia, as City Attorney, will pass upon certain legal matters for the City. Jackson Kelly PLLC, Charleston, West Virginia, as counsel to the Underwriters, will pass upon certain legal matters for the Underwriters.

## ABSENCE OF MATERIAL LITIGATION

Other than as described below, there is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court, public board or body, now pending or, to the best knowledge of the City, threatened or affecting the City (or, to the City's knowledge, any basis therefor) wherein an unfavorable decision, ruling or finding would have a material adverse effect on the City's financial position or on the validity of the Series 2012 D Bonds, the Ordinance or any agreement to which the City is a party and which is a part of the issuance of the Series 2012 D Bonds.

The City is involved in certain litigation concerning a Lease-Purchase Agreement (the "Lease") entered into on September 8, 2009, with Comvest, Ltd., Inc. ("Comvest"), in relation to the purchase of equipment for the City's Water System. According to the Lease, Comvest was to provide the City \$1,070,600 for the purchase of equipment that would be leased to the City pursuant to the Lease. Comvest assigned the Lease to Page Valley Bank in return for Page Valley Bank providing \$1,070,600 to the City for the purchase of equipment. The City received \$563,776.94 pursuant to the Lease for the purchase of equipment. The City requested the remainder of the \$1,070,600 but was informed by Comvest that the remaining funds were no longer available to the City. Comvest shortly after filed bankruptcy. The City is participating in the Comvest bankruptcy proceeding in an effort to obtain the additional funds due under the Lease. Page Valley Bank has asserted that the City owes it \$1,070,600 under the Lease. The City disputes this claim because it was not provided the full \$1,070,600. The City has agreed to make payments under the Lease in an amount that it actually received for the purchase of equipment. Additionally, the City has filed an action against the principals of Comvest and the West Virginia Municipal League (which the City alleges was a partner in the Comvest lease program) asserting negligence, breach of contract, breach of fiduciary duty and duty of trust and fraud. If all actions are resolved unfavorably to the City, the City believes that the maximum exposure to its Water System will be \$506,823.06 plus legal expenses.

Additionally, after the complaint against Comvest was filed in The Circuit Court of Marion County, West Virginia, the City was advised that on January 27, 2012, James R. Christie, secretary/treasurer of Comvest, had filed personal bankruptcy in the United States Bankruptcy Court for the Northern District of West Virginia. The case is styled In re: James R. Christie, and is assigned Case No. 12-00076. Christie did not list the City as a creditor on his bankruptcy schedules. Although the case was filed as a no-asset case, it has been converted to an asset case. The City has taken the following actions in Christie's bankruptcy case and a related adversary proceeding, Sheehan v. Christie, Case No. Ap. No. 1:12-ap-29, to protect the amounts alleged to be due from Christie and Comvest to the City's water fund: 1) filed a Motion to Lift Stay to permit the City to pursue state court action against Christie, which motion is pending; 2) timely

filed a proof of claim against Christie for the amount due the City's water fund, identified as "Christie Bankruptcy Claim No. 5"; and 3) filed a Motion for Leave to Intervene in Sheehan v. Christie, Case No. Ap. No. 1:12-ap-29, which motion is pending.

## UNDERWRITING

The Series 2012 D Bonds are being purchased by the Underwriters named on the cover of this Official Statement. The Bond Purchase Agreement provides that the Underwriters will purchase the Series 2012 D Bonds, if any are purchased, at a total purchase price of \$25,337,983.90 (\$25,555,000 minus Underwriters' discount of \$459,990 and plus a net original issue premium of \$242,973.90). The obligation to make such purchase is subject to the terms and conditions set forth in the Bond Purchase Agreement, including the approval of certain legal matters by counsel. The Underwriters may change the initial public offering prices from time to time. The Underwriters may offer and sell Series 2012 D Bonds to certain dealers (including dealers depositing the Series 2012 D Bonds into investment trusts) and certain dealer banks acting as agents at prices lower than the public offering prices stated on the cover page hereof.

Piper Jaffray & Co. and Pershing LLC, a subsidiary of The Bank of New York Mellon Corporation, entered into an agreement (the "Agreement") which enables Pershing LLC to distribute certain new issue municipal securities underwritten by or allocated to Piper Jaffray & Co., including the Series 2012 D Bonds. Under the Agreement, Piper Jaffray & Co. will share with Pershing LLC a portion of the fee or commission paid to Piper Jaffray & Co.

## FINANCIAL STATEMENTS

Included in Appendix C are the audited financial statements of the City as of and for the twelve-month period ended June 30, 2011, and the report with respect to the audited financial statements as of and for the twelve-month period ended June 30, 2011, dated January 6, 2012, of Tetrick & Bartlett, Certified Public Accountants. The City has obtained the consent of Tetrick & Bartlett, Certified Public Accountants to publish the audited financial statements with this Official Statement.

## RATINGS

The Series 2012 D Bonds are rated "AA-" by Standard & Poor's Rating Services, a division of the McGraw-Hill Companies, Inc. ("S&P") by virtue of a municipal bond insurance policy to be issued by Assured Guaranty Municipal Corp. ("AGM"). S&P has assigned an underlying rating of 'A' to the City. Any desired explanation of the significance of such ratings should be obtained from Standard & Poor's. The Board did not apply for any other ratings. Such rating reflects only the views of such organization and reference is made to such organization for the meaning of such rating. There is no assurance that such rating will continue for any period of time or that such rating will not be revised downward or withdrawn entirely by the assigning rating agency, if in the judgment of such rating agency, circumstances so warrant. Any downward revision or withdrawal of such rating may have an adverse effect upon the market price or value of the Bonds.

Except as provided under "Continuing Disclosure" herein, neither the City nor the Underwriter have undertaken any responsibility to take any action with respect to possible changes in such rating or to bring any such changes to the attention of the Bondholders.

### **CONTINUING DISCLOSURE**

The City has agreed to execute and deliver contemporaneously with the issuance of the Series 2012 D Bonds an agreement to undertake for the benefit of the Registered Owners of the Series 2012 D Bonds to provide certain financial information (the "Annual Information") not later than two hundred seventy (270) days following the end of the fiscal year of the City, commencing in 2012, and to provide the Annual Information to the Electronic Municipal Markets Access System ("EMMA") and to provide notice of the occurrence of the enumerated events to EMMA as required by SEC Rule 15c2-12, as modified by certain amendments that became effective on December 1, 2010. See "APPENDIX E – FORM OF CONTINUING DISCLOSURE AGREEMENT." The Annual Information and each notice of material events will be filed electronically by WesBanco Bank, Wheeling, West Virginia, as dissemination agent, on behalf of the City, with EMMA.

This continuing disclosure obligation is being undertaken by the City to assist the Underwriters in complying with Rule 15c2-12 promulgated by the SEC. The City has agreed to give notice in a timely manner to EMMA of any failure to supply the requested information. However, any such failure will not constitute a default under the terms of the Series 2012 D Bonds. Registered Owners may contact the Fairmont Manager at P.O. Box 428, Fairmont, West Virginia 26555-1428, (304) 366-6211, for more information. Under the Continuing Disclosure Agreement, a Bondholder's sole remedy for such failure is to seek an order for specific performance. Any failure to comply with the continuing disclosure requirements described above shall not, however, constitute an event of default under the Ordinance.

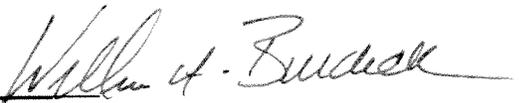
The Continuing Disclosure Agreements for the Series 1997 Bonds, the Series 1998 Bonds and the Series 1999 Bonds required the City to file its continuing disclosure with nationally recognized municipal securities information repositories. The City filed its continuing disclosure with Bloomberg as required by such agreements. However, the City was not aware of the changes to EMMA and failed to timely file the June 30, 2009 annual financial information with EMMA. With the assistance of the Underwriters, the City timely filed its July 1, 2010 annual financial information. The City failed to timely file the June 30, 2011 audited financials with EMMA until April 26, 2012. The City did not engage a dissemination agent to file the annual financial information for the Series 1997 Bonds, the Series 1998 Bonds and the Series 1999 Bonds. In an effort to ensure timely filing of future continuing disclosure obligations, the City is engaging WesBanco Bank, Wheeling, West Virginia, as dissemination agent pursuant to the Continuing Disclosure Agreement. See Appendix E.

### **MISCELLANEOUS**

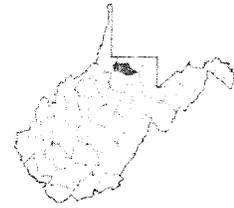
The foregoing summaries, explanations and quotations do not purport to be complete and are expressly made subject to the exact provisions of the complete documents. Purchasers are referred to the Act and the Ordinance for full and complete statements of their provisions.

Any statements in this Official Statement involving matters of opinion, whether or not expressly so stated, are intended as such and not as representation of fact. This Official Statement is not to be construed as a contract or agreement between the City and the purchasers or owners of any of the Series 2012 D Bonds. The City has authorized the execution and distribution of this Official Statement.

**CITY OF FAIRMONT, WEST VIRGINIA**

By: /s/ William Burdick   
Mayor

**APPENDIX A**  
 (sources include the City, US Census, City-Data.com)



**General Information Regarding Fairmont and Marion County, West Virginia**

The City of Fairmont, county seat of Marion County, West Virginia, was founded in 1820 and chartered as a city in 1899. The City is located in north central West Virginia, about 95 miles south of Pittsburgh, Pennsylvania, and 19 miles south of Morgantown, West Virginia. The Monongahela River begins in the City, making it the head of a great inland waterway system.

The City covers 8.8 square miles, of which 31 percent is used for single family housing, 4.8 percent for multi-family housing, 8.3 percent for commercial uses, 3 percent for industrial purposes and 7 percent for other land uses. Approximately 36 percent of the land in the City is vacant.

**Population Data**

Census Report	City Population	% Change
1940	23,105	- .2%
1950	29,346	+ 27.0%
1960	27,477	- 6.4%
1970	26,093	- 5.0%
1980	23,863	- 8.5%
1990	20,210	- 15.3%
2000	19,097	- 5.5%
2010	18,704	-2.1%

Source: U.S. Census Bureau

**Gender/Age/Race Data**

Median resident age: 36.8 years  
 WV median age: 43.4years

White alone	16,637	(88.9%)
Black alone	1,411	(7.5%)
Two or more races	430	(2.3%)
Asian alone	113	(0.6%)
American Indian alone	39	(0.2%)
Other race alone	71	(0.4%)
Native Hawaiian and Other Pacific Islander alone	3	(0.02%)

**Household Data**

Average household size:  
 City: ██████████ 2.16 people  
 West Virginia: 2.4 people

Percentage of family households:  
 City: ██████████ 54.4%  
 Whole state: ██████████ 68.1%

Residents with income below the poverty level in 2010:  
 City: ██████████ 22%  
 Whole state: ██████████ 17.4%

Source: U.S. Census Bureau

**County Population Data**

**MARION COUNTY POPULATION**

Census Report	County Population	% Change
1940	68,683	+ 3.0%
1950	71,521	+ 4.1%
1960	63,717	- 10.9%
1970	61,356	- 3.7%
1980	65,789	+ 7.2%
1990	57,249	- 13.0%
2000	56,598	- 1.1%
2010	56,418	- .3%

Source: U.S. Census Bureau

**Commerce and Industry**

The City has been an important trade area for North Central West Virginia. A downtown shopping area contains stores and specialty shops. Middletown Mall, located on the edge of the City, opened in 1972, and is now the location of the FBI offices and other area services entities. A major retail center (including Walmart and Sam's Warehouse) has located across from this facility. A 10 minute drive south on I-79 leads to both the Meadowbrook Mall, with its more than 100 places to shop and eat, and the Bridgeport Mall. Both the Morgantown Mall and Mountaineer Mall are within 20 miles of the City.

There is significant industrial activity in the area surrounding the City. Various industrial firms are located in the area. Within the City limits is the I-79 Technology Park which includes NASA and the High-Tech Consortium Building. The City is also in close proximity to the FBI fingerprint center.

Several private and public initiatives have revitalized the downtown area. The local Chamber of Commerce works cooperatively with the Harrison and Monongahela County Chambers to market the region.

The significant number of high technology public agencies and private firms now located in the area provides the foundation for growth. The high-tech companies include Lockheed-Martin, UNISYS, ManTech International, Electronic Warfare Associates, Computer Science Corporation, EG&G, and Hughes Information Systems. Several governmental agencies have located in the region and are providing the foundation upon which technology businesses are growing. These agencies include: NASA, the FBI, the Concurrent Engineering Research Center, and the Morgantown Energy Technology Center.

## Employment

### MAJOR EMPLOYERS (June, 2012)

<u>Employer</u>	<u>Service</u>
Marion County Board of Education	Education
Consolidation Coal Company	Coal
Fairmont State University	Education
Fairmont General Hospital, Inc.	Medical
Allegheny Power Service Corporation	Electrical Power
Wal-Mart	Retail
Eastern Associated Coal	Coal
Aegis Communications Group	Telemarketing
Ruskin Company	Ventilation Systems
Novelis Corporation	Recycling

Source: WV Bureau of Employment Programs, Labor & Economic Research

### MARION COUNTY UNEMPLOYMENT RATES

<u>Year</u>	<u>Unemployment Rate</u>
2002	6.0%
2003	5.7%
2004	4.9%
2005	4.3%
2006	4.1%
2007	3.9%
2008	3.5%
2009	5.9%
2010	7.1%
2011	6.7%

Source: West Virginia Bureau of Employment Programs,  
Labor & Economic Research and U.S. Dept. of Labor

## **Transportation**

Marion County is bisected by Interstate 79 which connects with Interstate 68, 20 miles to the north. Other major highways in the area include US 250, US 19, US 73, WV 218 and WV 310. The County is also 20 minutes from US 50 and approximately 30 minutes from Corridor H.

Passenger air service is provided to Fairmont Municipal Airport, Benedum Airport in Bridgeport, West Virginia, 14 miles south, and Morgantown Municipal Airport, in Morgantown, West Virginia, 20 miles north. The major airport serving the County is Pittsburgh International Airport in Pittsburgh, Pennsylvania which is within a 90 minute drive.

Area rail service is provided by the Chessie System Railroad, the B&O Railroad and the Monongahela Railway Co. Passenger bus service is provided by Greyhound Buslines and Fairmont-Marion County Transit Authority for national and local service, respectively.

## **Utilities and Services**

Electric service to Marion County is provided by Allegheny Power. Cable service is provided locally by CVI/Time Warner Cable and telephone service is provided by Frontier Communications.

The City's regional wastewater collection and treatment system provides sewer service to the City and surrounding areas, including three municipalities and four public service districts.

## **Health Care**

Marion County is served by Fairmont General Hospital, located in Fairmont, which operates a 24-hour emergency room, inpatient care, a range of outpatient services, a center for behavioral medicine and addiction treatment, as well as a center for skilled nursing. Both MVA and MVA Hospice of Marion County provide in-home care services to the chronically and/or terminally ill utilizing a staff of both professional and volunteer caregivers. Also, the MVA Fairmont Clinic provides quality, multispecialty health care to the residents of North Central West Virginia. There are six nursing homes located in Marion County.

### **Hospital/medical centers in/near Fairmont:**

FAIRMONT GENERAL HOSPITAL (1325 LOCUST AVENUE)

H/S MOUNTAINVIEW REGIONAL REHAB HOSP (about 8 miles; MORGANTOWN, WV)

GRAFTON CITY HOSPITAL (about 13 miles; GRAFTON, WV)

MONONGALIA COUNTY GENERAL HOSPITAL (about 13 miles; MORGANTOWN, WV)

UNITED HOSPITAL CENTER (about 16 miles; BRIDGEPORT, WV)

WVU RUBY MEMORIAL HOSPITAL (about 13 miles; MORGANTOWN, WV)

## **Lodging Facilities**

- Comfort Inn & Suites, 1185 Airport Rd, Fairmont, WV 26554, Phone: (304) 367-1370, Fax: (304) 367-1806
- Clarion Inn, 930 E Grafton Rd, Fairmont, WV 26554, Phone: (304) 366-5500, Fax: (304) 363-3975
- Red Roof Inn, 42 Spencer Dr., White Hall, WV 26554, Phone: (304) 366-6800, Fax: (304) 366-6812
- Days Inn, 166 Middletown Rd, Fairmont, WV 26554, Phone: (304) 366-5995, Fax: (304) 366-6092
- Super 8 Motel, 2208 Pleasant Vly Rd, Fairmont, WV 26554, Phone: (304) 363-1488, Fax: (304) 363-1488
- Fairfield Inn & Suites, 27 Southland Dr, Fairmont, WV 26554, Phone: (304) 367-9150, Fax: (304) 367-9151
- Holiday Inn Express, 2256 Landing Lane, Fairmont, WV 26554, Phone: (800) 465-4329
- The Inn at Pettyjohn, 1117 Fairmont Ave., Fairmont, WV 26554, Phone: (304) 363-0100
- Country Club Motor Lodge, US 19 and Country Club Road, Fairmont, WV 26554, Phone: (304) 366-4141
- Belmont Motor Inn, 608 Belleview Blvd., Fairmont, WV 26554, Phone: (304) 363-5300
- Avenue Motel, 816 Fairmont Ave., Fairmont, WV 26554, Phone: (304) 366-4960

## **Parks and Recreation**

Located in the City is Pricketts Fort State Park which is home to an historic fort originally built in 1774. Valley Falls State Park, a 1,145 acre day park along the Tygart River, offers fishing, hiking, cross country skiing and whitewater rafting. Also located close to the City are other West Virginia scenic and recreational areas including Blackwater Falls State Park, 3,860 acre Tygart Lake created by the Tygart Dam, ski areas of Tucker County, six other State parks and the Monongahela National Forest. The Fairmont Dragway, a National Racing Association sanctioned drag strip for modern stock cars, is located in the County. The area is also home to the Old Schoolhouse Museum which showcases the Civil War era.

## **Secondary Education**

### ***Public high schools in Fairmont:***

EAST FAIRMONT HIGH SCHOOL (Location: 1993 AIRPORT ROAD; Grades: 9 - 12)

FAIRMONT SENIOR HIGH SCHOOL (Location: 1 LOOP PARK DRIVE; Grades: 9 - 12)

FAIRMONT YOUTH ACADEMY (Location: 3 CROSSWINDS DRIVE; Grades 6 - 12)

***Private high schools in Fairmont:***

CALVARY CHRISTIAN SCHOOL (Location: 28 FELLOWSHIP DRIVE; Grades: KG - 12)

APOSTOLIC CHRISTIAN TEMPLE SCHOOL (Location: PO BOX 1757; Grades: PK - 12)

FAIRMONT CHRISTIAN ACADEMY (Location: 1501 PENNSYLVANIA AVENUE; Grades 7 - 12)

***Public elementary/middle schools in Fairmont:***

EAST DALE ELEMENTARY SCHOOL (Location: RT. 3; Grades: PK - 6)

EAST PARK ELEMENTARY SCHOOL (Location: 1025 FAIRFAX STREET; Grades: PK - 6)

EAST FAIRMONT JUNIOR HIGH SCHOOL (Location: 1 ORION LANE; Grades: 7 - 8)

JAYENNE ELEMENTARY SCHOOL (Location: 1504 COUNTRY CLUB ROAD; Grades: PK - 4)

PLEASANT VALLEY ELEMENTARY SCHOOL (Location: 58 VALLEY SCHOOL ROAD; Grades: PK - 6)

WATSON ELEMENTARY SCHOOL (Location: 1579 MARY LOU RETTON DR; Grades: PK - 4)

WEST FAIRMONT MIDDLE SCHOOL (Location: 110 10<sup>th</sup> STREET; Grades 5 – 8)

WHITE HALL ELEMENTARY SCHOOL (Location: 38 EMERALD LANE; Grades: PK - 4)

Source: Marion County Schools

***Private elementary/middle school in Fairmont:***

FAIRMONT CATHOLIC GRADE SCHOOL (Location: 416 A MADISON ST; Grades: KG - 8)

ACT ACADEMY (Location: 415 POTOMAC AVENUE; Grades: PK – 7)

**Higher Education**

FAIRMONT STATE UNIVERSITY (Location: 1201 LOCUST AVE; Public; Website: [www.fairmontstate.edu](http://www.fairmontstate.edu))

PIERPONT COMMUNITY AND TECHNICAL COLLEGE (Location: 1201 LOCUST AVE.; Public)

THE INTERNATIONAL ACADEMY OF DESIGN AND TECHNOLOGY (Location: 2000 GREEN RIVER DR; Private, for-profit)

OPPORTUNITIES INDUSTRIALIZATION CENTER-N CTRL WV (Location: 120 JACKSON ST; Private, not-for-profit)

MARION COUNTY ADULT AND COMMUNITY EDUCATION (Location: 601 LOCUST AVE; Public)

### **Communications**

News service is provided by the Times West Virginian, a daily newspaper located in the City, and the Mountain State Veteran and the Marion County Observer, both weekly publications. Other daily newspapers distributed in the area are the Clarksburg Exponent, Clarksburg Telegram and the Dominion Post (Morgantown).

WGYE 102.7 FM, WVUC-FM, WRLF-FM, WTCS-AM, WMMN-AM and WAJR-AM are the local radio stations.

TV broadcast stations around Fairmont include WVFX (Channel 46; CLARKSBURG, WV), WBOY-TV (Channel 12; CLARKSBURG, WV) and WNPB-TV (Channel 24; MORGANTOWN, WV).

### **Financial Institutions**

Banking service in the City is provided by Huntington Bank, Monongahela Valley Bank, Inc., the First Exchange Bank, WesBanco Bank and the Fairmont Federal Credit Union.

#### **Banks with branches in Fairmont (2011 data):**

Wesbanco Bank, Inc.  
The Huntington National Bank  
MVB Bank, Inc.  
Branch Banking and Trust Company  
BCBank, Inc.  
First Exchange Bank  
Woodforest National Bank

### **HOUSING:**

*Single-family new house construction building permits:*

- 2000: 16 buildings, average cost: \$67,800
- 2001: 16 buildings, average cost: \$67,800
- 2002: 17 buildings, average cost: \$67,800
- 2003: 20 buildings, average cost: \$67,800
- 2004: 22 buildings, average cost: \$67,800

- 2005: 24 buildings, average cost: \$67,800
- 2006: 12 buildings, average cost: \$102,300
- 2007: 10 buildings, average cost: \$102,300
- 2008: 6 buildings, average cost: \$102,300
- 2009: 4 buildings, average cost: \$102,300
- 2010: 3 buildings, average cost: \$102,300

**Airports located in Fairmont:**

Fairmont Muni-Frankman Field Airport (Runways: 1, Itinerant Ops: 1,400, Local Ops: 6,000, Military Ops: 500)  
 Carr Airport (Runways: 1)

	<b>Marion County</b>	<b>West Virginia</b>
<b>U.S. Census People QuickFacts</b>		
Population, 2011 estimate	NA	1,855,364
Population 2010	56,418	1,852,994
Population, percent change, 2000 to 2010	-0.3%	2.5%
Population, 2000	56,598	1,808,344
Persons under 5 years, percent, 2010	5.5%	5.6%
Persons under 18 years, percent, 2010	19.9%	20.9%
Persons 65 years and over, percent, 2010	16.9%	16.0%
Female persons, percent, 2010	51.2%	50.7%
White persons, percent, 2010 (a)	94.3%	93.9%
Black persons, percent, 2010 (a)	3.3%	3.4%
American Indian and Alaska Native persons, percent, 2010 (a)	0.2%	0.2%
Asian persons, percent, 2010 (a)	0.5%	0.7%
Persons reporting two or more races, percent, 2010	1.5%	1.5%
Persons of Hispanic or Latino origin, percent, 2010 (b)	0.9%	1.2%
White persons not	93.7%	93.2%
Living in same house 1 year & over, 2006-2010	88.4%	87.6%
Foreign born persons, percent, 2006-2010	1.2%	1.3%
Language other than English spoken at home, pct age 5+, 2006-2010	2.2%	2.3%
High school graduates, percent of persons age 25+, 2006-2010	86.4%	81.9%
Bachelor's degree or higher, pct of persons age 25+, 2006-2010	19.2%	17.3%
Veterans, 2006-2010	5,071	170,894
Mean travel time to work (minutes), workers age 16+, 2006-2010	25.4	25.4
Housing units, 2010	26,463	881,917
Homeownership rate, 2006-2010	75.1%	74.6%
Housing units in multi-unit structures, percent, 2006-2010	13.0%	12.1%
Median value of owner-occupied housing units, 2006-2010	\$87,500	\$94,500
Households, 2006-2010	22,744	740,874
Persons per household, 2006-2010	2.42	2.42
Per capita money income in past 12 months (2010 dollars) 2006-2010	\$20,752	\$21,232
Median household income 2006-2010	\$38,115	\$38,380
Persons below poverty level, percent, 2006-2010	16.8%	17.4%
<b>Business QuickFacts</b>	<b>Marion County</b>	<b>West Virginia</b>
Private nonfarm establishments, 2009	1,264	38,990 <sup>1</sup>
Private nonfarm employment, 2009	17,942	572,960 <sup>1</sup>
Private nonfarm employment, percent change 2000-2009	6.3%	2.6% <sup>1</sup>

Nonemployer establishments, 2009	2,645	88,081
Total number of firms, 2007	3,967	120,381
Women-owned firms, percent, 2007	29.5%	28.1%
Manufacturers shipments, 2007 (\$1000)	546,362	25,080,573
Retail sales, 2007 (\$1000)	614,884	20,538,829
Retail sales per capita, 2007	\$10,838	\$11,340
Accommodation and foodservices sales, 2007 (\$1000)	67,227	2,553,258
Building permits, 2010	5	2,395
Federal spending, 2009	578,946	20,464,822 <sup>1</sup>

**Geography QuickFacts**

	<b>Marion County</b>	<b>West Virginia</b>
Land area in square miles, 2010	308.74	24,038.21
Persons per square mile, 2010	182.7	77.1

Source: U.S. Census Bureau

## APPENDIX B

### The System

#### History and Development

Development of the System began in 1902 with construction of a pump station on the Monongahela River and a related reservoir, serving the downtown area of the City with 12-inch water mains. Filtration at the reservoir site commenced in 1911 and chlorination began soon thereafter. The filtration plant, constructed in 1924, initially had a maximum capacity of four million gallons per day. In 1942 the existing raw water pump station was constructed on the Tygart Valley River. Provisions for increased filtration capacity plus addition of finished water storage tanks increased plant capacity to six million gallons per day by 1952. The eight million gallon per day capacity was achieved in 1963 with the installation of two additional filters and an additional storage tank. Emergency improvements at the water treatment plant were made to the clearwell, settling basins and flocculator basin in 1977.

In 1984, plant capacity was increased through improvements made to the plant as part of a 1980 improvement project. This increase was due to the construction of an additional 1.5 million gallons of storage, a new head house, upgraded piping and valves, computerized controls, a backwash tank and bulk chemical facilities.

In 2003, the City replaced its conventional water filtration plant with a plant providing four separate production trains utilizing an immersed ultra-filtration membrane system. Although the new plant produced water that met or exceeded standards, there were serious problems with occasional reductions of potable water production, particularly in 2007. Interim steps to alleviate the problems were taken in 2009. In 2010, the City began construction on a filtration plant corrective action program that includes additional production trains and pre-treatment and is expected to provide the intended plant capacity of 12 million gallons per day (the "CAP Project"). The CAP Project is projected to be completed by the Summer of 2012.

The City acquired and installed a fifth production train as part of the CAP Project. The equipment was initially financed by a lease-purchase agreement in the amount of \$1,070,600 through Comvest Ltd., Inc. The company has filed bankruptcy, and the City has filed a proof of claim for the amount of \$506,823.06. However, the City had sufficient funds in Capital Reserves to complete the acquisition and installation. The fifth train went on line in July, 2012.

Since 1987, the System has focused on internally upgrading the distribution system and lines and has significantly reduced the amount of unaccounted for water. In July 2009, the City adopted a resolution endorsing a long-term rate stabilization program to reduce and control unaccounted for water recommended by the Public Service Commission of West Virginia (the "PSC").

In 2008, the City expanded service of the System by constructing 70,748 linear feet of 12-inch and 16-inch water line along US Route 250, from the City's existing Cleveland Avenue main water line to the City of Mannington's 632,000-gallon water storage tank, including a 1,000-gallon-per-minute deluxe water booster pump station with booster chlorination, a master meter system, and a SCADA system for automated operation.

## Properties and Services

The primary functions of the System are raw water intake, water treatment, transmission and distribution, and administration.

The immediate source of raw water for the System is the Tygart Valley River which flows at a minimum rate of 34 cubic feet per second. Water flows to the point of System intake from the Tygart Dam, located in Grafton, West Virginia. The dam serves a watershed area of 878,720 acres and has a reservoir capacity of 298,550 acre feet.

The City's raw water intake facility and pumping station are located on the Tygart Valley River. Raw water is pumped through two 20-inch lines to a raw water reservoir and water treatment plant by two 1,800 gallons per minute and two 3,200 gallons per minute pumps. The water treatment plant consists of chemical feed equipment, chlorination equipment and immersed membrane filtration system and 1,500,000 gallon and one 2,000,000 gallon clearwells for finished water storage. The present processing capacity of the water treatment plant is ten million gallons per day and there is currently a project underway to expand capacity to 12-15 million gallons per day and a new pretreatment process for the plant.

The water treatment plant is constructed with the capability to completely treat water in accordance with Federal requirements under the Safe Drinking Water Act. The water quality for both raw water entering the water treatment plant and treated drinking water leaving the plant is continuously monitored by a complete bacteriological and chemical laboratory. Pertinent test data are certified and forwarded to the State Bureau of Public Health which monitors the City's compliance with applicable regulatory standards.

Other raw materials necessary for the production of drinking water include chemicals and power supply. Chemicals are purchased pursuant to annual contracts with reliable suppliers and the City has encountered no difficulties in obtaining adequate chemicals. The required electrical energy is furnished throughout the System by the Mon Power/First Energy Company, and while short electrical interruptions are occasionally experienced, these interruptions have not created any serious problems for the System.

The City owns the transmission mains used to transport water from the water treatment plant to retail customers throughout the City and to the wholesale distribution areas. The transmission system is comprised of approximately 21 miles of 16 to 20-inch mains, 34 miles of 10 to 12-inch mains, 104 miles of 6 to 8-inch mains and 108 miles of 2 to 4-inch mains. Water pressure in the transmission mains is maintained presently by gravity and five booster stations. As part of an improvement project undertaken in 1983-84, a transmission loop for the water treatment plant was completed, a System storage tank was constructed and primary distribution lines were upgraded. These improvements permit adequate pressure maintenance with decreased operation of energy intensive booster pumps.

The City has entered into Inter Utility Agreements with various entities providing sewer service requiring the City to terminate water service to customers in the event such customers fail to pay their sewer bill.

## **Organization and Administration**

Pursuant to the Act and the City Charter adopted in 1976, the City is governed under the council-manager form of municipal government, whereby the Council is the governmental authority and the City Manager, who is appointed for an indefinite term by the Council, administers the government. The City Council is charged with the responsibility to establish, alter or abolish any City department, office or agency, regulate rates charged for services by a public utility and authorize the borrowing of money. The City Manager is charged with the responsibility to appoint and remove City employees, including department heads, to direct and supervise the administration of most departments, offices and agencies, to see that all laws and ordinances are faithfully executed and to prepare and submit the annual budget.

The System has been operated under the direct supervision of the City Manager since July 1, 1983. Immediately prior to that time, the custody, supervision, control and administration of the System was under the control of a water commission. Administrative duplication and cost, and lack of coordination between City and water commission projects, prompted the 1983 consolidation of System management under the City Manager.

System operations are organized as four functions and assigned on that basis to two departments of City government: the Municipal Utility Department is responsible for treatment plant and pump station operation, utility meter reading, and transmission and distribution line maintenance; and the City Finance Department is responsible for accounting, billing and collections. The officers and employees of the City responsible for these operations, and a discussion of the financial management of the System, are set forth separately below.

On August 29, 2010, the City Council enacted an ordinance that established the Fairmont Water Board to manage, control and supervise the System. The three members of the commission were appointed by the City Council on November 9, 2010. City Manager, Jay Rogers chairs the Board which conducts monthly meetings. All areas of the utility system are discussed with emphasis on the Utility Manager's report and Utility Controller financial assessment. The Board and staff have been active in policy decisions, major project analysis, and creation of a 5-year budget prospective. Future capitalization, customer service and billing technology enhancement, along with rate stabilization are all mission parameters on the Board's agenda moving forward.

### **Certain City Officers and Personnel**

**Jay Rogers** has served as City Manager since August 11, 2009. Jay has an Associate Arts Degree from Potomac State College, a Bachelor of Arts Degree in Political Science from West Virginia University, and a Masters in Public Administration from West Virginia University. Prior to serving as City Manager, Jay served as the Director of Planning and Development for the City from 1998 to 2009. Jay also serves as an Adjunct Professor at the West Virginia University Department of Administration for graduate level courses. From 1996 to 1998 Jay served as a Flood Recovery Mitigation Coordinator at Region VIII Planning and Development Council in Petersburg, West Virginia. In 2005, Jay received the Marion County Chamber of Commerce Public Servant of the Year Award. In 2006, Jay received the Times West Virginian Public Servant of the Year Award.

**David C. Sago** has served as Utility Manager for the City of Fairmont from May 12, 2002 to the present. He is responsible for the operation, maintenance and administration of the

City's Water & Sanitary Sewer Departments. Prior to this, David served as the Wastewater Treatment Plant Manager for the City from November of 1994 to May 12, 2002. David has a Bachelor of Technology from Fairmont State College and a Bachelor of Arts in Biology from West Virginia University. David has served as an adjunct professor at Fairmont State University in the Civil Engineering and Safety Departments since 2001. In addition, David has served as an Instructor at the West Virginia Environmental Training Center since 1994. David established a Safety Program that won the National Water Environmental Federation Awards in 1996. He won the "George W. Burke Jr. Award" for plant safety in 1997 and 2004 and won the "Governor's Safety Award" for small utilities in West Virginia in 1999, 2000, 2001, 2002 and 2003. David serves as the President of the West Virginia Municipal Water Quality Association and the West Virginia Water Environment Association.

**Eileen Layman** has been the Finance Director since July 24, 2001. Prior to this position she worked in the private sector for fourteen years and held positions of Accountant, Credit Manager, and Controller. She has also specialized in business consultations for in-depth analysis of financial statements and business plans. Early in her career, she taught school for four years. She holds a Bachelor of Arts Degree from Fairmont State University in Elementary Education with a concentration in French. Further, as a non-degree student at Fairmont State University, she completed courses in Accounting, EDP, and Business Law and fulfilled CPA requirement coursework in May, 1996. She has held an active CPA license (certificate #3803) in West Virginia since February, 1997.

**Mark Moore** has been the Water Utility Controller since June 17, 2010. Prior to this position he worked in the private sector for 20 years and held positions of Accountant, Controller, and CFO. He also spent 4 years as Finance Director of the Clarksburg Water Board. Mark holds a Bachelor of Science degree in Accounting and Business Administration from Fairmont State University. Further, along with various members of his family, they own and operate a corporation that has dealings in Marketing/Website Development, Accounting Software Programming, and Financial Management Consultation.

### **Other Employees**

Excluding the personnel named above and employees assigned to the City Manager or the City Finance Department, eight (8) persons are employed in water treatment plant and pump station operation, seven (7) persons are employed in the meter division of the Municipal Utility Department, and 12 persons are employed in transmission and distribution operations. All of these employees are members of the United Steelworkers Union of America, working pursuant to a Collective Bargaining Agreement with the City which expires October 23, 2014. The City considers its historical and current relationship with employees assigned to the System to be good.

### **Service Area**

The System provides both retail and wholesale service. The retail service area consists of the City, the Town of Barracksville and several unincorporated adjacent areas in Marion County. This retail service area occupies approximately 32 square miles and contains approximately 56,418 people. The System also serves ten wholesale customers which provide retail service in Marion County and parts of Monongalia and Harrison Counties, an aggregate area of approximately 200 square miles containing approximately 27,100 persons. Thus the aggregate

area of the combined wholesale and retail service areas is approximately 232 square miles, and the population served by retail service and wholesale supply is approximately 83,518 persons.

The following table shows the historical and projected population of the service area and water consumption in millions of gallons per day (MGD), as a whole and on a retail and whole sale basis.

**POPULATION AND AVERAGE DAILY CONSUMPTION**

<u>Year Ended June 30</u>	<u>Retail Population</u>	<u>Retail Daily Consumption (MGD)</u>	<u>Wholesale Population</u>	<u>Wholesale Daily Consumption (MGD)</u>	<u>Total Population</u>	<u>Total Daily Consumption (MGD)</u>
2004	13,743	2,538	9	1,338	13,752	3,875
2005	13,672	2,467	9	1,302	13,681	3,769
2006	13,397	2,460	9	1,291	13,406	3,750
2007	13,350	2,386	9	1,338	13,359	3,724
2008	13,247	2,276	9	1,364	13,256	3,640
2009	13,322	2,216	9	1,376	13,331	3,592
2010	13,257	2,141	10	1,622	13,267	3,763
2011	13,265	2,183	10	1,668	13,275	3,851

Sources: City of Fairmont  
\*PSC Annual Reports

**Customer Statistics**

The average numbers of customers of the System for the past five Fiscal Years are as follows:

**CUSTOMER CATEGORY SUMMARY**

<u>Year Ended June 30</u>	<u>Residential and Commercial (1)</u>	<u>Industrial</u>	<u>Wholesale</u>	<u>Private Fire Protection</u>	<u>Total</u>
2004	13,719	24	9	98	13,850
2005	13,650	22	9	98	13,779
2006	13,375	22	9	95	13,501
2007	13,328	22	9	98	13,457
2008	13,225	22	9	100	13,356
2009	13,300	22	9	104	13,435
2010	13,233	24	10	104	13,371
2011	13,242	23,	10	108	13,383

Source: City billing records.

(1) City records are available only as to the number of residential and commercial billing accounts. Therefore, the closing of any one account and the opening of a new account by any one residential or commercial user during any given fiscal year would be reflected in City records as two accounts and in the Customer Category Summary set forth above as two customers.

The City's customer count experiences seasonal fluctuation due to student activities.

The following table sets forth the major retail water customers of the System, their average daily consumption and the percentage of total average daily retail consumption and total average daily consumption represented by such consumption, for the fiscal year ended June 2011:

#### Major Retail Users

<u>Customer</u>	<u>Average Daily Consumption</u> (gallons)	<u>% of Total Daily Retail Consumption</u>	<u>% of Total Daily Consumption</u>
SFK Pulp Recycling	95,960	4.27	1.50
Fairmont State University	67,592	3.01	1.09
Fairmont General Hospital	35,457	1.58	.60
Novelis Corp	16,227	.72	.26
WVU NASA FAC	16,080	.72	.26
Superior Industrial	14,921	.66	.24
East Park MHP	14,472	.64	.23
Pierpoint Center	11,971	.53	.19
Amrapour Hotels	10,115	.45	.16
The Arbors	9,349	.42	.15
Total:	295,144	13.03	4.68

Source: City billing records.

#### Wholesale Contracts

The City sells water to ten wholesale users, including three towns, five public service districts and two water associations, located throughout Marion County and in Monongalia and Harrison Counties, West Virginia. The terms of the sale and delivery of, and payment for, System water originally were established by separate contracts between the City and each of the respective wholesale users. While the provisions of such contracts were not uniform, they generally required that the City make available filtered water at a metered location in an amount sufficient to meet the demand of such wholesale user's retail customers, but subject to the adequacy of water supply for the City's retail and other wholesale customers. (Present System capacity of 12-15 million gallons per day substantially exceeds the average 2,246,000 million gallons per day demand of the City's retail customers. Wholesale demand averages 1,668,000 gallons per day, leaving current capacity in excess of average aggregate daily demand equal to 8,086,000 gallons per day.) The contracts generally did not require any minimum purchase or payment by the wholesale users. The contracts further generally provided for a monthly billing of each wholesale user with payment to be made within 10 days thereafter. The contracts generally permitted extension of the contract term at the option of the wholesale user to be expressed in writing.

At least four of the wholesale supply contracts have expired and have not been extended in writing. Those wholesale users whose contracts with the City have expired have continued to purchase water from the System, as indicated in the following Wholesale User Summary. The wholesale users have not made other provision for supplying water to their respective retail customers and any such alternative provision would entail substantial incurrence of capital expenditures for the construction of transmission mains to other water systems or the construction of a water treatment plant. The City continues to supply water to the wholesale customers substantially in the manner provided in the contracts, as discussed above. Although the City received two protests from its wholesale users to the rate increase described below, the City believes that its relationships with the wholesale users are good and does not anticipate cessation of use of System water by any of the wholesale users within the foreseeable future.

Wholesale users accounted for 43% of total average daily consumption during the fiscal year ended June 2011, and 18% of Revenues during the same period.

Although the contracts have expired, the provision of water to the wholesale users by the System is continued annually by agreement. The System is the only provider of these services in the region with the exception of Tri-County Water Association which can obtain water from the Clarksburg Water Board under a wholesale agreement and does so on occasion. The Fairmont wholesale water rate is lower than Clarksburg at the present time and is still the primary provider for Tri-County.

There follows a tabular summary of the System's wholesale users, and their respective water purchases from the City for the year ending June 2011.

**WHOLESALE USER SUMMARY  
(Fiscal Year Ended June 2011)**

<u>Customer</u>	<u>Population Served</u>	<u>Number of Customers</u>	<u>Gallons of Water Purchased</u>	<u>Contract Revenues</u>	<u>Contract Date</u>	<u>Expires</u>
Valley Falls PSD	N/A*	1,601	92,166,000	227,649	2005	40 years
TriCounty Water Assoc.	N/A*	905	63,312,000	156,381	1958	Expired
Monumental PSD	N/A	863	66,765,000	164,909	2005	40 years
Little Creek PSD	2,100	850	68,061,000	166,119	1972	Expired
Town of Rivesville	1,500	910	51,666,000	127,615	1925	Expired
Ice's Run PSD	800	603	31,971,000	78,969	1967	Expired
Town of Grant Town	N/A*	520	48,521,000	119,847	1953	Expired
Paw Paw PSD	1,500	539	36,447,000	90,023	1963	Expired
Montana Water Assoc.	500	278	92,166,000	227,649	2003	40 years
City of Mannington	2,400	955	63,312,000	156,381	2006	40 years

\* Not available.

\*\* Numbers reflect only 11 months of the prior year.

## Rates

The current schedule of rates and charges has been in place since May 25, 2012. The City has recently completed construction of the CAP Project which is being financed by the proceeds of the Series 2010 A Bonds, Series 2010 B Bonds, Series 2010 C Bonds and Series 2010 D Bonds (the "CAP Bonds"). The rates necessary to pay the debt service on the CAP Bonds were authorized by the Public Service Commission on June 4, 2012, effective upon the substantial completion of the CAP Project which was May 25, 2012.

Pursuant to the Act, the governing body of a municipality must fix minimum rates and charges for the use of its municipal water system and increase such rates whenever necessary. Such rates and charges are required by the Act to be sufficient at all times to provide for the payment of interest on all bonds issued pursuant to the Act and to create a sinking fund to pay the principal of such bonds as and when the same becomes due, and reasonable reserves therefor, and to provide for the repair, maintenance and operation of the waterworks system, and to provide an adequate depreciation fund, and to make any other payments required or provided for in the applicable bond ordinance.

Except as described below, rates charged by municipally operated utilities in West Virginia generally are not subject to regulatory approval. Section 24-2-4b of the Code of West Virginia of 1931, as amended, provides that rates and charges established by municipally operated utilities shall be just, reasonable, applied without unjust discrimination or preference and based primarily on the costs of providing service. Rates and charges set by such utilities must be filed with the PSC. Any customer of a municipally operated utility aggrieved by a rate change may present to the PSC within 30 days of the adoption of the ordinance providing for the rate change a petition signed by not less than 25 percent of the retail customers served by the utility. Within 100 days from the filing of any such petition a hearing examiner must issue an order approving, disapproving or modifying the rate increase. Such order has the full force and effect of an order issued by the PSC. Also, if a municipally operated utility serves customers outside the boundaries of the municipality, the PSC is empowered to review, approve or modify such rates if, within 30 days of the adoption of the ordinance providing such rates, a customer (including a wholesale user) alleges that such rates are discriminatory. The PSC may determine the method by which such rates are reviewed and may grant and conduct a hearing on the matter if the customer or the municipality requests such a hearing.

Prior to imposition of the current schedule of rates and charges, the System experienced several years of financial difficulties. The financial situation of the System required a loan from the City's general fund and led to the rate increase described below. According to System management, the financial deficits were caused in part by an increase in commodity costs, chemicals, electricity and manpower benefit costs, lack of a rate increase for several preceding years, and the problems with the filtration plant described above. To address the problems and provide for debt service on the CAP Bonds, the City Council enacted a rate ordinance in early 2009 that would have imposed a 49% rate increase. In addition to protests from various citizens, both Valley Falls Public Service District and the Town of Mannington protested the rates as discriminatory. In connection with the proceedings, the PSC by emergency order established an interim water rate increase of approximately 24%. The order also included a \$1.54 per month per customer surcharge to apply to accumulated accounts payable. In October 2009 the PSC

voided the City's rate ordinance and authorized the rates described below, which the City has since adopted as its own.

**Current Rates**

The following table sets forth the rates and charges put in place June 4, 2012, effective for service rendered on or after May 25, 2012.

**RETAIL WATER SYSTEM RATES AND CHARGES**  
Cost per 1,000 Gallons per Month

Availability. Available for general domestic, commercial and industrial service.

<u>Water Consumption</u> (gallons used per month)	<u>Rate</u> (per 1000 gallons)
First 25,000	\$8.87
Next 25,000	\$4.68
Next 25,000	\$3.82
All Over 75,000	\$3.77
 Resale Rate	 \$2.70

Minimum Rates. No bill shall be rendered for less than the following amounts, according to size of meter installed:

<u>Size of Meter</u> (inches)	<u>Rate (per month)</u>
5/8 or less	\$ 22.18
3/4	\$ 33.27
1	\$ 55.45
1-1/4	\$ 80.95
1-1/2	\$ 110.89
2	\$ 177.43
3	\$ 354.86
4	\$ 554.46
6	\$1,108.93
8	\$1,774.29

Tap Fee

Three Hundred Dollars (\$300)

Reconnection Service Charge

Twenty-Five Dollars (\$25)

Source: Public Service Commission - Tariff

## Billing and Collections

The City renders a monthly bill to 1,133 commercial and industrial customers of the System. Residential customers are billed once every two months. Payments are due 20 days after the billing date. If a bill remains unpaid beyond the due date, a 10 percent penalty is added to the delinquent account and delinquency procedures are initiated, including the mailing of one termination notice and termination of service 30 days after the initial due date. Service on delinquent accounts remains terminated until payment of the account is made. Upon reinstating service to a previously delinquent account, a reconnection charge of \$25 is required.

Termination procedures were established in July 1982. During the fiscal year ended June 30, 2011, service attributable to 2,640 delinquent accounts were terminated because of nonpayment.

The City has a policy of writing off accounts determined to be uncollectible. Also, the City has made a provision with respect to operating expenses on its balance sheets pertaining to the System for doubtful accounts, as follows:

### SUMMARY OF DOUBTFUL ACCOUNTS

<u>Year Ended June 30</u>	<u>Provision for Doubtful Accounts</u>	<u>Accounts Receivable Written Off</u>
2007	\$226,783.14	\$110,606.78
2008	271,815.24	76,749.09
2009	268,170.40	141,227.42
2010	304,558.69	109,537.75
2011	334,895.08	114,068.64

Source: Audited Financial Reports prepared by Tetrick & Bartlett, Certified Public Accountants and the Finance Department of the City.

Deferred payment plans are available for any residential customer who can demonstrate inability to pay a System bill in full and that service termination would be dangerous to such customer's health or safety.

## System Budget and Expenditure

The City Manager, City Finance Department and Municipal Utility Department prepare draft budgets for System operations under their respective managements. The City budget is compiled from these, and other, draft budgets by the City Manager and submitted to the City Council on or before February 15 of each year. The Utility Department budgets are prepared and submitted to their respective boards for approval. Upon Board approval, budgets are forwarded to City Council for final adoption. The City budget is required by Charter to indicate operating expenditures and capital expenditures proposed for the ensuing fiscal year, detailed by offices, departments and agencies in terms of their respective work programs, and the method of financing such expenditures. The total of proposed expenditures may not exceed the total of

estimated income. Prior to March 28 of each year, but following public hearing, the City Council is required to adopt the City budget. Supplemental appropriations, or a reduction of appropriations, may be made by the City Council upon certification by the City Manager of an excess or insufficiency of revenues. No payment may be made except in accordance with appropriations set forth in the budget. As a matter of City practice, purchase orders are approved by the purchasing officer and payments are approved by the City Manager prior to disbursement of funds by the City accounting office. Separate accounting records are kept by the water accounting clerk and reviewed by the City utility accountant each year. Water accounting records are balanced with the records of the City Finance Department on a monthly basis.

### **Method of Accounting**

The City maintains its accounts pertaining to the System on an accrual basis and in accordance with the guidelines of the PSC. The records of the City for the fiscal years ended June 30 of 2007, 2008, 2009, 2010 and 2011 have been audited and are available for public inspection at the City and online.

### **Retirement System**

All full-time City employees (185) and System employees (35) are covered under the West Virginia Public Employees Retirement System ("PERS"). Employees contribute 4.5% of gross income which contribution is matched by a 14.5% of gross income contribution by the City. As with many employers, the City is faced with significant other post-employment benefit obligations. PERS has charged the City an additional assessment; however, rather than depositing the assessment amount with PERS, the City has escrowed the funds with a bank. See Financial Statements attached as Exhibit C.

**APPENDIX C**

**Financial Statements of the City Of Fairmont**

**CITY OF FAIRMONT, WEST VIRGINIA  
A CLASS II MUNICIPALITY IN MARION COUNTY**

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**INDEPENDENT AUDITOR'S REPORT AND  
RELATED FINANCIAL STATEMENTS**

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**FOR THE YEAR ENDED JUNE 30, 2011**  
*RFP #10-129 (Marion County)*

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CITY OF FAIRMONT, WEST VIRGINIA  
MUNICIPAL OFFICIALS  
FOR THE YEAR ENDED JUNE 30, 2011

Office	Name	Term
	<i>Elective</i>	
Mayor:	William Burdick	01/01/07 – 12/31/10
Council Member:		
1 <sup>st</sup> District	Robert Gribben	01/01/11 – 12/31/14
2 <sup>nd</sup> District	Robert Sapp	01/01/09 – 12/31/12
3 <sup>rd</sup> District	Deborah Seifrit	01/01/11 – 12/31/14
4 <sup>th</sup> District	William Burdick	01/01/09 – 12/31/12
5 <sup>th</sup> District	Chuck Warner	01/01/11 – 12/31/14
6 <sup>th</sup> District	Daniel Weber	01/01/09 – 12/31/12
7 <sup>th</sup> District	Robert Garcia	01/01/09 – 12/31/12
8 <sup>th</sup> District	Robin Smith	01/01/11 – 12/31/14
9 <sup>th</sup> District	Ronald J. Straight	01/01/11 – 12/31/14
	<i>Appointive</i>	
City Manager:	Jay Rogers, III	
Finance Director:	Eileen Layman	
City Clerk:	Janet Keller	
Municipal Judge:	Anthony Julian	

CITY OF FAIRMONT, WEST VIRGINIA  
INDEX OF FUNDS  
FOR THE YEAR ENDED JUNE 30, 2011

**GOVERNMENTAL FUND TYPES**

*General Fund*

*Special Revenue Funds*

Coal Severance Tax  
Economic Development Grant Fund  
Special Purpose Grant Program  
Emergency Shelter Grant Program  
Police Fund  
Bureau of Justice Fund  
Boards and Commissions Fund  
Workers Compensation Fund  
Police Investigation Fund  
Urban Renewal Authority  
Municipal Financial Stabilization Rainy Day Fund  
Other Post Employment Benefits Fund

*Capital Project Funds*

Capital Reserve Fund  
Sharon Steel Redevelopment Fund

**PROPRIETARY FUND TYPE**

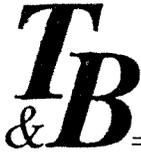
*Enterprise Funds*

Water  
Sanitary Sewer Board  
Parking  
Building Commission Fund  
Park Commission

**FIDUCIARY FUND TYPE**

*Trust Funds*

Policemen's Pension and Relief  
Firemen's Pension and Relief



## INDEPENDENT AUDITOR'S REPORT

The Honorable Mayor and Council  
City of Fairmont  
Fairmont, West Virginia

We have audited the accompanying financial statements of the governmental activities, the business-type activities, each major fund and the aggregate remaining fund information of the City of Fairmont, West Virginia, as of and for the year ended June 30, 2011, which collectively comprise the City's basic financial statements as listed in the table of contents. These financial statements are the responsibility of the City of Fairmont, West Virginia's management. Our responsibility is to express opinions on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinions.

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City of Fairmont, West Virginia, as of June 30, 2011, and the respective changes in financial position and cash flows, where applicable, thereof and the respective budgetary comparison for the General Fund and the Coal Severance Fund for the year then ended in conformity with accounting principles generally accepted in the United States of America.

As discussed in Note 1 to the financial statements, the City adopted the provisions of GASB Statement No. 54, *Fund Balance Reporting and Governmental Fund Type Definitions*, in the year ended June 30, 2011.

In accordance with *Government Auditing Standards*, we have also issued a report dated January 6, 2012, on our consideration of the City of Fairmont, West Virginia's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be considered in assessing the results of our audit.

Management has omitted the management's discussion and analysis that accounting principles generally accepted in the United States of America require to be presented to supplement the basic financial statements. Such missing information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. Our opinion on the basic financial statements is not affected by this missing information.

Accounting principles generally accepted in the United States of America require that the Schedule of Funding Progress – Policemen's Pension and Relief Fund (PPRF) and Firemen's Pension and Relief Fund (FPRF) be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Government Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the City of Fairmont, West Virginia's financial statements as a whole. The combining and individual nonmajor fund financial statements are presented for purposes of additional analysis and are not a required part of the financial statements. The accompanying schedule of expenditures of federal awards is presented for purposes of additional analysis as required by U.S. Office of Management and Budget Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*, and is also not a required part of the financial statements. The combining and individual nonmajor fund financial statements and the schedule of expenditures of federal awards are the responsibility of management and were derived from and relate directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the financial statements as a whole.

*T. Buck + B. ... , PLLC*

January 6, 2012

CITY OF FAIRMONT, WEST VIRGINIA  
STATEMENT OF NET ASSETS  
JUNE 30, 2011

	<u>Governmental</u> <u>Activities</u>	<u>Business-Type</u> <u>Activities</u>	<u>Total</u>
<b>Assets</b>			
Cash	\$ 2,447,788	\$ 498,867	\$ 2,946,655
Investments	5,036,683	2,787,147	7,823,830
Receivables	2,029,706	2,560,678	4,590,384
Internal balances	671,500	( 671,500)	-0-
Inventory	9,593	193,596	203,189
Prepaid expenses	20,856	708	21,564
Restricted assets	9,855	7,159,217	7,169,072
Capital assets, net	5,930,711	72,923,417	78,854,128
Unamortized bond discount and issue cost	-0-	<u>452,962</u>	<u>452,962</u>
Total assets	<u>16,156,692</u>	<u>85,905,092</u>	<u>102,061,784</u>
<b>Liabilities</b>			
Accounts payable	99,071	1,758,366	1,857,437
Claims payable	121,450	-0-	121,450
Other accrued expenses	253,731	533,980	787,711
Accrued other post employment benefits	2,843,197	-0-	2,843,197
Deferred revenue	114,000	-0-	114,000
Customer deposits	8,680	70,405	79,085
Accrued interest payable	-0-	838,110	838,110
Long-term liabilities			
Due within one year	528,680	3,063,857	3,592,537
Due in more than one year	<u>14,584,071</u>	<u>46,441,543</u>	<u>61,025,614</u>
Total liabilities	<u>18,552,880</u>	<u>52,706,261</u>	<u>71,259,141</u>
<b>Net Assets</b>			
Invested in capital assets, net of related debt	4,935,196	24,180,288	29,115,484
Restricted	90,981	7,159,217	7,250,198
Unrestricted	<u>( 7,422,365)</u>	<u>1,859,326</u>	<u>( 5,563,039)</u>
Total Net Assets	<u>\$ ( 2,396,188)</u>	<u>\$ 33,198,831</u>	<u>\$ 30,802,643</u>

The accompanying notes are an integral part of this statement.

**CITY OF FAIRMONT, WEST VIRGINIA**  
**STATEMENT OF ACTIVITIES**  
**FOR THE YEAR ENDED JUNE 30, 2011**

Function/Programs	Expenses	Charges for Services	Operating Grants and Contributions	Capital Grants and Contributions	Governmental Activities	Business-Type Activities	Total
<b>Governmental Activities</b>							
General government	\$ 2,411,066	\$ 11,212	\$ 11,172	\$ -0-	\$ ( 2,388,682)	\$ -0-	\$ ( 2,388,682)
Public safety	7,743,824	1,417,631	174,315	-0-	( 6,151,878)	-0-	( 6,151,878)
Highways and streets	1,722,099	86,993	-0-	-0-	( 1,635,106)	-0-	( 1,635,106)
Sanitation	1,212,272	1,194,627	-0-	-0-	( 17,645)	-0-	( 17,645)
Culture and recreation	131,539	26,038	-0-	-0-	( 105,501)	-0-	( 105,501)
Social services	1,761	-0-	-0-	-0-	( 1,761)	-0-	( 1,761)
Community development	4,200	-0-	174,415	-0-	170,215	-0-	170,215
Benefits paid	36,477	-0-	150,545	-0-	114,068	-0-	114,068
Total governmental activities	<u>13,263,238</u>	<u>2,736,501</u>	<u>510,447</u>	<u>-0-</u>	<u>(10,016,290)</u>	<u>-0-</u>	<u>(10,016,290)</u>
<b>Business-Type Activities</b>							
Water	7,053,743	8,792,721	-0-	4,290,783	-0-	6,029,761	6,029,761
Sanitary sewer board	4,426,094	4,592,862	-0-	55,521	-0-	222,289	222,289
Building commission	470,136	100	-0-	-0-	( 470,036)	-	( 470,036)
Parking	93,832	117,985	-0-	-0-	-0-	24,153	24,153
Park commission	26,866	4,142	-0-	2,200	-0-	( 20,524)	( 20,524)
Total business-type activities	<u>\$ 12,070,671</u>	<u>\$ 13,507,810</u>	<u>\$ -0-</u>	<u>\$ 4,348,504</u>	<u>-0-</u>	<u>5,785,643</u>	<u>5,785,643</u>
<b>General Revenues</b>							
Taxes					8,969,960	-0-	8,969,960
Licenses and permits					165,725	-0-	165,725
Investment income					360,698	227,574	588,272
Franchise fees					275,461	-0-	275,461
Miscellaneous					384,920	59,840	444,760
Total general revenues					<u>10,156,764</u>	<u>287,414</u>	<u>10,444,178</u>
Change in net assets before transfers					140,474	6,073,057	6,213,531
Transfers between activities					( 449,522)	449,522	-0-
Change in net assets after transfers between activities					( 309,048)	6,522,579	6,213,531
Net assets – beginning					( 2,087,140)	26,676,252	24,589,112
Net assets – ending					<u>\$ ( 2,396,188)</u>	<u>\$ 33,198,831</u>	<u>\$ 30,802,643</u>

The accompanying notes are an integral part of this statement.

**CITY OF FAIRMONT, WEST VIRGINIA  
FUND BALANCE SHEETS  
GOVERNMENTAL FUNDS  
JUNE 30, 2011**

	<u>General Fund</u>	<u>Capital Reserve Fund</u>	<u>Coal Severance Fund</u>	<u>Other Governmental Funds</u>	<u>Total Governmental Funds</u>
<b>ASSETS</b>					
Cash	\$ 682,754	\$ 1,324,438	\$ 35,479	\$ 405,117	\$ 2,447,788
Investments	1,375,473	-0-	-0-	3,661,210	5,036,683
Receivables, net of allowances:					
Taxes	1,538,618	-0-	-0-	-0-	1,538,618
Accounts	290,438	-0-	-0-	-0-	290,438
Other	72,280	-0-	-0-	58,410	130,690
Interest	2,355	-0-	-0-	5,659	8,014
Due from (to):					
Other funds	259,363	464,904	-0-	( 52,767)	671,500
Other governments	61,946	-0-	-0-	-0-	61,946
Prepaid expenses	1,070	19,786	-0-	-0-	20,856
Inventory	9,593	-0-	-0-	-0-	9,593
Restricted:					
Customer deposits	<u>9,855</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>9,855</u>
<b>TOTAL ASSETS</b>	<b>\$ <u>4,303,745</u></b>	<b>\$ <u>1,809,128</u></b>	<b>\$ <u>35,479</u></b>	<b>\$ <u>4,077,629</u></b>	<b>\$ <u>10,225,981</u></b>
<b>LIABILITIES AND FUND BALANCES</b>					
<b>Liabilities</b>					
Accounts payable	\$ 44,297	\$ 6,336	\$ -0-	\$ 48,438	\$ 99,071
Claims payable	-0-	-0-	-0-	121,450	121,450
Other accrued expenses	185,298	68,433	-0-	-0-	253,731
Accrued compensated absences	239,268	-0-	-0-	-0-	239,268
Accrued other post employment benefits	596,507	-0-	-0-	2,246,690	2,843,197
Deferred revenue	315,024	-0-	-0-	-0-	315,024
Customer deposits	<u>8,680</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>8,680</u>
Total liabilities	<u>1,389,074</u>	<u>74,769</u>	<u>-0-</u>	<u>2,416,578</u>	<u>3,880,421</u>
<b>Fund Balances</b>					
Nonspendable	10,664	-0-	-0-	-0-	10,664
Committed	290,438	-0-	-0-	1,276,149	1,566,587
Restricted	37,010	68,433	-0-	87,531	192,974
Assigned	-0-	1,665,926	35,479	297,371	1,998,776
Unassigned	<u>2,576,559</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>2,576,559</u>
Total fund balance	<u>2,914,671</u>	<u>1,734,359</u>	<u>35,479</u>	<u>1,661,051</u>	<u>6,345,560</u>
<b>TOTAL LIABILITIES AND FUND BALANCES</b>	<b>\$ <u>4,303,745</u></b>	<b>\$ <u>1,809,128</u></b>	<b>\$ <u>35,479</u></b>	<b>\$ <u>4,077,629</u></b>	<b>\$ <u>10,225,981</u></b>

The accompanying notes are an integral part of this statement.

CITY OF FAIRMONT, WEST VIRGINIA  
RECONCILIATION OF FUND BALANCE SHEETS OF  
GOVERNMENTAL FUNDS TO STATEMENT OF NET ASSETS  
JUNE 30, 2011

Fund balance, fund level statement June 30, 2011	\$ 6,345,560
<p>The total fund balance of the City of Fairmont's governmental funds differs from net assets of the governmental activities reported on the Statement of Net Assets as follows:</p> <p>Some liabilities are not due and payable in the current period and therefore, are not reported in the fund level statements:</p>	
Obligations under capital leases	( 995,516)
Unfunded pension and post retirement obligation	(12,930,710)
Accrued compensated absences	( 947,257)
<p>Capital assets, that are used in governmental activities and are purchased or constructed, the costs of those assets are reported as expenditures in the governmental funds. However, the Statement of Net Assets includes those assets and their associated accumulated depreciation.</p>	
	5,930,711
<p>Some assets do not provide current financial resources and are not reported as assets in the fund level statements:</p>	
Reduction in deferred revenue at June 30, 2011	<u>201,024</u>
Net assets of governmental activities	\$ <u>( 2,396,188)</u>

The accompanying notes are an integral part of this statement.

**CITY OF FAIRMONT, WEST VIRGINIA  
STATEMENT OF REVENUES, EXPENDITURES, AND  
CHANGES IN FUND BALANCES -  
GOVERNMENTAL FUNDS  
FOR THE YEAR ENDED JUNE 30, 2011**

	<u>General Fund</u>	<u>Capital Reserve Fund</u>	<u>Coal Severance Fund</u>	<u>Other Governmental Funds</u>	<u>Total Governmental Funds</u>
<b>Revenues</b>					
Taxes (including interest and penalties)	\$ 8,875,897	\$ -0-	\$ -0-	\$ -0-	\$ 8,875,897
Licenses and permits	165,725	-0-	-0-	-0-	165,725
Intergovernmental:					
Federal	117,385	-0-	-0-	154,869	272,254
State	40,895	-0-	97,275	30,002	168,172
Charges for services	2,350,040	-0-	-0-	-0-	2,350,040
Contributions:					
From employer	-0-	-0-	-0-	150,545	150,545
Fines and forfeits	-0-	-0-	-0-	386,461	386,461
Donations	11,172	442	-0-	5,579	16,751
Investment income	28,845	-0-	6	75,786	105,079
Franchise fees	275,461	-0-	-0-	-0-	275,461
Gain (loss) on investments	49,944	-0-	-0-	205,675	255,619
Miscellaneous	189,920	-0-	-0-	-0-	189,920
Total revenues	<u>12,105,284</u>	<u>442</u>	<u>97,281</u>	<u>1,008,917</u>	<u>13,211,924</u>
<b>Expenditures</b>					
General government	1,919,473	918	-0-	88,887	2,009,278
Public safety	6,238,164	-0-	-0-	141,252	6,379,416
Highways and streets	1,144,997	-0-	84,544	-0-	1,229,541
Sanitation	1,212,272	-0-	-0-	-0-	1,212,272
Culture and recreation	124,927	-0-	-0-	-0-	124,927
Social services	1,761	-0-	-0-	-0-	1,761
Community development	-0-	222,919	-0-	169,713	392,632
Police refunds and remittances	-0-	-0-	-0-	-0-	-0-
Retirement of debt service	-0-	331,972	-0-	-0-	331,972
Benefit payments	-0-	-0-	-0-	36,477	36,477
Total expenditures	<u>10,641,594</u>	<u>555,809</u>	<u>84,544</u>	<u>436,329</u>	<u>11,718,276</u>
Excess (deficiency) of revenues over (under) expenditures	<u>1,463,690</u>	<u>( 555,367)</u>	<u>12,737</u>	<u>572,588</u>	<u>1,493,648</u>
<b>Other Financing Sources (Uses)</b>					
Operating transfers in	196,675	1,801,367	-0-	1,470	1,999,512
Proceeds from debt service	-0-	195,000	-0-	-0-	195,000
Operating transfers (out)	<u>( 1,759,593)</u>	<u>( 434,884)</u>	<u>-0-</u>	<u>( 254,557)</u>	<u>( 2,449,034)</u>
Total other financing sources (uses)	<u>( 1,562,918)</u>	<u>1,561,483</u>	<u>-0-</u>	<u>( 253,087)</u>	<u>( 254,522)</u>
Excess (deficiency) of revenues and other financing sources over (under) expenditures and other financing sources	<u>( 99,228)</u>	<u>1,006,116</u>	<u>12,737</u>	<u>319,501</u>	<u>1,239,126</u>
Fund balance at beginning of year	<u>3,013,899</u>	<u>728,243</u>	<u>22,742</u>	<u>1,341,550</u>	<u>5,106,434</u>
Fund balance at end of year	\$ <u>2,914,671</u>	\$ <u>1,734,359</u>	\$ <u>35,479</u>	\$ <u>1,661,051</u>	\$ <u>6,345,560</u>

The accompanying notes are an integral part of this statement.

**CITY OF FAIRMONT, WEST VIRGINIA  
RECONCILIATION OF THE STATEMENT OF REVENUES,  
EXPENDITURES, AND CHANGES IN FUND BALANCES -  
GOVERNMENTAL FUNDS TO THE STATEMENT OF ACTIVITIES  
FOR THE YEAR ENDED JUNE 30, 2011**

Net change in fund balances – total governmental funds	\$ 1,239,126
Amounts reported for governmental activities in the Statement of Activities are different because:	
Governmental funds report capital outlays as expenditures while governmental activities report depreciation expense to allocate those expenditures over the life of the assets. This is the amount by which depreciation exceeded capital assets in the current period.	( 538,524)
Revenues in the Statement of Activities that do not provide current financial resources are not reported as revenues in the funds at June 30, 2011.	
Recognition of deferred income	( 3,211)
Capital leases and bonds provide current financial resources to governmental funds, but entering into capital leases increases long-term liabilities in the Statement of Net Assets. Repayment of capital lease obligations and bonds are an expenditure in the governmental funds, but the repayment reduces long-term liabilities in the Statement of Net Assets.	
Acquisition of capital assets from capital lease	( 197,907)
Repayment of obligation under capital lease	294,252
Some expenses reported in the Statement of Activities do not require the use of current financial resources and therefore are not reported as expenditures in governmental funds.	
Change in net pension obligations	(1,082,509)
Change in long-term accrued compensated absences	( 20,275)
Change in Net Assets of Governmental Activities	\$ ( 309,048)

The accompanying notes are an integral part of this statement.

CITY OF FAIRMONT, WEST VIRGINIA  
 FUND BALANCE SHEETS  
 PROPRIETARY FUNDS  
 JUNE 30, 2011

	Business-Type Activities					Total
	<u>Water</u>	<u>Sanitary Sewer Board</u>	<u>Building Commission</u>	<u>Parking</u>	<u>Park Commission</u>	
<b>ASSETS</b>						
<b>Current Assets</b>						
Cash	\$ 179,984	\$ 173,483	\$ 36,344	\$ 105,094	\$ 3,962	\$ 498,867
Investments	1,580,209	1,003,844	203,094	-0-	-0-	2,787,147
Receivables, net of allowances:						
Accounts	589,620	423,167	109,116	5,241	-0-	1,127,144
Other	21,141	7,725	-0-	-0-	2,200	31,066
Grants	1,399,715	-0-	-0-	-0-	-0-	1,399,715
Interest	2,140	-0-	613	-0-	-0-	2,753
Due from (to) other funds	( 759,585)	90,283	-0-	( 2,198)	-0-	( 671,500)
Prepaid expenses	-0-	708	-0-	-0-	-0-	708
Inventory, at cost	<u>165,357</u>	<u>28,239</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>193,596</u>
Total current assets	<u>3,178,581</u>	<u>1,727,449</u>	<u>349,167</u>	<u>108,137</u>	<u>6,162</u>	<u>5,369,496</u>
<b>Noncurrent Assets</b>						
Restricted assets	<u>6,231,351</u>	<u>927,866</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>7,159,217</u>
<b>Capital Assets</b>						
Land	227,647	397,394	744,740	-0-	-0-	1,369,781
Buildings	-0-	-0-	3,770,144	137,440	207,794	4,115,378
Structures and improvements	7,024,186	278,763	4,600,593	16,148	-0-	11,919,690
Transmission and distribution	45,769,137	37,091,203	-0-	-0-	-0-	82,860,340
Machinery and equipment	6,724,514	3,916,978	16,193	129,412	-0-	10,787,097
Construction in progress	8,319,613	-0-	-0-	-0-	-0-	8,319,613
Less: Accumulated depreciation	<u>(24,559,116)</u>	<u>(20,268,275)</u>	<u>(1,414,255)</u>	<u>(156,621)</u>	<u>( 50,215)</u>	<u>(46,448,482)</u>
Total capital assets	<u>43,505,981</u>	<u>21,416,063</u>	<u>7,717,415</u>	<u>126,379</u>	<u>157,579</u>	<u>72,923,417</u>
<b>Other Assets</b>						
Unamortized bond discount and issue costs	<u>403,152</u>	<u>49,810</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>452,962</u>
<b>TOTAL ASSETS</b>	<b>\$ <u>53,319,065</u></b>	<b>\$ <u>24,121,188</u></b>	<b>\$ <u>8,066,582</u></b>	<b>\$ <u>234,516</u></b>	<b>\$ <u>163,741</u></b>	<b>\$ <u>85,905,092</u></b>

	Business-Type Activities					Total
	Water	Sanitary Sewer Board	Building Commission	Parking	Park Commission	
<b>LIABILITIES AND NET ASSETS</b>						
<b>Current Liabilities (payable from current assets)</b>						
Current portion obligation under capital lease	\$ 173,880	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ 173,880
Notes payable	132,861	81,217	100,000	-0-	-0-	314,078
Accounts payable	1,670,159	85,421	-0-	253	2,533	1,758,366
Other accrued expenses	56,570	477,410	-0-	-0-	-0-	533,980
Deferred revenue	-0-	-0-	-0-	-0-	-0-	-0-
Accrued compensated absences	100,900	67,454	-0-	-0-	-0-	168,354
Total current liabilities (payable from current assets)	<u>2,134,370</u>	<u>711,502</u>	<u>100,000</u>	<u>253</u>	<u>2,533</u>	<u>2,948,658</u>
<b>Current Liabilities (payable from restricted assets)</b>						
Revenue bonds payable	1,180,796	1,015,930	210,819	-0-	-0-	2,407,545
Accrued revenue bond interest payable	806,554	-0-	-0-	-0-	-0-	806,554
Accrued interest payable	112	-0-	31,444	-0-	-0-	31,556
Customer deposits	70,405	-0-	-0-	-0-	-0-	70,405
Total current liabilities (payable from restricted assets)	<u>2,057,867</u>	<u>1,015,930</u>	<u>242,263</u>	<u>-0-</u>	<u>-0-</u>	<u>3,316,060</u>
<b>Long-Term Liabilities (net of current portion)</b>						
Revenue bonds payable	35,864,590	5,109,092	4,068,644	-0-	-0-	45,042,326
Obligation under capital lease	173,636	-0-	-0-	-0-	-0-	173,636
Notes payable	631,664	-0-	-0-	-0-	-0-	631,664
Customer advances	-0-	323,918	-0-	-0-	-0-	323,918
Accrued compensated absences	143,163	126,836	-0-	-0-	-0-	269,999
Total long-term liabilities (net of current portion)	<u>36,813,053</u>	<u>5,559,846</u>	<u>4,068,644</u>	<u>-0-</u>	<u>-0-</u>	<u>46,441,543</u>
Total liabilities	<u>41,005,290</u>	<u>7,287,278</u>	<u>4,410,907</u>	<u>253</u>	<u>2,533</u>	<u>52,706,261</u>
<b>Net Assets</b>						
Invested in capital assets, net of related debt	5,348,554	15,209,824	3,337,952	126,379	157,579	24,180,288
Restricted	6,231,351	927,866	-0-	-0-	-0-	7,159,217
Unrestricted	733,870	696,220	317,723	107,884	3,629	1,859,326
Total net assets	<u>12,313,775</u>	<u>16,833,910</u>	<u>3,655,675</u>	<u>234,263</u>	<u>161,208</u>	<u>33,198,831</u>
<b>TOTAL LIABILITIES AND NET ASSETS</b>	<b>\$ <u>53,319,065</u></b>	<b>\$ <u>24,121,188</u></b>	<b>\$ <u>8,066,582</u></b>	<b>\$ <u>234,516</u></b>	<b>\$ <u>163,741</u></b>	<b>\$ <u>85,905,092</u></b>

The accompanying notes are an integral part of this statement.

CITY OF FAIRMONT, WEST VIRGINIA  
STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET ASSET –  
PROPRIETARY FUNDS  
FOR THE YEAR ENDED JUNE 30, 2011

	Business-Type Activities					<u>Total</u>
	<u>Water</u>	<u>Sanitary Sewer Board</u>	<u>Building Commission</u>	<u>Parking</u>	<u>Park Commission</u>	
<b>Operating Revenues</b>						
Charges for services	\$ 8,574,244	\$ 4,591,962	\$ 100	\$ 117,985	\$ 4,142	\$ 13,288,433
Miscellaneous	<u>218,477</u>	<u>900</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>219,377</u>
Total operating revenues	<u>8,792,721</u>	<u>4,592,862</u>	<u>100</u>	<u>117,985</u>	<u>4,142</u>	<u>13,507,810</u>
<b>Operating Expenses</b>						
Purchases and materials	27,788	-0-	-0-	-0-	-0-	27,788
Pumping	353,834	554,168	-0-	-0-	-0-	908,002
Treatment and disposal	2,166,688	1,595,838	-0-	-0-	-0-	3,762,526
Billing and collection	714,190	205,550	-0-	-0-	-0-	919,740
General and administrative	391,383	727,583	3,450	-0-	3,550	1,125,966
Operating expenses	-0-	-0-	-0-	86,682	-0-	86,682
Depreciation	<u>1,652,235</u>	<u>1,107,513</u>	<u>261,148</u>	<u>7,150</u>	<u>23,316</u>	<u>3,051,362</u>
Total operating expenses	<u>5,306,118</u>	<u>4,190,652</u>	<u>264,598</u>	<u>93,832</u>	<u>26,866</u>	<u>9,882,066</u>
Operating income (loss)	<u>3,486,603</u>	<u>402,210</u>	<u>( 264,498)</u>	<u>24,153</u>	<u>( 22,724)</u>	<u>3,625,744</u>
<b>Nonoperating Revenues (Expenses)</b>						
Investment income	208,571	9,841	9,125	35	2	227,574
Miscellaneous income	56,207	-0-	-0-	-0-	-0-	56,207
Donations	-0-	-0-	-0-	-0-	-0-	-0-
Gain on disposal of capital assets	591	-0-	-0-	3,042	-0-	3,633
Interest and fiscal charges	( 1,699,082)	( 140,006)	( 205,538)	-0-	-0-	( 2,044,626)
Amortization of bond discount and issue costs	<u>( 48,543)</u>	<u>( 95,436)</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>( 143,979)</u>
Total nonoperating revenues (expenses)	<u>( 1,482,256)</u>	<u>( 225,601)</u>	<u>( 196,413)</u>	<u>3,077</u>	<u>2</u>	<u>( 1,901,191)</u>
Income (loss) before nonoperating grants and capital contributions	2,004,347	176,609	( 460,911)	27,230	( 22,722)	1,724,553
Contributions from other funds	-0-	-0-	408,148	223,919	-0-	632,067
Contributions to other funds	-0-	-0-	-0-	(182,545)	-0-	( 182,545)
Nonoperating grants and capital contributions	<u>4,290,783</u>	<u>55,521</u>	<u>-0-</u>	<u>-0-</u>	<u>2,200</u>	<u>4,348,504</u>
Change in net assets	6,295,130	232,130	( 52,763)	68,604	( 20,522)	6,522,579
Total net assets – beginning - restated	<u>6,018,645</u>	<u>16,601,780</u>	<u>3,708,438</u>	<u>165,659</u>	<u>181,730</u>	<u>26,676,252</u>
Total net assets – ending	\$ <u>12,313,775</u>	\$ <u>16,833,910</u>	\$ <u>3,655,675</u>	\$ <u>234,263</u>	\$ <u>161,208</u>	\$ <u>33,198,831</u>

The accompanying notes are an integral part of this statement.

CITY OF FAIRMONT, WEST VIRGINIA  
STATEMENT OF CASH FLOWS -  
PROPRIETARY FUNDS  
FOR THE YEAR ENDED JUNE 30, 2011

	Business-Type Activities					Total
	Water	Sanitary Sewer Board	Building Commission	Parking	Park Commission	
<b>Cash Flows From Operating Activities</b>						
Receipts from customers	\$ 8,678,106	\$ 4,594,016	\$ 100	\$ 117,659	\$ 4,142	\$ 13,394,023
Receipts from other sources	276,566	900	408,148	-0-	-0-	685,614
Payments to suppliers	(2,081,473)	(1,880,267)	( 3,450)	( 13,874)	( 3,833)	( 3,982,897)
Payments to employees	(1,283,850)	(1,047,815)	-0-	( 42,121)	-0-	( 2,373,786)
Net cash provided by operating activities	<u>5,589,349</u>	<u>1,666,834</u>	<u>404,798</u>	<u>61,664</u>	<u>309</u>	<u>7,722,954</u>
<b>Cash Flows From Capital and Related Financing Activities</b>						
(Increase) decrease in restricted assets	( 75,410)	( 113,226)	-0-	-0-	-0-	( 188,636)
Increase (decrease) in restricted liabilities	25,555	( 1,493)	-0-	-0-	-0-	24,062
Repayment of obligation under capital leases	( 171,025)	-0-	-0-	-0-	-0-	( 171,025)
Repayment of revenue bonds	(1,056,668)	(1,006,190)	(202,287)	-0-	-0-	( 2,265,145)
Proceeds from revenue bonds	454,146	30,350	-0-	-0-	-0-	484,496
Proceeds from notes payable	-0-	-0-	-0-	-0-	-0-	-0-
Repayment of notes payable	( 145,539)	( 135,735)	-0-	-0-	-0-	( 281,274)
Interest expense	(1,743,517)	( 140,006)	(198,661)	-0-	-0-	( 2,082,184)
Net cash (used in) provided by capital and related financing activities	<u>(2,712,458)</u>	<u>(1,366,300)</u>	<u>(400,948)</u>	<u>-0-</u>	<u>-0-</u>	<u>( 4,479,706)</u>
<b>Cash Flows From Investing Activities</b>						
(Increase) decrease in investments	( 427,558)	( 85,628)	( 4,036)	-0-	-0-	( 517,222)
Proceeds from nonoperating grants	3,587,566	55,521	-0-	-0-	2,200	3,645,287
Proceeds from disposal of capital assets	591	-0-	-0-	7,500	-0-	8,091
Acquisition of capital assets	(6,192,735)	( 526,014)	( 7,200)	( 16,148)	( 2,200)	( 6,744,297)
Interest on investments	<u>207,168</u>	<u>9,841</u>	<u>8,736</u>	<u>36</u>	<u>2</u>	<u>225,783</u>
Net cash (used in) provided by investing activities	<u>(2,824,968)</u>	<u>( 546,280)</u>	<u>( 2,500)</u>	<u>( 8,612)</u>	<u>2</u>	<u>( 3,382,358)</u>
Net (decrease) increase in cash	51,923	( 245,746)	1,350	53,052	311	( 139,110)
Cash at beginning of year	<u>128,061</u>	<u>419,229</u>	<u>34,994</u>	<u>52,042</u>	<u>3,651</u>	<u>637,977</u>
Cash at end of year	<u>\$ 179,984</u>	<u>\$ 173,483</u>	<u>\$ 36,344</u>	<u>\$ 105,094</u>	<u>\$ 3,962</u>	<u>\$ 498,867</u>

CITY OF FAIRMONT, WEST VIRGINIA  
STATEMENT OF CASH FLOWS (CONT'D)  
PROPRIETARY FUNDS  
FOR THE YEAR ENDED JUNE 30, 2011

	Business-Type Activities					Total
	Water	Sanitary Sewer Board	Building Commission	Parking	Park Commission	
Reconciliation of operating income (loss) to net cash provided by operating activities						
Operating income (loss)	\$ 3,486,603	\$ 402,210	\$(264,498)	\$ 24,153	\$(22,724)	\$ 3,625,744
Adjustments to reconcile operating income (loss) to net cash provided by operating activities:						
Depreciation and amortization	1,652,235	1,107,513	261,148	7,150	23,316	3,051,362
Loss on disposal of capital assets	-0-	3,675	-0-	-0-	-0-	3,675
Nonoperating miscellaneous income	56,208	-0-	-0-	-0-	-0-	56,208
Transfers (to) from other funds	-0-	-0-	408,148	41,374	-0-	449,522
(Increase) decrease in:						
Accounts receivable	103,862	2,054	-0-	( 326)	-0-	105,590
Other receivables	58,089	2,101	-0-	-0-	1,721	61,911
Due from (to) other funds	( 347,028)	175,661	-0-	( 71)	( 3,897)	( 175,335)
Prepaid expenses	-0-	( 483)	-0-	-0-	-0-	( 483)
Inventory	( 11,011)	( 5,802)	-0-	-0-	-0-	( 16,813)
Increase (decrease) in:						
Accounts payable	684,852	( 165,652)	-0-	( 9,074)	1,893	512,019
Other accrued expenses	( 100,288)	157,245	-0-	( 1,156)	-0-	55,801
Deferred revenue	-0-	-0-	-0-	-0-	-0-	-0-
Accrued compensated absences	5,827	( 11,688)	-0-	( 386)	-0-	( 6,247)
Net cash provided by operating activities	\$ <u>5,589,349</u>	\$ <u>1,666,834</u>	\$ <u>404,798</u>	\$ <u>61,664</u>	\$ <u>309</u>	\$ <u>7,722,954</u>

The accompanying notes are an integral part of this statement.

CITY OF FAIRMONT, WEST VIRGINIA  
 STATEMENT OF REVENUES, EXPENDITURES AND  
 CHANGES IN FUND BALANCE - BUDGET AND ACTUAL -  
 GENERAL FUND - BUDGETARY BASIS  
 FOR THE YEAR ENDED JUNE 30, 2011

	<u>Budgeted Amounts</u>		<u>Actual</u>	<u>Budget to</u>	<u>Actual</u>	<u>Variance</u>
	<u>Original</u>	<u>Final</u>	<u>(Budgetary</u> <u>Basis)</u>	<u>GAAP</u> <u>Difference</u>	<u>Amounts</u> <u>GAAP</u> <u>Basis</u>	<u>With Final</u> <u>Budget</u> <u>Favorable</u> <u>(Unfavorable)</u>
<b>Revenues</b>						
Taxes (including interest and penalties)	\$ 7,534,516	\$ 7,531,448	\$ 8,875,897	\$ ( 3,212)	\$ 8,872,685	\$ 1,344,449
Licenses and permits	207,000	207,000	165,725	-0-	165,725	( 41,275)
Charges for services	2,341,059	2,375,523	2,350,040	-0-	2,350,040	( 25,483)
Fines and forfeitures	190,000	190,000	195,105	-0-	195,105	5,105
Donations	-0-	11,172	11,172	-0-	11,172	-0-
Interest	2,000	2,000	1,406	-0-	1,406	( 594)
Franchise fees	270,000	276,280	275,461	-0-	275,461	( 819)
Intergovernmental:						
State	48,000	48,000	40,895	-0-	40,895	( 7,105)
Federal	104,724	104,724	117,385	-0-	117,385	12,661
Miscellaneous	281,976	298,557	189,920	-0-	189,920	( 108,637)
Total revenues	<u>10,979,275</u>	<u>11,044,704</u>	<u>12,223,006</u>	<u>( 3,212)</u>	<u>12,219,794</u>	<u>1,178,302</u>
<b>Expenditures</b>						
General government	2,068,661	1,281,218	1,253,493	69,407	1,322,900	27,725
Public safety	6,361,347	6,501,776	6,238,164	1,364,407	7,602,571	263,612
Highways and streets	1,222,552	1,252,878	1,144,997	492,558	1,637,555	107,881
Sanitation	1,165,721	1,213,273	1,212,272	-0-	1,212,272	1,001
Culture and recreation	158,594	127,233	124,927	6,612	131,539	2,306
Social services	2,400	1,832	1,761	-0-	1,761	71
Total expenditures	<u>10,979,275</u>	<u>10,378,210</u>	<u>9,975,614</u>	<u>1,932,984</u>	<u>11,908,598</u>	<u>402,596</u>
(Deficiency) excess of revenues (under) over expenditures	<u>-0-</u>	<u>666,494</u>	<u>2,247,392</u>	<u>(1,936,196)</u>	<u>311,196</u>	<u>1,580,898</u>
<b>Other Financing Sources (Uses)</b>						
Operating transfers in	-0-	639	1,570	-0-	1,570	931
Operating transfers (out)	-0-	( 1,770,000)	( 1,759,593)	-0-	( 1,759,593)	10,407
Total other financing sources (uses)	<u>-0-</u>	<u>( 1,769,361)</u>	<u>( 1,758,023)</u>	<u>-0-</u>	<u>( 1,758,023)</u>	<u>11,338</u>
Net change in fund balance	-0-	( 1,102,867)	489,369	(1,936,196)	( 1,446,827)	1,592,236
Fund balance at beginning of year	-0-	1,102,867	2,574,222	(6,375,747)	( 3,801,525)	1,471,355
Fund balance at end of year	\$ <u>-0-</u>	\$ <u>-0-</u>	\$ <u>3,063,591</u>	\$ <u>(8,311,943)</u>	\$ <u>( 5,248,352)</u>	\$ <u>3,063,591</u>

CITY OF FAIRMONT, WEST VIRGINIA  
STATEMENT OF REVENUES, EXPENDITURES AND  
CHANGES IN FUND BALANCE - BUDGET AND ACTUAL -  
GENERAL FUND - BUDGETARY BASIS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

**Explanation of Differences:**

- (1) The City budgets for capital expenditures as a current period expenditure rather than a capital expenditure on the accrual basis of accounting.
- (2) The amount reported as "fund balance" on the budgetary basis of accounting derives from the basis of accounting used in preparing the City's budget. This amount differs from the fund balance reported in the statement of revenues, expenditures, and changes in fund balances because of the cumulative effect of transactions such as those described above.

The accompanying notes are an integral part of this statement.

CITY OF FAIRMONT, WEST VIRGINIA  
STATEMENT OF REVENUES, EXPENDITURES AND  
CHANGES IN FUND BALANCE - BUDGET AND ACTUAL -  
COAL SEVERANCE FUND - BUDGETARY BASIS  
FOR THE YEAR ENDED JUNE 30, 2011

	<u>Budgeted Amounts</u>		<u>Actual</u>	<u>Budget to</u>	<u>Actual</u>	<u>Variance</u>
	<u>Original</u>	<u>Final</u>	<u>(Budgetary</u>	<u>GAAP</u>	<u>Amounts</u>	<u>With Final</u>
			<u>Basis)</u>	<u>Difference</u>	<u>GAAP</u>	<u>Budget</u>
					<u>Basis</u>	<u>Favorable</u>
						<u>(Unfavorable)</u>
<b>Revenues</b>						
Interest	\$ 40	\$ 40	\$ 6	\$ -0-	\$ 6	\$ ( 34)
Intergovernmental:						
State	<u>80,000</u>	<u>80,000</u>	<u>97,275</u>	<u>-0-</u>	<u>97,275</u>	<u>17,275</u>
Total revenues	<u>80,040</u>	<u>80,040</u>	<u>97,281</u>	<u>-0-</u>	<u>97,281</u>	<u>17,241</u>
<b>Expenditures</b>						
Highways and streets	<u>80,040</u>	<u>86,907</u>	<u>84,544</u>	<u>-0-</u>	<u>84,544</u>	<u>2,363</u>
Total expenditures	<u>80,040</u>	<u>86,907</u>	<u>84,544</u>	<u>-0-</u>	<u>84,544</u>	<u>2,363</u>
(Deficiency) excess of revenues (under) over expenditures	<u>-0-</u>	<u>( 6,867)</u>	<u>12,737</u>	<u>-0-</u>	<u>12,737</u>	<u>19,604</u>
<b>Other Financing Sources (Uses)</b>						
Operating transfers in	-0-	-0-	-0-	-0-	-0-	-0-
Operating transfers (out)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Total other financing sources (uses)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Net change in fund balance	-0-	( 6,867)	12,737	-0-	12,737	19,604
Fund balance at beginning of year	<u>-0-</u>	<u>6,867</u>	<u>22,742</u>	<u>-0-</u>	<u>22,742</u>	<u>15,875</u>
Fund balance at end of year	\$ <u>-0-</u>	\$ <u>-0-</u>	\$ <u>35,479</u>	\$ <u>-0-</u>	\$ <u>35,479</u>	\$ <u>35,479</u>

**Explanation of Differences:**

- (1) The City budgets for capital expenditures as a current period expenditure rather than a capital expenditure on the accrual basis of accounting.
- (2) The amount reported as "fund balance" on the budgetary basis of accounting derives from the basis of accounting used in preparing the City's budget. This amount differs from the fund balance reported in the statement of revenues, expenditures, and changes in fund balances because of the cumulative effect of transactions such as those described above.

The accompanying notes are an integral part of this statement.

CITY OF FAIRMONT, WEST VIRGINIA  
 FIDUCIARY RESONSIBILITIES  
 STATEMENT OF NET ASSETS  
 JUNE 30, 2011

	<u>Policemen's Pension and Relief</u>	<u>Firemen's Pension and Relief</u>	<u>Total</u>
<b>Assets</b>			
Cash	\$ 29,841	\$ 96,440	\$ 126,281
Investments	3,800,267	1,905,563	5,705,830
Receivables:			
Other	2,179	2,179	4,358
Interest	<u>7,762</u>	<u>5,599</u>	<u>13,361</u>
Total assets	<u>3,840,049</u>	<u>2,009,781</u>	<u>5,849,830</u>
<b>Liabilities</b>			
Accounts payable	<u>25</u>	<u>30</u>	<u>55</u>
<b>Net Assets</b>			
Held in trust for pension benefits	\$ <u>3,840,024</u>	\$ <u>2,009,751</u>	\$ <u>5,849,775</u>

The accompanying notes are an integral part of this statement.

CITY OF FAIRMONT, WEST VIRGINIA  
 FIDUCIARY RESPONSIBILITIES  
 STATEMENT OF CHANGES IN NET ASSETS  
 FOR THE YEAR ENDED JUNE 30, 2011

	<u>Policemen's</u> <u>Pension and</u> <u>Relief</u>	<u>Firemen's</u> <u>Pension and</u> <u>Relief</u>	<u>Total</u>
<b>Additions</b>			
Contributions:			
Employer	\$ 505,841	\$ 687,492	\$ 1,193,333
Employees	108,901	156,674	265,575
Insurance premium tax allocation	<u>353,292</u>	<u>442,494</u>	<u>795,786</u>
Net contributions	<u>968,034</u>	<u>1,286,660</u>	<u>2,254,694</u>
Investment income:			
Net appreciation in fair value of investments	( 4,728)	243,224	238,496
Interest income and dividends	127,276	63,000	190,276
Capital gains	<u>458,378</u>	<u>5,739</u>	<u>464,117</u>
Net investment income	580,926	311,963	892,889
Miscellaneous	<u>-0-</u>	<u>30</u>	<u>30</u>
Total additions	<u>1,548,960</u>	<u>1,598,653</u>	<u>3,147,613</u>
<b>Deductions</b>			
General and administrative	5,214	2,251	7,465
Benefit payments	<u>1,072,349</u>	<u>1,457,177</u>	<u>2,529,526</u>
Total deductions	<u>1,077,563</u>	<u>1,459,428</u>	<u>2,536,991</u>
Net increase	471,397	139,225	610,622
Net assets – beginning of year	<u>3,368,627</u>	<u>1,870,526</u>	<u>5,239,153</u>
Net assets – end of year	\$ <u>3,840,024</u>	\$ <u>2,009,751</u>	\$ <u>5,849,775</u>

The accompanying notes are an integral part of this statement.

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS  
FOR THE YEAR ENDED JUNE 30, 2011

**1. Summary of Significant Accounting Policies**

The City of Fairmont, West Virginia complies with accounting principles generally accepted in the United States of America. The City's reporting entity applies all relevant Governmental Accounting Standards Board (GASB) pronouncements. Proprietary funds apply Financial Accounting Standards Board (FASB) pronouncements and Accounting Principles Board (APB) opinions issued on or before November 30, 1989, unless those pronouncements conflict with or contradict GASB pronouncements, in which case, GASB prevails.

The remainder of the Notes are organized to provide explanations, including required disclosures, of the City's financial activities for the fiscal year ended June 30, 2011.

The City of Fairmont, West Virginia is incorporated under the provisions of the State of West Virginia. The City operates under a Council - Manager form of government and provides the following services as authorized by its charter: public safety (police and fire), streets, sanitation, water, waste, recreation, education, public improvements, planning and zoning, and general administrative services.

In February 2009, Governmental Accounting Standards Board (GASB) issued Statement No. 54, *Fund Balance Reporting and Governmental Fund Type Definitions*, which is effective for periods that begin after June 15, 2010. The objective of GASB 54 is to enhance the usefulness of fund balance information by 1) clarifying existing governmental fund type definitions and 2) providing clearer fund balance classifications that can be more consistently applied. The City of Fairmont, West Virginia implemented GASB 54 for the year ended June 30, 2011.

In June 1999, the Government Accounting Standards Board (GASB) unanimously approved Statement No. 34, *Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments*. Certain of the significant changes in the Statement include the following:

A Management Discussion and Analysis (MD&A) section providing an analysis of the City's overall financial position and results of operation.

Financial statements prepared using the full accounting for all of the City's activities, including infrastructure (roads, bridges, etc.).

A change in the fund financial statements to focus on the major funds.

Statement 34 established standards for external financial reporting for all state and local governmental entities which includes a management's discussion and analysis section, a statement of net assets, a statement of activities and changes in net assets and a statement of cash flows. It requires the classification of net assets into three components – invested in capital assets, net of related debt; restricted; and unrestricted.

In June 2001, GASB issued Statement No. 37 "Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments; Omnibus" which amends Statement No. 34. The amendments clarify certain provisions that, in retrospect, may not be sufficiently clear for consistent application and modifies other provisions that GASB believes may have unintended consequences in some circumstances.

Also in June 2001, GASB issued Statement No. 38 "Certain Financial Statement Note Disclosures." Statement No. 38 modifies, establishes and rescinds certain financial statement disclosure requirements. Existing disclosures that are modified include interfund balances, debt service requirements, short-term debt activity, lease disclosures and expanded definitions and activity descriptions. Additional note disclosures established include certain interest rate disclosures, major components of receivables and payables and descriptions of interfund transfers.

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

The adoption of Statement 37 and 38 had no effect on the basic financial statements except for expanded disclosures for interfund activity.

These and other changes are reflected in the accompanying financial statements (including notes to financial statements). The City has elected to implement the general provisions of the Statement in the year ended June 30, 2003.

**Basic Financial Statements – Government Wide Statements**

The City's basic financial statements include both government-wide (reporting the City as a whole) and fund financial statements (reporting the City's major funds). Both the government-wide and fund financial statements categorize primary activities as either governmental or business type. The City's police and fire protection, parks, public works and general administrative services are classified as governmental activities. The City's water, sewer, parking, building commission and park commission services are classified as business-type activities.

In the government-wide Statement of Net Assets, both the governmental and business-type activities columns (a) are presented on a consolidated basis by column, (b) and are reported on a full accrual, economic resource basis, which recognizes all long-term assets and receivables as well as long-term debt and obligations. The City's net assets are reported in three parts – invested in capital assets, net of related debt; restricted net assets; and unrestricted net assets. The City first utilizes restricted resources to finance qualifying activities.

The government-wide Statement of Activities reports both the gross and net cost of each of the City's functions and business-type activities (police, fire, public works, etc.). The functions are also supported by general government revenues (taxes, certain intergovernmental revenues, fines, permits and charges, etc.). The Statement of Activities reduces gross expenses (including depreciation) by related program revenues, operating and capital grants. Program revenues must be directly associated with the function (police, public works, etc.) or a business-type activity. Operating grants include operating-specific and discretionary (either operating or capital) grants while the capital grants column reflects capital-specific grants.

The net costs (by function or business-type activity) are normally covered by general revenue (taxes, intergovernmental revenues, interest income, etc.).

The City does not allocate indirect costs. An administrative service fee is charged by the General Fund to the other operating funds that is eliminated like a reimbursement (reducing the revenue and expense in the General Fund) to recover the direct costs of General Fund services provided (finance, personnel, purchasing, etc.).

This government-wide focus is more on the sustainability of the City as an entity and the change in the City's net assets resulting from the current year's activities.

A summary of the significant accounting policies of the City of Fairmont, West Virginia, is presented below.

**(a) Reporting Entity**

The City's financial statements include the operations of all organizations for which the City Council exercises oversight responsibility. Oversight responsibility is demonstrated by financial interdependency, selection of governing authority, designation of management, ability to significantly influence operations, and accountability for fiscal matters.

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

(b) **Government-Wide Financial Statements**

The government-wide financial statements report information on all the nonfiduciary activities of the government. For the most part, the effect of internal activity has been removed from these statements. Government activities, which normally are supported by taxes and intergovernmental revenues, are reported separately from business-type activities, which rely to significant extent on fees and charges for support.

The Statement of Activities demonstrates the degree to which the direct expenses of a given function or segment are offset by program revenues. Direct expenses are those that are clearly identifiable with a specific function or segment. Program revenues include (1) charges to customers or applicants whose purchase, use or directly benefit from goods, services or privileges provided by a given function or segment and (2) grants and contributions that are restricted to meeting the operational or capital requirements of a particular function or segment. Taxes and other items not properly included among program revenues are reported instead as general revenues.

Separate financial statements are provided for governmental funds, proprietary funds and fiduciary funds, even though the latter are excluded from the governmental-wide statements. Major individual funds are reported as separate columns in the fund statements.

(c) **Measurement Focus and Financial Statement Presentation – Government-Wide Financial Statements**

Funds are classified into three categories: governmental, proprietary and fiduciary. Each category, in turn, is divided into separate “fund types”. Governmental funds are used to account for governmental activities, where the focus of attention is on the providing of services to the public as opposed to proprietary funds where the focus of attention is on recovering the cost of providing services to the public through service charges or user fees. Fiduciary funds are used to account for assets held by the City in a trustee or agency capacity. The fund types used by the City of Fairmont are described as follows:

**Governmental Fund Types**

*General Fund:* The General Fund is the general operating fund of the municipality. It is used to account for all financial resources except those required to be accounted for in another fund.

*Special Revenue Funds:* Special Revenue Funds are used to account for the proceeds of specific revenue sources (other than special assessments, expendable trusts, or major capital projects) that are legally restricted to expenditures for capital purposes.

*Capital Project Funds:* Capital Project Funds are used to account for the financial resources to be used for the acquisition or construction of major capital facilities which are not financed by Proprietary Funds.

**Proprietary Fund Types**

*Enterprise Funds:* Enterprise funds are used to account for operations (a) that are financed and operated in a manner similar to private business enterprises – where the intent of the governing body is that the costs (expenses including depreciation) of providing goods and services to the general public on a continuing basis be financed or recovered primarily through user charges; or (b) where the governing body has decided that periodic determination of revenues earned, expenses incurred, and/or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes.

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

The City of Fairmont reports the following major governmental funds:

The General Fund, Capital Reserve Fund and Coal Severance Fund.

*General Fund:* The General Fund is the general operating fund of the municipality.

The City of Fairmont reports the following major proprietary funds:

The Water Fund, the Sanitary Sewer Board, the Parking Fund, the Building Commission and the Park Commission.

**(d) Funds and Account Groups – Fund Financial Statements**

The accounts of the City are organized into funds and account groups, each of which is considered to be a separate accounting entity. The major fund categories and account groups for the fund financial statements are:

**Governmental Fund Types**

Governmental funds are accounted for using the current financial resources measurement focus. Only current assets and current liabilities are generally included on their balance sheets. Their operating statements present sources and uses of available resources during a given period.

*General Fund:* The General Fund is the general operating fund of the municipality. It is used to account for all financial resources except those required to be accounted for in another fund.

*Special Revenue Funds:* Special Revenue Funds are used to account for the proceeds of specific revenue sources (other than special assessments, expendable trusts, or major capital projects) that are legally restricted to expenditures for specified purposes.

*Capital Project Funds:* Capital Project Funds are used to account for the financial resources to be used for the acquisition or construction of major capital facilities which are not financed by Proprietary Funds.

**Proprietary Fund Types**

Proprietary funds are accounted for using the economic resources measurement focus; the accounting objectives are determination of net income, financial position, and cash flows. All assets and liabilities associated with a proprietary fund's activities are included on its balance sheet.

*Enterprise Funds:* Enterprise Funds are used to account for operations (a) that are financed and operated in a manner similar to private business enterprises - where the intent of the governing body is that the costs (expenses, including depreciation) of providing goods and services to the general public on a continuing basis be financed or recovered primarily through user charges; or (b) where the governing body has decided that periodic determination of revenues earned, expenses incurred, and/or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes.

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

**Fiduciary Funds**

Fiduciary funds account for assets held by the City in a trustee or agency capacity. Pension trust funds are accounted for in essentially the same manner as proprietary funds.

**(e) Cash, Cash Equivalents and Investments**

Cash on hand and deposits with banking institutions either in checking or savings accounts are presented as cash and cash equivalent in the accompanying financial statements.

State statutes authorize the government to invest in the State Investment Pool or the Municipal Bond Commission or to invest such funds in the following classes of securities: (a) obligations of the United States or any agency thereof, (b) certificates of deposit (which mature in less than one year), (c) general and direct obligations of the State of West Virginia, (d) obligations of the Federal National Mortgage Association, (e) indebtedness secured by first lien deed of trust for property situated within the State if the payment is substantially insured or guaranteed by the federal government, (f) pooled mortgage trusts (subject to limitations), (g) indebtedness of any private corporation that is properly graded as in the top two or three highest rating grades, (h) interest earning deposits which are fully insured or collateralized, and (i) mutual funds registered with the Security and Exchange Commission which have fund assets over three hundred million dollars. State statute limitations concerning the aforementioned investments include the following:

- (1) at no time can investment portfolios consist of more than seventy-five percent of the indebtedness of any private corporations nor can the portfolio have over twenty-five percent of its portfolio consisting of the indebtedness of a private corporation's debt which matures in less than one year.
- (2) at no time may more than nine percent of the portfolio be invested in securities issued by a single private corporation or association.
- (3) at no time can more than sixty percent of the portfolio be invested in equity mutual funds.

Investment risk is categorized as follows:

**Interest rate risk** – The risk that changes in interest rates will adversely affect the fair value of an investment.

**Credit risk** – The risk that an issuer or other counterparty to an investment will not fulfill its obligations.

**Custodial credit risk** – The risk that, in the event of the failure of the counterparty to a transaction, the City will not be able to recover the value of investment or collateral securities that are in the possession of an outside party.

**(f) Receivables**

All receivables are shown net of allowance for uncollectibles.

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

**(g) Capital Assets**

The accounting and reporting treatment applied to capital assets and long-term liabilities associated with a fund are determined by its measurement focus. The City of Fairmont records the purchase of capital assets used in governmental fund type operations as expenditures in the governmental funds. The government-wide financial statements of the City of Fairmont are accounted for on a cost of service or "capital maintenance" measurement focus. This means that all assets and all liabilities (whether current or noncurrent) associated with their activity are included on the statement of net assets.

All proprietary funds and pension trust funds are accounted for on a cost of services or "capital maintenance" measurement focus. This means that all assets and all liabilities (whether current or noncurrent) associated with their activity are included on the balance sheets. The reported fund equity (net total assets) is segregated into contributed capital and retained earnings components. Proprietary fund type operating statements present increase (revenues) and decreases (expenses) in net total assets.

Depreciation of all exhaustible capital assets is charged as an expense against operations. Accumulated depreciation is reported on the statements of net assets. Depreciation has been provided over the estimated useful lives using the straight line method. The estimated useful lives are as follows:

**Governmental Funds**

Buildings and improvements	20 - 50 years
Infrastructure	20 - 65 years
Machinery and equipment	5 - 20 years
Vehicles	8 - 10 years

**Proprietary Funds**

Buildings	25 - 50 years
Improvements	10 - 20 years
Utility plant	10 - 20 years
Equipment	3 - 10 years

**(h) Basis of Accounting**

**Fund Financial Statements**

**Modified Accrual Basis of Accounting**

The City used the modified accrual basis of accounting for governmental fund types. The modified accrual basis of accounting recognizes revenues when both "measurable and available." Measurable means that amount can be determined. Available means collectible within the current period or soon enough thereafter to pay current liabilities. Also, under the modified accrual basis of accounting, expenditures are recorded when the related fund liability is incurred.

Major revenue sources susceptible to accrual include: business & occupation tax, hotel/motel tax, wine tax, liquor tax, property taxes, fire service fees, intergovernmental revenues, and investment income.

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

**Accrual Basis of Accounting**

The accrual basis of accounting is used in proprietary fund types and the pension trust funds. The accrual basis of accounting recognizes revenues when earned. Expenses are recorded when incurred. Plan member contributions to the pension trust funds are recognized in the period in which the contributions are due. Employer contributions to the plan are recognized when due and the City has made a formal commitment to provide the contributions. Benefits and refunds are recognized when due and payable in accordance with the terms of the plan.

**Government-Wide Financial Statements**

The government-wide financial statements are reported using the economic resources measurement focus and the accrual basis of accounting, as are the proprietary funds (when appropriate) and fiduciary fund financial statements. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of related cash flows. Property taxes are recognized as revenues in the year in which they are levied. Grants and similar items are recognized as revenues as soon as all eligibility requirements imposed by the provider have been met.

Governmental fund financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Revenues are recognized as soon as they are both measurable and available. Revenues are considered to be available when they are collectible within the current period or soon enough thereafter to pay liabilities of the current period. For this purpose, the government considers revenues to be available if they are collected within 60 days after the end of the current fiscal year. Expenditures generally are recorded when a liability is incurred, as under accrual accounting. However, debt service expenditures, as well as expenditures related to compensated absences are recorded only when payment is due.

Taxes, grants and interest associated with the current fiscal period are all considered to be susceptible to accrual and so have been recognized as revenues of the current fiscal period. All other revenue items are considered to be measurable and available only when cash is received by the government.

**(i) Fund Equity**

In the fund financial statements, governmental funds report reservations of fund balance for amounts that are not available for appropriation or are legally restricted by outside parties for use for specific purpose. Designations of fund balance represents tentative management plans that are subject to change.

**(j) Budgets and Budgetary Accounting**

All municipalities within West Virginia, are required by statute to prepare annual budgets (levy estimates) on prescribed forms for the General and Coal Severance Funds and submit these for approval to the State Tax Commissioner. These budgets are prepared in accordance with the following procedures:

1. The governing body of the municipality is required to hold a meeting or meetings between the seventh and twenty-eighth days of March to ascertain the financial condition of the municipality and to prepare the levy estimate (budget) for the fiscal year commencing July 1.
2. The budget is then forthwith submitted to the State Tax Commissioner for approval.
3. The governing body then reconvenes on the third Tuesday in April to hear objections from the public and to formally lay the levy.

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

Revisions are authorized only with the prior written approval of the State Tax Commissioner. The budgeted amounts reflected in the accompanying financial statements are such approved amounts.

A) Unused appropriations for all of the above annually budgeted funds lapse at the year end.

B) The budget amounts shown in the financial statements are the final authorized amounts as revised during the year.

**(k) Committed – Fund Financial Statements**

Committed accounting is used for the General Fund and special revenue funds. Commitments are recorded when purchase orders are issued but are not considered expenditures until liabilities for payments are incurred. Commitments are reported as a reservation of fund balance on the balance sheet. Commitments do not lapse at the close of the fiscal year but are carried forward as reserved fund balance until liquidated.

**(l) Inventories**

The municipality considers inventories of materials and supplies utilized in governmental fund types operations as expended at the time of purchase therefore, they do not appear in the municipality's financial statements. Inventories of materials and supplies utilized in the proprietary fund type operation, are considered expended at the time of consumption; therefore, balances on hand at year end, valued at cost (first-in, first-out) are presented in the municipality's financial statements.

**(m) Amortization**

Debt discount and expense on bonds is amortized on the straight-line method from the date of issuance to the date of maturity. Amortization of debt discount and issue costs for fiscal year ended June 30, 2011 was \$143,979.

**(n) Compensated Absences**

The liability for compensated absences reported in the government-wide financial statements consists of unpaid, accumulated annual sick and accrued vacations. The liability has been calculated using the vesting method, in which leave amounts for both employees who currently are eligible to receive termination payments and other employees who are expected to become eligible in the future to receive such payment upon termination are included.

**(o) Pension Plans**

The City provides separate defined benefit pension plans for uniformed police and fire department personnel. It is the City's policy to fund the normal cost and amortization of the unfunded prior service cost.

All other eligible employees are covered under the West Virginia Public Employee Retirement System due to the City's electing to be a participating public employer.

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

(p) **Equity Classification**

Effective July 1, 2010, the City adopted GASB Statement No. 54 "Fund Balance Reporting and Governmental Fund Type Definitions," which establishes new standards for accounting and financial reporting that are intended to improve the clarity and consistency of the fund balance information provided to financial report users. The classifications are based primarily on the extent to which the City is bound to honor constraints on the specific purposes for which the amounts in those funds can be spent. Fund balances are reported in the following categories:

Government-wide net assets are divided into three components:

- a. Invested in capital assets, net of related debt – Consists of the historical cost of capital assets less accumulated depreciation and less any debt that remains outstanding that was used to finance those assets.
- b. Restricted net assets – Consists of net assets that are restricted by the City's creditors (for example through debt covenants), by the state enabling legislation (through restrictions on shared revenues), by grantors (both federal and state), and by other contributions.
- c. Unrestricted net assets – All other net assets are reported in this category.

In the governmental fund financial statements, fund balances are classified as follows:

- a. Nonspendable – Amounts that cannot be spent either because they are in a nonspendable form or because they are legally or contractually required to be maintained intact.
- b. Restricted – Amounts that can be spent only for specific purposes because of the City's code, state or federal laws, or externally imposed conditions by grantors or creditors.
- c. Committed – Amounts that can be used only for specific purposes determined by a formal action by the City's council.
- d. Assigned – Amounts that are designed by the City's council for a particular purpose but are not spendable until there is a majority vote approval by the City's council.
- e. Unassigned – All amounts not included in other spendable classifications.

(q) **Use of Estimates**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

(r) **Interfund Activity**

Interfund activity is reported as either loans, services provided, reimbursements or transfers. Loans are reported as interfund receivables and payables as appropriate and are subject to elimination upon consolidation. Services provided, deemed to be at market or near market rates, are treated as revenues and expenditures/expenses. Reimbursements are when one fund incurs a cost, charges the appropriate benefiting fund and reduces its related cost as a reimbursement. All other interfund transactions are treated as transfers. Transfers between governmental or proprietary funds are netted as part of the reconciliation to the government-wide financial statements.

(s) **Restricted Assets**

Certain proceeds of the water and sewer enterprise fund revenue bonds, as well as certain proceeds set aside for their repayment, are classified as restricted assets on the statement of net assets because their use is limited by applicable bond covenants.

**2. Reconciliation of Government-Wide and Fund Financial Statements**

The governmental fund balance sheet includes a reconciliation between fund balance – total governmental funds and net assets – governmental activities as reported on the government-wide statement of net assets. The governmental fund statement of revenues, expenditures, and changes in fund balance includes a reconciliation between net changes in fund balances – total governmental fund and changes in net assets of governmental activities as reported in the government-wide statement of activities. The individual elements of those reconciliations are included with the statements.

**3. Deposits and Investments**

The City reporting entity considers highly liquid investments with an original maturity of three months or less when purchased to be cash equivalents. Exceptions include the City of Fairmont, West Virginia's Policemen's Pension and Relief Fund and the Firemen's Pension and Relief Fund which classify only cash as cash equivalents in order to appropriately report investment activity.

**Deposits**

It is the City's policy for deposits to be 100% secured by collateral valued at market or par, whichever is lower, less the amount of the Federal Deposit Insurance Corporation insurance. The City's deposits are categorized to give an indication of the level of risk assumed by the City at June 30, 2011. The categories are described as follows:

**Category 1** - Insured or collateralized with securities held by the entity or by its agent in the entity's name.

**Category 2** - Collateralized with securities held by the pledging financial institution's trust department or agent in the entity's name.

**Category 3** - Uncollateralized.

CITY OF FAIRMONT, WEST VIRGINIA  
 NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
 FOR THE YEAR ENDED JUNE 30, 2011

<u>Non-Pooled Deposits</u>	<u>Bank</u> <u>Balance</u>	<u>1</u>	<u>Category</u> <u>2</u>	<u>3</u>	<u>Carrying</u> <u>Amount</u>
General Fund	\$ 1,882,116	\$ 115,977	\$ 1,766,139	\$ -0-	\$ 682,754
Special Revenue Funds	437,665	56,712	380,953	-0-	440,596
Capital Project Funds	1,317,128	81,162	1,235,966	-0-	1,324,438
Enterprise Funds	<u>460,086</u>	<u>36,068</u>	<u>424,018</u>	<u>-0-</u>	<u>498,867</u>
Total deposits	<u>\$ 4,096,995</u>	<u>\$ 289,919</u>	<u>\$ 3,807,076</u>	<u>\$ -0-</u>	<u>\$ 2,946,655</u>

	<u>Bank</u> <u>Balance</u>	<u>Category</u> <u>1</u>	<u>2</u>	<u>3</u>	<u>Carrying</u> <u>Amount</u>
Fiduciary Funds	<u>\$ 126,281</u>	<u>\$ 126,281</u>	<u>\$ -0-</u>	<u>\$ -0-</u>	<u>\$ 126,281</u>

**Investments**

Investment pools are under the custody of the City. Investing is performed in accordance with investment policies complying with State Statutes and the City Charter. Pooled funds may be invested in the State Investment Pool or the Municipal Bond Commission for investment purposes, or invested in the following classes of securities: Commercial paper rated A-1 by Standard & Poor's Corporation or P-1 by Moody's Commercial Paper Record, bankers' acceptances, repurchase agreements and reverse repurchase agreements. The pension trust fund is also authorized to invest in corporate bonds rated AA or better by Standard & Poor's Corporation or AA or better by Moody's Bond Rating.

The City's investments are categorized to give an indication of the level of risk assumed by the City at June 30, 2011. The categories are described as follows:

**Custodial Credit Risk**

For an investment, custodial credit risk is the risk that, in the event of the failure of the counterparty, the City will not be able to recover the value of its investments or collateral securities that are in the possession of an outside party.

Investments made by the City are summarized below. The investments that are presented by specific identifiable investment securities are classified as to credit risk by the three categories.

**Category 1** – Insured or registered, securities held by the City or its agent in the entity's name.

**Category 2** – Uninsured and unregistered, with securities held by the counterparty's trust department or agent in the entity's name.

**Category 3** – Uninsured and unregistered, with securities held by the counterparty, or by its trust department or agent but not in the entity's name.

CITY OF FAIRMONT, WEST VIRGINIA  
 NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
 FOR THE YEAR ENDED JUNE 30, 2011

<u>Type of Investments</u>	<u>Category</u>			<u>Market Value</u>	<u>Cost</u>
	<u>1</u>	<u>2</u>	<u>3</u>		
Cash equivalents	\$ 3,003,606	\$ -0-	\$ -0-	\$ 3,003,606	\$ 2,996,296
Certificates of deposit	1,116,155	-0-	-0-	1,116,155	1,118,000
Corporate equities	539,422	-0-	-0-	539,422	469,728
Mutual funds	<u>4,835,496</u>	<u>-0-</u>	<u>-0-</u>	<u>4,835,496</u>	<u>4,609,877</u>
Total investments	\$ <u>9,494,679</u>	\$ <u>-0-</u>	\$ <u>-0-</u>	9,494,679	9,193,901
Investments in municipal bond commission				<u>5,498,223</u>	<u>5,498,223</u>
Total investments				\$ <u>14,992,902</u>	\$ <u>14,692,124</u>

Deposits and investments are presented in the statement of net assets as follows:

Investments	\$ 7,823,830
Restricted assets	<u>7,169,072</u>
Total investments	\$ <u>14,992,902</u>

**Credit Risk**

State law limits investments. It is the government's policy that no investment be purchased which does not conform to the State of West Virginia Code Chapter 8. As of June 30, 2011, the government's investments were rated using Standard & Poor's and Fitch and Moody's Investment Services.

As of June 30, 2011, the City had the following investments:

<u>Investment Type</u>	<u>Fair Value</u>	<u>Credit Risk Rating</u>	
		<u>Standard &amp; Poor's and Fitch</u>	<u>Moody's Investment Services</u>
Money Market	\$ 3,003,606	AAA	AAA
Mutual funds	\$ 4,835,496	AAA	AAA
Certificates of deposit	\$ 1,116,155	N/A	N/A
Corporate equities	\$ 539,422	AAA	AAA

**Interest Rate Risk**

As of June 30, 2011, the City had the following investments and maturities exposed to interest rate risk.

<u>Investment Type</u>	<u>Fair Value</u>	<u>Less than 1</u>	<u>1 - 5</u>	<u>6 - 10</u>	<u>More than 10</u>
Certificates of deposit	\$ <u>1,116,155</u>	\$ <u>981,795</u>	\$ <u>134,360</u>	\$ <u>-0-</u>	\$ <u>-0-</u>

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

**Fiduciary Funds**

<u>Type of Investments</u>	<u>Category</u>			<u>Market Value</u>	<u>Cost</u>
	<u>1</u>	<u>2</u>	<u>3</u>		
Money Market	\$ 85,016	\$ -0-	\$ -0-	\$ 85,016	\$ 85,016
Mutual funds	4,147,864	-0-	-0-	4,147,864	3,441,237
Certificates of deposit	689,104	-0-	-0-	689,104	665,000
Corporate bonds and notes	700,673	-0-	-0-	700,673	690,000
Corporate stocks	79,285	-0-	-0-	79,285	130,237
U.S. Government obligations	<u>3,888</u>	<u>-0-</u>	<u>-0-</u>	<u>3,888</u>	<u>4,200</u>
Total investments	\$ <u>5,705,830</u>	\$ <u>-0-</u>	\$ <u>-0-</u>	\$ <u>5,705,830</u>	\$ <u>5,015,690</u>

**Credit Risk:** State law limits investments in corporate debt to commercial paper rated AA or better by Standard & Poor's Corporation or AA or better by Moody's Bond Rating.

**Interest Risk:** The pension investments are at risk of declines in market value due to interest rate risk.

**Custodial Credit Risk:** The City's investments were 100% insured by brokerage insurance and were not subject to custodial credit risk.

**Credit Risk**

State law limits investments. It is the government's policy that no investment be purchased which does not conform to the State of West Virginia Code Chapter 8. As of June 30, 2011, the government's investments were rated using Standard & Poor's and Fitch and Moody's Investment Services.

As of June 30, 2011, the City had the following investments:

<u>Investment Type</u>	<u>Fair Value</u>	<u>Credit Risk Rating</u>	
		<u>Standard &amp; Poor's and Fitch</u>	<u>Moody's Investment Services</u>
Money Market	\$ 85,016	AAA	AAA
Mutual funds	\$ 4,147,864	AAA	AAA
Certificates of deposit	\$ 689,104	N/A	N/A
Corporate bonds and notes	\$ 700,673	B+ - AAA	B3 - A3
Corporate stocks	\$ 79,285	N/A	N/A
U.S. Government obligations	\$ 3,888	AAA	AAA

**Interest Rate Risk**

As of June 30, 2011, the City had the following investments and maturities exposed to interest rate risk.

<u>Investment Type</u>	<u>Fair Value</u>	<u>Less than 1</u>	<u>1 - 5</u>	<u>6 - 10</u>	<u>More than 10</u>
Certificates of deposit	\$ 689,104	\$ 199,773	\$ 489,331	\$ -0-	\$ -0-
Corporate bonds and notes	\$ 700,673	\$ 74,234	\$ 408,185	\$ -0-	\$ 218,254
Federal obligations	\$ 3,888	\$ 152	\$ 1,868	\$ -0-	\$ 1,868

CITY OF FAIRMONT, WEST VIRGINIA  
 NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
 FOR THE YEAR ENDED JUNE 30, 2011

3. Property Taxes

The taxes on real property and the interest and other charges upon such taxes attach as an enforceable lien on the first day of July. There is no lien denominated as such on personal property; however, statutes provide that the sheriff of a county may distrain for delinquent taxes any goods and chattels belonging to a person assessed. All current taxes assessed on real and personal property may be paid in two installments; the first installment is payable on September first of the year for which the assessment is made, and become delinquent on October first, and the second installment is payable on the first day of the following March and becomes delinquent on April first. Taxes paid on or before the date when they are payable, including both first and second installments, are subject to a discount of two and one-half percent. If taxes are not paid on or before the date on which they become delinquent, including both first and second installments, interest at the rate of nine percent annum is added from the date they become delinquent until paid.

All municipalities within the state are authorized to levy taxes not in excess of the following maximum levies per \$100 of assessed valuation: On Class I property, twelve and five-tenths cents (12.5¢); on Class II property, twenty-five cents (25.0¢); and on Class IV property, fifty cents (50.0¢). In addition, municipalities may provide for an election to lay an excess levy, the rates not to exceed fifty percent of such authorized maximum levies, provided that at least sixty percent of the voters cast ballots in favor of the excess levy.

The levy rates levied by the City of Fairmont, West Virginia, per \$100 of assessed valuation for each class of property for the fiscal year ended June 30, 2011 were as follows:

<u>Class of Property</u>	<u>Assessed Valuations For Tax Purposes</u>	<u>Current Expense</u>
Class I	\$ -0-	11.05¢
Class II	\$ 258,760,924	22.10¢
Class IV	\$ 293,489,510	44.20¢

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

4. Capital Assets and Capital Assets Net of Depreciation

Capital asset activity for the year ended June 30, 2011 was as follows:

	<u>Beginning Balance</u>	<u>Additions</u>	<u>Retirements</u>	<u>Ending Balance</u>
<b>Governmental Activities</b>				
<i>Non-depreciable Assets</i>				
Land	\$ <u>149,635</u>	\$ <u>-0-</u>	\$ <u>-0-</u>	\$ <u>149,635</u>
Total non-depreciable assets	<u>149,635</u>	<u>-0-</u>	<u>-0-</u>	<u>149,635</u>
<i>Depreciable Assets</i>				
Buildings	971,258	-0-	-0-	971,258
Land improvements	530,906	-0-	-0-	530,906
Machinery and equipment	1,409,615	55,144	-0-	1,464,759
Building improvements	132,354	-0-	-0-	132,354
Office furniture and equipment	615,838	24,151	-0-	639,989
Vehicles	4,429,542	223,941	51,000	4,602,483
Infrastructure	<u>30,160,945</u>	<u>-0-</u>	<u>-0-</u>	<u>30,160,945</u>
Totals at historical cost	<u>38,250,458</u>	<u>303,236</u>	<u>51,000</u>	<u>38,502,694</u>
Less: Accumulated depreciation				
Buildings	677,265	13,813	-0-	691,078
Land improvements	102,149	26,289	-0-	128,438
Machinery and equipment	1,048,967	86,942	-0-	1,135,909
Building improvements	49,449	8,165	-0-	57,614
Office furniture and equipment	407,331	40,292	-0-	447,623
Vehicles	3,011,079	225,464	51,000	3,185,543
Infrastructure	<u>26,634,618</u>	<u>440,795</u>	<u>-0-</u>	<u>27,075,413</u>
Total accumulated depreciation	<u>31,930,858</u>	<u>841,760</u>	<u>51,000</u>	<u>32,721,618</u>
Total depreciable assets	<u>6,319,600</u>	( <u>538,524</u> )	<u>-0-</u>	<u>5,781,076</u>
Governmental activities capital assets, net	\$ <u>6,469,235</u>	\$ ( <u>538,524</u> )	\$ <u>-0-</u>	\$ <u>5,930,711</u>

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

	<u>Beginning Balance</u>	<u>Additions</u>	<u>Retirements</u>	<u>Ending Balance</u>
<b>Business-Type Activities</b>				
<i>Non-depreciable Assets</i>				
Land	\$ 1,293,979	\$ 75,802	\$ -0-	\$ 1,369,781
Construction in progress	<u>2,625,876</u>	<u>5,693,737</u>	<u>-0-</u>	<u>8,319,613</u>
Total non-depreciable assets	<u>3,919,855</u>	<u>5,769,539</u>	<u>-0-</u>	<u>9,689,394</u>
<i>Depreciable Assets</i>				
Buildings	4,113,178	2,200	-0-	4,115,378
Structures and improvements	11,877,937	41,753	-0-	11,919,690
Transmission and distribution	82,156,548	851,556	147,764	82,860,340
Machinery and equipment	<u>10,740,105</u>	<u>83,263</u>	<u>36,271</u>	<u>10,787,097</u>
Totals at historical cost	<u>108,887,768</u>	<u>978,772</u>	<u>184,035</u>	<u>109,682,505</u>
Less: Accumulated depreciation				
Buildings	471,252	135,317	-0-	606,569
Structures and improvements	2,750,427	305,332	-0-	3,055,759
Transmission and distribution	35,570,040	2,199,751	147,774	37,622,017
Machinery and equipment	<u>4,777,287</u>	<u>410,962</u>	<u>24,112</u>	<u>5,164,137</u>
Total accumulated depreciation	<u>43,569,006</u>	<u>3,051,362</u>	<u>171,886</u>	<u>46,448,482</u>
Total depreciable assets	<u>65,318,762</u>	<u>(2,072,590)</u>	<u>12,149</u>	<u>63,234,023</u>
Business type activities capital assets, net	\$ <u>69,238,617</u>	\$ <u>3,696,949</u>	\$ <u>12,149</u>	\$ <u>72,923,417</u>

Depreciation expense was charged to governmental activities as follows:

General government	\$ 67,865
Public safety	266,273
Highways and streets	501,418
Culture and recreation	<u>6,204</u>
Total depreciation expense	\$ <u>841,760</u>

CITY OF FAIRMONT, WEST VIRGINIA  
 NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
 FOR THE YEAR ENDED JUNE 30, 2011

5. Long-Term Debt

Long-term liability activity for the year ended June 30, 2011 was as follows:

	<u>Beginning</u> <u>Balance</u>	<u>Additions</u>	<u>Reductions</u>	<u>Ending</u> <u>Balance</u>	<u>Amounts</u> <u>Due Within</u> <u>One Year</u>	<u>Amounts</u> <u>Due After</u> <u>One Year</u>
<b>Governmental Activities</b>						
Obligation under capital lease	\$ 1,091,861	\$ 197,907	\$ 294,252	\$ 995,516	\$ 289,412	\$ 706,104
Compensated absences	1,154,875	31,650	-0-	1,186,525	239,268	947,257
Net pension obligation	<u>11,848,201</u>	<u>1,082,509</u>	<u>-0-</u>	<u>12,930,710</u>	<u>-0-</u>	<u>12,930,710</u>
Governmental activities long-term liabilities	<u>\$ 14,094,937</u>	<u>\$ 1,312,066</u>	<u>\$ 294,252</u>	<u>\$ 15,112,751</u>	<u>\$ 528,680</u>	<u>\$ 14,584,071</u>

The General Fund of the City of Fairmont entered into a lease agreement to finance the acquisition of a Smeal Class A Pumper. This lease qualifies as a capital lease for accounting purposes and, therefore, has been recorded at the present value of the minimum lease payments as of the date of its inception. The following is a schedule of future minimum lease payments required under this capital lease and the present value of the net minimum lease payments at June 30, 2011:

<u>Fiscal Year Ending June 30,</u>		
2012		\$ 41,987
2013		41,987
2014		41,987
2015		<u>41,987</u>
		167,948
Less: Amount representing interest		<u>19,716</u>
Present value of future minimum lease payments		<u>\$ 148,232</u>

The General Fund of the City of Fairmont entered into a lease agreement on August 10, 2007 for the acquisition of a copier for the police and fire departments. This lease qualifies as a capital lease for accounting purposes and, therefore, has been recorded at the present value of the minimum lease payments as of the date of its inception. The following is a schedule of future minimum lease payments required under this capital lease and the present value of the net minimum lease payments at June 30, 2011:

<u>Fiscal Year Ending June 30,</u>		
2012		\$ 2,954
2013		<u>246</u>
		3,200
Less: Amount representing interest		<u>-0-</u>
Present value of future minimum lease payments		<u>\$ 3,200</u>

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

The General Fund of the City of Fairmont entered into a lease agreement on July 25, 2007 for the acquisition of a Pierce Aerial Platform Fire Truck. This lease qualifies as a capital lease for accounting purposes and, therefore, has been recorded at the present value of the minimum lease payments as of the date of its inception. The following is a schedule of future minimum lease payments required under this capital lease and the present value of the net minimum lease payments at June 30, 2011:

<u>Fiscal Year Ending June 30,</u>		
2012		\$ 99,364
2013		99,364
2014		99,364
2015		99,364
2016		99,364
2017		<u>99,364</u>
		596,184
Less: Amount representing interest		<u>85,820</u>
Present value of future minimum lease payments		\$ <u>510,364</u>

The General Fund of the City of Fairmont entered into a lease agreement on March 1, 2008 for the acquisition of a Pitney Bowes Stuffer DI245. This lease qualifies as a capital lease for accounting purposes and, therefore, has been recorded at the present value of the minimum lease payments as of the date of its inception. The following is a schedule of future minimum lease payments required under this capital lease and the present value of the net minimum lease payments at June 30, 2011:

<u>Fiscal Year Ending June 30,</u>		
2012		\$ 5,652
2013		<u>3,768</u>
		9,420
Less: Amount representing interest		<u>-0-</u>
Present value of future minimum lease payments		\$ <u>9,420</u>

The General Fund of the City of Fairmont entered into a lease agreement on June 13, 2008 for the acquisition of police department vehicles. This lease qualifies as a capital lease for accounting purposes and, therefore, has been recorded at the present value of the minimum lease payments as of the date of its inception. The following is a schedule of future minimum lease payments required under this capital lease and the present value of the net minimum lease payments at June 30, 2011:

<u>Fiscal Year Ending June 30,</u>		
2012		\$ 73,321
Less: Amount representing interest		<u>1,156</u>
Present value of future minimum lease payments		\$ <u>72,165</u>

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

The General Fund of the City of Fairmont entered into a lease agreement on October 30, 2008 for the acquisition of public works department vehicles. This lease qualifies as a capital lease for accounting purposes and, therefore, has been recorded at the present value of the minimum lease payments as of the date of its inception. The following is a schedule of future minimum lease payments required under this capital lease and the present value of the net minimum lease payments at June 30, 2011:

Fiscal Year Ending June 30,

		\$
2012		67,328
2013		<u>22,443</u>
		89,771
Less: Amount representing interest		<u>2,725</u>
Present value of future minimum lease payments		\$ <u>87,046</u>

The General Fund of the City of Fairmont entered into a lease agreement on December 13, 2008 for the acquisition of a copier for City Hall. This lease qualifies as a capital lease for accounting purposes and therefore, has been recorded at the present value of the minimum lease payments as of the date of its inception. The following is a schedule of future minimum lease payments required under this capital lease and the present value of the net minimum lease payments at June 30, 2011:

Fiscal Year Ending June 30,

		\$
2012		2,700
2013		2,700
2014		<u>1,350</u>
		6,750
Less: Amount representing interest		<u>-0-</u>
Present value of future minimum lease payments		\$ <u>6,750</u>

The General Fund of the City of Fairmont entered into a lease agreement on August 13, 2010 for the acquisition of a Street Sweeper. This lease qualifies as a capital lease for accounting purposes and, therefore, has been recorded at the present value of the minimum lease payments as of the date of its inception. The following is a schedule of future minimum lease payments required under this capital lease and the present value of the net minimum lease payments at June 30, 2011:

Fiscal Year Ending June 30,

		\$
2012		51,043
2013		51,043
2014		51,043
2015		<u>8,508</u>
		161,637
Less: Amount representing interest		<u>5,817</u>
Present value of future minimum lease payments		\$ <u>155,820</u>

CITY OF FAIRMONT, WEST VIRGINIA  
 NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
 FOR THE YEAR ENDED JUNE 30, 2011

The General Fund of the City of Fairmont entered into a lease agreement on October 10, 2010 for the acquisition of a copier for the police department. This lease qualifies as a capital lease for accounting purposes and therefore, has been recorded at the present value of the minimum lease payments as of the date of its inception. The following is a schedule of future minimum lease payments required under this capital lease and the present value of the net minimum lease payments at June 30, 2011:

<u>Fiscal Year Ending June 30,</u>		
2012		\$ 581
2013		581
2014		581
2015		581
2016		<u>195</u>
		2,519
Less: Amount representing interest		<u>-0-</u>
Present value of future minimum lease payments		\$ <u>2,519</u>

The following is a schedule of all future minimum lease payments together with the present value of net minimum lease payments as of June 30, 2011:

<u>Fiscal Year Ending June 30,</u>		
2012		\$ 344,930
2013		222,132
2014		194,325
2015		150,440
2016		99,559
2017		<u>99,364</u>
		1,110,750
Less: Amount representing interest		<u>115,234</u>
Present value of future minimum lease payments		995,516
Less: Current portion		<u>289,412</u>
Non-current portion		\$ <u>706,104</u>

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

The following is a summary of bonds payable at June 30, 2011:

	<u>Beginning Balance</u>	<u>Additions</u>	<u>Reductions</u>	<u>Ending Balance</u>	<u>Amounts Due Within One Year</u>	<u>Amounts Due After One Year</u>
<b>Business-Type Activities</b>						
<b>Bonds and notes payable:</b>						
1988 Sewerage Bonds	\$ 1,515,000	\$ -0-	\$ 755,000	\$ 760,000	\$ 760,000	\$ -0-
1997 Waterworks Refunding Bonds	3,610,000	-0-	830,000	2,780,000	875,000	1,905,000
1998 Water Revenue Bonds	8,690,000	-0-	135,000	8,555,000	140,000	8,415,000
1999 Water Revenue Bonds	19,945,000	-0-	-0-	19,945,000	-0-	19,945,000
2003 Sewerage Bonds	392,462	-0-	16,184	376,278	16,188	360,090
2007 Sewerage Bonds	5,193,400	30,350	235,006	4,988,744	239,742	4,749,002
2008A Water Revenue Bonds	2,550,573	46,952	91,668	2,505,857	91,668	2,414,189
Veterans Plaza Parking Garage Series 1999	271,505	-0-	60,733	210,772	64,319	146,453
Municipal Building Lease Revenue Bonds Series B	261,955	-0-	51,183	210,772	53,268	157,504
Municipal Building Lease Revenue Bonds Series A	2,845,141	-0-	37,446	2,807,695	38,380	2,769,315
Parking Garage Lease Revenue Bonds Series 2005	1,103,149	-0-	52,925	1,050,224	54,852	995,372
West Virginia Housing Development Fund	100,000	-0-	-0-	100,000	100,000	-0-
Chase Bank	383,322	-0-	49,798	333,524	52,060	281,464
Chase Bank	216,952	-0-	135,735	81,217	81,217	-0-
2010A Water Revenue Bonds	155,836	1,103,693	-0-	1,259,529	74,128	1,185,401
2010C Water Revenue Bonds	2,000,000	-0-	-0-	2,000,000	-0-	2,000,000
2010D Water Revenue Bonds	-0-	-0-	-0-	-0-	-0-	-0-
Page Valley Bank	526,742	-0-	95,741	431,001	80,801	350,200
Total bonds and notes payable	<u>49,761,037</u>	<u>1,180,995</u>	<u>2,546,419</u>	<u>48,395,613</u>	<u>2,721,623</u>	<u>45,673,990</u>
<b>Other Long-Term Debt</b>						
Obligation under capital lease	518,541	-0-	171,025	347,516	173,880	173,636
Customer advances	325,411	-0-	1,493	323,918	-0-	323,918
Accrued compensated absences	444,600	-0-	6,247	438,353	168,354	269,999
Total other long-term debt	<u>1,288,552</u>	<u>-0-</u>	<u>178,765</u>	<u>1,109,787</u>	<u>342,234</u>	<u>767,553</u>
Total long-term debt	\$ <u>51,049,589</u>	\$ <u>1,180,995</u>	\$ <u>2,725,184</u>	\$ <u>49,505,400</u>	\$ <u>3,063,857</u>	\$ <u>46,441,543</u>

- a. **1988 Series - Sewerage System Refunding Revenue Capital Appreciation Bonds**  
Series 1988 Sewerage System Refunding Revenue Capital Appreciation Bonds in the amount of \$11,065,000 were issued pursuant to an ordinance enacted by the City of Fairmont on October 25, 1988 and supplemented by a resolution adopted on October 25, 1988. The bonds dated November 30, 1988 and sold as of November 30, 1988 mature serially through 2011 with effective yields from 6.60% to 7.75% per the following schedule.

<u>Year</u>	<u>Amount</u>	<u>Effective Yield</u>
2012	\$ <u>760,000</u>	7.75

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

The 1988 bonds were issued by the City in order to: (1) advance refund a portion of the City's existing Sewerage System Revenue Refunding Bonds, Series 1985; (2) pay the costs of certain additions and improvements to the City's Sewerage System and; (3) pay all costs and expenses associated with such refunding and the issuance of the Series 1988 Bonds.

The 1988 bonds are secured by a lien on and pledge of the net revenues derived from the operation of the system. These bonds are insured by the AMBAC Indemnity Corporation unconditionally guaranteeing the timely payment of principal and interest on the 1988 Series Bonds.

The Series 1988 Bonds are not subject to optional redemption prior to maturity.

As required by the 1988 Revenue Bond Ordinance, a Sinking Fund has been established with the West Virginia Municipal Bond Commission. Moneys in the Sinking Fund are to be used only for the purpose of paying principal of and interest on the bonds. Beginning 13 months prior to the first principal payment of the Series 1988 Bonds, monthly payments are required to be made into the Sinking Fund in amounts equaling 1/12th of the amount of principal due on the next principal payment date. The sinking fund account balance at June 30 2011 was \$558,051.

No additional payments are required to be made into the Sinking Fund when the aggregate amount in the Sinking Fund is equal to the aggregate principal amount of bonds outstanding plus the amount of interest due or thereafter to become due on the bonds outstanding.

**b. 1997 Series - Waterworks Refunding Revenue Bonds**

Series 1997, Waterworks Refunding Revenue Bonds in the amount of \$10,260,000 were issued pursuant to an ordinance enacted by the City of Fairmont on April 8, 1997 and supplemented by a resolution adopted on June 5, 1997 and sold as of June 19, 1997 mature serially through 2013 and bear interest from 4.25% to 5.375% per the following schedule.

<u>Maturity</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2012	\$ 875,000	5.300%
2013	925,000	5.500%
2014	<u>980,000</u>	5.375%
	<u>\$ 2,780,000</u>	

The 1997 bonds were issued by the City in order to: (1) currently refund all of the Issuer's outstanding Waterworks Refunding Revenue Bonds, Series 1987, dated January 15, 1987; (2) fund a portion of the reserve account for the Bonds and to pay the initial premium for a debt service reserve account letter of credit for the balance thereof; and (3) pay costs of issuance thereof and other costs in connection with such refunding.

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

The 1997 bonds are secured by a lien on and pledge of the net revenues derived from the operation of the System. These bonds are insured by the National Public Finance Guarantee Corporation unconditionally guaranteeing the timely payment of principal and interest on the 1997 Series Bonds.

The Series 1997 bonds shall be redeemable prior to their stated dates of maturity at the option of the Issuer, as a whole at any time, or in part on any interest payment date, in inverse order of their maturities and by lot within a maturity, at the respective redemption prices as set forth in the bond ordinance.

As required by the 1997 Revenue Bond Ordinance, a sinking fund has been established with the West Virginia Municipal Bond Commission. Moneys in the sinking fund are to be used only for the purposes of paying principal of and interest on the bonds. Monthly payments are required to be made into the sinking fund of amounts equaling 1/6th of the amount of interest due on the next semiannual interest date plus 1/12th of the amount of principal due on the next principal payment date. The sinking fund account balance at June 30, 2011 was \$957,462.

No additional payments are required to be made into the sinking fund when the aggregate amount in the sinking fund, including the reserve account, is equal to the aggregate principal amount of bonds outstanding plus the amount of interest due or thereafter to become due on the bonds outstanding.

**c. 1998 Series - Water Revenue Bonds**

Series 1998, Water Revenue Bonds in the amount of \$9,600,000 were issued pursuant to an ordinance enacted by the City of Fairmont on November 10, 1998 and sold as of December 30, 1998. The bonds mature serially through 2029 and bear interest from 3.60% to 4.90% per the following schedule.

<u>Maturity</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2012	\$ 140,000	4.25%
2013	145,000	4.30%
2014	145,000	4.35%
2018	1,625,000	4.75%
2023	3,055,000	4.90%
2029	<u>3,445,000</u>	4.75%
	<b>\$ <u>8,555,000</u></b>	

The 1998 bonds were issued by the City in order to: (1) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing water system of the City, including capitalized interest on the Bonds; (2) to fund a reserve account in each of the sinking funds; and (3) to pay certain costs of issuance of the Bonds and related costs.

The 1998 bonds are secured by a lien on and pledge of the net revenues derived from the operation of the System. These bonds are insured by the Ambac Financial Group, Inc. unconditionally guaranteeing the timely payment of principal and interest on the 1998 Series Bonds.

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

The Series 1998 bonds shall be redeemable prior to their stated dates of maturity at the option of the Issuer, as a whole at any time, or in part on any interest payment date, in inverse order of their maturities and by lot within a maturity, at the respective redemption prices as set forth in the bond ordinance.

As required by the 1998 Revenue Bond Ordinance, a sinking fund has been established with the West Virginia Municipal Bond Commission. Moneys in the sinking fund are to be used only for the purposes of paying principal of and interest on the bonds. Monthly payments are required to be made into the sinking fund of amounts equaling 1/6th of the amount of interest due on the next semiannual interest date plus 1/12th of the amount of principal due on the next principal payment date. The sinking fund account balance at June 30, 2011 was \$1,329,407.

No additional payments are required to be made into the sinking fund when the aggregate amount in the sinking fund, including the reserve account, is equal to the aggregate principal amount of bonds outstanding plus the amount of interest due or thereafter to become due on the bonds outstanding.

**d. 1999 Series - Water Revenue Bonds**

Series 1999 Water Revenue Bonds in the amount of \$19,945,000 were issued pursuant to an ordinance enacted by the City of Fairmont on November 10, 1998 and sold as of December 30, 1998. The bonds mature serially through 2029 and bear interest from 4.50% to 5.25% per the following schedule.

<u>Maturity</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2015	\$ 1,825,000	5.25%
2017	2,020,000	5.25%
2019	2,235,000	5.00%
2022	3,000,000	5.25%
2024	2,500,000	4.50%
2029	<u>8,365,000</u>	5.00%
	<u>\$ 19,945,000</u>	

The 1999 bonds were issued by the City in order to: (1) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing water system of the City, including capitalized interest on the Bonds; (2) to fund a reserve account in each of the sinking funds; and (3) to pay certain costs of issuance of the Bonds and related costs.

The 1999 bonds are secured by a lien on and pledge of the net revenues derived from the operation of the System. These bonds are insured by the Ambac Financial Group, Inc. unconditionally guaranteeing the timely payment of principal and interest on the 1999 Series Bonds.

The Series 1999 bonds shall be redeemable prior to their stated dates of maturity at the option of the Issuer, as a whole at any time, or in part on any interest payment date, in inverse order of their maturities and by lot within a maturity, at the respective redemption prices as set forth in the bond ordinance.

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

As required by the 1999 Revenue Bond Ordinance, a sinking fund has been established with the West Virginia Municipal Bond Commission. Moneys in the sinking fund are to be used only for the purposes of paying principal of and interest on the bonds. Monthly payments are required to be made into the sinking fund of amounts equaling 1/6th of the amount of interest due on the next semiannual interest date plus 1/12th of the amount of principal due on the next principal payment date. The sinking fund account balance at June 30, 2011 was \$2,178,778.

No additional payments are required to be made into the sinking fund when the aggregate amount in the sinking fund, including the reserve account, is equal to the aggregate principal amount of bonds outstanding plus the amount of interest due or thereafter to become due on the bonds outstanding.

**e. Sewer Revenue Bond Series 2003A**

Series 2003A Sewer Revenue Bonds in the amount of \$600,000 are being issued pursuant to an ordinance enacted by the City of Fairmont on May 13, 2003. The bonds mature serially through September 1, 2034 and bear interest at 0%.

The 2003A bonds were issued by the City of Fairmont in order to: (1) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing sewerage system of the City; (2) to fund a reserve account in the sinking fund; and (3) to pay certain costs of issuance of the Bonds and related costs.

The 2003A bonds are secured by a lien on and pledge of the net revenues derived from the operation of the System.

The following is a schedule of future debt retirement based on current financing arrangements:

<u>Year Ending June 30,</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2012	\$ 16,188	\$ -0-	\$ 16,188
2013	16,188	-0-	16,188
2014	16,188	-0-	16,188
2015	16,188	-0-	16,188
2016	16,188	-0-	16,188
2017 – 2021	80,920	-0-	80,920
2022 – 2026	80,920	-0-	80,920
2027 – 2031	80,920	-0-	80,920
2032 – 2035	<u>52,578</u>	<u>-0-</u>	<u>52,578</u>
 Total	 \$ <u>376,278</u>	 \$ <u>-0-</u>	 \$ <u>376,278</u>

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

**f. Sewer Revenue Bonds Series 2007**

Series 2007 Sewer Revenue Bonds in the amount of \$5,577,760 are being issued pursuant to an ordinance enacted by the City of Fairmont. The bonds mature serially through March 1, 2029 and bear interest at 2%.

The 2007 bonds were issued by the City of Fairmont in order to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing sewerage system of the City.

The 2007 bonds are secured by a lien on and pledge of the net revenues derived from the operation of the System.

The following is a schedule of future debt retirement based on current financing arrangements:

<u>Year Ending June 30,</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2012	\$ 239,742	\$ 99,320	\$ 339,062
2013	244,573	94,489	339,062
2014	249,501	89,561	339,062
2015	254,529	84,533	339,062
2016	259,658	79,404	339,062
2017 – 2021	1,378,912	316,398	1,695,310
2022 – 2026	1,517,052	178,258	1,695,310
2027 – 2029	<u>844,777</u>	<u>106,956</u>	<u>951,733</u>
Total	\$ <u>4,988,744</u>	\$ <u>1,048,919</u>	\$ <u>6,037,663</u>

**g. Water Revenue Bonds Series 2008A**

The Series 2008A bonds were issued by the City in order to (i) pay a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the waterworks system of the City of Fairmont, (ii) to fully fund the Series 2008A Bonds Reserve Account; and (iii) to pay certain costs of issuance hereof and related costs.

The 2008A bonds are secured by a lien on and pledge of the net revenues derived from the operations of the System. These bonds are insured by the Municipal Bond Insurance Association unconditionally guaranteeing the timely payment of principal and interest on the 2008A Series Bonds.

The Series 2008A bonds shall be redeemable prior to their stated dates of maturity upon written consent of the West Virginia Water Development Authority and the West Virginia Bureau for Public Health and upon payment of the redemption premium.

As required by the 2008A Revenue Bond Ordinance, a sinking fund has been established with the West Virginia Municipal Bond Commission. Moneys in the sinking fund are to be used only for the purposes of paying principal of and interest on the bonds. Monthly payments are required to be made into the sinking fund of amounts equaling 1/6<sup>th</sup> of the amount of interest due on the next semiannual interest date plus 1/12<sup>th</sup> of the amount of principal due on the next principal payment date. The sinking fund account balance at June 30, 2011 was \$100,806.

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

No additional payments are required to be made into the sinking fund when the aggregate amount in the sinking fund, including the reserve, is equal to the aggregate principal amount of bonds outstanding plus the amount of interest due or thereafter to become due on the bonds outstanding.

The following is a schedule of future debt retirement based on current financing arrangements:

<u>Year Ending June 30,</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2012	\$ 91,668	\$ -0-	\$ 91,668
2013	91,668	-0-	91,668
2014	91,668	-0-	91,668
2015	91,668	-0-	91,668
2016	91,668	-0-	91,668
2017 – 2021	458,340	-0-	458,340
2022 – 2026	458,340	-0-	458,340
2027 – 2031	458,340	-0-	458,340
2032 – 2036	458,340	-0-	458,340
2037 – 2039	<u>214,157</u>	<u>-0-</u>	<u>214,157</u>
Total	\$ <u>2,505,857</u>	\$ <u>-0-</u>	\$ <u>2,505,857</u>

**h. Veterans Plaza Parking Garage Bond Series 1999**

Series 1999 Veterans Plaza Parking Garage Bonds in the amount of \$750,000 were issued pursuant to an ordinance enacted by the City of Fairmont.

The bonds were issued by the City in order to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to a parking garage.

The 1999 bonds are secured by the rental income payable to the City pursuant to a lease agreement between the City and the Fairmont Building Commission dated June 29, 1999. The bonds pay interest at a rate of 5.75%.

The following is a schedule of future debt retirement based on current financing arrangements:

<u>Year Ending June 30,</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2012	\$ 64,319	\$ 10,441	\$ 74,760
2013	68,115	6,645	74,760
2014	72,137	2,623	74,760
2015	<u>6,201</u>	<u>31</u>	<u>6,232</u>
Total	\$ <u>210,772</u>	\$ <u>19,740</u>	\$ <u>230,512</u>

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

**i. Municipal Building Lease Revenue Bonds Series B**

On March 28, 2005, the Building Commission issued Municipal Building Lease Revenue Bonds, Series B in the amount of \$500,000 with Huntington Capital Corp as the holder. The bonds have an interest rate of 4% with principal and interest payable monthly for a term of 10 years. The proceeds of this financing, along with the USDA financing, were used to complete renovation of the Public Safety Building site at 500 Quincy Street.

The following is a schedule of future debt retirement based on current financing arrangements:

<u>Year Ending June 30,</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2012	\$ 53,268	\$ 7,479	\$ 60,747
2013	55,347	5,400	60,747
2014	57,642	3,105	60,747
2015	<u>44,515</u>	<u>1,045</u>	<u>45,560</u>
Total	<u>\$ 210,772</u>	<u>\$ 17,029</u>	<u>\$ 227,801</u>

**j. Municipal Building Lease Revenue Bonds Series A**

On March 28, 2005, the Building Commission issued Municipal Building Lease Revenue Bonds, Series A in the amount of \$2,999,450 with USDA Rural Development as the holder. The bonds have an interest rate of 4.25% with principal and interest payable monthly for a term of 40 years. The proceeds of this financing, along with the Huntington Capital Corp financing, were used for the purchase of the property at 500 Quincy Street for the new Public Safety Building and to complete the renovation of the site.

The following is a schedule of future debt retirement based on current financing arrangements:

<u>Year Ending June 30,</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2012	\$ 38,380	\$ 119,276	\$ 157,656
2013	40,778	116,878	157,656
2014	42,546	115,110	157,656
2015	44,389	113,267	157,656
2016	44,390	113,266	157,656
2017 – 2021	252,525	535,755	788,280
2022 – 2026	312,198	476,082	788,280
2027 – 2031	385,970	402,310	788,280
2032 – 2036	477,176	311,104	788,280
2037 – 2041	589,934	198,346	788,280
2042 – 2045	<u>579,409</u>	<u>103,936</u>	<u>683,345</u>
Total	<u>\$ 2,807,695</u>	<u>\$ 2,605,330</u>	<u>\$ 5,413,025</u>

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

**k. Parking Garage Lease Revenue Bonds Series 2005**

The Building Commission owns property situated at the corner of Adams and Madison Streets in Fairmont, West Virginia as conveyed by the City of Fairmont known as Elks Lot. On January 18, 2009 the Building Commission issued 20 year revenue bonds in the amount of \$1,345,000 to add to a \$2,000,000 State of West Virginia EDA grant to build a 250 space parking garage on this site. Monongahela Valley Bank is the registered owner of the Series 2005 lease revenue bonds. The bonds are subject to mandatory redemption on the eighteenth day of each month until and including January 18, 2025 in the amount of \$8,982 which includes a principal amount plus accrued interest to the date of mandatory redemption set forth in a debt service schedule. This bond is payable solely from the rent payable by the City pursuant to a lease agreement between the City and the Building Commission dated January 18, 2005. Upon expiration of the lease, the City has the option to purchase the property from the Building Commission for \$1. The bonds pay interest at the rate of 5.14%.

The following is a schedule of future debt retirement based on current financing arrangements:

<u>Year Ending June 30,</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2012	\$ 54,852	\$ 52,932	\$ 107,784
2013	57,987	49,797	107,784
2014	61,039	46,745	107,784
2015	64,252	43,532	107,784
2016	67,633	40,151	107,784
2017 – 2021	395,454	143,466	538,920
2022 – 2025	<u>349,008</u>	<u>33,246</u>	<u>382,254</u>
<b>Total</b>	<b>\$ <u>1,050,225</u></b>	<b>\$ <u>409,869</u></b>	<b>\$ <u>1,460,094</u></b>

**l. West Virginia Housing Development Fund**

On February 24, 2004 the Building Commission entered into a loan and pledge agreement and signed a promissory note with the West Virginia Housing Development Fund to participate in its demolition loan program. The Building Commission received \$100,000 in loan proceeds to be repaid on or before April 1, 2009 with interest as per the following schedule:

<u>Anniversary Date</u>	<u>Percent</u>
02/25/04 – 02/24/05	0.00%
02/25/05 – 02/24/06	2.00%
02/25/06 – 02/24/07	3.00%
02/25/07 – 02/24/08	4.00%
02/25/08 – 02/24/09	5.00%

These funds have been made available to businesses and individuals for their demolition needs. Currently, the Building Commission holds three notes totaling \$109,115.74 with interest accruing at 3% or 4% on each note. A deed of trust accompanies each note and all notes are due the sooner of the sale or transfer of the property or March 1, 2009.

These funds have been made available to businesses and individuals for their demolition needs.

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

**m. Chase Bank Note Payable**

On March 30, 2007, the Water Fund of the City of Fairmont purchased a water filtration system with loan proceeds from Chase Bank. The loan bears interest at a rate of 4.45% and is payable in monthly installments of \$7,579. The loan is secured by equipment.

Future debt retirement based on current financing arrangements at June 30, 2011 is as follows:

<u>Year Ending June 30,</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2012	\$ 52,060	\$ 13,788	\$ 65,848
2013	54,424	11,424	65,848
2014	56,896	8,952	65,848
2015	59,480	6,368	65,848
2016	62,182	3,666	65,848
2017	<u>48,482</u>	<u>904</u>	<u>49,386</u>
Total	\$ <u>333,524</u>	\$ <u>45,102</u>	\$ <u>378,626</u>

On January 31, 2008 the Sewer Fund of the City of Fairmont purchased vehicles with loan proceeds from Chase Bank. The loan bears interest at a rate of 3.22% and is payable in monthly installments of \$11,887. The loan is secured by vehicles.

<u>Year Ending June 30,</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2012	\$ <u>81,217</u>	\$ <u>875</u>	\$ <u>82,092</u>

**n. Water Revenue Bonds Series 2010A – West Virginia DWTRF Program**

Water Revenue Bonds Series 2010A – West Virginia DWTRF Program Bonds in the amount of \$4,447,618 were issued pursuant to an ordinance enacted by the City of Fairmont on December 15, 2009 and supplemented by a resolution adopted on January 15, 2010. The bonds were sold to the West Virginia Water Development Authority and mature serially through December 1, 2041 and bear interest at 0%.

The Series 2010A bonds were issued by the City in order to (i) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public waterworks system of the Issuer; and (ii) to pay certain costs of issuance of the Bonds and related costs.

The 2010A bonds were secured by a lien on and pledge of the net revenues derived from the operation of the system. The bond is issued on a parity with respect to the liens, pledges and source of and security for payment of prior issued Water Revenue Bonds of the City of Fairmont.

The 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 West Virginia Water Development Authority and the West Virginia Bureau for Public Health and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement by and between the Issuer and the Authority, on behalf of the West Virginia Bureau for Public Health, dated January 21, 2010.

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

As required by the 2010 Revenue Bond Ordinance, a Sinking Fund has been established with the West Virginia Municipal Bond Commission. Moneys in the Sinking Fund are to be used only for the purpose of paying principal of and interest on the bonds. The sinking fund account balance at June 30, 2011 was \$-0-.

At June 30, 2011 the City of Fairmont had drawn down \$1,259,529 of this bond issue.

The following is a schedule of future debt retirement based on current financing arrangement.

<u>Year Ending June 30,</u>	<u>Principal</u>	<u>Interest</u>
2012	\$ 74,128	\$ -0-
2013	148,256	-0-
2014	148,256	-0-
2015	148,256	-0-
2016	148,256	-0-
2017	148,256	-0-
2018	148,256	-0-
2019	148,256	-0-
2020	<u>147,609</u>	<u>-0-</u>
Total	<u>\$ 1,259,529</u>	<u>\$ -0-</u>

**o. Water Revenue Bonds Series 2010C – West Virginia Development Authority**

Water Revenue Bonds Series 2010C – West Virginia Water Development Authority Bonds in the amount of \$2,000,000 were issued pursuant to an ordinance enacted by the City of Fairmont on December 15, 2009 and supplemented by a resolution adopted on January 15, 2010. The bonds were sold to the West Virginia Water Development Authority and mature serially through October 1, 2031 and bear interest at 5%.

The Series 2010C bonds were issued by the City in order to (i) pay prior notes; (ii) pay a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the existing public waterworks system of the Issuer; (iii) pay interest on the Series 2010C bonds during the construction of the project and for not more than 6 months thereafter; and (iv) pay certain costs of issuance hereof and related costs.

The 2010C bonds were secured by a lien on and pledge of the net revenues derived from the operation of the system. The bond is issued on a parity with respect to the liens, pledges and source of and security for payment of prior issued Water Revenue Bonds of the City of Fairmont.

The 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 West Virginia Water Development Authority and upon the terms and conditions prescribed by, and otherwise in compliance with, the agreement between the City of Fairmont and the West Virginia Water Development Authority dated January 21, 2010.

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

As required by the 2010 Revenue Bond Ordinance, a Sinking Fund has been established with the West Virginia Municipal Bond Commission. Moneys in the Sinking Fund are to be used only for the purpose of paying principal of and interest on the bonds. The sinking fund account balance at June 30, 2011 was \$100,040.

The following is a schedule of future debt retirement based on current financing arrangement.

<u>Year Ending June 30,</u>	<u>Principal</u>	<u>Interest</u>
2012	\$ -0-	\$ 100,000
2013	60,485	98,488
2014	63,509	95,388
2015	66,685	92,133
2016	70,019	93,716
2017	73,520	85,128
2018	77,196	81,360
2019	81,056	77,403
2020	85,109	73,249
2021	89,364	68,887
2022	93,832	64,307
2023	98,524	59,499
2024	103,450	54,449
2025	108,623	49,147
2026	114,054	43,580
2027	119,757	37,734
2028	125,744	31,597
2029	132,032	25,153
2030	138,633	18,386
2031	145,565	11,281
2032	<u>152,843</u>	<u>3,821</u>
 Total	 \$ <u>2,000,000</u>	 \$ <u>1,264,706</u>

**p. Water Revenue Bonds Series 2010D – West Virginia Infrastructure Fund**

Water Revenue Bonds Series 2010D – West Virginia Infrastructure Fund Bonds in the amount of \$1,250,104 were issued pursuant to an ordinance enacted by the City of Fairmont on December 15, 2009 and supplemented by a resolution adopted on January 15, 2010. The bonds were sold to the West Virginia Water Development Authority on behalf of the West Virginia Infrastructure Fund and mature serially through December 1, 2049 and bear interest at 0%.

The Series 2010D bonds were issued by the City in order to (i) pay a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the public waterworks system of the City; and (ii) to pay certain costs of issuance hereof and related costs.

The 2010D bonds were secured by a lien on and pledge of the net revenues derived from the operation of the system. The bond is issued on a parity with respect to the liens, pledges and source of and security for payment of prior issued Water Revenue Bonds of the City of Fairmont.

**CITY OF FAIRMONT, WEST VIRGINIA**  
**NOTES TO THE FINANCIAL STATEMENTS (CONT'D)**  
**FOR THE YEAR ENDED JUNE 30, 2011**

The 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 West Virginia Development Authority and the West Virginia Infrastructure and Jobs Development Council and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the City of Fairmont and the West Virginia Water Development Authority, on behalf of the West Virginia Infrastructure and Jobs Development Council dated January 21, 2010.

As required by the 2010 Revenue Bond Ordinance, a Sinking Fund has been established with the West Virginia Municipal Bond Commission. Moneys in the Sinking Fund are to be used only for the purpose of paying principal of and interest on the bonds. The sinking fund account balance at June 30, 2010 was \$-0-.

At June 30, 2011 the City of Fairmont had drawn down \$-0- of this bond issue.

**q. Page Valley Bank**

On September 9, 2009, the Water Fund of the City of Fairmont borrowed funds from Page Valley Bank through Comvest to finance the 2009 train #5 expansion. The loan bears interest at a rate of 4.60% and is payable in monthly installments of \$8,245.

Future debt retirement based on current financing arrangements at June 30, 2011 is as follows:

<u>Year Ending June 30,</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2012	\$ 80,801	\$ 18,137	\$ 98,938
2013	84,598	14,340	98,938
2014	88,572	10,366	98,938
2015	92,734	6,204	98,938
2016	<u>84,296</u>	<u>1,851</u>	<u>86,147</u>
Total	\$ <u>431,001</u>	\$ <u>50,898</u>	\$ <u>481,899</u>

**r. Obligation Under Capital Lease**

On January 14, 2003 the City of Fairmont entered into a capital lease for the acquisition of water treatment equipment. The following is a schedule of future minimum lease payments together with the present value of net minimum lease payments as of June 30, 2011:

<u>Year ending June 30,</u>	
2012	\$ 188,654
2013	<u>178,575</u>
Minimum required lease payments	367,229
Less: Amount representing interest	<u>19,713</u>
Present value of minimum lease payment	\$ <u>347,516</u>
Current portion	\$ 173,880
Non-current portion	<u>173,636</u>
	\$ <u>347,516</u>

CITY OF FAIRMONT, WEST VIRGINIA  
 NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
 FOR THE YEAR ENDED JUNE 30, 2011

6. Employees Retirement System

*Plan Descriptions Contribution Information and Funding Policies*

**Public Employees' Retirement System (PERS)**

The City of Fairmont, West Virginia, participates in a state-wide, cost-sharing, multiple-employer defined benefit plan on behalf of general City employees. The system is administered by agencies of the State of West Virginia and funded by contributions from participants, employers, and state appropriations, as necessary.

The following is a summary of eligibility factors, contribution methods, and benefit provisions:

<u>Public Employees' Retirement System (PERS)</u>	
Eligibility to participate	All City full-time employees, except those covered by other pension plans.
Authority establishing contribution obligations and benefit provisions	State Statute
Plan member's contribution rate	4.50%
City's contribution rate	12.50%
Period required to vest	5 years
Benefits and eligibility for distribution	A member who has attained age 50 and has earned 5 years or more of contributing service, or age 55 if the sum of his/her age plus years of credited service is equal to or greater than 80. The final average salary (three highest consecutive years in the last 10) times the years of service times 2% equals the annual retirement benefit.
Deferred retirement portion	No
Provisions for:	
Cost of Living	No
Death Benefits	Yes

*Trend Information*

Public Employees' Retirement System (PERS)

<u>Fiscal Year</u>	<u>Annual Pension Cost</u>	<u>Percentage Contributed</u>
2011	\$ 489,721	100%
2010	\$ 392,849	100%
2009	\$ 385,146	100%

PERS issues a publicly available financial report that includes financial statements and required supplementary information. That information may be obtained by writing to the Public Employees' Retirement System, Building 5, Room 1000, 1900 Kanawha Boulevard East, Charleston, WV 25305

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

**Other Post Employment Benefits**

***Plan Description:***

The City of Fairmont, West Virginia contributes to the West Virginia Retiree Health Benefits Trust Fund (RHBT), a cost-sharing, multiple-employer defined benefit post-employment health care plan administered by the West Virginia Public Employees Insurance Agency (PEIA). RHBT provides medical benefits to eligible retired employees of participating employers. Eligibility is primarily established through participation in certain defined benefit plans. RHBT issues a publicly available financial report that includes financial statements and required supplementary information. That report may be obtained by writing to: West Virginia Retiree Health Benefits Trust, Building 5, Room 1001, 1900 Kanawha Boulevard East, Charleston, West Virginia 25305-0170.

***Authority Establishing the Plan and Fund Policy:***

Chapter 5, Article 16D of the West Virginia State Code assigns the authority to establish and amend benefits and provisions to the RHBT. Plan members are currently required to contribute \$461.06 per month per active health policy. Participating employers are contractually required to contribute at a rate assessed each year by RHBT. The RHBT board sets the employer contribution rate based on the annual required contributions of the plan (ARC), an amount actuarially determined in accordance with the parameters of Governmental Accounting Standards Board (GASB) Statement No. 45. The ARC represents a level of funding that, if paid on an ongoing basis, is projected to cover normal costs each year and amortize any unfunded actuarial liabilities (or funding excess) of the plan over a period not to exceed thirty years.

**Funding Policy:** The City's contribution is based on projected pay-as-you-go financing requirements. For fiscal year 2011, the City contributed \$-0- to the plan. Employees are not required to make contributions for basic life insurance.

**Annual OPEB Cost:** The City's annual OPEB cost (expense) for the plan is calculated based on the annual required contribution of the employer (ARC), an amount actuarially determined in accordance with the parameters of GASB Statement No. 45. The ARC represents a level of funding that, if paid on an ongoing basis, is projected to cover normal costs each year and to amortize any unfunded actuarial liabilities (or funding excess) over a period not to exceed thirty years.

Actuarial valuations of an ongoing plan involve estimates of the value of reported amounts and assumptions about the probability of occurrence of events far into the future. Examples include assumptions about future employment, mortality, and the healthcare cost trend. Amounts determined regarding the funded status of the plan and the annual required contributions of the employer are subject to continual revision as actual results are compared with past expectations and new estimates are made about the future. The schedule of funding progress presented as required supplementary information follow in the notes to the financial statements, presents multiyear trend information about whether the actuarial value of plan assets is increasing or decreasing over time relative to the actuarial accrued liabilities for benefits.

**Actuarial Methods and Assumptions:** Projections of benefits for financial reporting purposes are based on the substantive plan (the plan as understood by the employer and the plan members) and include the types of benefits provided at the time of each valuation and the historical pattern of sharing of benefit costs between the employer and plan members to that point. The actuarial methods and assumptions used include techniques that are designed to reduce the effects of short-term volatility in actuarial accrued liabilities and the actuarial value of assets, consistent with the long-term perspective of the calculations.

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

The following table shows the components of the Municipality's annual OPEB cost for the year, the amount actually contributed to the Plans, and changes in the Municipality's net OPEB obligations, as well as the assumptions used to calculate the net OPEB obligation for the covered active and retired employees.

Annual OPEB cost	\$ 414,225
Contributions made	<u>-0-</u>
Increase (decrease) in net OPEB obligation	414,225
Net OPEB obligation (asset) beginning of year	<u>1,078,016</u>
Net OPEB obligation (asset) end of year	<u>\$ 1,492,241</u>
Actuarial valuation date	6/30/2007
Actuarial cost method	Entry age
Amortization method	Level dollar
Asset valuation method	Smoothed market approach
Remaining amortization period	30 years
Actuarial assumptions:	
Investment rate of return	4.50%
Projected rate increase	4.60% - 5.60%
Health care inflation rate	9.3% in 2008, grading to 6% in 2027

**Three-Year Trend Information**

<u>Year Ending</u>	<u>Annual OPEB Cost (AOC)</u>	<u>Percentage of AOC Contributed</u>	<u>Net OPEB Obligation (Asset)</u>
June 30, 2011	\$ 414,225	0%	\$ 1,492,241
June 30, 2010	\$ 510,426	0%	\$ 1,078,016
June 30, 2009	\$ 342,301	0%	\$ 567,590

N/A – Not Applicable, 2008 is the implementation year for GASB Statement No. 45.

GASB Statement No. 45 was applied prospectively.

**CITY OF FAIRMONT, WEST VIRGINIA**  
**NOTES TO THE FINANCIAL STATEMENTS (CONT'D)**  
**FOR THE YEAR ENDED JUNE 30, 2011**

**Defined Benefit Pension Plans**

The City has established and maintains the following employees retirement and benefits funds, as authorized by West Virginia Code §8-22-1, et seq., for all eligible employees.

- (1) Policemen's Pension and Relief Fund
- (2) Firemen's Pension and Relief Fund

**Plan Descriptions**

At July 1, the plan's membership consisted of the following:

Retirees and beneficiaries currently receiving benefits and terminated employees entitled to benefits but not yet receiving them:

Firemen (July 1, 2008)	60
Policemen (July 1, 2008)	<u>50</u>
Total	<u>110</u>

Current employees:

Vested and nonvested:	
Firemen	41
Policemen	<u>34</u>
Total	<u>75</u>

	<u>Policemen's Pension Plan</u>	<u>Firemen's Pension Plan</u>
Other plan details:		
Eligibility	All paid members of the Police Department.	All paid members of the Fire Department.
Rate of employee contribution	7% of salary.	8.5% of salary.
Vesting period for normal retirement	20 years of service but no later than the date the participant reaches age 65.	20 years of service but no later than the date the participant reaches age 65.
Benefits	60% of average compensation, but not less than \$6,000, plus an additional 2% for each full year of credited service in excess of 20 years, but not in excess of 25 years, plus an additional 2% for each full year of credited service in excess of 25 years, but not in excess of 30 years. In addition, 1% is granted for each full year of military service up to 4 years. However, maximum benefit received may not exceed 75%.	60% of average compensation, but not less than \$6,000, plus an additional 2% for each full year of credited service in excess of 20 years, but not in excess of 25 years, plus an additional 1% for each full year of credited service in excess of 25 years, but not in excess of 30 years. In addition, 1% is granted for each full year of military service up to 4 years. However, maximum benefit received may not exceed 75%.

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

**Funding Status and Progress**

The amount shown on the following page as "pension benefit obligation" is a standardized disclosure measure of the present value of pension benefits, adjusted for the effects of projected salary increases, estimated to be payable in the future as a result of employee service to date. The measure is the actuarial present value of credited projected benefits and is intended to help users assess progress made in accumulating sufficient assets to pay benefits when due.

The pension benefit obligation was determined as part of an actuarial valuation of the plan as of July 1, 2010.

Significant actuarial assumptions used in determining the pension benefit obligation included: (1) a rate of return on the investment of present and future assets of 5.0 percent per year compounded annually for both the fire pension plan and the police pension plans, (2) the assumption that benefits will increase 3.0 percent per year after retirement, and (3) projected salary increases of 5.0 percent per year for the police plan and 4.0 percent for year for the fire plan.

The unfunded pension benefit obligations for the policemen's and firemen's pensions were \$24,238,478 and \$31,669,126, respectively.

**Firemen's Pension and Relief**

**Annual Pension Cost and Contributions**

Valuation Date	July 1, 2010
Valuation Interest Rate	5.00%
Cost-of-Living Adjustment	3.00%
Wage Inflation	4.00%
Salary Increase	5.00%
Actuarial Value of Assets	Market
Actuarial Cost Method	Entry Age Normal
Remaining Amortization Period	30 years, Level % of Pay

**Annual Pension Cost and Contributions**

Fiscal Year End June 30, 2011

1. Annual Pension Cost for FYE June 30

(a) Annual Required Contribution (ARC) for FYE June 30	\$ 1,678,376
(b) Interest on Net Pension Obligation (NPO) as of July 1 of FY	\$ 377,812
(c) Adjustment to ARC	\$ ( 288,375)
(d) Annual Pension Cost (a + b + c)	\$ 1,767,813

2. Net Pension Obligation as of FYE June 30

(a) NPO as of July 1 of FY	\$ 7,556,235
(b) Annual Pension Cost for FY	\$ 1,767,813
(c) Employer Contribution	\$ 688,608
(d) STO Contributions	\$ 442,494
(d) NPO as of FYE (a + b - c - d)	\$ 8,192,946

CITY OF FAIRMONT, WEST VIRGINIA  
 NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
 FOR THE YEAR ENDED JUNE 30, 2011

**Pension Cost Summary**

Fiscal Year End	June 30, 2011
1. Annual Pension Cost	\$ 1,767,813
2. Employer Contribution	\$ 688,608
3. STO Contribution	\$ 442,494
4. Percentage of Annual Pension Cost Contributed [ (2 + 3)/1 ]	64%
5. Net Pension Obligation	\$ 8,192,946

**Policemen's Pension and Relief**

Valuation Date	July 1, 2010
Valuation Interest Rate	5.00%
Cost-of-Living Adjustment	3.00%
Wage Inflation	4.00%
Salary Increase	5.00%
Actuarial Value of Assets	Market
Actuarial Cost of Method	Entry Age Normal
Remaining Amortization Period	30 years, Level % of Pay

**Annual Pension Cost and Contributions**

Fiscal Year End	June 30, 2011
1. Annual Pension Cost for FYE June 30	
(a) Annual Required Contribution (ARC) for FYE June 30	\$ 1,255,246
(b) Interest on Net Pension Obligation (NPO) as of July 1 of FY	\$ 214,598
(c) Adjustment to ARC	\$( 163,798)
(d) Annual Pension Cost (a + b + c)	\$ 1,306,046
2. Net Pension Obligation as of FYE June 30	
(a) NPO as of July 1 of FY	\$ 4,291,966
(b) Annual Pension Cost for FY	\$ 1,306,046
(c) Employer Contribution	\$ 506,956
(d) STO Contributions	\$ 353,292
(d) NPO as of FYE (a + b - c - d)	\$ 4,737,764

**CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011**

**Pension Cost Summary**

Fiscal Year End	June 30, 2011
1. Annual Pension Cost	\$ 1,306,046
2. Employer Contribution	\$ 506,956
3. STO Contribution	\$ 353,292
4. Percentage of Annual Pension Cost Contributed [ (2 + 3)/1 ]	66%
5. Net Pension Obligation	\$ 4,737,764

**(a) Policemen's Pension and Relief Fund**

The Policemen's Pension and Relief Fund of the municipality covers all eligible employees of the police department paid on a full-time basis from public funds. The municipality's contribution for the fiscal year ended June 30, 2011, was \$505,841 and \$353,292 was provided by the insurance premium tax allocation, for a total contribution of \$859,133.

According to the latest actuarial study of the municipality's Policemen's Pension and Relief Fund, conducted by Gabriel Roeder Smith & Company, the unfunded past service liability as of July 1, 2010, was \$20,869,851.

As required by West Virginia Code §8-22-20, in no event will the municipality be allowed to contribute less than the greater of:

- (1) The average of the amounts contributed in the five fiscal years beginning fiscal year ending June 30, 1984.
- (2) One hundred and seven percent (107%) of the prior year's required city contribution.
- (3) The amount which, when added to the member contribution and the revenue from the state premium tax, equals the overall plans normal cost.

It was determined during this examination that the municipality did comply with the minimum required contribution per West Virginia Code §8-22-20 for the fiscal year ended June 30, 2011.

In presenting these recommended funding levels, Gabriel Roeder Smith & Company, assumed that the premium tax allocation will continue to be paid to the municipality and that it will remain at about the same level for the next three years.

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

**(b) Firemen's Pension and Relief Fund**

The Firemen's Pension and Relief Fund of the municipality covers all eligible employees of the fire department paid on a full-time basis from public funds. The municipality's contribution for the fiscal year ended June 30, 2011, was \$687,492 and \$442,494 was provided by the insurance premium tax allocation, for a total contribution of \$1,129,986.

According to the latest actuarial study of the municipality's Firemen's Pension and Relief Fund, conducted by Gabriel Roeder Smith & Company, the unfunded past service liability as of July 1, 2010 was \$29,798,600.

As required by West Virginia Code §8-22-20, in no event will the municipality be allowed to contribute less than the greater of:

- (1) The average of the amounts contributed in the five fiscal years beginning fiscal year ending June 30, 1984.
- (2) One hundred and seven percent (107%) of the prior year's required city contribution.
- (3) The amount which, when added to the member contribution and the revenue from the state premium tax, equals the overall plans normal cost.

It was determined during this examination that the municipality did comply with the minimum required contribution per West Virginia Code §8-22-20 for the fiscal year ended June 30, 2011.

In presenting these recommended funding levels, Gabriel Roeder Smith & Company, assumed that the premium tax allocation will continue to be paid to the municipality and that it will remain at about the same level for the next three years.

**7. Workers' Compensation Fund**

On July 5, 1983, the City of Fairmont adopted Ordinance No. 600 authorizing self-insured status for Workers' Compensation. This Ordinance provides for the payment to the West Virginia Workers' Compensation for costs of administering the fund, and the required amounts into a surplus fund for the coverage of catastrophe and second injury liability, and to pay all Workers' Compensation benefits anticipated to be payable that year. In addition, the Ordinance authorized all necessary procedures to insure that all Workers' Compensation payments are paid promptly to eligible employees. It further directed the purchase of excess insurance for the purpose of indemnifying the City against losses per accident in excess of a specific retention level and for the purpose of indemnifying the City against annual losses in the aggregate in excess of a specific retention level.



CITY OF FAIRMONT, WEST VIRGINIA  
 NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
 FOR THE YEAR ENDED JUNE 30, 2011

8. Lease

City of Fairmont is the lessor of land under an operating lease with an original lease term of 30 years expiring in 2014. The lease includes the option to renew for two (2) subsequent periods of ten years each, by giving notice of at least 30 days prior to the expiration of the lease. Minimum lease payments to be received as of June 30, 2011 for each of the next five years are:

<u>Year Ended June 30,</u>	<u>Amount</u>
2012	\$ 12,000
2013	12,000
2014	<u>12,000</u>
Total	\$ <u>36,000</u>

9. Interfund Balances

Individual fund interfund receivable and payable balances at June 30, 2011 for fund financial:

	<u>Due From Other Funds</u>	<u>Due to Other Funds</u>
General Fund	\$ 259,363	\$ -0-
<b>Special Revenue Funds</b>		
Bureau of Justice Fund	5,570	-0-
Police Fund	-0-	19,977
Police Investigating Fund	-0-	863
Economic Development Grant Fund	-0-	36,409
<b>Capital Project Funds</b>		
Capital Reserve Fund	464,904	-0-
Sharon Steel Redevelopment Fund	-0-	1,088
<b>Enterprise Funds</b>		
Water Fund	-0-	759,585
Sanitary Sewer Fund	90,283	-0-
Parking Fund	<u>-0-</u>	<u>2,198</u>
Total	\$ <u>820,120</u>	\$ <u>820,120</u>

CITY OF FAIRMONT, WEST VIRGINIA  
 NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
 FOR THE YEAR ENDED JUNE 30, 2011

**10. Debt Service Coverage**

The debt service coverage factor for the Sanitary Sewer Board Fund has been calculated as follows for the year ended June 30, 2011:

Operating revenues	\$ 4,592,862
Operating expenses	<u>4,190,652</u>
Operating income	402,210
Add: Depreciation expense	1,107,513
Interest income	<u>9,841</u>
Amount available for debt service and capital expenditures	\$ <u>1,519,564</u>
Maximum annual debt service	\$ <u>1,110,250</u>
Calculated debt service coverage factor	1.37
Required debt service coverage factor	1.25

Based on this calculation, it appears that the Sanitary Sewer Board was in compliance with the provisions set forth in its bond ordinances as of June 30, 2011.

The debt service coverage factor for the Water Fund has been calculated as follows for the year ended June 30, 2011:

Operating revenues	\$ 8,792,721
Operating expenses	<u>5,306,118</u>
Operating income	3,486,603
Add: Depreciation expense	1,652,235
Interest income	<u>208,571</u>
Amount available for debt service and capital expenditures	\$ <u>5,347,409</u>
Maximum annual debt service	\$ <u>3,054,525</u>
Calculated debt service coverage factor	1.75
Required debt service coverage factor	1.20

Based on this calculation, it appears that the Water Fund was in compliance with the provisions set forth in its bond ordinances as of June 30, 2011.

CITY OF FAIRMONT, WEST VIRGINIA  
NOTES TO THE FINANCIAL STATEMENTS (CONT'D)  
FOR THE YEAR ENDED JUNE 30, 2011

**11. Pending Litigation**

The City of Fairmont has been name defendant in several cases which in the opinion of the municipality's attorney will have no material adverse effect to the City.

**12. Restricted Assets**

Certain enterprise fund assets are restricted for repayment of long-term debt. Restricted net assets include the excess of assets over certain liabilities restricted for the debt service on revenue bonds.

**13. Restricted Net Assets**

It was determined during this examination that the net assets at the beginning of the year of the Water Fund required restatement as follows:

Net assets at beginning of year	\$ 5,862,809
Restatement: Reclassification of ARRA bond issue from debt to grant income	<u>155,836</u>
Net assets at beginning of year restated	\$ <u>6,018,645</u>

**14. Subsequent Events**

The City has considered all subsequent events through January 6, 2012, the date the financial statements were made available.

*REQUIRED SUPPLEMENTARY INFORMATION*

**CITY OF FAIRMONT, WEST VIRGINIA  
REQUIRED SUPPLEMENTAL INFORMATION  
FOR THE FISCAL YEAR ENDED JUNE 30, 2011**

**1. Schedules of Funding Progress**

Policemen's Pension and Relief Fund (PPFR)

<u>Actuarial Valuation Date</u>	<u>Actuarial Value of Assets (a)</u>	<u>Actuarial Accrued Liability (AAL) - Entry Age (b)</u>	<u>Unfunded AAL (UAAL) (b) - (a)</u>	<u>Funded Ratio (a) / (b)</u>	<u>Covered Payroll (c)</u>	<u>UAAL as a % Covered Payroll (b - a) / c</u>
7/1/2001	\$ 2,664,788	\$ 13,852,571	\$ 11,156,783	19.24%	\$ 1,207,014	924%
7/1/2004	\$ 3,100,970	\$ 16,044,620	\$ 12,943,650	19.33%	\$ 1,312,786	986%
7/1/2008	\$ 4,038,740	\$ 18,155,269	\$ 14,116,529	22.25%	\$ 1,356,042	954%
7/1/2010	\$ 3,368,627	\$ 24,238,478	\$ 20,869,851	13.90%	\$ 1,458,935	1430%

Firemen's Pension and Relief Fund (FPFR)

<u>Actuarial Valuation Date</u>	<u>Actuarial Value of Assets (a)</u>	<u>Actuarial Accrued Liability (AAL) - Entry Age (b)</u>	<u>Unfunded AAL (UAAL) (b) - (a)</u>	<u>Funded Ratio (a) / (b)</u>	<u>Covered Payroll (c)</u>	<u>UAAL as a % Covered Payroll (b - a) / c</u>
7/1/2002	\$ 3,353,845	\$ 21,031,260	\$ 17,677,415	15.95%	\$ 1,476,041	1198%
7/1/2005	\$ 2,986,375	\$ 22,414,167	\$ 19,427,792	13.32%	\$ 1,480,774	1312%
7/1/2008	\$ 2,483,747	\$ 24,349,397	\$ 21,865,650	10.20%	\$ 1,568,485	1394%
7/1/2010	\$ 1,870,356	\$ 31,669,126	\$ 29,798,600	5.91%	\$ 1,671,862	1782%

CITY OF FAIRMONT, WEST VIRGINIA  
 COMBINING FUND BALANCE SHEETS  
 NONMAJOR GOVERNMENTAL FUNDS  
 JUNE 30, 2011

	<u>Special Revenue</u> <u>Funds</u>	<u>Capital Project</u> <u>Funds</u>	<u>Total</u>
<b>ASSETS</b>			
Cash	\$ 405,117	\$ -0-	\$ 405,117
Investments	3,661,210	-0-	3,661,210
Receivables:			
Other	57,322	1,088	58,410
Interest	5,659	-0-	5,659
Due from (to):			
Other funds	( 51,679)	(1,088)	( 52,767)
<b>TOTAL ASSETS</b>	<b>\$ <u>4,077,629</u></b>	<b>\$ <u>-0-</u></b>	<b>\$ <u>4,077,629</u></b>
<b>LIABILITIES AND FUND BALANCES</b>			
<b>Liabilities</b>			
Accounts payable	\$ 48,438	\$ -0-	\$ 48,438
Claims payable	121,450	-0-	121,450
Accrued other post employment benefits	<u>2,246,690</u>	<u>-0-</u>	<u>2,246,690</u>
Total liabilities	<u>2,416,578</u>	<u>-0-</u>	<u>2,416,578</u>
<b>Fund Balances</b>			
Committed	1,276,149	-0-	1,276,149
Restricted	87,531	-0-	87,531
Assigned	<u>297,371</u>	<u>-0-</u>	<u>297,371</u>
Total fund balances	<u>1,661,051</u>	<u>-0-</u>	<u>1,661,051</u>
<b>TOTAL LIABILITIES AND FUND BALANCES</b>	<b>\$ <u>4,077,629</u></b>	<b>\$ <u>-0-</u></b>	<b>\$ <u>4,077,629</u></b>

The accompanying notes are an integral part of the combining financial statements.

CITY OF FAIRMONT, WEST VIRGINIA  
 COMBINING STATEMENTS OF REVENUES, EXPENDITURES AND  
 CHANGES IN FUND BALANCES  
 NONMAJOR GOVERNMENTAL FUNDS  
 FOR THE YEAR ENDED JUNE 30, 2011

	<u>Special Revenue</u> Funds	<u>Capital Project</u> Funds	<u>Total</u>
<b>Revenues</b>			
Intergovernmental:			
Federal	\$ 154,869	\$ -0-	\$ 154,869
State	30,002	-0-	30,002
Contributions:			
From employer	150,545	-0-	150,545
Fines and forfeits	386,461	-0-	386,461
Donations	3,502	2,077	5,579
Investment income	75,786	-0-	75,786
Gain (loss) on investments	<u>205,675</u>	<u>-0-</u>	<u>205,675</u>
Total revenues	<u>1,006,840</u>	<u>2,077</u>	<u>1,008,917</u>
<b>Expenditures</b>			
General government	88,887	-0-	88,887
Public safety	141,252	-0-	141,252
Community development	167,636	2,077	169,713
Benefit payments	<u>36,477</u>	<u>-0-</u>	<u>36,477</u>
Total expenditures	<u>434,252</u>	<u>2,077</u>	<u>436,329</u>
(Deficiency) excess of revenues (under) over expenditures	<u>572,588</u>	<u>-0-</u>	<u>572,588</u>
<b>Other Financing Sources (Uses)</b>			
Operating transfers in	1,470	-0-	1,470
Operating transfers (out)	<u>( 254,557)</u>	<u>-0-</u>	<u>( 254,557)</u>
Total other financing sources (uses)	<u>( 253,087)</u>	<u>-0-</u>	<u>( 253,087)</u>
(Deficiency) excess of revenues and other financing sources (under) over expenditures and other financing uses	319,501	-0-	319,501
Fund balance beginning of year	<u>1,341,550</u>	<u>-0-</u>	<u>1,341,550</u>
Fund balance end of year	\$ <u>1,661,051</u>	\$ <u>-0-</u>	\$ <u>1,661,051</u>

The accompanying notes are an integral part of the combining financial statements.

**CITY OF FAIRMONT, WEST VIRGINIA  
COMBINING FUND BALANCE SHEETS  
NONMAJOR GOVERNMENTAL FUNDS - SPECIAL REVENUE FUNDS  
JUNE 30, 2011**

	HUD Special Purpose Grant Program	Bureau of Justice Fund	Boards and Commissions Fund	Workers Compensation Fund	Police Fund	Police Investigative Fund	Urban Renewal Authority	Other Post Employment Benefits Fund	Economic Development Grant Fund	Total
Cash	\$ -0-	\$ -0-	\$ 5,337	\$ 272,409	\$ 35,556	\$ 80,282	\$ 955	\$ -0-	\$ 10,578	\$ 405,117
Investments	-0-	-0-	4,573	1,281,171	-0-	-0-	-0-	2,375,466	-0-	3,661,210
Receivables:										
Other	-0-	-0-	-0-	-0-	-0-	698	-0-	-0-	56,624	57,322
Interest	-0-	-0-	-0-	1,870	-0-	-0-	-0-	3,789	-0-	5,659
Due from (to):										
Other funds	-0-	5,570	-0-	-0-	(19,977)	(863)	-0-	-0-	(36,402)	(51,672)
<b>TOTAL ASSETS</b>	<b>\$ -0-</b>	<b>\$ 5,570</b>	<b>\$ 9,910</b>	<b>\$ 1,555,450</b>	<b>\$ 15,579</b>	<b>\$ 80,117</b>	<b>\$ 955</b>	<b>\$ 2,379,255</b>	<b>\$ 30,793</b>	<b>\$ 4,077,629</b>
<b>LIABILITIES AND FUND BALANCES</b>										
<b>Liabilities</b>										
Accounts payable	\$ -0-	\$ -0-	\$ -0-	\$ 6,692	\$ 6,392	\$ 9,569	\$ -0-	\$ -0-	\$ 25,785	\$ 48,438
Claims payable	-0-	-0-	-0-	121,450	-0-	-0-	-0-	-0-	-0-	121,450
Accrued other post employment benefits	-0-	-0-	-0-	-0-	-0-	-0-	-0-	2,246,690	-0-	2,246,690
Total liabilities	-0-	-0-	-0-	128,142	6,392	9,569	-0-	2,246,690	25,785	2,416,578
<b>Fund Balances</b>										
Committed	-0-	-0-	-0-	1,276,149	-0-	-0-	-0-	-0-	-0-	1,276,149
Restricted	-0-	5,570	-0-	-0-	6,784	70,177	-0-	-0-	5,000	87,531
Assigned	-0-	-0-	9,910	151,159	2,403	371	955	132,565	8	297,371
Unassigned	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Total fund balances	-0-	5,570	9,910	1,427,308	9,187	70,548	955	132,565	5,008	1,661,051
<b>TOTAL LIABILITIES AND FUND BALANCES</b>	<b>\$ -0-</b>	<b>\$ 5,570</b>	<b>\$ 9,910</b>	<b>\$ 1,555,450</b>	<b>\$ 15,579</b>	<b>\$ 80,117</b>	<b>\$ 955</b>	<b>\$ 2,379,255</b>	<b>\$ 30,793</b>	<b>\$ 4,077,629</b>

The accompanying notes are an integral part of the combining financial statements.

**CITY OF FAIRMONT, WEST VIRGINIA  
COMBINING STATEMENT OF REVENUES, EXPENDITURES AND  
CHANGES IN FUND BALANCES  
NONMAJOR GOVERNMENTAL FUNDS - SPECIAL REVENUE FUNDS  
FOR THE YEAR ENDED JUNE 30, 2011**

	HUD Special Purpose Grant Program	Bureau of Justice Fund	Boards and Commissions Fund	Workers Compensation Fund	Police Fund	Police Investigative Fund	Urban Renewal Authority	Other Post Employment Benefits Fund	Economic Development Grant Fund	Total
<b>Revenues</b>										
Intergovernmental:										
Federal	\$ 12,477	\$ 15,035	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 127,357	\$ 154,869
State	-	-	-	-	-	-	-	-	30,002	30,002
Contributions:										
From employer	-	-	-	147,187	-	-	-	3,358	-	150,545
Fines and forfeits	-	-	-	-	356,915	29,546	-	-	-	386,461
Donations	-	-	2,502	-	-	1,000	-	-	-	3,502
Investment income	-	-	37	41,228	17	371	-	34,127	6	75,786
Gain (loss) on investments	-	-	220	109,931	-	-	-	95,524	-	205,675
Total revenues	<u>12,477</u>	<u>15,035</u>	<u>2,759</u>	<u>298,346</u>	<u>356,932</u>	<u>30,917</u>	<u>-</u>	<u>133,009</u>	<u>157,365</u>	<u>1,006,840</u>
<b>Expenditures</b>										
General government										
Public safety	-	-	-	86,885	-	-	-	2,002	-	88,887
Community development	-	16,935	-	-	96,192	28,125	-	-	-	141,252
Benefit payments	12,477	-	2,280	-	-	-	-	-	152,879	167,636
Total expenditures	<u>12,477</u>	<u>16,935</u>	<u>2,280</u>	<u>36,477</u>	<u>96,192</u>	<u>28,125</u>	<u>-</u>	<u>2,002</u>	<u>152,879</u>	<u>36,477</u>
(Deficiency) excess of revenues (under) over expenditures	-	(1,900)	479	174,984	260,740	2,792	-	131,007	4,486	572,588
<b>Other Financing Sources (Uses)</b>										
Operating transfers in	-	-	-	-	-	-	950	-	520	1,470
Operating transfers (out)	-	-	-	-	(254,557)	-	-	-	-	(254,557)
Total other financing sources (uses)	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>(254,557)</u>	<u>-</u>	<u>950</u>	<u>-</u>	<u>520</u>	<u>(253,087)</u>
(Deficiency) excess of revenues and other financing sources (under) over expenditures and other financing uses	-	(1,900)	479	174,984	6,183	2,792	950	131,007	5,006	319,501
Fund balance beginning of year	-	7,470	9,431	1,252,324	3,004	67,756	5	1,538	2	1,341,550
Fund balance end of year	<u>\$ -</u>	<u>\$ 5,570</u>	<u>\$ 9,910</u>	<u>\$ 1,427,308</u>	<u>\$ 9,187</u>	<u>\$ 70,548</u>	<u>\$ 955</u>	<u>\$ 132,565</u>	<u>\$ 5,008</u>	<u>\$ 1,661,051</u>

The accompanying notes are an integral part of the combining financial statements.

CITY OF FAIRMONT, WEST VIRGINIA  
 COMBINING FUND BALANCE SHEETS  
 NONMAJOR GOVERNMENTAL FUNDS –  
 CAPITAL PROJECTS FUNDS  
 JUNE 30, 2011

Sharon Steel  
Redevelopment  
Fund

**ASSETS**

Accounts receivable	\$ 1,088
Due from (to):	
Other funds	(1,088)
<b>TOTAL ASSETS</b>	<b>\$ <u>-0-</u></b>

**LIABILITIES AND FUND BALANCES**

<b>Liabilities</b>	
Accounts payable	\$ <u>-0-</u>
Total liabilities	<u>-0-</u>
<b>Fund Balances</b>	
Unassigned	<u>-0-</u>
Total fund balances	<u>-0-</u>
<b>TOTAL LIABILITIES AND FUND BALANCES</b>	<b>\$ <u>-0-</u></b>

The accompanying notes are an integral part of the combining financial statements.

CITY OF FAIRMONT, WEST VIRGINIA  
 COMBINING STATEMENT OF REVENUES, EXPENDITURES AND  
 CHANGES IN FUND BALANCE  
 NONMAJOR GOVERNMENTAL FUNDS - CAPITAL PROJECT FUNDS  
 FOR THE YEAR ENDED JUNE 30, 2011

Sharon Steel  
Redevelopment  
Fund

<b>Revenues</b>	
Donations	\$ <u>2,077</u>
Total revenues	<u>2,077</u>
<b>Expenditures</b>	
Community development	<u>2,077</u>
Total expenditures	<u>2,077</u>
(Deficiency) excess of revenues (under) over expenditures	-0-
Fund balance beginning of year	<u>-0-</u>
Fund balance end of year	\$ <u><u>-0-</u></u>

The accompanying notes are an integral part of the combining financial statements.



**REPORT ON INTERNAL CONTROL OVER FINANCIAL  
REPORTING AND ON COMPLIANCE AND OTHER  
MATTERS BASED ON AN AUDIT OF FINANCIAL  
STATEMENTS PERFORMED IN ACCORDANCE WITH  
GOVERNMENT AUDITING STANDARDS**

The Honorable Mayor and Council  
City of Fairmont  
Fairmont, West Virginia

We have audited the financial statements of the governmental activities, the business-type activities, each major fund and the aggregate remaining fund information of the City of Fairmont, West Virginia, as of and for the year ended June 30, 2011, which collectively comprise the City of Fairmont, West Virginia's basic financial statements and have issued our report thereon dated January 6, 2012. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

**Internal Control Over Financial Reporting**

In planning and performing our audit, we considered the City of Fairmont, West Virginia's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the City of Fairmont, West Virginia's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the City of Fairmont, West Virginia's internal control over financial reporting.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be deficiencies, significant deficiencies, or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above.

### Compliance and Other Matters

As part of obtaining reasonable assurance about whether the City of Fairmont, West Virginia's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

This report is intended solely for the information and use of management, Municipal Officials of the City of Fairmont, West Virginia, others within the entity and federal and state awarding agencies and pass-through entities and the West Virginia State Auditor's Office Chief Inspector Division and is not intended to be and should not be used by anyone other than these specified parties.

*J. Stuck · Banker, PLLC*

January 6, 2012



**Tetrick & Bartlett, PLLC**  
Certified Public Accountants  
Consultants

122 N. Oak St. • PO Box 1916 • Clarksburg, WV 26302-1916 • (304) 624-5564 • Fax: (304) 624-5582 • www.tetrickbartlett.com

INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE WITH  
REQUIREMENTS THAT COULD HAVE A DIRECT AND MATERIAL  
EFFECT ON EACH MAJOR PROGRAM AND ON INTERNAL  
CONTROL OVER COMPLIANCE IN ACCORDANCE WITH  
*OMB CIRCULAR A-133*

The Honorable Mayor and Council  
City of Fairmont  
Fairmont, West Virginia

### Compliance

We have audited the City of Fairmont, West Virginia's compliance with the types of compliance requirements described in the *OMB Circular A-133 Compliance Supplement* that could have a direct and material effect on each of the City of Fairmont, West Virginia's major federal programs for the year ended June 30, 2011. The City of Fairmont, West Virginia's major federal programs are identified in the summary of auditor's results section of the accompanying schedule of findings and questioned costs. Compliance with the requirements of laws, regulations, contracts, and grants applicable to each of its major federal programs is the responsibility of the City of Fairmont, West Virginia's management. Our responsibility is to express an opinion on the City of Fairmont, West Virginia's compliance based on our audit.

We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*. Those standards and OMB Circular A-133 require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the types of compliance requirements referred to above that could have a direct and material effect on a major federal program occurred. An audit includes examining, on a test basis, evidence about the City of Fairmont, West Virginia's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion. Our audit does not provide a legal determination of the City of Fairmont, West Virginia's compliance with those requirements.

In our opinion, the City of Fairmont, West Virginia complied, in all material respects, with the compliance requirements referred to above that could have a direct and material effect on each of its major federal programs for the year ended June 30, 2011.

## Internal Control Over Compliance

Management of the City of Fairmont, West Virginia is responsible for establishing and maintaining effective internal control over compliance with the requirements of laws, regulations, contracts, and grants applicable to federal programs. In planning and performing our audit we considered the City of Fairmont, West Virginia's internal control over compliance with the requirements that could have a direct and material effect on a major federal program to determine the auditing procedures for the purpose of expressing our opinion on compliance and to test and report on internal control over compliance in accordance with *OMB Circular A-133* but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of the City of Fairmont, West Virginia's internal control over compliance.

*A deficiency in internal control over compliance* exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. A *material weakness in internal control over compliance* is a deficiency or combination of deficiencies, in internal control over compliance such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis.

Our consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over compliance that might be deficiencies, significant deficiencies, or material weaknesses. We did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses, as defined above.

This report is intended solely for the information and use of management, Municipal Officials of the City of Fairmont, West Virginia, others within the entity, federal and state awarding agencies and pass-through entities and the West Virginia State Auditor's Office Chief Inspector's Division and is not intended to be and should not be used by anyone other than these specified parties. However, this report is a matter of public record.

*T. Patrick Bartlett, P.H.C.*

January 6, 2012

CITY OF FAIRMONT, WEST VIRGINIA  
SCHEDULE OF FINDINGS AND QUESTIONED COSTS  
FOR THE YEAR ENDED JUNE 30, 2011

**A. Summary of Audit Results**

1. The auditor's report expresses an unqualified opinion on the financial statements of the City of Fairmont, West Virginia.
2. No significant deficiencies relating to the audit of the financial statements are reported in the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with *Government Auditing Standards*.
3. No instances of noncompliance material to the financial statements of the City of Fairmont, West Virginia which would be required to be reported in accordance with *Government Auditing Standards*, were disclosed during the audit.
4. No significant deficiencies in internal control over major federal award programs were disclosed during the audit and reported in the independent auditor's report on compliance with requirements that could have a direct and material effect on each major program and on internal control over compliance in accordance with *OMB Circular A-133*.
5. The auditor's report on compliance for the major federal award programs for the City of Fairmont, West Virginia expresses an unqualified opinion on all major federal programs.
6. Audit findings that are required to be reported in accordance with Section 510(a) of *OMB Circular A-133* are reported in this schedule.
7. The programs tested as major programs are the United States Environmental Protection Agency, Office of Water, Capitalization Grants for Drinking Water State Revolving Funds – CFDA Number 66.468 and the United States Environmental Protection Agency, Office of Water, ARRA – Capitalization Grants for Drinking Water State Revolving Funds – CFDA Number 66.468.
8. The threshold used for distinguishing between Type A and B programs was \$300,000.
9. The City of Fairmont, West Virginia was not determined to be a low risk auditee.

**B. Findings - Financial Statements Audit**

There were no findings identified in the financial statements audit.

**C. Findings and Questioned Costs - Major Federal Award Program Audit**

There were no findings and questioned costs identified in the major federal award program audit.

**CITY OF FAIRMONT, WEST VIRGINIA  
SCHEDULE OF EXPENDITURES AND FEDERAL AWARDS  
FOR THE YEAR ENDED JUNE 30, 2011**

<u>Federal Grantor/Pass-Through Grantor Program Title</u>	<u>Federal CFDA Number</u>	<u>Grant Number</u>	<u>Program or Award Amount</u>	<u>Receipts or Revenues Recognized</u>	<u>Federal Disbursements/ Expenditures</u>
<b>United States Environmental Protection Agency/Office of Water</b>					
<i>State of West Virginia Environmental Protection and West Virginia Water Development Authority</i>					
Capitalization Grants for Drinking Water State Revolving Funds	66.468		\$ 3,500,000	\$ 79,993	\$ 79,993
Capitalization Grants for Drinking Water State Revolving Funds	66.468		4,446,618	1,103,693	1,103,693
ARRA – Capitalization Grants for Drinking Water State Revolving Funds	66.468		4,446,618	4,290,783	4,290,783
				<u>5,474,469</u>	<u>5,474,469</u>
<b>United States Department of Housing and Urban Development/ Office of Community Planning and Development</b>					
<i>State of West Virginia Office of Economic Opportunity</i>					
Emergency Shelter Grants Program	14.231	S-09-DC-54-0001	76,000	27,357	27,357
Emergency Shelter Grants Program	14.231	S-10-DC-54-0001	76,000	62,370	62,370
<b>United States Department of Housing and Urban Development/ Office of Community Planning and Development</b>					
<i>West Virginia Development Office</i>					
Community Development Block Grants/Entitlement Grants	14.218	B-05-DC-54-0001	500,000	12,477	12,477
				<u>102,204</u>	<u>102,204</u>
<b>United States Department of Transportation/Federal Highway Administration</b>					
<i>West Virginia Department of Transportation Division of Highways</i>					
ARRA – Highway Planning and Construction	20.205	TEA-OH22(001)E	150,000	2,080	2,080
				<u>2,080</u>	<u>2,080</u>

CITY OF FAIRMONT, WEST VIRGINIA  
 SCHEDULE OF EXPENDITURES AND FEDERAL AWARDS (CONT'D)  
 FOR THE YEAR ENDED JUNE 30, 2011

<u>Federal Grantor/Pass-Through Grantor Program Title</u>	Federal CFDA Number	Grant Number	Program or Award Amount	Receipts or Revenues Recognized	Federal Disbursements/ Expenditures
<b>United States Department of Justice / Office of Community Oriented Policing Services</b>					
ARRA – Public Safety Partnership and Community Policing Grants	16.710	2009RKCWX0923	\$ 347,100	\$ 117,385	\$ 117,385
<b>United States Department of Justice / Office of Justice Programs</b>					
ARRA – Edward Byrne Memorial Justice Assistance Grant (JAG) Program/ Grants to Units of Local Government	16.804	2009-SB-B9-2292	96,270	<u>15,035</u> <u>132,420</u>	<u>15,035</u> <u>132,420</u>
<b>United States Department of Energy</b>					
ARRA – Energy Efficiency and Conservation Block Grant Program (EECBG)	81.128	DE-EE0001811	87,100	<u>35,550</u> <u>35,550</u>	<u>35,550</u> <u>35,550</u>
<b>Total</b>			<b>\$ 5,746,723</b>	<b>\$ 5,746,723</b>	<b>\$ 5,746,723</b>

**Notes to Schedule of Expenditures of Federal Awards**

**Note 1 - Significant Accounting Policies**

The accompanying schedule of federal awards is a summary of the activity of the City of Fairmont, West Virginia's federal award programs and presents transactions that would be included in financial statements of the City presented on the accrual basis of accounting as contemplated by accounting principles generally accepted in the United States of America.

**CITY OF FAIRMONT, WEST VIRGINIA  
SUMMARY SCHEDULE OF PRIOR AUDIT FINDINGS  
FOR THE YEAR ENDED JUNE 30, 2011**

**United States Environmental Protection Agency, Office of Water Capitalization Grants for Clean Water State Revolving Funds – CFDA Number 55.458 for the fiscal year ended June 30, 2010; the United States Environmental Protection Agency, Office of Water, Capitalization Grants for Drinking Water State Revolving Funds – CFDA Number 66.468 for the fiscal year ended June 30, 2010; and the United States Environmental Protection Agency, Office of Water, ARRA – Capitalization Grants for Drinking Water State Revolving Funds – CFDA Number 66.468 for the fiscal year ended June 30, 2010.**

There were no prior year audit findings related to the major federal award programs.

**APPENDIX D**

**Form of Opinion of Bond Counsel**

October 24, 2012

City of Fairmont  
Water Refunding Revenue Bonds, Series 2012 D

City of Fairmont  
Fairmont, West Virginia

Assured Guaranty Municipal Corp.  
New York, New York

Crews & Associates, Inc.  
Charleston, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

Piper Jaffray & Company  
Charleston, West Virginia

Ladies and Gentlemen:

We have examined a record of proceedings relating to the issuance by the City of Fairmont, West Virginia (the "Issuer") of its \$25,555,000 aggregate principal amount of Water Refunding Revenue Bonds, Series 2012 D, (the "Series 2012 D Bonds").

The Series 2012 D Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 8, Article 19 and Chapter 13, Article 2E of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Ordinance duly enacted by the Issuer on March 27, 2012, as supplemented by a Supplemental Parameters Resolution duly adopted by the Issuer on June 12, 2012 and a Second Supplemental Resolution duly adopted by the Issuer on September 12, 2012 (collectively, the "Ordinance"), and are subject to all the terms and conditions of the Ordinance. All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Ordinance when used herein.

The Series 2012 D Bonds are issued in fully registered form, are dated October 24, 2012, upon original issuance, mature on July 1 in the years and amounts and bear interest payable each January 1 and July 1, commencing January 1, 2013, as set forth in the Ordinance.

The Series 2012 D Bonds shall be subject to optional redemption on or after July 1, 2019, at par plus accrued interest thereon to the date set for redemption.

The Ordinance provides that the Series 2012 D Bonds are issued for the purpose of (i) currently refunding the Issuer's Waterworks Refunding Revenue Bonds, Series 1997 (the "Series 1997 Bonds"); (ii) currently refunding the Issuer's Water Revenue Bonds, Series 1998 (the "Series 1998 Bonds"); (iii) paying a portion of the Issuer's Water Revenue Bonds, Series 1999 (the "Series 1999 Bonds to be Refunded"); (iv) funding a debt service reserve account for the Series 2012 D Bonds; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs.

The Series 2012 D Bonds have been sold to Crews & Associates, Inc. and Piper Jaffray & Company (collectively, the "Original Purchasers"), pursuant to a Bond Purchase Agreement dated September 25, 2012, and accepted by the Issuer (the "Bond Purchase Agreement").

As to questions of fact material to our opinion, we have relied upon representations of the Issuer, the Original Purchasers and other entities contained in the Ordinance, the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Tax Certificate and in the certified proceedings and other certifications of certain officials furnished to us without undertaking to verify the same by independent investigation.

Based upon the foregoing, and assuming compliance with the covenants and representations of the Issuer and others set forth in the Ordinance, the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Tax Certificate and such certifications, we are of the opinion, under existing law, that:

1. The Issuer is a duly organized and validly existing municipal corporation under and pursuant to the laws of the State of West Virginia, with full power and authority to adopt and enact the Ordinance, enter into the Bond Purchase Agreement, the Continuing Disclosure Agreement and Tax Certificate, perform its obligations under the terms and provisions thereof and to issue and sell the Series 2012 D Bonds, all under the provisions of the Act and other applicable provisions of law.
2. The Issuer, through its governing body, has legally and effectively adopted and enacted the Ordinance, has authorized, executed and delivered the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Tax Certificate, has authorized the distribution of the Official Statement in connection with the marketing and sale of the Series 2012 D Bonds, and has issued and delivered the Series 2012 D Bonds to the Original Purchasers pursuant to the Bond Purchase Agreement. The Ordinance is in full force and effect as of the date hereof.
3. Assuming due authorization, execution and delivery by the other parties thereto the Bond Purchase Agreement, the Continuing Disclosure Agreement and the Tax Certificate constitute valid, legal, binding and enforceable instruments of the Issuer in accordance with their respective terms.
4. The Series 2012 D Bonds have been duly authorized, executed and delivered by the Issuer and, assuming proper authentication, constitute valid and legally enforceable limited obligations of the Issuer, payable from, and secured by a lien on, the Gross Revenues of the System, on a parity with the Issuer's outstanding: (1) unrefunded portion of the Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000; (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000; (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618; (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618; (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000; and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (collectively, the "Prior Bonds"). The Series 2012 D Bonds are enforceable in accordance with their terms and the terms of the Ordinance, and are entitled to the benefits of the Ordinance and the Act.

5. The Series 1997 Bonds have been paid within the meaning and with the effect expressed in the ordinance, as supplemented, pursuant to which they were issued, and the covenants, agreements and other obligations of the Issuer to the holders and owners of the Series 1997 Bonds have been satisfied and discharged.

The Series 1998 Bonds have been paid within the meaning and with the effect expressed in the ordinance, as supplemented, pursuant to which they were issued, and the covenants, agreements and other obligations of the Issuer to the holders and owners of the Series 1998 Bonds have been satisfied and discharged.

The Series 1999 Bonds to be Refunded have been paid within the meaning and with the effect expressed in the ordinance, as supplemented, pursuant to which they were issued, and the covenants, agreements and other obligations of the Issuer to the holders and owners of the Series 1999 Bonds to be Refunded have been satisfied and discharged.

6. Under existing laws, regulations, published rulings and judicial decisions of the United States of America, as presently written and applied, the interest on the Series 2012 D Bonds (including any original issue discount properly allocable to owners of the Series 2012 D Bonds) is excludable from gross income of the holders thereof for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed upon individuals and corporations. It should be noted, however, that for the purpose of computing the alternative minimum tax on corporations (as defined for federal income tax purposes), such interest is taken into account in determining adjusted current earnings. Ownership of tax-exempt obligations, including the Series 2012 D Bonds, may result in collateral federal income tax consequences to certain taxpayers, including without limitation, financial institutions, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits, and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry such obligations. We offer no opinion as to such collateral tax consequences. The opinions set forth above are subject to the condition that the Issuer comply, on a continuing basis, with all requirements of the Internal Revenue Code of 1986, as amended, and regulations thereunder (collectively, the "Code") that must be satisfied subsequent to issuance of the Series 2012 D Bonds for interest thereon to be or continue to be excludable from gross income for federal income tax purposes and with all certifications, covenants and representations which may affect the excludability from gross income of the interest on the Series 2012 D Bonds set forth in the Ordinance, the Tax Certificate and the certifications of the Issuer and others. Failure to comply with such Code provisions or such certifications, covenants and representations could cause the interest on the Series 2012 D Bonds to be includable in gross income retroactive to the date of issuance of the Series 2012 D Bonds. We express no other opinion as to the federal tax consequences of purchasing, holding or disposing of the Series 2012 D Bonds. Prospective purchasers of the Series 2012 D Bonds should consult their own tax advisors as to such consequences.

7. Under the Act, the Series 2012 D Bonds and the interest thereon are exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

8. The Series 2012 D Bonds are exempted securities within the meaning of Section 3(a)(2) of the Securities Act of 1933, as amended, and the West Virginia Uniform Securities Act, as amended, and it is not necessary, in connection with the public offering and sale of the Series 2012 D Bonds, to register any securities under said Securities Acts.

It is to be understood that the rights of the holders of the Series 2012 D Bonds and the enforceability of the Series 2012 D Bonds, the Ordinance, the Bond Purchase Agreement, the Continuing

Disclosure Agreement, the Tax Certificate, and the liens, pledges, rights or remedies with respect thereto, are subject to and may be limited by any applicable bankruptcy, reorganization, insolvency, moratorium or other similar laws heretofore or hereafter enacted affecting creditors' rights or remedies generally and that their enforcement may also be subject to the application of public policy, general principles of equity and the exercise of judicial discretion in appropriate cases.

We do not express any opinion as to the sufficiency or accuracy of the material, information or financial statements which are set forth in the Official Statement prepared and used in connection with the offering and sale of the Series 2012 D Bonds.

We have examined the executed and authenticated Series 2012 D Bonds of said issue, and in our opinion, said Series 2012 D Bonds are in proper form and have been duly executed and authenticated.

Very truly yours,

STEPTOE & JOHNSON PLLC

## APPENDIX E

### Form of Continuing Disclosure Agreement

#### CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (the "Agreement") is by and between the City of Fairmont (the "Issuer"), and WesBanco Bank, Inc. (the "Dissemination Agent"), in connection with the issuance of \$ \_\_\_\_\_ City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 A (Bank Qualified) and Water Refunding Revenue Bonds, Series 2012 B (Non-Bank Qualified) (collectively, the "Bonds"). The Bonds are being issued pursuant to the Ordinance enacted by the City Council of the City on March 27, 2012 (the "Original Ordinance"), as supplemented, amended and conformed by a Supplemental Parameters Resolution adopted by the City Council of the City on May 9, 2012 (the "Supplemental Resolution" and together with the Original Ordinance as conformed, the "Ordinance"). The Issuer and Dissemination Agent covenant and agree as follows:

SECTION 1. Purpose of Agreement. The Agreement is being executed and delivered by the Issuer and Dissemination Agent for the benefit of the holders and Beneficial Owners of the Bonds and in order to assist the Participating Underwriter in complying with SEC Rule 15c2-12(b)(5).

SECTION 2. Definitions. In addition to the definitions set forth in the Ordinance and the Bond Purchase Agreement dated \_\_\_\_\_, 2012, which apply to any capitalized term used in the Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

"Annual Financial Information" means the financial information (which shall be based on financial statements prepared in accordance with generally accepted accounting principles ("GAAP")) and operating data with respect to the Issuer, provided at least annually, of the type included in those sections of the final official statement with respect to the Bonds attached thereto as Appendix C, which Annual Financial Information shall include Audited Financial Statements if available on the Report Date, and, if not then available, unaudited financial statements.

"Audited Financial Statements" means the Issuer's annual financial statements, prepared in accordance with GAAP, which financial statements shall have been audited by a firm of independent certified public accountants.

"Beneficial Owner" shall mean any person who has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries).

"Disclosure Representative" shall mean the current Mayor, City Manager, Utility Manager or Finance Director of the Issuer.

“Dissemination Agent” shall initially mean WesBanco Bank, Inc., or any successor Dissemination Agent designated in writing by the Issuer and which has filed with the Issuer a written acceptance of such designation.

“EMMA” means the Electronic Municipal Market Access System described in the 1934 Act Release No. 59062 and maintained by the Municipal Securities Rulemaking Board for purposes of the Rule.

“Listed Events” shall mean any of the events listed in Section 5(a) of the Agreement.

“National Repository” shall mean the Municipal Securities Rulemaking Board, Washington, D.C., the sole Nationally Recognized Municipal Securities Information Repository for purposes of the Rule, effective as of July 1, 2009.

“Participating Underwriter” shall mean the original underwriter(s) of the Bonds who are required to comply with the Rule in connection with offering of the Bonds.

“Repository” shall mean each National Repository.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“State” shall mean the State of West Virginia.

### SECTION 3. Provision of Annual Reports.

(a) The Issuer shall, or shall cause the Dissemination Agent to, not later than 270 days after the end of the Issuer’s fiscal year (presently June 30) (the “Due Date”), commencing with the report for the Fiscal Year ending June 30, 2012, provide to EMMA Annual Financial Information and Audited Financial Statements, which are consistent with the requirements of Section 4 of the Agreement. The Annual Financial Information and Audited Financial Statements may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of the Agreement. The Issuer shall provide the Dissemination Agent with a copy of each report filed under the Agreement. If the Issuer’s fiscal year changes, the Issuer shall give notice of such change in the same manner as for a Listed Event under Section 5(a). The Dissemination Agent shall send written notice to the Issuer thirty days prior to the Due Date of the Annual Financial Information and Audited Financial Statements that such information is due by the Due Date.

(b) Not later than fifteen (15) Business Days prior to the Due Date, the Issuer shall provide the Annual Financial Information and Audited Financial Statements to the Dissemination Agent. If by the Due Date the Dissemination Agent has not received a copy of the Annual Report, the Dissemination Agent shall contact the Issuer to determine if the Issuer is in compliance with the first sentence of this subsection (b). If the Dissemination Agent is unable to provide to EMMA its Annual Financial Information and Audited Financial Statements by the

date required in subsection (a), the Dissemination Agent shall send a notice to EMMA in substantially the form attached as Exhibit A.

(c) The Dissemination Agent shall file a report with the Issuer certifying that the Annual Financial Information and Audited Financial Statements have been provided to EMMA pursuant to the Agreement and the date provided.

SECTION 4. Content of Annual Financial Information. Within 270 days of the Issuer's 2012 fiscal year-end, and each subsequent fiscal year, the Dissemination Agent shall submit to EMMA information and data of the Issuer for the prior fiscal year, including the Audited Financial Statements, prepared in accordance with generally accepted accounting principles in effect from time to time.

Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the Issuer or related public entities, which have been submitted to EMMA or the Securities and Exchange Commission. If the document included by reference is a final official statement it must be available from the Municipal Securities Rulemaking Board. The Issuer shall clearly identify each such other document so included by reference.

SECTION 5. Reporting of Significant Events.

(a) Pursuant to the provisions of this Section 5, the Issuer shall give, or cause to be given, notice of the occurrence of any of the following events, if applicable, with respect to the Bonds:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
7. Modifications to rights of security holders, if material;
8. Bond calls, if material, and tender offers;
9. Defeasances;

10. Release, substitution, or sale of property securing repayment of the Bonds, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership, or similar event of the Issuer<sup>1</sup>;
13. The consummation of a merger, consolidation or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action; or the termination of a definitive agreement relating to any such actions, other than pursuant to its term, if material; and
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material.

(b) The Dissemination Agent shall, within one (1) Business Day of obtaining actual knowledge of the occurrence of any of the Listed Events contact the Disclosure Representative, inform such person of the event, and request that the Issuer promptly notify the Dissemination Agent in writing whether or not to report the event pursuant to subsection (f).

(c) Whenever the Issuer obtains knowledge of the occurrence of a Listed Event, classified under Section 5(a) (2), (7), (8), (10), (13) or (14), because of a notice from the Dissemination Agent pursuant to subsection (b) or otherwise, the Issuer shall as soon as possible determine if such event would be material under applicable federal securities laws, in any event such determination must be made and submitted to the Dissemination Agent within two (2) business days.

(d) If the Issuer determines that knowledge of the occurrence of any of the Listed Events, classified under Section 5(a) (2), (7), (8), (10), (13) or (14), would be material under applicable federal securities laws pursuant to subsection (b) or the Issuer received notice of any Listed Event that does not require a finding of materiality classified under Section 5(a) (1), (3), (4), (5), (6), (9), (11) or (12), the Issuer shall promptly file with the Dissemination Agent a notice of such occurrence to be provided to EMMA.

(e) If in response to a request under subsection (b), the Issuer determines that the Listed Event, classified under Section 5(a) (2), (7), (8), (10), (13) or (14), would not be material under applicable federal securities laws, the Issuer shall so notify the Dissemination Agent in

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<sup>1</sup> For the purposes of the event identified in Section 5(a)(12) above, the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for an obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person.

writing and instruct the Dissemination Agent not to report the occurrence pursuant to subsection (f).

(f) If the Dissemination Agent has been instructed by the Issuer to report the occurrence of a Listed Event, the Dissemination Agent shall file a notice of such occurrence with EMMA with a copy to the Issuer. The Dissemination Agent must file such notice with EMMA within ten (10) business days of the occurrence of such Listed Event.

SECTION 6. Termination of Reporting Obligation. The Issuer's obligations under the Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the Issuer shall give notice of such termination in the same manner as for any of the Listed Events under Section 5(a).

SECTION 7. Dissemination Agent. WesBanco Bank, Inc., is hereby appointed as Dissemination Agent. The Issuer may, from time to time, appoint or engage an alternate or successor Dissemination Agent to assist it in carrying out its obligations under the Agreement, and may discharge any such Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the Issuer pursuant to the Agreement.

SECTION 8. Amendment, Waiver. Notwithstanding any other provision of the Agreement, the Issuer may amend the Agreement, and any provision of the Agreement may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Sections 3(a), 4 or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances, and

(c) The amendment or waiver either (i) is approved by the Holders of the Bonds in the same manner as provided in the Ordinance for amendments to the Ordinance with the consent of Holders, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Holders or Beneficial Owners of the Bonds.

In the event of any amendment or waiver of a provision of the Agreement, the Issuer shall describe such amendment in the next Annual Financial Information and Audited Financial Statements, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the Issuer. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for

any of the Listed Events under Section 5(a), and (ii) the Annual Financial Information and Audited Financial Statements for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

SECTION 9. Additional Information. Nothing in the Agreement shall be deemed to prevent the Issuer from disseminating any other information, using the means of dissemination set forth in the Agreement or any other means of communication, or including any other information in any Annual Financial Information and Audited Financial Statements or notice of occurrence of any of the Listed Events, in addition to that which is required by the Agreement. If the Issuer chooses to include any information in any Annual Financial Information and Audited Financial Statements or notice of occurrence of any of the Listed Events in addition to that which is specifically required by the Agreement, the Issuer shall have no obligation under the Agreement to update such information or include it in any future Annual Financial Information and Audited Financial Statements or notice of occurrence of any of the Listed Events.

SECTION 10. Default. In the event of a failure of the Issuer or Dissemination Agent to comply with any provision of the Agreement (and, at the request of the Original Purchasers), the Dissemination Agent may or any Holder or Beneficial Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Issuer or Dissemination Agent to comply with its obligations under the Agreement. A default under the Agreement shall not be deemed an Event of Default under the Ordinance, and the sole remedy under the Agreement in the event of any failure of the Issuer or Dissemination Agent to comply with the Agreement shall be an action to compel performance.

SECTION 11. Duties, Immunities and Liabilities of Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in the Agreement, and the Issuer agrees to the extent allowed by State law to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys' fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's gross negligence or willful misconduct. The obligations of the Issuer under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

SECTION 12. Notices. Any notices or communications to or among any of the parties to the Agreement may be given as follows:

To the Issuer: City of Fairmont, West Virginia  
P.O. Box 1428  
Fairmont, WV 26555

To the Dissemination Agent: WesBanco Bank, Inc.  
ATTN: Corporate Trust  
1 Bank Plaza

Wheeling, WV 26003

Any person may, by written notice to the other persons listed above, designate a different address or telephone number(s) to which subsequent notices or communications should be sent.

SECTION 13. Beneficiaries. The Agreement shall inure solely to the benefit of the Issuer, the Dissemination Agent, the Participating Underwriter and Holders and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

SECTION 14. Counterparts. The Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 15. Fees. The Issuer agrees to pay all fees and expenses of the Dissemination Agent including, without limitation, all reasonable expenses, charges, costs, attorney's fees and other disbursements in the administration and performance of the Dissemination Agent's duties.

SECTION 16. Right to Resign. The Dissemination Agent may resign at any time by providing thirty (30) days' written notice to the Issuer.

SECTION 17. Right to Counsel. The Dissemination Agent shall have the right to consult with counsel in carrying out its duties under the Agreement and to rely upon an opinion of counsel.

Date: \_\_\_\_\_, 2012

CITY OF FAIRMONT

By: \_\_\_\_\_  
Its: Mayor

WESBANCO BANK, INC.,  
as Dissemination Agent

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

EXHIBIT A

NOTICE TO REPOSITORIES OF FAILURE TO FILE ANNUAL REPORT

Name of Issuer: City of Fairmont (West Virginia)

Name of Issue: \$ \_\_\_\_\_ City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 A (Bank Qualified) and Water Refunding Revenue Bonds, Series 2012 B (Non-Bank Qualified)

Date of Issuance: \_\_\_\_\_, 2012

Notice is hereby given that the Issuer has not provided an Annual Report with respect to the above-named Bonds as required by its covenant made in connection with the above-referenced bond issue. The Issuer anticipates that the Annual Report will be filed by \_\_\_\_\_.

Dated this \_\_\_\_\_.

CITY OF FAIRMONT

By: \_\_\_\_\_  
Its: Mayor

By: \_\_\_\_\_  
Its: City Manager

**APPENDIX F**

**FORM OF ORDINANCE, SUPPLEMENTAL PARAMETERS RESOLUTION AND  
SECOND SUPPLEMENTAL RESOLUTION (PROVIDED BY BOND COUNSEL)**

**CITY OF FAIRMONT  
(WEST VIRGINIA)**

**WATER REFUNDING REVENUE BONDS, SERIES 2012 C (BANK QUALIFIED); AND  
WATER REFUNDING REVENUE BONDS, SERIES 2012 D (NON-BANK QUALIFIED)**

**BOND ORDINANCE**

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**Bond Ordinance**

**CITY OF FAIRMONT  
(WEST VIRGINIA)**

AN ORDINANCE AUTHORIZING THE REFUNDING OF THE ISSUER'S OUTSTANDING WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997 A; WATER REVENUE BONDS, SERIES 1998 AND A PORTION OF THE WATER REVENUE BONDS, SERIES 1999 AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, AND PAYING COSTS OF ISSUANCE AND RELATED COSTS, THROUGH THE ISSUANCE OF WATER REFUNDING REVENUE BONDS, SERIES 2012 C (BANK QUALIFIED) OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$10,000,000; AND WATER REFUNDING REVENUE BONDS, SERIES 2012 D (NON-BANK QUALIFIED) OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$30,000,000 PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TAX AND NON-ARBITRAGE CERTIFICATE, AN OFFICIAL STATEMENT, A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER DOCUMENTS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, the City of Fairmont (the "Issuer" or the "City") presently owns and operates a water system (the "System") and has heretofore financed the acquisition and construction of the System and certain additions, betterments and improvements thereto through the issuance of several series of bonds or refunding bonds, of which there are presently outstanding the Prior Bonds, as hereinafter defined;

WHEREAS, all of the Prior Bonds were issued pursuant to ordinances of the Issuer previously enacted (such ordinances, as so amended and supplemented, collectively herein called the "Prior Ordinances");

WHEREAS, under the provisions of Chapter 8, Article 19 and Chapter 13, Article 2 of the Code of West Virginia, 1931, as amended (the "Act"), the Issuer is authorized to issue refunding revenue bonds for the purpose of refunding, paying or discharging all or any part of its outstanding revenue bonds, including interest thereon;

WHEREAS, the Issuer has determined and hereby determines that present value debt service savings would result from the Issuer's current refunding of its outstanding Waterworks Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of \$10,260,000 (the "Series 1997 Bonds");

WHEREAS, the Issuer has determined and hereby determines that present value debt service savings would result from the Issuer's current refunding of its outstanding Water Revenue Bonds, Series 1998, dated December 15, 1998, issued in the original aggregate principal amount of \$9,600,000 (the "Series 1998 Bonds");

WHEREAS, the Issuer has determined and hereby determines that present value debt service savings would result from the Issuer's current refunding of a portion of its outstanding Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the "Series 1999 Bonds");

WHEREAS, the Issuer has determined that it is in the best interests of the inhabitants of the City of Fairmont and other users of the System to currently refund its outstanding Series 1997 Bonds, Series 1998 Bonds and a portion of the Series 1999 Bonds;

WHEREAS, the Issuer has determined that the aforementioned refunding of the Series 1997 Bonds, Series 1998 Bonds and a portion of the Series 1999 Bonds should be financed with the proceeds from the issuance of the Water Refunding Revenue Bonds, Series 2012 C, in the original aggregate principal amount of not more than \$10,000,000 (the "Series 2012 C Bonds (Bank Qualified)"), and Water Refunding Revenue Bonds, Series 2012 D (Non-Bank Qualified), in the original aggregate principal amount of not more than \$30,000,000 (the "Series 2012 D Bonds"), (collectively, the Series 2012 C Bonds and Series 2012 D Bonds shall be known herein as the "Refunding Bonds") such Refunding Bonds to be secured by and payable from the Gross Revenues (as hereinafter defined) of the System; and

WHEREAS, the Issuer has determined and hereby determines that it is in the best interests of the residents of the City that its Refunding Bonds be sold to the Original Purchaser (as hereinafter defined) thereof pursuant to the terms and provisions of a bond purchase agreement (the "Bond Purchase Agreement") between the Issuer and the Original Purchaser.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF FAIRMONT HEREBY ORDAINS:

**ARTICLE I**  
**DEFINITIONS; STATUTORY AUTHORITY; FINDINGS**

Section 1.01. Definitions. All capitalized terms used in this Ordinance and not otherwise defined in the recitals hereto shall have the meanings specified below, unless the context expressly requires otherwise:

"Act" means Chapter 8, Article 19 of the Code of West Virginia, 1931, as amended and in effect on the date of delivery of the Refunding Bonds.

"Authorized Newspaper" means a financial journal or newspaper of general circulation in the City of New York, New York, printed in the English language and customarily published on each business day of the Registrar, whether or not published on Saturdays, Sundays or legal holidays, and so long as so published, shall include The Bond Buyer.

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

"Bond Commission" or "Commission" means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia which succeeds to the functions of the Bond Commission.

"Bond Counsel" shall mean any law firm having a national reputation in the field of municipal law whose opinions are generally accepted by purchasers of municipal bonds, appointed by the Issuer, and shall initially mean Steptoe & Johnson PLLC, Charleston, West Virginia.

"Bondholder," "Holder," "Holder of the Bonds," "Owner of the Bonds," "Registered Owner," or any similar term means any person who shall be the registered owner of any outstanding Bond.

"Bond Insurer" means any entity, if any, which shall insure all or any portion of the payment of principal of and interest on any of the Bonds.

"Bond Register" means the books of the Issuer maintained by the Registrar for the registration and transfer of Bonds.

"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, collectively, the Refunding Bonds, the Prior Bonds remaining after the refunding, and any additional parity Bonds hereafter issued within the terms, restrictions and conditions contained herein.

"Business Day" means any day other than a Saturday, Sunday or a day on which national banking associations or West Virginia banking corporations are authorized by law to remain closed.

"Certificate of Authentication and Registration" means the Certificate of Authentication and Registration on the Refunding Bonds, substantially in the form set forth in EXHIBIT A - FORM OF SERIES 2012 C BONDS and EXHIBIT B - FORM OF SERIES 2012 D BONDS, attached hereto.

"City" or "Issuer" means the City of Fairmont, a municipal corporation and political subdivision of the State of West Virginia, in Marion County thereof, and, unless the context clearly indicates otherwise, includes the Governing Body and any other commission, board or department established by the Issuer to operate and maintain the System.

"Clerk" means the Clerk of the Issuer.

"Closing Date" means the date upon which there is an exchange of the Refunding Bonds for the proceeds representing the original purchase price thereof.

"Code" shall mean the Internal Revenue Code of 1986, as amended and supplemented from time to time, and Regulations thereunder.

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

"Consulting Engineers" means any qualified engineer or engineers or firm or firms of engineers that shall at any time now or hereafter be retained by the Issuer as Consulting Engineers for the System, or portion thereof.

"Costs" or similar terms means all those costs now or hereafter permitted by the Act to be financed with bonds issued pursuant hereto, including, without limitation, those costs described in Section 1.03E.

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

"Debt Service," with reference to a specified period, means the amount of principal, including any sinking fund payments, and interest payable with respect to the Bonds during such period.

"Depository Bank" means the bank or banks to be designated as such in the Supplemental Resolution, and any other bank or national banking association eligible under the laws of the State of West Virginia to receive deposits of state and municipal funds and insured by the FDIC that may hereafter be appointed by the Issuer as Depository Bank.

"DTC" means The Depository Trust Company, New York, New York or its successor.

"DTC-eligible" means, with respect to the Series 2012 C Bonds, meeting the qualifications prescribed by DTC.

"Event of Default" means any occurrence or event specified in Section 7.01.

"FDIC" means the Federal Deposit Insurance Corporation or any successor to the functions of the FDIC.

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

"Governing Body" means the City Council of the Issuer or any other governing body of the Issuer that succeeds to the functions of the City Council, as it may now or hereafter be constituted.

"Government Obligations" means certificates or interest-bearing notes or obligations of the United States, or those for which the full faith and credit of the United States are pledged for the payment of principal and interest.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts, and includes any proceeds from the sale or other disposition of capital assets, but does not include any increase in the value of capital assets (including Qualified Investments).

"Independent Accountants" means the West Virginia State Tax Department or any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any purpose except keeping the accounts of said System in the normal operations of its business and affairs.

"Investment Property" means any security (as said term is defined in Section 165(g)(2)(A) or (B) of the Code), obligation, annuity contract, investment-type property or residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan, excluding, however, obligations the interest on which is excluded from gross income, under Section 103 of the Code, for federal income tax purposes other than specified private activity bonds as defined in Section 57(a)(5)(C) of the Code.

"Issuer" or "City" means the City of Fairmont, a municipal corporation and political subdivision of the State of West Virginia, in Marion County thereof, and, unless the context clearly indicates otherwise, includes the Governing Body and any other commission, board or department established by the Issuer to operate and maintain the System.

"Maximum Annual Debt Service" means, at the time of computation, the greatest amount of Debt Service required to be paid on the Bonds for the then current or any succeeding Fiscal Year, assuming that the principal of any Term Bonds is deemed due on the earlier of their stated maturity date or the date on which they are required to be redeemed pursuant to mandatory sinking fund redemption.

"Mayor" means the Mayor of the Issuer.

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

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

"Nonpurpose Investment" means any Investment Property which is acquired with the gross proceeds of the Refunding Bonds and is not acquired in order to carry out the governmental purpose of the Refunding Bonds.

"Operating Expenses," unless qualified, means the current expenses, paid or accrued, of repair, operation and maintenance of the System, and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses (other than those capitalized as part of the costs of any project relating to the acquisition or construction of additions, betterments or improvements for the System), supplies, labor, wages, the cost of materials and supplies used for current operations, fees and expenses of fiscal agents and of the Depository Bank, Registrar and Paying Agent or Paying Agents, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles.

"Ordinance" regardless of whether preceded by the article "the" or "this," means this Ordinance, as it may hereafter from time to time be amended or supplemented, by ordinance or by resolution.

"Original Purchaser" means collectively, Crews & Associates, Inc., Charleston, West Virginia, and Raymond James, Charleston, West Virginia.

"Outstanding," when used with reference to Bonds and as of any particular date, describes all Bonds theretofore and thereupon being issued and delivered except (a) any Bond or Prior Bond canceled by the registrar for such Bond or Prior Bond at or prior to said date; (b) any Bond or Prior Bond for the payment of which moneys, equal to its principal amount, with interest to the date of maturity, shall be held in trust under this Ordinance and set aside for such payment (whether upon or prior to maturity); (c) any Bond deemed to have been paid as

provided by Section 9.01; and (d) with respect to determining the number or percentage of Bondholders or Bonds respectively, for the purpose of consents, notices and the like, any Bond registered to the Issuer. Notwithstanding the foregoing, in the event that a Bond Insurer has paid principal of and/or interest on any Bond, such Bond shall be deemed to be Outstanding until such time as such Bond Insurer has been reimbursed in full.

"Paying Agent" means the Bond Commission and any other paying agent for the Bonds which may be appointed by a resolution supplemental hereto, all in accordance with Section 8.12 hereof.

"Prior Bonds" means the, Series 2008 A Bonds, Series 2010 A Bonds, Series 2010 B Bonds, Series 2010 C Bonds, and Series 2010 D Bonds and, if not refunded, the Series 1997 Bonds, Series 1998 Bonds and Series 1999 Bonds.

"Prior Ordinances" means, collectively, the ordinances of the Issuer, authorizing the issuance of the Prior Bonds.

"Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and use as a member of the general public.

"Purchase Price," for the purpose of computation of the Yield of the Refunding Bonds, has the same meaning as the term "issue price" in Sections 1273(b) and 1274 of the Code, and, in general, means the initial offering price of the Refunding Bonds to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of the Bonds of each maturity is sold or, if the Refunding Bonds are privately placed, the price paid by the first buyer of the Refunding Bonds or the acquisition cost of the first buyer. "Purchase Price," for purposes of computing Yield of Nonpurpose Investments, means the fair market value of the Nonpurpose Investments on the date of use of Gross Proceeds of the Refunding Bonds for acquisition thereof, or if later, on the date that Investment Property constituting a Nonpurpose Investment becomes a Nonpurpose Investment of the Refunding Bonds.

"Qualified Investments" means and includes the investments set forth in the Supplemental Resolution and designated as such.

"Rebate Fund" means the Rebate Fund described in Section 4.01 hereof.

"Record Date" means the day of the month which shall be so stated in the Refunding Bonds, regardless of whether such day is a Saturday, Sunday or legal holiday.

"Redemption Date" means the date fixed for redemption of Bonds subject to redemption in any notice of redemption published or mailed in accordance herewith.

"Redemption Price" means the price at which the Bonds may be called for redemption and includes the principal amount of the Bonds to be redeemed, plus the premium, if any, required to be paid to effect such redemption.

"Registered Owner," "Bondholder," "Holder," "Owner" or any similar term means any person who shall be the registered owner of any outstanding Bond.

"Registrar" means the bank to be designated in the Supplemental Resolution as the registrar for the Refunding Bonds, and any successor thereto appointed in accordance with Section 8.08 hereof.

"Regulations" means temporary and permanent regulations promulgated under the Code, and includes applicable regulations promulgated under the Internal Revenue Code of 1954.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund created by the Prior Ordinances and continued by Section 4.02 hereof.

"Reserve Accounts" means, collectively, the respective reserve accounts created for the Refunding Bonds and the Prior Bonds.

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

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

"Series 1997 Bonds" means the Issuer's Waterworks Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of \$10,260,000.

"Series 1998 Bonds" means the Issuer's Water Revenue Bonds, Series 1998, dated December 15, 1998, issued in the original aggregate principal amount of \$9,600,000.

"Series 1999 Bonds" means the Issuer's Outstanding Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000.

"Series 2008 A Bonds" means the Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000.

"Series 2010 A Bonds" means the Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618.

“Series 2010 B Bonds” means the Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618.

“Series 2010 C Bonds” means the Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000.

“Series 2010 D Bonds” means the Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104.

"Series 2012 C Bonds" means the Water Refunding Revenue Bonds, Series 2012 C, of the Issuer, originally authorized to be issued pursuant to this Ordinance and the Supplemental Resolution.

"Series 2012 C Bonds Redemption Account" means the Series 2012 C Bonds Redemption Account established in the Series 2012 C Bonds Sinking Fund pursuant to Section 4.02 hereof.

"Series 2012 C Bonds Reserve Account" means the Series 2012 C Bonds Reserve Account established in the Series 2012 C Bonds Sinking Fund pursuant to Section 4.02 hereof.

"Series 2012 C Bonds Reserve Account Requirement" means an amount equal to the lesser of (i) 10% of the original principal amount of the Series 2012 C Bonds, (ii) Maximum Annual Debt Service at the time of original issuance of the Series 2012 C Bonds, or (iii) 125% of average annual Debt Service at the time of original issuance of the Series 2012 C Bonds, as determined in conjunction with the Series 2012 D Bonds.

"Series 2012 C Bonds Sinking Fund" means the Series 2012 C Bonds Sinking Fund established by Section 4.02 hereof.

"Series 2012 D Bonds" means the Water Refunding Revenue Bonds, Series 2012 D, of the Issuer, originally authorized to be issued pursuant to this Ordinance and the Supplemental Resolution.

"Series 2012 D Bonds Redemption Account" means the Series 2012 D Bonds Redemption Account established in the Series 2012 D Bonds Sinking Fund pursuant to Section 4.02 hereof.

"Series 2012 D Bonds Reserve Account" means the Series 2012 D Bonds Reserve Account established in the Series 2012 D Bonds Sinking Fund pursuant to Section 4.02 hereof.

"Series 2012 D Bonds Reserve Account Requirement" means an amount equal to the lesser of (i) 10% of the original principal amount of the Series 2012 D Bonds, (ii) Maximum

Annual Debt Service at the time of original issuance of the Series 2012 D Bonds, or (iii) 125% of average annual Debt Service at the time of original issuance of the Series 2012 D Bonds,

"Series 2012 D Bonds Sinking Fund" means the Series 2012 D Bonds Sinking Fund established by Section 4.02 hereof.

"Refunding Bonds" means, collectively, the Series 2012 C Bonds and the Series 2012 D Bonds.

"Refunding Bonds Costs of Issuance Fund" means the Costs of Issuance Fund created by Section 4.01 hereof.

"Sinking Funds" means, collectively, the respective sinking funds created for the Refunding Bonds and the Prior Bonds.

"State" means the State of West Virginia.

"Supplemental Resolution" means any ordinance or resolution amendatory hereof or supplemental hereto and, when preceded by the article "the," refers specifically to the Supplemental Resolution to be adopted by the Issuer following enactment of this Ordinance, setting forth the final amounts, maturities, interest rates and other terms of the Refunding Bonds and authorizing the sale of the Refunding Bonds to the Original Purchaser; provided, that any provision intended to be included in the Supplemental Resolution and not so included may be contained in any other Supplemental Resolution.

"Surplus Revenues" means the Gross Revenues not required by the Ordinance to be set aside and held for the payment of or security for the Bonds or any other obligations of the Issuer, including, without limitation, the funds and accounts established for the Prior Bonds or the Refunding Bonds.

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

"Term Bonds" means Refunding Bonds subject to mandatory sinking fund redemption, as described by Section 3.06 hereof.

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations and vice versa; and words importing the masculine gender shall include the feminine and neuter genders and vice versa.

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

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

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

Section 1.02. Authority for this Ordinance. This Ordinance is enacted pursuant to the provisions of the Act and other applicable provisions of law.

Section 1.03. Findings. The Council hereby finds and determines as follows:

A. The Issuer is a municipal corporation and political subdivision of the State of West Virginia, in Marion County of said State.

B. The Issuer now owns and operates a public waterworks system, the construction, extension and improvement of which it has financed or refinanced pursuant to the issuance of the Prior Bonds.

C. The Issuer has determined that present value debt service savings will result from the current refunding of its Outstanding Series 1997 Bonds, Series 1998 Bonds and a portion of the Series 1999 Bonds and that it is in the best interest of the residents of the Issuer and other users of the System to currently refund such Series 1997 Bonds, Series 1998 Bonds and a portion of the Series 1999 Bonds.

D. It is deemed necessary for the Issuer to issue its (i) Water Refunding Revenue Bonds, Series 2012 C, in the original aggregate principal amount of not more than \$10,000,000, (the "Series 2012 C Bonds"); and (ii) Water Refunding Revenue Bonds, Series 2012 D, in the original aggregate principal amount of not more than \$30,000,000 (the "Series 2012 D Bonds", and collectively with the Series 2012 C Bonds, the "Refunding Bonds") in order to (i) repay in full the remaining principal balance of and all accrued interest on the Series 1997 Bonds; (ii) repay in full the remaining principal balance of and all accrued interest on the Series 1998 Bonds; (iii) repay a portion of the remaining principal balance of and all accrued interest on the Series 1999 Bonds; and the proceeds of the Refunding Bonds may also be applied to funding the respective Refunding Bonds Reserve Accounts and the payment of underwriter's discount; legal expenses; expenses for estimates of costs and revenues; administrative expense; commitment fees; premiums for municipal bond insurance, reserve account insurance or reserve account surety bonds; letter of credit fees; discount; initial fees for the services of registrar's, paying agents, depositories or trustees or other costs in connection with the sale of the Refunding Bonds and such other expenses as may be necessary or incidental to the financing herein authorized; and the performance of the things herein required or permitted, in connection with any thereof, provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Refunding Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall also be permitted.

E. It is in the best interest of the Issuer that the Refunding Bonds be sold to the Original Purchaser pursuant to the terms and provisions of a Bond Purchase Agreement to be entered into by and between the Issuer and the Original Purchaser, as shall be approved by the Supplemental Resolution of the Issuer.

F. There are outstanding obligations of the Issuer which will rank on a parity with the Refunding Bonds as to liens, pledge, source of and security for payment, as follows: (1) a portion of the Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000; (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000; (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618; (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618; (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000; and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (collectively referred to herein as the "Prior Bonds").

The Refunding Bonds shall be issued on a parity with one another and with the Prior Bonds, all of which shall have a first lien position with respect to pledge and source of and security for payment and in all other respects. The Issuer has met the coverage requirements for issuance of parity bonds of the Prior Bonds and the Prior Ordinances and has substantially complied with all other parity requirements, except to the extent that noncompliance with any such other parity requirements is not of a material nature.

Prior to the issuance of the Refunding Bonds, the Issuer will obtain (i) the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met; and (ii) the written consent of the Registered Owners of the Prior Bonds to the issuance of the Refunding Bonds on a parity with such Prior Bonds if required by the Prior Ordinances.

Other than the Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

G. The Issuer derives revenues from the System which are pledged for payment of the Prior Bonds. Except for such pledge thereof to secure and pay the Prior Bonds, said revenues are not pledged or encumbered in any manner. The Issuer intends to issue the Refunding Bonds and to pledge for payment thereof, the Gross Revenues of the System. Upon issuance of the Refunding Bonds, the Refunding Bonds will be secured by a first lien on the Gross Revenues of the System, on a parity with the Prior Bonds.

H. The estimated revenues to be derived in each year after the date hereof from the operation of the System will be sufficient, to provide for repair, maintenance and operation of the System, the payment of interest on the Refunding Bonds and the Prior Bonds, and to create

sinking funds, as hereinafter provided, to pay the principal on the Refunding Bonds and the Prior Bonds as and when it becomes due and reasonable reserves therefore, to provide an adequate renewal and replacement fund, as hereinafter provided, and to make all other payments provided for in this Ordinance.

I. It is in the best interests of the Issuer, and the residents thereof, that the Issuer issue the Refunding Bonds, and secure the Refunding Bonds by a pledge and assignment of the Gross Revenues derived from the operation of the System, the monies in the Refunding Bonds Reserve Account, unexpended proceeds of the Refunding Bonds and as further set forth herein.

J. The Series 2012 C Bonds and the Certificate of Authentication and Registration to be endorsed thereon are to be in substantially the forms set forth in EXHIBIT A – FORM OF SERIES 2012 C BONDS, and the Series 2012 D Bonds and the Certificate of Authentication and Registration to be endorsed thereon are to be in substantially the forms set forth in EXHIBIT B – FORM OF SERIES 2012 D BONDS, attached hereto and incorporated herein by reference, with necessary and appropriate variations, omissions and insertions as permitted or required by this Ordinance or a Supplemental Resolution or as deemed necessary by the Registrar or the Issuer.

K. All things necessary to make the Refunding Bonds, when authenticated by the Registrar and issued as in this Ordinance provided, the valid, binding and legal special obligations of the Issuer according to the import thereof, and to validly pledge and assign those funds pledged hereby to the payment of the principal of and interest on the Refunding Bonds will be timely done and duly performed.

L. The enactment of this Ordinance, and the execution and issuance of the Refunding Bonds, subject to the terms thereof, will not result in any breach of, or constitute a default under, any instrument to which the Issuer is a party or by which it may be bound or affected.

M. The Issuer has complied with all requirements of West Virginia law relating to the operation of the System, the issuance of the Refunding Bonds and the refunding of the Series 1997 Bonds, Series 1998 Bonds and a portion of the Series 1999 Bonds or will have so complied prior to issuance of any thereof.

Section 1.04. Ordinance Constitutes Contract. In consideration of the acceptance of the Refunding Bonds by those who shall own or hold the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the Issuer and such Registered Owners and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the legal Registered Owners of any and all of such Refunding Bonds, all of which shall be of equal rank and without preference, priority or distinction between any one Series 2010 Bond and any other Series 2010 Bond, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

**ARTICLE II**  
**AUTHORIZATION OF REFUNDING**

Section 2.01. Authorization of Refunding. A. All Series 1997 Bonds Outstanding as of the date of issuance of the Refunding Bonds and all unpaid interest accrued thereon, if any, are hereby ordered to be refunded and paid in full and the pledge of Gross Revenues in favor of the Registered Owners of the Series 1997 Bonds imposed by the Prior Ordinance authorizing the issuance of the Series 1997 Bonds, the monies in the funds and accounts created by the Prior Ordinances pledged to payment of the Series 1997 Bonds, and any other funds pledged by the Prior Ordinances to payment of the Series 1997 Bonds are hereby ordered terminated, discharged and released upon such payment to the Registered Owners of the Series 1997 Bonds. Contemporaneously with the payment in full of the Series 1997 Bonds, the amounts on deposit in the sinking fund, and all other funds and accounts created and maintained on behalf of the Series 1997 Bonds, shall be released from the lien created by the Prior Ordinance authorizing the issuance of the Series 1997 Bonds. Monies held in the Series 1997 Bonds Sinking Fund and Series 1997 Bonds Reserve Fund shall be transferred as set forth in the Supplemental Parameters Resolution.

B. All Series 1998 Bonds Outstanding as of the date of issuance of the Refunding Bonds and all unpaid interest accrued thereon, if any, are hereby ordered to be refunded and paid in full and the pledge of Gross Revenues in favor of the Registered Owners of the Series 1998 Bonds imposed by the Prior Ordinance authorizing the issuance of the Series 1998 Bonds, the monies in the funds and accounts created by the Prior Ordinances pledged to payment of the Series 1998 Bonds, and any other funds pledged by the Prior Ordinances to payment of the Series 1998 Bonds are hereby ordered terminated, discharged and released upon such payment to the Registered Owners of the Series 1998 Bonds. Contemporaneously with the payment in full of the Series 1998 Bonds, the amounts on deposit in the sinking fund, and all other funds and accounts created and maintained on behalf of the Series 1998 Bonds, shall be released from the lien created by the Prior Ordinance authorizing the issuance of the Series 1998 Bonds. Monies held in the Series 1998 Bonds Sinking Fund and Series 1998 Bonds Reserve Fund shall be transferred as set forth in the Supplemental Parameters Resolution.

C. A portion of the Series 1999 Bonds Outstanding as of the date of issuance of the Refunding Bonds and the prorated unpaid interest accrued thereon, if any, are hereby ordered to be refunded and paid. At Closing, monies held in the Series 1999 Bonds Sinking Fund and Series 1999 Bonds Reserve Fund shall be transferred as set forth in the Supplemental Parameters Resolution. The Issuer covenants and agrees to transfer the monies remaining in the Series 1999 Bonds Reserve Account as provided in the Supplemental Resolution. The Issuer covenants and agrees not to use the Series 1999 Bonds Reserve Account for the final payment of the Series 1999 Bonds.

### **ARTICLE III THE BONDS**

Section 3.01. Form and Payment of Bonds. No Refunding Bonds shall be issued pursuant to this Ordinance except as provided in this Article III. Any Refunding Bonds issued pursuant to this Ordinance may be issued only as fully registered Refunding Bonds without coupons, in the denomination of \$5,000 or any integral multiple thereof for any year of maturity (or such other denominations as may be set forth in a Supplemental Resolution). All Refunding Bonds shall be dated as of the date provided in a Supplemental Resolution applicable to such series. All Refunding Bonds shall bear interest from the interest payment date next preceding the date of authentication or, if authenticated after the Record Date but prior to the applicable interest payment date or on such interest payment date, from such interest payment date or, if no interest on such Refunding Bonds has been paid, from the date thereof; provided however, that, if, as shown by the records of the Registrar, interest on such Refunding Bonds shall be in default, Refunding Bonds issued in exchange for Refunding Bonds surrendered for transfer or exchange shall bear interest from the date to which interest has been paid in full on the initial Refunding Bonds surrendered.

The principal of and the premium, if any, on the Refunding Bonds shall be payable in any coin or currency which, on the respective date of such payment, is legal tender for the payment of public and private debts under the laws of the United States of America upon surrender at the principal office of the Paying Agent. Interest on the Refunding Bonds shall be paid by check or draft made payable and mailed to the Registered Owner thereof at his address as it appears in the Bond Register at the close of business on the Record Date, or, if requested, in the case of a Registered Owner of \$1,000,000 or more of the Refunding Bonds, by wire transfer to a domestic bank account specified in writing at least 5 days prior to such interest payment date by such Registered Owner.

In the event any Refunding Bond is redeemed in part, such bond shall be surrendered to and canceled by the Registrar, and the Issuer shall execute, and the Registrar shall authenticate and deliver to the Registered Owner thereof, another Series 2012 Bond in the principal amount of said Refunding Bond then Outstanding.

Section 3.02. Execution of Bonds. The Refunding Bonds shall be executed in the name of the Issuer by the Mayor, by his or her manual or facsimile signatures, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Clerk by his or her manual or facsimile signature; provided, that, all such signatures and the seal may be by facsimile. In case any one or more of the officers who shall have signed or sealed any of the Refunding Bonds shall cease to be such officer of the Issuer before the Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Refunding Bonds 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 3.03. Authentication and Registration. A. No Series 2012 C Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in EXHIBIT A - FORM OF SERIES 2012 C BOND attached hereto and incorporated herein by reference with respect to such respective Series 2012 C Bond, shall have been duly manually executed by the Registrar. Any such manually executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Series 2012 C Bond has been authenticated, registered and delivered under this Ordinance. The Certificate of Authentication and Registration on any Series 2012 C Bond shall be deemed to have been executed by the Registrar if signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Series 2012 C Bonds issued hereunder.

B. No Series 2012 D Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in EXHIBIT B - FORM OF SERIES 2012 D BOND attached hereto and incorporated herein by reference with respect to such respective Series 2012 D Bond, shall have been duly manually executed by the Registrar. Any such manually executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Series 2012 D Bond has been authenticated, registered and delivered under this Ordinance. The Certificate of Authentication and Registration on any Series 2012 D Bond shall be deemed to have been executed by the Registrar if signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Series 2012 D Bonds issued hereunder.

Section 3.04. Negotiability and Registration. Subject to the requirements for transfer set forth below, the Refunding Bonds shall be, and have all of the qualities and incidents of, negotiable instruments under the Uniform Commercial Code of the State, and each successive Registered Owner, in accepting any of said Refunding Bonds, shall be conclusively deemed to have agreed that such Refunding Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State, and each successive Holder shall further be conclusively deemed to have agreed that said Refunding Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as any of the Refunding Bonds remain Outstanding, the Registrar shall keep and maintain books for the registration and transfer of the Refunding Bonds. The Refunding Bonds shall be transferable only by transfer of registration upon the Bond Register by the registered owner thereof in person or by his attorney or legal representative duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or such duly authorized attorney or legal representative. Upon transfer of a Refunding Bond, there shall be issued at the option of the Holder or the transferee another Bond or Bonds of the aggregate principal amount equal to the unpaid amount of the transferred Bond and of the same series, interest rate and maturity of said transferred Bond.

Upon surrender thereof at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar and duly executed by the registered owner or his attorney or legal representative duly authorized in writing, Refunding Bonds may at the option of the Holder thereof be exchanged for an equal aggregate principal amount of Bonds of the same series, maturity and interest rate, in any authorized denominations.

In all cases in which the privilege of transferring or exchanging a Series 2010 Bond is exercised, Refunding Bonds shall be delivered in accordance with the provisions of this Ordinance. All Refunding Bonds surrendered in any such transfer or exchange shall forthwith be canceled by the Registrar. Transfers of Refunding Bonds, the initial exchange of Refunding Bonds and exchanges of such Bonds in the event of partial redemption of fully registered Bonds shall be made by the Registrar without charge to the Holder or the transferee thereof, except as provided below. For other exchanges of Refunding Bonds, the Registrar may impose a service charge. For every such transfer or exchange of such Bonds, the Registrar may make a charge sufficient to reimburse its office for any tax or other governmental charge required to be paid with respect to such transfer or exchange, and such tax or governmental charge, and such service charge for exchange other than the initial exchange or in the event of partial redemption, shall be paid by the person requesting such transfer or exchange as a condition precedent to the exercise of the privilege of making such transfer or exchange. The Registrar shall not be obliged to make any such transfer or exchange of Refunding Bonds that have been called for redemption.

Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2010 Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may execute, in its discretion, and the Registrar shall authenticate, register and deliver any new Bond of like series, maturity and principal amount as the Bond so mutilated, destroyed, stolen or lost, in exchange and upon surrender and cancellation of, such mutilated Bond, or in lieu of and substitution for the Bond so destroyed, stolen or lost, and upon the Registered Owner furnishing the Issuer and the Registrar proof of his ownership thereof and that said Bond has been destroyed, stolen or lost and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer or the Registrar may prescribe and paying such expenses as the Issuer or the Registrar may incur. The name of the Registered Owner listed in the Bond Register shall constitute proof of ownership. All Bonds so surrendered shall be submitted to and canceled by the Registrar, and evidence of such cancellation shall be given to the Issuer. If such Bond shall have matured or be about to mature, instead of issuing a substitute Bond the Issuer, by and through the Registrar, may pay the same, upon being indemnified as aforesaid, and, if such Bond be lost, stolen or destroyed, without surrender thereof.

Any such duplicate Bonds issued pursuant to this section shall constitute original, additional contractual obligations on the part of the Issuer, whether or not the lost, stolen or destroyed Bonds be at any time found by any one, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien and source of and security for payment from the revenues pledged herein with all other Bonds issued hereunder.

Section 3.06. Term Bonds. In the event Term Bonds are issued as part of the Refunding Bonds issued pursuant to this Ordinance, the following provisions shall apply:

A. The amounts to be deposited, apportioned and set apart by the Issuer from the Revenue Fund and into the Refunding Bonds Redemption Account in accordance with Subsection 4.03(A)(2) shall include (after credit as provided below) on the first of each month, beginning on the first day of that month which is 13 months prior to the first mandatory redemption date of said Term Bonds, a sum equal to 1/12th of the amount required to redeem the principal amount of such Term Bonds which are to be redeemed as of the next ensuing mandatory redemption date, which amounts and dates, if any, with respect to a series of Bonds shall be set forth in the Supplemental Resolution relating thereto.

B. At its option, to be exercised on or before the 60th day next preceding any such mandatory redemption date, the Issuer may (a) deliver to the Registrar for cancellation such Term Bonds in any aggregate principal amount desired or (b) receive a credit in respect of its mandatory redemption obligation for any such Term Bonds which prior to said date have been redeemed (otherwise than pursuant to this section) and canceled by the Registrar and not theretofore applied as a credit against any such mandatory redemption obligation. Each Term Bond so delivered or previously redeemed shall be credited by the Registrar at 100% of the principal amount thereof against the obligation of the Issuer on such mandatory redemption date, and Term Bonds delivered in excess of such mandatory redemption obligation shall be credited against future mandatory redemption obligations in the order directed by the Issuer, and the principal amount of such Term Bonds to be redeemed pursuant to mandatory sinking fund redemption shall be accordingly reduced.

C. The Issuer shall on or before the 60th day next preceding each mandatory redemption date furnish the Registrar and the Bond Commission with its certificate indicating whether and to what extent the provisions of (a) and (b) of the preceding paragraph are to be utilized with respect to such mandatory redemption payment and stating, in the case of the credit provided for in (b) of the preceding paragraph, that such credit has not theretofore been applied against any mandatory redemption obligation.

D. After said 60th day but prior to the date on which the Registrar selects the Term Bonds to be redeemed, the Bond Commission may use the moneys in the Refunding Bonds Redemption Account to purchase Term Bonds at a price less than the par value thereof and accrued interest thereon. The Bond Commission shall advise the Issuer and the Registrar of any Term Bonds so purchased, and they shall be credited by the Registrar at 100% of the principal amount thereof against the obligation of the Issuer on such mandatory redemption date, and any excess shall be credited against future mandatory redemption obligations in the order directed by the Issuer, and the principal amount of such Term Bonds to be redeemed pursuant to mandatory sinking fund redemption shall be accordingly reduced.

E. The Registrar shall call for redemption, in the manner provided herein, an aggregate principal amount of such Term Bonds, at the principal amount thereof plus interest accrued to the redemption date (interest to be paid from the Sinking Fund), as will exhaust as nearly as practicable such Refunding Bonds Redemption Account payment designated to be made in accordance with paragraph (A) of this section. Such redemption shall be by random selection made on the 45th day preceding the mandatory redemption date, in such manner as may

be determined by the Registrar. For purposes of this section, "Term Bonds" shall include any portion of a fully registered Term Bond, in integrals of \$5,000.

Section 3.07. Notice of Redemption. Unless waived by any Registered Owner of the Bonds to be redeemed, official notice of any redemption shall be given by the Registrar on behalf of the Issuer by mailing a copy of an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the applicable Bond Insurer, if any, the Original Purchaser, and the Registered Owner of the Series 2010 Bond or Bonds, as applicable, to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such registered owner to the Bond Registrar.

All official notices of redemption shall be dated and shall state:

- (1) The Redemption Date,
- (2) The Redemption Price,
- (3) If less than all outstanding Refunding Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed,
- (4) That on the Redemption Date the Redemption Price and interest accrued will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date,
- (5) The place where such Bonds are to be surrendered for payment of the Redemption Price, which place of payment shall be the principal office of the Registrar, and
- (6) Such other information, if any, as shall be required for DTC-eligible Bonds.

Prior to any redemption date, the Issuer shall deposit with the Registrar an amount of money sufficient to pay the redemption price of all the Refunding Bonds or portions of such Bonds which are to be redeemed on that date.

Official notice of redemption having been given as aforesaid, the Refunding Bonds or portions of such Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Issuer shall default in the payment of the redemption price) such Refunding Bonds or portions of such Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Registrar at the Redemption Price. Installments of interest due on or prior to the Redemption Date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the registered owner a new Bond or Bonds of the same maturity in the amount of the unpaid principal. All Bonds which have been redeemed shall be canceled and destroyed by the Bond Registrar and shall not be reissued.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of Refunding Bonds, and failure to mail such notice shall not affect the validity of proceedings for the redemption of any portion of Bonds for which there was no such failure.

Section 3.08. Persons Treated as Owners. The Issuer, the Registrar and any agent of the Issuer or the Registrar may treat the person in whose name any Bond is registered as the owner of such Bond for the purpose of receiving payment of the principal of, and interest on, such Bond and (except as provided in Section 6.18) for all other purposes, whether or not such Bond is overdue.

Section 3.09. Temporary Bonds. Until Bonds of any series in definitive form are ready for delivery, the Issuer may execute and the Registrar shall authenticate, register, if applicable, and deliver, subject to the same provisions, limitations and conditions set forth in this Article III, one or more printed, lithographed or typewritten Bonds in temporary form, substantially in the form of the definitive Bonds of such series, with appropriate omissions, variations and insertions, and in authorized denominations. Until exchanged for Bonds in definitive form, such Bonds in temporary form shall be entitled to the lien and benefit created under this Ordinance. Upon the presentation and surrender of any Bond in temporary form, the Issuer shall, without unreasonable delay, prepare, execute and deliver to the Registrar, and the Registrar shall authenticate, register, if applicable, and deliver, in exchange therefore, a Bond or Bonds in definitive form. Such exchange shall be made by the Registrar without making any charge therefore to the Holder of such Bond in temporary form.

Section 3.10. Authorization of Bonds. A. For the purposes of (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds, and (ii) funding the Series 2012 C Bonds Reserve Account; and (iii) paying costs of issuance of the Series 2012 C Bonds and related costs, there shall be issued the Series 2012 C Bonds of the Issuer, in an aggregate principal amount of not more than \$10,000,000. The Series 2012 C Bonds shall be designated the "City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 C (Bank Qualified)" and shall be issued in fully registered form, in denominations of \$5,000 or any integral multiple thereof for any year of maturity (or such other denominations as may be set forth in the Supplemental Resolution), not exceeding the aggregate principal amount of Series 2012 C Bonds maturing in the year of maturity for which the denomination is to be specified. The Series 2012 C Bonds shall be numbered from CR-1 consecutively upward. The Series 2012 C Bonds shall be dated; shall be in such aggregate principal amount; shall bear interest at such rate or rates, not exceeding the then legally permissible rate, payable semiannually on such dates; shall mature on such dates and in such amounts; shall be subject to such mandatory and optional redemption provisions; and shall have such other terms, all as the Issuer shall prescribe herein and in the Supplemental Resolution.

B. For the purposes of (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds; (ii) paying a portion of the outstanding principal of and the prorated accrued interest on the Series 1999 Bonds; (iii) funding the Series 2012 D Bonds Reserve Account; and (iv) paying costs of issuance of the Series 2012 C Bonds and the Series 2012 D Bonds and related costs, there shall be issued the Series 2012 D Bonds of

the Issuer, in an aggregate principal amount of not more than \$30,000,000. The Series 2012 D Bonds (Non Bank Qualified) shall be designated the "City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 D (Non Bank Qualified)" and shall be issued in fully registered form, in denominations of \$5,000 or any integral multiple thereof for any year of maturity (or such other denominations as may be set forth in the Supplemental Resolution), not exceeding the aggregate principal amount of Series 2012 D Bonds maturing in the year of maturity for which the denomination is to be specified. The Series 2012 D Bonds shall be numbered from DR-1 consecutively upward. The Series 2012 D Bonds shall be dated; shall be in such aggregate principal amount; shall bear interest at such rate or rates, not exceeding the then legally permissible rate, payable semiannually on such dates; shall mature on such dates and in such amounts; shall be subject to such mandatory and optional redemption provisions; and shall have such other terms, all as the Issuer shall prescribe herein and in the Supplemental Resolution.

Section 3.11. Book Entry System for Refunding Bonds. The Refunding Bonds (if purchased by the Original Purchaser) shall initially be issued in the form of one fully-registered bond for the aggregate principal amount of the Refunding Bonds of each maturity, and shall be registered in the name of Cede & Co., as nominee of DTC. Notwithstanding anything herein to the contrary contained, so long as the Refunding Bonds are so issued and registered, DTC (or its nominee) shall be treated as the sole Registered Owner for all purposes hereunder. Each Bond shall bear a legend substantially to the following effect "Except as otherwise provided in the Ordinance, this global bond may be transferred, in whole but not in part, only to another nominee of DTC (as defined in the Ordinance) or to a successor of DTC or to a nominee of a successor of DTC. Unless this certificate is presented by an authorized representative of DTC, to the Issuer or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the Registered Owner hereof, Cede & Co., has an interest herein."

With respect to Refunding Bonds registered in the records of the Registrar in the name of Cede & Co., as nominee of DTC, the Issuer and the Paying Agent shall have no responsibility or obligation to any other participant in DTC or to any Person on behalf of whom such a participant in DTC holds a beneficial interest in the Refunding Bonds. Without limiting the immediately preceding sentence, the Issuer and the Paying Agent shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any other participant in DTC with respect to any beneficial ownership interest in any Bond, (ii) the delivery to any other participant in DTC or any other Person, other than a Registered Owner, as shown in the records of the Registrar, of any notice with respect to any Refunding Bonds, including without limitation any notice of redemption, tender, purchase or any event which would or could give rise to a tender or purchase right or option with respect to any Bond, (iii) the payment to any other participant in DTC or any other Person, other than a Registered Owner, as shown in the records of the Registrar, of any amount with respect to principal of, premium, if any, or interest on, any Bond, or (iv) any consent given by DTC as Registered Owner. Notwithstanding any other provision of this Ordinance to the contrary, the Issuer and the Paying

Agent shall be entitled to treat and consider the Person in whose name each Bond is registered in the records of the Registrar as the absolute owner of such Bond for the purpose of payment of principal, premium, if any, and interest with respect to such Bond, for the purpose of giving notices of redemption, sale, purchase or any event which would or could give rise to a sale or purchase right or option with respect to any Bond for the purpose of making payment of any purchase price of such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Issuer and Paying Agent shall pay all principal of, premium, if any, and interest on the Refunding Bonds and the purchase price of any Bond only to or upon the order of the respective Registered Owners, as shown in the records of the Registrar as provided in this Ordinance, or their respective attorneys or legal representatives duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to payment of principal of, premium, if any, and interest on the Refunding Bonds to the extent of the sum or sums so paid. No Person other than a Registered Owner, as shown in the records of the Registrar, shall receive a Bond certificate evidencing the obligation of the Issuer to make payments of principal, premium, if any, and interest pursuant to this Ordinance.

The Registered Owners have no right to a depository for the Refunding Bonds. The Issuer may remove DTC or any successor thereto for any reason at any time. In such event or in the event DTC shall notify the Issuer that DTC is discontinuing its book-entry system for the Refunding Bonds, the Issuer shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities Exchange Act, notify DTC of the appointment of such successor securities depository and transfer one or more separate Bond certificates to such successor securities depository or (ii) notify DTC of the availability through the DTC of Bond certificates and transfer one or more separate Bond certificates to other participants or beneficial owners as DTC may direct. In such event, the Refunding Bonds shall no longer be restricted to being registered in the records of the Registrar in the name of Cede & Co., as nominee, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names other participants in DTC receiving Refunding Bonds shall designate, in accordance with the provisions of this Ordinance. The provisions of this Section applicable to DTC shall apply, mutatis mutandis, to any successor depository performing the same functions hereunder as DTC.

The Issuer represents hereby that it has executed a Letter of Representations, the terms of which are applicable to the issuance of the Refunding Bonds hereunder. Such Letter of Representations is for the purpose of effectuating the Book-Entry Only System only and shall not be deemed to amend, supersede or supplement the terms of this Ordinance which are intended to be complete without reference to the Letter of Representations. In the event of any conflict between the terms of the Letter of Representations and the terms of this Ordinance, the terms of this Ordinance shall control. DTC may exercise the rights of a Registered Owner hereunder only in accordance with the terms hereof applicable to the exercise of such rights.

Section 3.12. Delivery of Refunding Bonds. The Issuer shall execute and deliver the Refunding Bonds to the Registrar, and the Registrar shall authenticate, register and deliver the Refunding Bonds to the Original Purchaser upon receipt of the documents set forth below:

(1) If not registered in the name of DTC or its nominee, a list of the names in which the Refunding Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Registrar may reasonably require;

(2) A request and authorization to the Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Refunding Bonds to DTC for the benefit of the Original Purchaser;

(3) Copies of this Ordinance and the Supplemental Resolution certified by the Clerk;

(4) The unqualified approving opinion of Bond Counsel regarding the Refunding Bonds; and

(5) A copy of such other documents and certificates as the Original Purchaser may reasonably require.

Section 3.13. Form of Series 2012 C Bonds. A. The definitive Series 2012 C Bonds shall be in substantially the form set forth in EXHIBIT A – FORM OF SERIES 2012 C BOND attached hereto and incorporated herein by reference, with such necessary and appropriate omissions, insertions and variations as are approved by those officers executing such Series 2012 C Bonds on behalf of the Issuer and execution thereof by such officers shall constitute conclusive evidence of such approval, and the definitive Series 2012 C Bonds shall have the form of the opinion of Steptoe & Johnson PLLC, as Bond Counsel, attached thereto or printed on the reverse thereof.

B. The definitive Series 2012 D Bonds shall be in substantially the form set forth in EXHIBIT B – FORM OF SERIES 2012 D BOND attached hereto and incorporated herein by reference, with such necessary and appropriate omissions, insertions and variations as are approved by those officers executing such Series 2012 D Bonds on behalf of the Issuer and execution thereof by such officers shall constitute conclusive evidence of such approval, and the definitive Series 2012 D Bonds shall have the form of the opinion of Steptoe & Johnson PLLC, as Bond Counsel, attached thereto or printed on the reverse thereof.

Section 3.14. Disposition of Proceeds of Refunding Bonds. Upon the issuance and delivery of the Refunding Bonds, the Issuer shall forthwith deposit the proceeds thereof as follows:

1. All interest accrued on Series 2012 C Bonds from the date thereof to the date of delivery thereof shall be deposited in the Series 2012 C Bonds Sinking Fund and applied to payment of interest on the Series 2012 C Bonds at the first interest payment date.

2. All interest accrued on Series 2012 D Bonds from the date thereof to the date of delivery thereof shall be deposited in the Series 2012 D Bonds Sinking Fund and applied to payment of interest on the Series 2012 D Bonds at the first interest payment date.
3. An amount of the proceeds of the Series 2012 C Bonds equal to the amount, if any, set forth in the Supplemental Resolution shall be remitted to the Commission for deposit in the Series 2012 C Bonds Reserve Account.
4. An amount of the proceeds of the Series 2012 D Bonds equal to the amount, if any, set forth in the Supplemental Resolution shall be remitted to the Commission for deposit in the Series 2012 D Bonds Reserve Account.
5. An amount of the proceeds of the Series 2012 D Bonds equal to the entire outstanding principal of and all accrued interest on the Series 1997 Bonds, less the amounts transferred from the Series 1997 Bonds Sinking Fund and Series 1997 Bonds Reserve Fund, if any, as set forth in the Supplemental Resolution shall be remitted to the Bond Commission to pay the Series 1997 Bonds in full.
6. An amount of the proceeds of the Series 2012 C Bonds equal to the entire outstanding principal of and all accrued interest on the Series 1998 Bonds, less the amounts transferred from the Series 1998 Bonds Sinking Fund and Series 1998 Bonds Reserve Fund, if any, as set forth in the Supplemental Resolution shall be remitted to the Bond Commission to pay the Series 1998 Bonds in full.
7. An amount of the proceeds of the Series 2012 D Bonds equal to a portion of the principal of and the prorated accrued interest on the Series 1999 Bonds, less the amounts transferred from the Series 1999 Bonds Sinking Fund and Series 1999 Bonds Reserve Fund, if any, as set forth in the Supplemental Resolution shall be remitted to the Bond Commission to pay a portion of the Series 1999 Bonds.
8. An amount of Series 2012 D Bond proceeds which, together with other monies or securities deposited therein, shall be equal to the Costs of Issuance of the Series 2012 C Bonds and the Series 2012 D Bonds shall be deposited with the Depository Bank in the Costs of Issuance Fund and shall be drawn out, used and applied by the Issuer solely to pay costs of issuance of the Series 2012 C Bonds and the Series 2012 D Bonds at the written direction of the Issuer. Monies not to be applied immediately to pay such costs of issuance may be invested in accordance with this Ordinance, subject however, to applicable yield restrictions as may be in effect under the Code. If for any reason such proceeds, or any part thereof, are not necessary for, or are not applied to such purpose within 120 days following the Closing Date for the Series 2012 C Bonds and the Series 2012 D Bonds, such unapplied proceeds shall be transferred by the Issuer to the Series 2012 D Bonds Sinking Fund established in Section 4.02 hereof and applied to the next ensuing payment of interest on the Series 2012 D Bonds. All such proceeds shall constitute a trust fund for such purposes, and there hereby is created a lien upon such monies until so applied in favor of the Holders of the Series 2012 D Bonds from which such proceeds are derived.

**ARTICLE IV  
SYSTEM REVENUES; FUNDS AND ACCOUNTS**

Section 4.01. Establishment of Funds and Accounts with Depository Bank.  
Pursuant to this Article IV, the following special funds are created with (or continued if previously established by the Prior Ordinances), and shall be held by, the Depository Bank, segregated from all other funds and accounts of the Depository Bank or the Issuer and from each other and used solely for the purposes provided herein:

- (1) Revenue Fund (established by the Prior Ordinances);
- (2) Renewal and Replacement Fund (established by the Prior Ordinances);
- (3) Refunding Bonds Costs of Issuance Fund; and
- (4) Rebate Fund.

Section 4.02. Establishment of Funds and Accounts with Bond Commission.  
Pursuant to this Article IV, the following special funds and accounts are hereby established (or continued if previously established by the Prior Ordinances) with and shall be held by the Bond Commission, separate and apart from all other funds or accounts of the Bond Commission or the Issuer and from each other and used solely for the purposes provided herein:

- (1) Series 1999 Bonds Sinking Fund (established by Prior Ordinance);
- (2) Series 1999 Reserve Account (established by Prior Ordinance);
- (3) Series 1999 Bonds Redemption Account (established by Prior Ordinance);
- (4) Series 2008 A Bonds Sinking Fund (established by Prior Ordinance);
- (5) Series 2008 A Bonds Reserve Account (established by Prior Ordinance);
- (6) Series 2010 A Bonds Sinking Fund (established by Prior Ordinance);
- (7) Series 2010 A Bonds Reserve Account (established by Prior Ordinance);
- (8) Series 2010 B Bonds Sinking Fund (established by Prior Ordinance);
- (9) Series 2010 B Bonds Reserve Account (established by Prior Ordinance);
- (10) Series 2010 C Bonds Sinking Fund (established by Prior Ordinance);
- (11) Series 2010 C Bonds Reserve Account (established by Prior Ordinance);

- (12) Series 2010 D Bonds Sinking Fund (established by Prior Ordinance);
- (13) Series 2010 D Bonds Reserve Account (established by Prior Ordinance);
- (14) Series 2012 C Bonds Sinking Fund;
  - (a) Within the Series 2012 C Bonds Sinking Fund:
    - (i) Series 2012 C Bonds Reserve Account; and
    - (ii) Series 2012 C Bonds Redemption Account.
- (15) Series 2012 D Bonds Sinking Fund;
  - (a) Within the Series 2012 D Bonds Sinking Fund:
    - (i) Series 2012 D Bonds Reserve Account; and
    - (ii) Series 2012 D Bonds Redemption Account

Section 4.03. System Revenues and Application Thereof. So long as any of the Refunding Bonds shall be Outstanding and unpaid, the Issuer covenants as follows:

A. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited by the Issuer in the Revenue Fund. The Revenue Fund shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner herein provided. All Revenues at any time remaining on deposit in the Revenue Fund shall be disposed of only in the following manner and order of priority:

- (1) The Issuer shall first, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission (i) the amounts required by the Prior Ordinances to pay the interest on the Series 2010 C Bonds and the Outstanding Series 1999 Bonds; (ii) commencing 7 months prior to the first interest payment date of the Series 2012 C Bonds, for deposit in the Series 2012 C Bonds Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on the Series 2012 C Bonds on the next ensuing semiannual interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2012 C Bonds Sinking Fund and the next ensuing semiannual interest payment date is more or less than 7 months, then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date; provided further that, the initial amount required to be transferred from the

Revenue Fund and deposited in the Series 2012 C Bonds Sinking Fund shall be reduced by the amount of accrued interest on the Series 2012 C Bonds deposited therein, and subsequent amounts required to be transferred from the Revenue Fund and deposited in the Series 2012 C Bonds Sinking Fund shall be reduced by the amount of any earnings credited to the Series 2012 C Bonds Sinking Fund; and (iii) commencing 7 months prior to the first interest payment date of the Series 2012 D Bonds, for deposit in the Series 2012 D Bonds Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on the Series 2012 D Bonds on the next ensuing semiannual interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2012 D Bonds Sinking Fund and the next ensuing semiannual interest payment date is more or less than 7 months, then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date; provided further that, the initial amount required to be transferred from the Revenue Fund and deposited in the Series 2012 D Bonds Sinking Fund shall be reduced by the amount of accrued interest on the Series 2012 D Bonds deposited therein, and subsequent amounts required to be transferred from the Revenue Fund and deposited in the Series 2012 D Bonds Sinking Fund shall be reduced by the amount of any earnings credited to the Series 2012 D Bonds Sinking Fund.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission (i) the amounts required by the Prior Ordinances to pay the principal of the Prior Bonds; (ii) commencing 13 months prior to the first principal payment date or mandatory Redemption Date of the Series 2012 C Bonds, for deposit in the Series 2012 C Bonds Sinking Fund and in the Series 2012 C Bonds Redemption Account therein in the case of the Term Bonds which are to be redeemed, a sum equal to 1/12th of the amount (or 1/6th of the amount if the Series 2012 C Bonds mature semiannually rather than annually) of principal which will mature or be redeemed and become due on the Series 2012 C Bonds on the next ensuing principal payment date or mandatory Redemption Date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2012 C Bonds Sinking Fund and the next ensuing principal payment date or mandatory Redemption Date is more or less than 13 months (or 7 months if the Series 2012 C Bonds mature semiannually rather than annually), then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next

ensuing principal payment date or mandatory Redemption Date, the required amount of principal coming due on such date, and provided further, that the amount of such deposits shall be reduced by the amount of any earnings credited to the Series 2012 C Bonds Sinking Fund and not previously credited pursuant to the preceding paragraph; and (iii) commencing 13 months prior to the first principal payment date or mandatory Redemption Date of the Series 2012 D Bonds, for deposit in the Series 2012 D Bonds Sinking Fund and in the Series 2012 D Bonds Redemption Account therein in the case of the Term Bonds which are to be redeemed, a sum equal to 1/12th of the amount (or 1/6th of the amount if the Series 2012 D Bonds mature semiannually rather than annually) of principal which will mature or be redeemed and become due on the Series 2012 D Bonds on the next ensuing principal payment date or mandatory Redemption Date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2012 D Bonds Sinking Fund and the next ensuing principal payment date or mandatory Redemption Date is more or less than 13 months (or 7 months if the Series 2012 D Bonds mature semiannually rather than annually), then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next ensuing principal payment date or mandatory Redemption Date, the required amount of principal coming due on such date, and provided further, that the amount of such deposits shall be reduced by the amount of any earnings credited to the Series 2012 D Bonds Sinking Fund and not previously credited pursuant to the preceding paragraph.

Moneys in the Series 2012 C Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2012 C Bonds, whether by maturity or redemption prior to maturity. Moneys on deposit in the Series 2012 C Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 2012 C Bonds when the funds on deposit in the Series 2012 C Bonds Sinking Fund are insufficient therefore, and for no other purpose. Pending such use, such moneys shall be invested in accordance with Article V.

Moneys in the Series 2012 D Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2012 D Bonds, whether by maturity or redemption prior to maturity. Moneys on deposit in the Series 2012 D Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 2012 D Bonds when the funds on deposit in the Series 2012 D Bonds Sinking Fund are insufficient therefore, and for no other purpose. Pending such use, such moneys shall be invested in accordance with Article V.

The Issuer shall not be required to make any further payments into the Series 2012 C Bonds Sinking Fund when the aggregate amount of funds therein, including the Series 2012 C Bonds Reserve Account therein, is at least equal to the aggregate principal amount of Series 2012 C Bonds then Outstanding, plus the amount of interest due or thereafter to become due on such Bonds then Outstanding.

The Issuer shall not be required to make any further payments into the Series 2012 D Bonds Sinking Fund when the aggregate amount of funds therein, including the Series 2012 D Bonds Reserve Account therein, is at least equal to the aggregate principal amount of Series 2012 D Bonds then Outstanding, plus the amount of interest due or thereafter to become due on such Bonds then Outstanding.

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

The payments into the Series 2012 C Bonds Sinking Fund and Series 2012 D Bonds Sinking Fund shall be made on the first day of each month, except that, when the first day of any month shall be a Saturday, Sunday or legal holiday, then such payments shall be made on the next succeeding Business Day, 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 Ordinance.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission (i) for deposit in the Reserve Accounts of the Prior Bonds the amounts required by the Prior Ordinances; (ii) commencing 13 months prior to the first date of payment of principal of the Series 2012 C Bonds, if not fully funded upon issuance of the Series 2012 C Bonds, for deposit in the Series 2012 C Bonds Reserve Account, an amount equal to 1/120th of the Series 2012 C Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2012 C Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2012 C Bonds Reserve Requirement, and thereafter the Issuer shall deposit in the Series 2012 C Bonds Reserve Account, an amount sufficient to remedy any decrease in value of the Series 2012 C Bonds Reserve Account below the Series 2012 C Bonds Reserve Requirement or any withdrawal from the Series 2012 C Bonds Reserve Account, beginning with the first full calendar month following the date on which (a) the valuation of investments in the Series 2012 C Bonds Reserve Account results in a determination that the amount of moneys and the value of the

Qualified Investments deposited to the credit of the Series 2012 C Bonds Reserve Account is less than the Series 2012 C Bonds Reserve Requirement, or (b) any amount is withdrawn from the Series 2012 C Bonds Reserve Account for deposit into the Series 2012 C Bonds Sinking Fund. To the extent Gross Revenues and any other legally available funds are available therefore, the amount so deposited shall be used to restore the amount of moneys on deposit in the Series 2012 C Bonds Reserve Account to an amount equal to the Series 2012 C Bonds Reserve Requirement to the full extent that such Gross Revenues are available; provided however, that if the shortfall in the Series 2012 C Bonds Reserve Account is due to a decrease in value of investments therein, such shortfall shall be replenished by not less than 6 equal monthly payments, and if such shortfall is due to a withdrawal from the Series 2012 C Bonds Reserve Account, such shortfall shall be replenished by not less than 12 equal monthly payments, and provided further, that no payments shall be required to be made into the Series 2012 C Bonds Reserve Account whenever and as long as the amount on deposit therein shall be equal to the Series 2012 C Bonds Reserve Requirement; and (iii) commencing 13 months prior to the first date of payment of principal of the Series 2012 D Bonds, if not fully funded upon issuance of the Series 2012 D Bonds, for deposit in the Series 2012 D Bonds Reserve Account, an amount equal to 1/120th of the Series 2012 D Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2012 D Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2012 D Bonds Reserve Requirement, and thereafter the Issuer shall deposit in the Series 2012 D Bonds Reserve Account, an amount sufficient to remedy any decrease in value of the Series 2012 D Bonds Reserve Account below the Series 2012 D Bonds Reserve Requirement or any withdrawal from the Series 2012 D Bonds Reserve Account, beginning with the first full calendar month following the date on which (a) the valuation of investments in the Series 2012 D Bonds Reserve Account results in a determination that the amount of moneys and the value of the Qualified Investments deposited to the credit of the Series 2012 D Bonds Reserve Account is less than the Series 2012 D Bonds Reserve Requirement, or (b) any amount is withdrawn from the Series 2012 D Bonds Reserve Account for deposit into the Series 2012 D Bonds Sinking Fund. To the extent Gross Revenues and any other legally available funds are available therefore, the amount so deposited shall be used to restore the amount of moneys on deposit in the Series 2012 D Bonds Reserve Account to an amount equal to the Series 2012 D Bonds Reserve Requirement to the full extent

that such Gross Revenues are available; provided however, that if the shortfall in the Series 2012 D Bonds Reserve Account is due to a decrease in value of investments therein, such shortfall shall be replenished by not less than 6 equal monthly payments, and if such shortfall is due to a withdrawal from the Series 2012 D Bonds Reserve Account, such shortfall shall be replenished by not less than 12 equal monthly payments, and provided further, that no payments shall be required to be made into the Series 2012 D Bonds Reserve Account whenever and as long as the amount on deposit therein shall be equal to the Series 2012 D Bonds Reserve Requirement.

Amounts in the Series 2012 C Bonds Reserve Account shall be used only for the purpose of making payments of principal of and interest on the Series 2012 C Bonds when due, when amounts in the Series 2012 C Bonds Sinking Fund are insufficient therefore and for no other purpose.

Amounts in the Series 2012 D Bonds Reserve Account shall be used only for the purpose of making payments of principal of and interest on the Series 2012 D Bonds when due, when amounts in the Series 2012 D Bonds Sinking Fund are insufficient therefore and for no other purpose.

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

(5) The Issuer shall next, on the first day of each month, transfer from the monies remaining in the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund (as previously set forth in the Prior Ordinances and not in addition thereto), a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of any Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Subject to the restrictions contained in the Prior Ordinances, so long as the Prior Bonds are outstanding, withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, or improvements or extensions to the System; provided, that any deficiency in any Reserve Account, except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof, shall be promptly eliminated with monies from the Renewal and Replacement Fund.

(6) If on any monthly payment date the revenues of the System are insufficient to make the required deposits in any of the funds and accounts as hereinabove provided, the deficiency shall be made up on the next ensuing payment dates by payments in addition to the payments which are otherwise required to be made into the funds on such ensuing payment dates.

(7) The Issuer may next, each month, after making the above required transfers of moneys from the Revenue Fund, apply any remaining revenues ("Surplus Revenues") to payment of debt service on any other subordinate bonds, notes, certificates or other obligations of the System. Any Surplus Revenues then remaining in the Revenue Fund may be used for any lawful purpose of the System.

B. The Bond Commission is hereby designated as the fiscal agent for the administration of the Sinking Funds created or continued hereunder, and all amounts required for said Sinking Funds shall be remitted to the Bond Commission from said Revenue Fund and from the proceeds of the sale of the Bonds, by the Issuer at the times and as otherwise provided herein. All remittances made by the Issuer to the Bond Commission shall clearly identify the fund or account into which each amount is to be deposited. Notwithstanding the foregoing, however, the Bond Commission shall deposit all remittances in the fund or account in the priority established by this Ordinance.

C. If on any monthly payment date the Gross 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 4.03 and the Gross Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

D. Principal and interest payments, and any payments made for the purpose of funding the Reserve Accounts, shall be made on a parity basis and prorated, with respect to the Prior Bonds, the Refunding Bonds and any parity Bonds hereinafter issued, in accordance with the respective principal amounts of each such series of Bonds then Outstanding, if less than the full amount required hereby.

**ARTICLE V**  
**INVESTMENTS; NON-ARBITRAGE**  
**REBATES AND CONTINUING DISCLOSURE CERTIFICATE**

Section 5.01. Investments. The Issuer shall invest and reinvest, and shall instruct the Bond Commission and the Depository Bank to invest and reinvest, any moneys held as a part of the funds and accounts created by this Ordinance in Qualified Investments to the fullest extent

possible under applicable laws, this Ordinance, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this section.

Except as provided below, any investment shall be held in and at all times deemed a part of the fund or account in which such 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 Issuer shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Issuer may make any and all investments permitted by this section through the bond department of the Depository Bank. The Depository Bank shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The following specific provisions shall apply with respect to any investments made under this section:

(A) Qualified Investments acquired for the Renewal and Replacement Fund or any Reserve Account shall mature or be subject to retirement at the option of the holder within not more than 3 years from the date of such investment.

(B) The Issuer shall, or shall cause the Bond Commission to, semiannually transfer from each Reserve Account to the corresponding Sinking Fund any earnings on the moneys deposited therein and any other funds in excess of the applicable Reserve Account Requirement; provided, however, that there shall at all times remain on deposit in each Reserve Account an amount at least equal to the applicable Reserve Account Requirement.

(C) In computing the amount in any fund or account, Qualified Investments shall be valued at the lower of the cost or the market price, exclusive of accrued interest. Valuation of all funds and accounts shall occur annually, except in the event of a withdrawal from a Reserve Account, whereupon it shall be valued immediately after such withdrawal. If amounts on deposit in a Reserve Account shall, at any time, be less than the applicable Reserve Requirement, the applicable Bond Insurer, if any, shall be notified immediately of such deficiency, and such deficiency shall be made up from the first available Gross Revenues after required deposits to the applicable Sinking Fund and otherwise in accordance with Section 4.03(3).

(D) All amounts representing accrued interest shall be held by the Bond Commission, pledged solely to the payment of interest on the Bonds and invested only in Government Obligations maturing at such times and in such amounts as are necessary to match the interest payments to which they are pledged.

(E) Notwithstanding the foregoing, all moneys deposited in any Sinking Fund may be invested by the Bond Commission in the West Virginia "consolidated fund" managed by the West Virginia Board of Treasury Investments pursuant to Chapter 12, Article 6C of the Code of West Virginia, 1931, as amended.

Section 5.02. Arbitrage. The Issuer covenants that (i) it will restrict the use of the proceeds of the Refunding Bonds in such manner and to such extent as may be necessary, so that such Refunding Bonds will not constitute "arbitrage bonds" under Section 148 of the Code and Regulations prescribed thereunder, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a Federal information return with respect to such Bonds) so that the interest on the Refunding Bonds will be and remain excluded from gross income for Federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 5.03. Tax Certificate, Rebates, and Rebate Fund. The Issuer shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of any series of Bonds. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Refunding Bonds as may be necessary in order to fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of this Ordinance.

The Issuer shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, the Issuer shall deposit, or cause to be deposited, in the Rebate Fund such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder and used only for payment of rebatable arbitrage to the United States. The Issuer shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States in the time and at the address prescribed by the Regulations as the same may be in time to time in effect with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefore. The Issuer at its expense, may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer may deem appropriate in order to assure compliance with this Section 5.03. The Issuer shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 5.03 in accordance with the requirements of Section 148(f) of the Code and such Regulations. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and other amounts, from lawfully available sources, and obtain a waiver

from the Internal Revenue Service, if necessary, in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes.

Section 5.04. Continuing Disclosure Certificate. The Issuer shall deliver a continuing disclosure certificate in form acceptable to the Original Purchaser sufficient to ensure compliance with SEC Rule 15c2-12, as it may be amended from time to time.

## **ARTICLE VI** **ADDITIONAL COVENANTS OF THE ISSUER**

Section 6.01. Covenants Binding and Irrevocable. All the covenants, agreements and provisions of this Ordinance shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Refunding Bonds, as prescribed by Article VII. In addition to the other covenants, agreements and provisions of this Ordinance, the Issuer hereby covenants and agrees with the Holders of the Refunding Bonds as hereinafter provided in this Article VI. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Refunding Bonds or the interest thereon, are Outstanding and unpaid.

Section 6.02. Bonds Not to be Indebtedness of the Issuer. The Refunding Bonds shall not be or constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness but shall be payable solely from the Gross Revenues of the System, the moneys in the Refunding Bonds Sinking Fund and the Refunding Bonds Reserve Account therein and the unexpended proceeds of the Refunding Bonds, all as herein provided. No Holder or Holders of the Refunding Bonds issued hereunder shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Refunding Bonds or the interest thereon.

Section 6.03. Refunding Bonds Secured by Parity Pledge of Gross Revenues; Lien Position with Respect to Prior Bonds. The payment of the debt service of all of the Refunding Bonds issued hereunder shall be secured forthwith equally and ratably with each other by a first lien on the Gross Revenues derived from the operation of the System, on a parity with the lien on the Gross Revenues in favor of the Holders of the Prior Bonds. The payment of the debt service on the Refunding Bonds shall also be secured by the moneys in the Refunding Bonds Sinking Funds, including the respective Refunding Bonds Reserve Accounts therein. The Gross Revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Prior Bonds and the Refunding Bonds herein authorized, and to make the payments into the Series 2012 C Bonds Sinking Fund and Series 2012 D Bonds Sinking Fund, all moneys and securities in the Series 2012 C Bonds Sinking Fund, including the Series 2012 C Bonds Reserve Account therein, the Series 2012 D Bonds Sinking Fund, including the Series 2012 D Bonds Reserve Account therein and all other payments provided for in this Ordinance, are hereby irrevocably pledged in the manner provided in this Ordinance to the payment of the principal of and interest on the Prior Bonds and the Refunding Bonds herein authorized as the same become due and for the other purposes provided in this Ordinance.

Section 6.04. Rates. Prior to the issuance of the Refunding Bonds, rates or charges for the use of the services and facilities of the System will be fixed and established, all in the manner and form required by law, and a copy of such rates and charges so fixed and established shall at all times be kept on file in the office of the Clerk of the Issuer, which copy will be open to inspection by all interested parties. The schedule or schedules of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to make the prescribed payments into the funds and accounts created hereunder. Such schedule or schedules of rates and charges shall be revised from time to time, whenever necessary, so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule or schedules of rates or charges from time to time in effect shall be sufficient (i) to provide for all Operating Expenses of the System, (ii) so long as the Series 1999 Bonds, Series 2012 C Bonds or Series 2012 D Bonds are outstanding to leave a balance each year equal to at least 120% of the Maximum Annual Debt Service on the Refunding Bonds, and all obligations issued on a parity with the Refunding Bonds, including the Prior Bonds; and (iii) so long as the Series 2008 A Bonds, Series 2010 A Bonds, Series 2010 B Bonds, Series 2010 C Bonds or Series 2010 D Bonds are outstanding to leave a balance each year equal to at least 115% of the Maximum Annual Debt Service on the Refunding Bonds, and all obligations issued on a parity with the Refunding Bonds, including the Prior Bonds. All such rates and charges, if not paid when due, shall constitute a lien upon the premises served by the System.

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

Section 6.05. Operation and Maintenance. The Issuer will maintain the System in good condition and will operate the same as a revenue-producing enterprise in an efficient and economical manner, making such expenditures for equipment and for renewal, repair and replacement as may be proper for the economical operation and maintenance thereof from the Revenues of said System in the manner provided in this Ordinance.

Section 6.06. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of or encumber the System except as provided in the Prior Ordinances. Additionally, so long as the Refunding Bonds are Outstanding, the System may be sold, mortgaged, leased or otherwise disposed of only as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding, or to defease the pledge created by this Ordinance and the Prior Ordinances. The proceeds from such sale, mortgage, lease or other disposition of the System shall be immediately remitted to the Bond Commission for deposit in the respective Sinking Funds, and otherwise as prescribed by Section 9.01. Any balance remaining after such defeasance shall be remitted to the Issuer by the Bond Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor is not in excess of \$250,000, the Issuer shall, in writing, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Issuer may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Revenue Fund. If the amount to be received from such sale, lease or other disposition of said property shall be in excess of \$250,000, the Issuer shall first, in writing, determine with the written approval of the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Issuer may then, if it be so advised, by resolution duly adopted, approve and concur in such finding and authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds derived from any such sale, lease or other disposition of such property, in excess of \$50,000 and not in excess of \$250,000, shall be deposited by the Issuer into the Renewal and Replacement Fund. Such payments of such proceeds into the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Ordinance.

No sale, lease or other disposition of all properties of the System shall be made by the Issuer if the proceeds to be derived therefrom shall be insufficient to defease the pledge created by this Ordinance, as provided by Section 9.01.

Section 6.07. Issuance of Other Obligations Payable out of Revenues and General Covenant Against Encumbrances. The Issuer shall not issue any other obligations whatsoever, except additional parity Bonds provided for in Section 6.08 hereof, payable from the Revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from the Gross Revenues with the Refunding Bonds; and all obligations hereafter issued by the Issuer payable from the revenues of the System, except such additional Bonds, shall contain an express statement that such obligations are junior and subordinate as to lien on and source of and security for payment from such revenues and in all other respects to the Bonds.

The Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or, except with respect to such additional parity Bonds, being on a parity with the lien of the Refunding Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Refunding Bonds and the interest thereon in this Ordinance or upon the System or any part thereof.

Section 6.08. Additional Parity Bonds. So long as the Prior Bonds are Outstanding, the limitations and requirements on the issuance of parity obligations set forth in the Prior Ordinances shall be applicable. In addition, no additional parity Bonds, as in this section defined, payable out of the revenues of the System shall be issued after the issuance of any Bonds pursuant to this Ordinance, except under the conditions and in the manner herein provided.

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

So long as the Series 1999 Bonds, Series 2012 C Bonds, or Series 2012 D Bonds are outstanding, no such additional parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Clerk of the Issuer a written statement by an Independent Accountant, reciting the conclusion that the Net Revenues actually derived from the System during the Fiscal Year preceding the date of the actual issuance of such additional parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the issuance of such Parity Bonds, if any, shall not be less than 120% of the Maximum Annual Debt Service on the following:

- (1) The Prior Bonds then Outstanding;
- (2) The Refunding Bonds then Outstanding;
- (3) Any additional parity Bonds theretofore issued pursuant to the provisions contained in this Ordinance then Outstanding; and
- (4) The additional parity Bonds then proposed to be issued.

So long as the Series 2008 A Bonds, Series 2010 A Bonds, Series 2010 B Bonds, Series 2010 C Bonds or Series 2010 D Bonds are outstanding, no such additional parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Clerk of the Issuer a written statement by an Independent Accountant, reciting the conclusion that the Net Revenues actually derived from the System during any 12 consecutive months in the 18 months immediately preceding the date of the actual issuance of such additional parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall not be less than 115% of the Maximum Annual Debt Service on the following:

- (1) The Prior Bonds then Outstanding;
- (2) The Refunding Bonds then Outstanding;
- (3) Any additional parity Bonds theretofore issued pursuant to the provisions contained in this Ordinance then Outstanding; and
- (4) The additional parity Bonds then proposed to be issued.

The Net Revenues actually derived from the System during the 12-consecutive month period hereinabove referred to may be adjusted by adding to such Net Revenues such

additional Net Revenues which would have been received, in the opinion of the Independent Accountants, as stated in a certificate, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to issuance of such Parity Bonds.

The term "additional parity Bonds," as used in this section, shall be deemed to mean additional Bonds issued under the provisions and within the limitations of this section, payable from the Net Revenues of the System on a parity with the Refunding Bonds, and all the covenants and other provisions of this Ordinance (except as to details of such additional parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Refunding Bonds, the Prior Bonds and the Holders of any additional parity Bonds theretofore or subsequently issued from time to time within the limitations of and in compliance with this section. All the Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Net Revenues of the System, and their source of and security for payment from said Net Revenues, without preference of any Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Ordinance required for and on account of such additional parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Ordinance.

The term "additional parity Bonds," as used in this section, shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien on the Revenues of the System of which is subject to the prior and superior lien of the Bonds on such Revenues. Any such subordinate bonds, notes, certificates or other obligations shall be payable from Surplus Revenues. The Issuer shall not issue any obligations whatsoever payable from the Revenues of the System, or any part thereof, which rank prior to or equally, as to lien and source of and security for payment from such Revenues, with the Refunding Bonds, except in the manner and under the conditions provided in this section.

No additional parity Bonds, as in this section defined, shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in this Ordinance on account of the Bonds then Outstanding, if any (excluding the Renewal and Replacement Fund), and any other payments provided for in this Ordinance shall have been made in full as required to the date of delivery of the additional parity Bonds.

Section 6.09. Insurance and Bonds. The Issuer hereby covenants and agrees, that so long as the Refunding Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance and bonds and worker's compensation coverage with a reputable insurance carrier or carriers or bonding company or companies covering the following risks and in the following amounts:

A. FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the greater of the fair appraised value or the original cost thereof. In the time of war the Issuer will also carry and maintain insurance to the extent available against risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged and

destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund.

B. PUBLIC LIABILITY INSURANCE, with limits of not less than \$1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than \$500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

C. WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT OR COMPLETION BONDS, such bonds to be in the amounts of not less than 100% of the amount of any construction contract and to be required of each contractor dealing directly with the Issuer and such payment bonds will be filed with the Clerk of the County Commission of the County in which such work is to be performed prior to commencement of construction of any additions, extensions or improvements for the System in compliance with West Virginia Code, Section 38-2-39.

D. FLOOD INSURANCE, to extent available at reasonable cost to the Issuer.

E. BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

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

Section 6.10. Connections. To the extent permitted by the laws of the State and rules and regulations of the Public Service Commission of West Virginia, the Issuer shall require every owner, tenant or occupant of any house, dwelling, or building intended to be served by the System to connect thereto.

Section 6.11. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System; and, in the event the Issuer or any department, agency, instrumentality, officer or employee thereof shall avail himself of the facilities or services provided by the System or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. Such charges shall be paid as they accrue, and the Issuer shall transfer from its general funds sufficient sums to pay such charges for service to any of its departments or properties. The revenues so received shall be deemed to be revenues derived from the operation of the System and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 6.12. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other

charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 20 days after the same shall become due and payable, the user of the services and facilities shall be delinquent until such time as all such rates and charges are fully paid and to the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, all delinquent rates, rentals and other charges, if not paid, shall become a lien on the premises served by the System. The Issuer further covenants and agree that it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services and facilities of the System to all delinquent users of services and facilities of the System and will not restore such services of the System until all billing for charges for the services and facilities of the System, including penalties and reconnect fees, have been fully paid, or a payment agreement in compliance with the West Virginia Public Service Commission regulations has been entered.

Section 6.13. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of any franchise or permit to any person, firm, corporation or body, or agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 6.14. Books and Records. The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds shall have the right at all reasonable times to inspect the System, and all parts thereof, and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles, to the extent allowable under and in accordance with the rules and regulations of the Public Service Commission of West Virginia and the Act. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner, on the forms, in the books and along with other bookkeeping records as prescribed by the Issuer. The Issuer shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Issuer shall be reported to such agent of the Issuer as it shall direct.

The Issuer shall file with the Original Purchaser and any Bond Insurer, and shall mail to any Holder of Bonds requesting the same, an annual report within 120 days following the end of each Fiscal Year containing a balance sheet, statement of revenues, expenses, and changes in retained earnings, and statement of cash flows, as prescribed by generally accepted accounting principles.

The Issuer shall also file with the Original Purchaser and any Bond Insurer, and mail to any Holder of Bonds requesting the same, a monthly unaudited report within 30 days following the end of each month containing the following:

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

(B) A statement of account balances in the Sinking Fund accounts provided for in this Ordinance and status of said funds.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be completely audited by Independent Accountants, shall mail upon request, and make available generally, the report of said Independent Accountants, or a summary thereof, to any Holder or Holders of Bonds issued pursuant to this Ordinance and shall file said report with the Original Purchaser.

Section 6.15. Operating Budget. The Issuer shall annually, at least 30 days preceding the beginning of each Fiscal Year, or at such earlier date required by its charter, prepare and adopt by resolution a detailed budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Original Purchaser and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Original Purchaser and to any Holder of Bonds or anyone acting for and in behalf of such Holder who requests the same.

Section 6.16. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Refunding Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on such Refunding Bonds during the term thereof is, under the terms of such Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) in the event that both (A) in excess of 5% of the Net Proceeds of the Refunding Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Refunding Bonds during the terms thereof is, under the terms of such Refunding Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Refunding Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the

System, or if the Refunding Bonds are for the purpose of financing more than one project, a portion of the System, and shall not exceed the proceeds used for the governmental use of that portion of the System to which such Private Business Use is related.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of the lesser of 5% of the Net Proceeds of the Refunding Bonds or \$5,000,000 are used, directly or indirectly, to make or finance a loan to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Refunding Bonds to be directly or indirectly "federally guaranteed" within the meaning of Section 149(b) of the Code and Regulations promulgated thereunder.

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

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

Section 6.17. Statutory Mortgage Lien. For the further protection of the Holders of the Refunding Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon the issuance of the Refunding Bonds and shall be on a parity with one another and with the statutory mortgage lien in favor of the Holders of the Prior Bonds.

Section 6.18. Designation of Series 2012 C Bonds as "Qualified Tax-Exempt Obligations".

The Series 1998 Bonds were designated by the Issuer as "qualified tax-exempt obligations" for purposes of Section 265(b)(3)(B) of the Code. As the Series 2012 C Bonds are refunding the Series 1998 Bonds, the Series 2012 C Bonds are "qualified tax-exempt obligations" for purposes of Section 265(b)(3)(B) of the Code.

## **ARTICLE VII** **DEFAULTS AND REMEDIES**

Section 7.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Refunding Bonds:

(A) If default by the Issuer occurs in the due and punctual payment of the principal of or interest on any Bond;

(B) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part in this Ordinance or any Supplemental Resolution or in the Bonds contained, and such default shall have continued for a period of 30 days after written notice specifying such default and requiring the same to be remedied shall have been given to the Issuer by any Registered Owner of any Bond;

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

(D) If the Issuer defaults on the Prior Bonds or the Prior Ordinances.

Section 7.02. Enforcement. Upon the happening and continuance of any Event of Default, any Registered Owner of any Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his rights and, in particular:

(A) Bring suit for any unpaid principal or interest then due;

(B) By mandamus or other appropriate proceeding enforce all rights of the Registered Owners, including the right to require the Issuer to perform its duties under the Act and this Ordinance;

(C) Bring suit upon the Bonds;

(D) By action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Bonds; and

(E) By action or bill in equity enjoin any acts in violation of this Ordinance or the rights of the Registered Owners of the Bonds; provided that, all rights and remedies of the Registered Owners of the Refunding Bonds shall be on a parity with those of the Registered Owners of the Prior Bonds.

No remedy by the terms of this Ordinance conferred upon or reserved to the Registered Owners is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Registered Owners hereunder or now or hereafter existing at law or by statute.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or Event of Default hereunder by the Registered Owners shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereto.

Section 7.03. Appointment of Receiver. If there be any Event of Default existing and continuing, any Registered Owner shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the principal of and interest on the Bonds, the deposits into the funds and accounts hereby established as herein provided and the payment of Operating Expenses of the System and to apply such rates, rentals, fees, charges or other Revenues in conformity with the provisions of this Ordinance and the Act.

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

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

Such receiver, in the performance of the powers hereinabove conferred upon him, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby and a successor receiver appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and the Registered Owners of the Bonds issued pursuant to this Ordinance. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System, for the sole purpose of the protection of both the Issuer and the Registered Owners of the Bonds, and the curing and making good of any default under the provisions of this Ordinance, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, mortgage or otherwise dispose of any assets of the System.

Section 7.04. Restoration of Issuer and Registered Owners. In case any Registered Owner shall have proceeded to enforce any right under this Ordinance by the appointment of a

receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer and such Registered Owners shall be restored to their former positions and rights hereunder, and all rights and remedies of such Registered Owners shall continue as if no such proceedings had been taken.

## **ARTICLE VIII** **REGISTRAR, PAYING AGENT AND DEPOSITORY BANK**

Section 8.01. Appointment of Registrar, Paying Agent and Depository Bank. The Registrar, Paying Agent and Depository Bank (collectively, the "Fiduciaries") for the Refunding Bonds shall be appointed pursuant to the Supplemental Resolution. The Issuer is hereby authorized and directed to enter into an agreement with the Fiduciaries, the substantial form of which agreement is to be approved by Supplemental Resolution.

Section 8.02. Responsibilities of Fiduciaries. The recitals of fact in the Refunding Bonds shall be taken as statements of the Issuer, and the Fiduciaries shall not be responsible for their accuracy. The Fiduciaries shall not be deemed to make any representation as to, and shall not incur any liability on account of, the validity of the execution of any Refunding Bonds by the Issuer. Notwithstanding the foregoing, the Registrar shall be responsible for any representation in its Certificate of Authentication on the Refunding Bonds. The Fiduciaries and any successor thereto shall agree to perform all the duties and responsibilities spelled out in this Ordinance and any other duties and responsibilities incident thereto, all as provided by said agreement described in Section 8.01.

Section 8.03. Evidence on Which Fiduciaries May Act. Except as otherwise provided by Section 10.02, the Fiduciaries shall be protected in acting upon any notice, resolution, request, consent, order, certificate, opinion or other document believed by them to be genuine and to have been signed or presented by the proper party or parties. Whenever any Fiduciary shall deem it necessary or desirable that a fact or matter be proved or established prior to taking or suffering any action, such fact or matter, unless other evidence is specifically prescribed, may be deemed to be conclusively proved and established by a certificate of an Authorized Officer of the Issuer, but in its discretion such Fiduciary may instead accept other evidence of such fact or matter.

Section 8.04. Compensation and Expenses. The Issuer shall pay to the Fiduciaries from time to time reasonable compensation for all services, including the transfer of registration of Refunding Bonds, the first exchange of Refunding Bonds and the exchange of Refunding Bonds in the event of partial redemption, incurred in the performance of their duties hereunder.

Section 8.05. Certain Permitted Acts. The Registrar may become the owner of or may deal in Refunding Bonds as fully and with the same rights it would have if it were not Registrar. To the extent permitted by law, the Registrar may act as depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Registered Owners or effect or aid in any

reorganization growing out of the enforcement of the Refunding Bonds or this Ordinance, whether or not any such committee shall represent the Registered Owners of a majority in principal amount of the Refunding Bonds Outstanding.

Section 8.06. Resignation of Registrar. The Registrar may at any time resign and be discharged of its duties and obligations under this Ordinance by giving not less than 60 days' written notice to the Issuer and publishing in an Authorized Newspaper notice (or mailing such notice to each Registered Owner in the event all Refunding Bonds are fully registered), specifying the date when such resignation shall take effect, within 20 days after the giving of such written notice. A copy of such notice shall also be mailed to each owner of a fully registered Bond or a coupon Bond registered as to principal (other than to bearer). Such resignation shall take effect upon the day specified in such notice unless a successor shall have been previously appointed by the Issuer or bondholders, in which event such resignation shall take effect immediately.

Section 8.07. Removal. The Registrar may be removed at any time by the Issuer or by the Registered Owners of a majority in principal amount of the Refunding Bonds then Outstanding by an instrument or concurrent instruments in writing signed and duly acknowledged by the Issuer or by such Registered Owners or their attorneys duly authorized in writing and delivered to the Issuer, as the case may be. Copies of each such instrument shall be delivered by the Issuer to the Registrar.

Section 8.08. Appointment of Successor. In case at any time the Registrar shall resign or shall be removed or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or if a receiver, liquidator or conservator of the Registrar or of its property shall be appointed, or if any public officer or court shall take charge or control of the Registrar or of its property or affairs, a successor may be appointed by the Registered Owners of a majority in principal amount of the Refunding Bonds then Outstanding by an instrument or concurrent instruments in writing signed by such Registered Owners or their attorneys duly authorized in writing and delivered to the Issuer and such successor Registrar, notification thereof being given to the predecessor Registrar. Pending such appointment, the Issuer shall forthwith appoint a Registrar to fill such vacancy until a successor Registrar shall be appointed by such Registered Owners. The Issuer shall publish in an Authorized Newspaper (or mail to each Registered Owner in the event all Refunding Bonds are fully registered) notice of any such appointment within 20 days after the effective date of such appointment. A copy of such notice shall also be mailed to each owner of a fully registered Bond or a coupon Bond registered as to principal (other than to bearer). Any successor Registrar appointed by the Issuer shall, immediately and without further act, be superseded by a Registrar appointed by such Registered Owners. If in a proper case no appointment of a successor Registrar shall be made within 45 days after the Registrar shall have given to the Issuer written notice of resignation or after the occurrence of any other event requiring such appointment, the Registrar or any Registered Owner may apply to any court of competent jurisdiction to appoint a successor. Any Registrar appointed under the provisions of this section shall be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this Ordinance.

Section 8.09. Transfer of Rights and Property to Successor. Any predecessor Registrar or Paying Agent shall pay over, assign and deliver any moneys, books and records held by it and relating to the Refunding Bonds to its successor.

Section 8.10. Merger or Consolidation. Any company into which the Registrar may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party, or any company to which the Registrar or any public officer or court may sell or transfer all or substantially all of its corporate trust business, shall be the successor to such Registrar without the execution or filing of any paper or the performance of any further act; provided, however, that such company shall be a bank, trust company or national banking association meeting the requirements set forth in Section 8.08.

Section 8.11. Adoption of Authentication. In case any of the Refunding Bonds shall have been authenticated but not delivered, any successor Registrar may adopt a Certificate of Authentication and Registration executed by any predecessor Registrar and deliver such Refunding Bonds so authenticated, and, in case any Refunding Bonds shall have been prepared but not authenticated, any successor Registrar may authenticate such Refunding Bonds in the name of the predecessor Registrar or in its own name.

Section 8.12. Paying Agent and Depository Bank. The Paying Agent shall be appointed pursuant to the Supplemental Resolution. The Paying Agent must be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this Ordinance. Such alternate Paying Agent shall signify its acceptance of the duties and obligations imposed upon it pursuant hereto by executing and delivering to the Issuer a written acceptance thereof. Any successor Paying Agent shall take such actions as may be necessary to ensure that the Refunding Bonds shall be and remain DTC-eligible.

Each Paying Agent shall be entitled to payment and reimbursement for reasonable fees for its services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by such Paying Agent in connection with such services solely from moneys available therefore.

Any bank, trust company or national banking association with or into which any Paying Agent may be merged or consolidated, or to which the assets and business of such Paying Agent may be sold, shall be deemed the successor of such Paying Agent for the purposes of this Ordinance. If the position of Paying Agent shall become vacant for any reason, the Issuer shall, within 30 days thereafter, appoint a bank, trust company or national banking association located in the same city as such Paying Agent to fill such vacancy; provided, however, that, if the Issuer shall fail to appoint such Paying Agent within said period, the Bond Commission, a court of competent jurisdiction or a majority of the Registered Owners may make such appointment.

The Paying Agents shall enjoy the same protective provisions in the performance of their duties hereunder as are specified in this Article VIII with respect to the Registrar, insofar as such provisions may be applicable.

Notice of the appointment of successor or additional Paying Agents or fiscal agents shall be given in the same manner as provided by Section 8.08 hereof with respect to the appointment of a successor Registrar.

All moneys received by the Paying Agents shall, until used or applied as provided in this Ordinance, be held in trust for the purposes for which they were received.

**ARTICLE IX**  
**DEFEASANCE; DISCHARGE OF PLEDGE OF ORDINANCE**

Section 9.01. Defeasance; Discharge of Pledge of Ordinance. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Registered Owners of all Refunding Bonds the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Ordinance, then this Ordinance and the pledges of the Gross Revenues and other moneys and securities pledged hereunder, and all covenants, agreements and other obligations of the Issuer on behalf of the Registered Owners of the Refunding Bonds made hereunder, shall thereupon cease, terminate and become void and be discharged and satisfied.

Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due the respective principal of and interest on such Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Refunding Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Bond Commission or an escrow trustee either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Bond Commission or said escrow trustee at the same or earlier time shall be sufficient, to pay when due the principal of, any redemption premium on and interest due and to become due on said Refunding Bonds on and prior to the maturity date thereof, or if the Issuer irrevocably determines to redeem any of said Refunding Bonds prior to the maturity thereof, on and prior to said redemption date. Neither securities nor moneys deposited with the Bond Commission or an escrow trustee pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and interest on said Refunding Bonds; provided, that any cash received from such principal, redemption premium, if any, and interest payments on such securities deposited with the Bond Commission or said escrow trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal of and redemption premium, if any, and interest to become due on said Bonds on and prior to such maturity or redemption dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the

Bond Commission or said escrow trustee, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

## ARTICLE X MISCELLANEOUS

Section 10.01. Amendment of Ordinance. This Ordinance and any Supplemental Resolution may be amended or modified without the consent of any Registered Owner or other person, solely for the purpose of maintaining the tax-exempt status of the Refunding Bonds, provided that, in the event any of the Refunding Bonds are insured, no such amendment or modification which adversely affects the security for such Refunding Bonds or the rights of the applicable Bond Insurer for such Refunding Bonds may be effected without the written consent of such Bond Insurer. Otherwise, no materially adverse amendment or modification to this Ordinance, or of any Supplemental Resolution, may be made without the written consent of the Registered Owners of 60% in aggregate principal amount of the Refunding Bonds then Outstanding and affected thereby and the Bond Insurer, which must be filed with the Clerk of the Issuer before any such modification or amendment may be made. No such modification or amendment shall extend the maturity of or reduce the interest rate on, or otherwise alter the terms of payment of the principal of or interest on, any Series 2010 Bond without the express written consent of the Registered Owner of such Bond, nor reduce the percentage of Refunding Bonds required for consent to any such modification or amendment.

Section 10.02. Evidence of Signatures of Registered Owners and Ownership of Refunding Bonds. Any request, consent, revocation of consent or other instrument which this Ordinance may require or permit to be signed and executed by Registered Owners may be in one or more instruments of similar tenor, and shall be signed or executed by such Registered Owners in person or by their attorneys duly authorized in writing. Proof of the execution of any such instrument, or of an instrument appointing or authorizing any such attorney, shall be sufficient for any purpose of this Ordinance if made in the following manner, or in any other manner satisfactory to the Issuer or the Registrar, as the case may be, which may nevertheless in its discretion require further or other proof in cases where it deems the same desirable:

A. The fact and date of the execution by any Registered Owner or his attorney of any such instrument may be proved (i) by the certificate of a notary public or other officer authorized to take acknowledgments of deeds to be recorded in the jurisdiction in which he purports to act that the person signing such instrument acknowledged to him the execution thereof, or by the affidavit of a witness of such execution, duly sworn to before such a notary public or other officer or (ii) by the certificate, which need not be acknowledged or verified, of an officer of a bank, a trust company or a financial firm or corporation satisfactory to the Issuer or the Registrar, as the case may be, that the person signing such instrument acknowledged to such bank, trust company, firm or corporation the execution thereof.

B. The authority of a person or persons to execute any such instrument on behalf of a corporate Holder may be established without further proof if such instrument is signed by a person purporting to be the president or treasurer or a vice-president or an assistant treasurer of

such corporation with a corporate seal affixed, and is attested by a person purporting to be its secretary or assistant secretary.

C. The amount of fully registered Refunding Bonds held by a person executing any instrument as a Registered Owner, the date of his holding such Refunding Bonds and the numbers and other identification thereof, shall be confirmed by the Bond Register.

Any request, consent or other instrument executed by the Registered Owner of any Bond shall bind all future Registered Owners of such Bond in respect of anything done or suffered to be done hereunder by the Issuer or the Registrar in accordance therewith.

Section 10.03. Preservation and Inspection of Documents. To the extent allowable under law, all reports, certificates, statements and other documents received by the Registrar under the provisions of this Ordinance shall be retained in its possession and shall be available at all reasonable times for the inspection of the Issuer or any Registered Owner, and their agents and their representatives, but any such reports, certificates, statements or other documents may, at the election of the Registrar, be destroyed or otherwise disposed of at any time after such date as the pledge created by this Ordinance shall be discharged as provided in Section 9.01.

Section 10.04. Cancellation of Refunding Bonds. All Refunding Bonds purchased or paid shall, if surrendered to the Issuer, be canceled and delivered to the Registrar, or, if surrendered to the Registrar, be canceled by it. No such Refunding Bonds shall be deemed Outstanding under this Ordinance and no Refunding Bonds shall be issued in lieu thereof. All such Refunding Bonds shall be canceled and upon order of the Issuer shall be destroyed, and a certificate evidencing such destruction shall be delivered to the Issuer.

Section 10.05. Failure to Present Refunding Bonds. Anything in this Ordinance to the contrary notwithstanding, any moneys held by the Bond Commission or a Paying Agent in trust for the payment and discharge of any of the Refunding Bonds which remain unclaimed for 1 year after the date on which such Refunding Bonds have become due and payable, whether by maturity or upon call for redemption, shall at the written request of the Issuer be paid by the Bond Commission or said Paying Agent to the Issuer as its absolute property and free from trust, and the Bond Commission or said Paying Agent shall thereupon be released and discharged with respect thereto, and the Registered Owners of such Refunding Bonds shall look only to the Issuer for the payment of such Refunding Bonds; provided, however, that, before making any such payment to the Issuer, the Registrar, if so advised by the Bond Commission, or said Paying Agent shall send to the Registered Owner, at the address listed on the Bond Register, by certified mail, a notice that such moneys remain unclaimed and that, after a date named in said notice, which date shall be not less than 30 days after the date of such notice is mailed, the balance of such moneys then unclaimed will be returned to the Issuer.

Section 10.06. Notices, Demands and Requests. Unless otherwise expressly provided, all notices, demands and requests to be given or made hereunder to or by the Issuer, the Registrar, the Depository Bank, or the Original Purchaser shall be in writing and shall be properly made if sent by United States mail, postage prepaid, and addressed as follows or if

hand-delivered to the individual to whom such notice, demand or request is required to be directed as indicated below:

CITY:

City of Fairmont  
500 Quincy Street  
Fairmont, West Virginia 26554  
Attention: Mayor

REGISTRAR:

[Name and address to be set forth in the Supplemental Resolution]

PAYING AGENT:

[Name and address to be set forth in the Supplemental Resolution]

DEPOSITORY BANK:

[Name and address to be set forth in the Supplemental Resolution]

ORIGINAL PURCHASERS:

Crews & Associates, Inc.  
300 Summers Street  
Suite 930  
Charleston, West Virginia 25301

Raymond James Financial Services  
#10 Hale Street, Suite 410  
Charleston, West Virginia 25301

Any party listed above may change such address listed for it at any time upon written notice of change sent by United States mail, postage prepaid, to the other parties.

Section 10.07. No Personal Liability. No member of the Council or officer or employee of the Issuer shall be individually or personally liable for the payment of the principal of or the interest on any Series 2010 Bond, but nothing herein contained shall relieve any such member, official or employee from the performance of any official duty provided by law or this Ordinance.

Section 10.08. Law Applicable. The laws of the State shall govern the construction of this Ordinance and of all Refunding Bonds issued hereunder.

Section 10.09. Parties Interested Herein. Nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon, or give to, any person or corporation, other than the Issuer, the Registrar, the Paying Agent, the Registered Owners of the Refunding Bonds and the Original Purchaser, any right, remedy or claim under or by reason of this Ordinance. All the covenants, stipulations, promises and agreements contained in this Ordinance by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the

Registrar, the Paying Agent, the Registered Owners of the Refunding Bonds and the Original Purchaser.

Section 10.10. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Ordinance.

Section 10.11. Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 10.12. Conflicting Provisions Repealed. All ordinances, orders, resolutions or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed, provided however, that the Prior Ordinances shall remain in full force and effect so long as any of the Prior Bonds are Outstanding.

Section 10.13. 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, Clerk and members of the Council 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 10.14. Procedure on Enactment of Ordinance; Public Hearing. Upon adoption of this Ordinance, the Clerk is hereby authorized and directed to have an abstract of this Ordinance, which abstract has been determined by the Council to contain sufficient information to give notice of the contents of such Ordinance, published once each week for 2 successive weeks, with not less than six full days between each publication, the first such publication to be not less than 10 days before the date stated below for the public hearing, in the *Times West Virginia*, a newspaper published and having a general circulation in the City of Fairmont, together with a notice to all persons concerned, stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Bonds described in this Ordinance and that any person interested may appear before the Council of the Issuer at the public hearing to be had at a public meeting of the Council on March 27, 2012, at 7:00 p.m., and present protests, and that a certified copy of this Ordinance is on file with the Clerk for review by interested parties during the office hours of the Clerk. At such hearing all protests and suggestions shall be heard by the Council and it shall then take such action as it shall deem proper in the premises.

First Reading:	February 28, 2012
Second Reading:	March 13, 2012
Passed on Final Reading	
Following Public	
Hearing:	March 27, 2012

Section 10.15. Effective Date. This Ordinance shall take effect on \_\_\_\_\_, 2012  
(30 days from enactment).

Enacted the 27th day of March, 2012.

[SEAL]

\_\_\_\_\_  
Mayor

CERTIFICATION

Certified a true, correct and complete copy of an Ordinance duly enacted by the Council of the CITY OF FAIRMONT at a regular meeting of the Council held on March 27, 2012, pursuant to proper notice, at which meeting a quorum was present and acting throughout, and which Ordinance was enacted following a public hearing thereon, notice of which public hearing was published once a week for two successive weeks in a newspaper published and having a general circulation in the City of Fairmont, the first publication having been not less than 10 days prior to such public hearing.

[SEAL]

\_\_\_\_\_  
Clerk

EXHIBIT A – FORM OF SERIES 2012 C BOND

Except as otherwise provided in the Ordinance, this global bond may be transferred, in whole but not in part, only to another nominee of DTC (as defined in the Ordinance) or to a successor of DTC or to a nominee of a successor of DTC. Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. CR-\_\_\_\_\_

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

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT (WEST VIRGINIA)  
WATER REFUNDING REVENUE BOND, SERIES 2012 C

INTEREST RATE      MATURITY DATE      BOND DATE      CUSIP NO.

REGISTERED OWNER:                      CEDE & CO.

PRINCIPAL AMOUNT:                      \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefore, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date specified above, or, if and to the extent that the City shall default in the payment of interest on any Interest Payment Date, then this Bond shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Bond surrendered for transfer or exchange shall be dated as of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per

annum specified above, semiannually, on \_\_\_\_\_ 1 and \_\_\_\_\_ 1, in each year, beginning \_\_\_\_\_ 1, 20\_\_\_\_ (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Ordinance.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by \_\_\_\_\_, \_\_\_\_\_, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each \_\_\_\_\_ 15 and \_\_\_\_\_ 15) or, in the event of a default in the payment of Bonds, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by \_\_\_\_\_, \_\_\_\_\_, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal office of the Paying Agent, in \_\_\_\_\_, West Virginia.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of \$ \_\_\_\_\_ designated the "City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 C (Bank Qualified)" (the "Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated \_\_\_\_\_, 2012, the proceeds of which are to be used, along with other available funds, for the purpose of (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds, (ii) funding the Series 2012 D Bonds Reserve Account; and (iii) paying costs of issuance of the Series 2012 D Bonds and related costs. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 of the Code of West Virginia, 1931, as amended (the "Act"), and an ordinance duly enacted by the Council of the Issuer on \_\_\_\_\_, 2012, and supplemented by supplemental resolution adopted by said Council on \_\_\_\_\_, 2012, (hereinafter collectively referred to as the "Ordinance"), and is subject to all the terms and conditions of said Ordinance. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the Issuer, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the Clerk in the City of Fairmont, West Virginia.

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Ordinance and as set forth in the following lettered paragraphs:

(A) Optional Redemption. The Bonds maturing on or after \_\_\_\_\_, \_\_\_\_\_ are subject to redemption prior to maturity at the option of the Issuer on and after \_\_\_\_\_, \_\_\_\_\_, in whole or in part at any time, in such order of maturity as shall be designated to the Registrar by the Issuer and by lot within a maturity, at the following redemption prices (expressed as percentages of the principal amount of Bonds to be redeemed), plus interest accrued thereon to the date fixed for redemption:

<u>Period During Which Redeemed</u> <u>(Dates Inclusive)</u>	<u>Redemption</u> <u>Price</u>
_____ to _____	\$ _____
_____ to _____	\$ _____
_____ to _____	\$ _____

(B) Mandatory Sinking Fund Redemption. The Bonds maturing on \_\_\_\_\_, are subject to annual mandatory redemption prior to maturity by random selection on \_\_\_\_\_ of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

Bonds Maturing

Year ( )	<u>Principal Amount</u>
_____	_____

Bonds Maturing

Year ( )	<u>Principal Amount</u>
_____	_____

\_\_\_\_\_  
\* Final Maturity

If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and Maturity Dates.

Notice of any redemption of this Bond, unless waived, shall be given by the Registrar on behalf of the Issuer by mailing an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the

Registrar. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the redemption price therein specified, and from and after such date (unless the Issuer shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of this Bond.

There are outstanding obligations of the Issuer which will rank on a parity with the Series 2012 C Bonds as to liens, pledge, source of and security for payment, as follows: (1) a portion of the Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the "Series 1999 Bonds"); (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000 (the "Series 2008 A Bonds"); (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (Series 2010 A Bonds"); (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (the "Series 2010 B Bonds"); (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000 (the "Series 2010 C Bonds"); and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (the "Series 2010 D Bonds") (collectively, the "Prior Bonds").

The Bonds and the interest thereon are payable only from and are secured by the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Prior Bonds and from moneys in the Series 2012 C Bonds Sinking Fund and the Series 2012 C Bonds Reserve Account established under the Ordinance, and the unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose and to make the other payments required by the Ordinance. This Bond does not constitute an indebtedness of the Issuer within any constitutional or statutory provision or limitation, nor shall the Issuer be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 2012 C Bonds Sinking Fund and the Series 2012 C Bonds Reserve Account and unexpended proceeds of the Bonds. Under the Ordinance, the Issuer has covenanted and agreed to fix, establish and collect just and equitable rates or charges for the use of the services and facilities of the System and to revise the same from time to time as will always be sufficient to pay all operating expenses of the System and to leave a balance each year equal to at least 120% of the maximum amount payable in any year for principal of and interest on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds, including the Series 2012 D Bonds and the Prior 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 Ordinance. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds except for accrued interest thereon shall be applied solely to (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1998 Bonds, (ii) funding the Series 2012 D Bonds Reserve Account; and (iii) paying costs of issuance of the Series 2012 D Bonds and related costs, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the Registered Owners of the Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by said Issuer for the prompt payment of the principal of and interest on the Bonds of which this Bond is one.

This Bond, under the provisions of the Act is and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the Ordinance.

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

This Bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

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

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the CITY OF FAIRMONT has caused this Bond to be signed by its Mayor and, and its corporate seal to be imprinted hereon and attested by its Clerk, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

(Manual or Facsimile Signature)  
Mayor

ATTEST:

(Manual or Facsimile Signature)  
Clerk

CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION

This Bond is one of the fully registered Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto is the complete text of the opinion of Steptoe & Johnson PLLC, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Bonds.

Dated: \_\_\_\_\_, 2012.

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

By \_\_\_\_\_  
Its Authorized Officer

ASSIGNMENT

Social Security or Other Identifying Number of Assignee \_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
the within Bond and does hereby irrevocably constitute and appoint  
\_\_\_\_\_ to transfer  
the said Bond on the books kept for registration thereof with full power of substitution in the  
premises.

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

\_\_\_\_\_

SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

EXHIBIT B – FORM OF SERIES 2012 D BOND

Except as otherwise provided in the Ordinance, this global bond may be transferred, in whole but not in part, only to another nominee of DTC (as defined in the Ordinance) or to a successor of DTC or to a nominee of a successor of DTC. Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. DR-\_\_\_\_\_

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

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT (WEST VIRGINIA)  
WATER REFUNDING REVENUE BOND, SERIES 2012 D

INTEREST RATE      MATURITY DATE      BOND DATE      CUSIP NO.

REGISTERED OWNER:                      CEDE & CO.

PRINCIPAL AMOUNT:                      \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefore, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date specified above, or, if and to the extent that the City shall default in the payment of interest on any Interest Payment Date, then this Bond shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Bond surrendered for transfer or exchange shall be dated as of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per

annum specified above, semiannually, on \_\_\_\_\_ 1 and \_\_\_\_\_ 1, in each year, beginning \_\_\_\_\_ 1, 20\_\_\_\_ (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Ordinance.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by \_\_\_\_\_, \_\_\_\_\_, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each \_\_\_\_\_ 15 and \_\_\_\_\_ 15) or, in the event of a default in the payment of Bonds, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by \_\_\_\_\_, \_\_\_\_\_, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal office of the Paying Agent, in \_\_\_\_\_, West Virginia.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of \$ \_\_\_\_\_ designated the "City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 D" (the "Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated \_\_\_\_\_, 2012, the proceeds of which are to be used, along with other available funds, for the purpose of (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds, (ii) paying a portion of the outstanding principal of and the prorated accrued interest on the Series 1999 Bonds; (iii) funding the Series 2012 C Bonds Reserve Account; and (iv) paying costs of issuance of the Series 2012 C Bonds and the Series 2012 D Bonds and related costs. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 of the Code of West Virginia, 1931, as amended (the "Act"), and an ordinance duly enacted by the Council of the Issuer on \_\_\_\_\_, 2012, and supplemented by supplemental resolution adopted by said Council on \_\_\_\_\_, 2012, (hereinafter collectively referred to as the "Ordinance"), and is subject to all the terms and conditions of said Ordinance. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the Issuer, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the Clerk in the City of Fairmont, West Virginia.

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Ordinance and as set forth in the following lettered paragraphs:

(A) Optional Redemption. The Bonds maturing on or after \_\_\_\_\_, \_\_\_\_\_ are subject to redemption prior to maturity at the option of the Issuer on and after \_\_\_\_\_, \_\_\_\_\_, in whole or in part at any time, in such order of maturity as shall be designated to the Registrar by the Issuer and by lot within a maturity, at the following redemption prices (expressed as percentages of the principal amount of Bonds to be redeemed), plus interest accrued thereon to the date fixed for redemption:

<u>Period During Which Redeemed</u> <u>(Dates Inclusive)</u>	<u>Redemption</u> <u>Price</u>
_____ to _____	\$ _____
_____ to _____	\$ _____
_____ to _____	\$ _____

(B) Mandatory Sinking Fund Redemption. The Bonds maturing on \_\_\_\_\_, are subject to annual mandatory redemption prior to maturity by random selection on \_\_\_\_\_ of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

Bonds Maturing

_____ Year ( ) _____	Principal Amount
----------------------	------------------

Bonds Maturing

_____ Year ( ) _____	Principal Amount
----------------------	------------------

\_\_\_\_\_  
\* Final Maturity

If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and Maturity Dates.

Notice of any redemption of this Bond, unless waived, shall be given by the Registrar on behalf of the Issuer by mailing an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to

the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Registrar. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the redemption price therein specified, and from and after such date (unless the Issuer shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of this Bond.

There are outstanding obligations of the Issuer which will rank on a parity with the Series 2012 C Bonds as to liens, pledge, source of and security for payment, as follows: (1) a portion of Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the "Series 1999 Bonds"); (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000 (the "Series 2008 A Bonds"); (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (Series 2010 A Bonds"); (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618 (the "Series 2010 B Bonds"); (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000 (the "Series 2010 C Bonds"); and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (the "Series 2010 D Bonds") (collectively, the "Prior Bonds"); and (7) Water Refunding Revenue Bonds, Series 2012 C, dated \_\_\_\_\_, 2012, issued simultaneously herewith in the original aggregate principal amount of \$ \_\_\_\_\_ (the "Series 2012 C Bonds")

The Bonds and the interest thereon are payable only from and are secured by the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Prior Bonds and the Series 2012 C Bonds and from moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account established under the Ordinance, and the unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose and to make the other payments required by the Ordinance. This Bond does not constitute an indebtedness of the Issuer within any constitutional or statutory provision or limitation, nor shall the Issuer be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account and unexpended proceeds of the Bonds. Under the Ordinance, the Issuer has covenanted and agreed to fix, establish and collect just and equitable rates or charges for the use of the services and facilities of the System and to revise the same from time to time as will always be sufficient to pay all operating expenses of the System and to leave a balance each year equal to at least 120% of the maximum amount payable in any year for principal of and interest on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds, including the Series

2012 C Bonds and the Prior 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 Ordinance. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds except for accrued interest thereon shall be applied solely to (i) paying in full the entire outstanding principal of and all accrued interest on the Series 1997 Bonds, (ii) paying a portion of the outstanding principal of and all accrued interest on the Series 1999 Bonds; (iii) funding the Series 2012 C Bonds Reserve Account; and (iv) paying costs of issuance of the Series 2012 C Bonds and the Series 2012 D Bonds and related costs, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the Registered Owners of the Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by said Issuer for the prompt payment of the principal of and interest on the Bonds of which this Bond is one.

This Bond, under the provisions of the Act is and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the Ordinance.

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

This Bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

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

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the CITY OF FAIRMONT has caused this Bond to be signed by its Mayor and, and its corporate seal to be imprinted hereon and attested by its Clerk, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

(Manual or Facsimile Signature) \_\_\_\_\_  
Mayor

ATTEST:

(Manual or Facsimile Signature)  
Clerk

CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION

This Bond is one of the fully registered Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto is the complete text of the opinion of Steptoe & Johnson PLLC, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Bonds.

Dated: \_\_\_\_\_, 2012.

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

By \_\_\_\_\_  
Its Authorized Officer

ASSIGNMENT

Social Security or Other Identifying Number of Assignee \_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_

the within Bond and does hereby irrevocably constitute and appoint

\_\_\_\_\_ to transfer

the said Bond on the books kept for registration thereof with full power of substitution in the premises.

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

\_\_\_\_\_

SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

City of Fairmont, West Virginia  
Water Refunding Revenue Bonds, Series 2012 D

**SUPPLEMENTAL PARAMETERS RESOLUTION**

SUPPLEMENTAL RESOLUTION PROVIDING PARAMETERS AS TO THE PRINCIPAL AMOUNTS, DATES, MATURITY DATES, INTEREST RATES, INTEREST AND PRINCIPAL PAYMENT DATES AND OTHER TERMS OF THE WATER REFUNDING REVENUE BONDS, SERIES 2012 D; AUTHORIZING AND APPROVING A BOND PURCHASE AGREEMENT; A COMMITMENT FOR MUNICIPAL BOND INSURANCE; THE SALE AND DELIVERY OF SUCH BONDS TO THE ORIGINAL PURCHASER; APPOINTING A REGISTRAR AND PAYING AGENT FOR SUCH BONDS; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

**WHEREAS**, the City of Fairmont (the “Issuer”) in the County of Marion, State of West Virginia, is a municipal corporation and political subdivision of said State, the governing body of which is its Council (the “Governing Body”);

**WHEREAS**, the Governing Body has duly and officially enacted on March 27, 2012 which became effective on April 26, 2012, an Ordinance (the “Ordinance”) entitled:

AN ORDINANCE AUTHORIZING THE REFUNDING OF THE ISSUER’S OUTSTANDING WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997 A; WATER REVENUE BONDS, SERIES 1998 AND A PORTION OF THE WATER REVENUE BONDS, SERIES 1999 AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, AND PAYING COSTS OF ISSUANCE AND RELATED COSTS, THROUGH THE ISSUANCE OF WATER REFUNDING REVENUE BONDS, SERIES 2012 C (BANK QUALIFIED) OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$10,000,000; AND WATER REFUNDING REVENUE BONDS, SERIES 2012 D (NON-BANK QUALIFIED) OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$30,000,000 PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TAX AND NON-ARBITRAGE CERTIFICATE, AN OFFICIAL STATEMENT, A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER DOCUMENTS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

**WHEREAS**, capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Ordinance (the “Bond Legislation”) when used herein;

**WHEREAS**, the Ordinance provides for the issuance by the Issuer of its Water Refunding Revenue Bonds, Series 2012 C in an aggregate principal amount not to exceed \$10,000,000 (the “Series 2012 C Bonds”) and Water Refunding Revenue Bonds, Series 2012 D in an aggregate principal amount not to exceed \$30,000,000 (the “Series 2012 D Bonds”), in accordance with Chapter 8, Article 19 and Chapter 13, Article 2 of the West Virginia Code of 1931, as amended (the “Act”);

**WHEREAS**, the Issuer is advised that current market conditions are such that interest savings would be realized from the current refunding of its outstanding Water Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of \$10,260,000 (the “Series 1997 Bonds”) and the Issuer has determined that it is currently in the best interest of its residents to currently refund the Series 1997 Bonds pursuant to the issuance of the Series 2012 D Bonds;

**WHEREAS**, the Issuer is advised that current market conditions are such that interest savings would be realized from the current partial refunding of its outstanding Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the “Series 1999 Bonds”) and the Issuer has determined that it is currently in the best interest of its residents to currently partially refund the Series 1999 Bonds pursuant to the issuance of the Series 2012 D Bonds;

**WHEREAS**, the Issuer is advised that current market conditions are such that interest savings would be realized from the current refunding of its outstanding Water Revenue Bonds, Series 1998, dated December 15, 1998, issued in the original aggregate principal amount of \$9,600,000 (the “Series 1998 Bonds”) and the Issuer has determined that it is currently in the best interest of its residents to currently refund the Series 1998 Bonds pursuant to the issuance of its Series 2012 D Bonds;

**WHEREAS**, the Ordinance further provided that the exact dates, amounts, maturities, interest rates, redemption provisions, purchase price and other terms of the Series 2012 D Bonds should be established by Supplemental Resolution or by Certificate of Determinations, that a Registrar, Paying Agent and Depository Bank be designated, that Bond Purchase Agreement, a Continuing Disclosure Agreement, Registrar Agreement and an Official Statement be approved and that other matters pertaining to the Series 2012 D Bonds be provided for by a Supplemental Resolution of the Governing Body or pursuant to a Certificate of Determinations, that additional covenants and provisions relating to the Series 2012 D Bonds be provided therein, and that other matters pertaining to the Series 2012 D Bonds be provided for by a supplemental resolution of this Governing Body or by Certificate of Determinations;

**WHEREAS**, the Series 2012 D Bonds are proposed to be purchased by Crews & Associates, Inc., Charleston, West Virginia and Piper Jaffray & Co., Charleston, West Virginia (collectively, the “Original Purchaser”), pursuant to a bond purchase agreement between the Original Purchaser and the Issuer, to be dated the date of execution thereof (the “Bond Purchase Agreement”);

**WHEREAS**, the Governing Body has determined that, in order to obtain the best possible savings for the City in the current interest rate environment, the Mayor shall be empowered and authorized to execute the Bond Purchase Agreement, within the parameters set forth herein, at such time as the Mayor shall determine most advantageous to the Issuer, or not at all; and

**WHEREAS**, the Governing Body deems it essential and desirable that this supplemental parameters resolution (the "Supplemental Parameters Resolution") be adopted, that the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Tax and Non-Arbitrage Certificate and the Registrar Agreement hereinafter provided for be entered into by the Issuer, that the Official Statement relating to the Series 2012 D Bonds, hereinafter described, be approved, that the Mayor be authorized to enter into the Bond Purchase Agreement within the parameters hereby approved by the Governing Body, and that other matters relating to the Series 2012 D Bonds be herein provided for all in accordance with the Ordinance;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAIRMONT:**

SECTION 1. The Issuer hereby approves the substitution of Piper Jaffray & Co. for Raymond James Financials, Inc. as one of the purchasers of the Series 2012 D Bonds, along with Crews & Associates, Inc.

SECTION 2. For the purposes of (i) paying the entire outstanding principal balance of and all accrued interest on the Issuer's outstanding Series 1997 Bonds; (ii) paying the entire outstanding principal balance of and all accrued interest on the Issuer's outstanding Series 1998 Bonds; (iii) paying a portion of the outstanding principal balance of and all accrued interest on such principal, the Issuer's outstanding Series 1999 Bonds; (iv) funding a debt service reserve account for the Series 2012 D Bonds; and (v) paying costs of issuance of the Series 2012 D Bonds and related costs, the Governing Body of the Issuer hereby authorizes and orders the issuance of the Series 2012 D Bonds in an aggregate principal amount not to exceed \$30,000,000, provided that the Net Present Value of the savings of such refunding shall not be less than 4.0%.

SECTION 3. The Issuer instructs the Commission to transfer moneys in the Series 1999 Bonds Reserve Account to the Series 2012 D Bonds Reserve Account when the Series 1999 Bonds are paid in full. The Issuer covenants and agrees not to use the Series 1999 Bonds Reserve Account for the final payment of the Series 1999 Bonds.

SECTION 4. Pursuant to the Ordinance and the Act, this Supplemental Parameters Resolution is adopted and there are hereby authorized and ordered to be issued the Series 2012 D Bonds. The Series 2012 D Bonds shall be issued in the aggregate principal amount not to exceed \$30,000,000, bear interest at a rate not to exceed 6.0%, payable semiannually on January 1 and July 1 of each year, and shall mature on July 1 in such years, shall be dated such date, upon original issuance, shall mature in such principal amounts on such dates (with final maturity no later than July 1, 2029) shall be subject to such redemption provisions, all as shall subsequently be approved by the Mayor pursuant to the execution and delivery by the Mayor of a Certificate of Determinations with respect to the Series 2012 D Bonds, dated the date of the Bond Purchase Agreement, the form of which is attached hereto as EXHIBIT A and approved hereby (the "Certificate of Determinations"); and shall be substantially in the form set forth in the Ordinance, provided however, that the specific terms of the Series 2012 D Bonds shall be as determined by the Mayor at the time of the execution of the Bond Purchase Agreement and as approved by the Mayor in the Certificate of Determinations. All other provisions relating to the Series 2012 D Bonds shall be as provided in the Ordinance.

SECTION 5. The Bond Purchase Agreement by and between the Original Purchaser and the Issuer, substantially in the forms to be approved pursuant to the execution and delivery by the Mayor of the Certificate of Determinations, and the execution and delivery (in multiple counterparts) by the Mayor thereof shall be and the same are hereby authorized, approved, and directed. The Mayor shall execute and deliver the Bond Purchase Agreement with such changes, insertions and omissions as may be approved

by the Mayor. The execution of the Bond Purchase Agreement by the Mayor shall be conclusive evidence of any approval required by this Section, and authorization of any action required by the Bond Purchase Agreement relating to the issuance and sale of the Series 2012 D Bonds, including the payment of all necessary fees and expenses in connection therewith.

SECTION 6. Proceeds of the Series 2012 D Bonds shall be expended solely for the purposes set forth herein.

SECTION 7. The Issuer is advised and hereby finds that based upon the assumed principal amount, maturity schedule and interest rates for the Series 2012 D Bonds presented to the Issuer by the Original Purchaser, the Series 2012 D Bonds show a net present value debt service savings to the Issuer after deducting all expenses of the refunding of the Series 1997 Bonds, the Series 1998 Bonds and a portion of the Series 1999 Bonds and the costs of issuing the Series 2012 D Bonds.

SECTION 8. The Tax and Non-Arbitrage Certificate, to be dated the date of execution and delivery of the Series 2012 D Bonds (the "Tax Certificate"), and executed and delivered by the Issuer, substantially in the form to be approved pursuant to the execution and delivery by the Mayor of the Certificate of Determinations, and the execution and delivery (in multiple counterparts) by the Mayor thereof shall be and the same are hereby authorized, approved and directed. The Mayor shall execute and deliver the Tax Certificate with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Tax Certificate by the Mayor shall be conclusive evidence of any approval required by this Section.

SECTION 9. The Continuing Disclosure Agreement, to be dated the date of execution and delivery of the Series 2012 D Bonds (the "Disclosure Agreement"), by and between the Issuer and the Dissemination Agent named therein, substantially in the form to be approved pursuant to the execution and delivery by the Mayor of the Certificate of Determinations, and the execution and delivery (in multiple counterparts) by the Mayor thereof shall be and the same are hereby authorized, approved and directed. The Mayor shall execute and deliver the Disclosure Agreement with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Disclosure Agreement by the Mayor shall be conclusive evidence of any approval required by this Section.

SECTION 10. The distribution by the Original Purchaser of a Preliminary Official Statement (which is a "deemed final" official statement in accordance with SEC Rule 15c2-12), substantially in the form submitted to this meeting is hereby ratified and approved. The certificate of the Issuer relating to compliance with SEC Rule 15c2-12 and the execution and delivery thereof by the Mayor is hereby approved. The Official Statement to be substantially in the form of the Preliminary Official Statement, (with such changes, insertions and omissions as may be necessary or advisable in the opinion of the Mayor) and the distribution of counterparts or copies thereof by the Original Purchaser are hereby approved. The Mayor shall execute and deliver the Official Statement with such changes, insertions and omissions as may be approved. The execution of the Official Statement by the Mayor shall be conclusive evidence of any approval required by this Section.

SECTION 11. The Registrar Agreement by and between the Issuer and the Registrar designated herein, substantially in the form to be approved pursuant to the execution and delivery by the Mayor of the Certificate of Determinations, and the execution and delivery (in multiple counterparts) by the Mayor thereof shall be and the same are hereby authorized, approved and directed. The Mayor shall execute and deliver the Registrar Agreement with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Registrar Agreement by the Mayor shall be conclusive evidence of any approval required by this Section.

SECTION 12. The firm of Steptoe & Johnson PLLC, Charleston, West Virginia, is hereby appointed bond counsel to the Issuer in connection with the issuance of the Series 2012 D Bonds.

SECTION 13. The Issuer hereby appoints and designates the West Virginia Municipal Bond Commission, Charleston, West Virginia, as the Paying Agent for the Series 2012 D Bonds.

SECTION 14. The Issuer hereby appoints and designates WesBanco Bank, Inc., Wheeling, West Virginia, as the Depository Bank for the Series 2012 D Bonds.

SECTION 15. The Issuer hereby appoints and designates WesBanco Bank, Inc., Wheeling, West Virginia, as the Registrar.

SECTION 16. Upon approval by the Mayor, the Issuer may purchase insurance and in such case the covenants and provisions to be required by the Bond Insurer as a condition precedent to issuance of its Insurance Policy for the Bonds and shall be set forth in Exhibit A to the Certificate of Determinations.

SECTION 17. The Mayor and Clerk are hereby authorized and directed to execute and deliver such other documents and certificates, required or desirable in connection with the Series 2012 D Bonds to the end that the Series 2012 D Bonds may be delivered on a timely basis to the Original Purchaser pursuant to the Bond Purchase Agreement.

SECTION 18. The notice addresses for the Depository Bank, Paying Agent, Registrar and Original Purchaser shall be as follows:

PAYING AGENT

West Virginia Municipal Bond Commission  
1207 Quarrier Street, Suite 401  
Charleston, West Virginia 25301  
Attention: Executive Director

REGISTRAR/DEPOSITORY BANK

WesBanco Bank, Inc.  
One Bank Plaza  
Wheeling, West Virginia 26003  
Attention: Trust Department

ORIGINAL PURCHASER

Crews & Associates, Inc.  
300 Summers Street, Suite 930  
Charleston, West Virginia 25301-1631

Piper Jaffray & Co.  
405 Capitol Street, Suite 613  
Charleston, West Virginia 25301

SECTION 19. The issuance of the Series 2012 D Bonds is in the public interest, serves a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

SECTION 20. The Issuer hereby covenants and agrees that it will not permit at any time or times any of the proceeds of the Series 2012 D Bonds or any other funds of the Issuer to be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause any of the Series 2012 D Bonds or Prior Bonds to be an "arbitrage bond" as defined in Section 148 of the Code, and the regulations promulgated pursuant thereto. The Mayor of the Issuer is authorized and directed to execute and deliver such further instruments or agreements as shall be required to provide further assurances of the Issuer's compliance with this covenant.

SECTION 21. The Mayor and Clerk, and all other appropriate officers and employees of the Issuer are hereby authorized, empowered and directed to do any and all things proper and necessary to cause the Series 2012 D Bonds to be duly and properly issued by the Issuer and delivered to the Original Purchaser as herein authorized and to otherwise facilitate the transaction contemplated by this Supplemental Parameters Resolution, and no further authority shall be necessary to authorize any such officers or employees to give such further assurance and do such further acts as may be legally required.

SECTION 22. This Supplemental Parameters Resolution shall be effective immediately following adoption hereof.

[Remainder of Page Intentionally Left Blank]

Adopted this 12th day of June, 2012.

CITY OF FAIRMONT

[SEAL]

By: \_\_\_\_\_  
Its: Mayor

CERTIFICATION

Certified a true copy of a Supplemental Parameters Resolution duly adopted by the Council of the CITY OF FAIRMONT on June 12, 2012, which Supplemental Parameters Resolution has not been repealed, rescinded, modified, amended or revoked, as of the date hereof.

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

268460.00017

## EXHIBIT B

### FORM OF CERTIFICATE OF DETERMINATIONS

City of Fairmont, West Virginia  
Water Refunding Revenue Bonds, Series 2012 D

### CERTIFICATE OF DETERMINATIONS

The undersigned, William Burdick, Mayor of the City of Fairmont (the "Issuer"), in accordance with the Supplemental Parameters Resolution adopted by the Governing Body of the Issuer on June 12, 2012 (the "Supplemental Parameters Resolution"), with respect to the Issuer's Water Refunding Revenue Bonds, Series 2012 D (the "Series 2012 D Bonds") hereby finds and determines this \_\_\_\_\_ day of \_\_\_\_\_, 2012 Ds follows:

1. The Series 2012 D Bonds shall be dated \_\_\_\_\_, 2012 shall bear interest on January 1 and July 1 of each year commencing \_\_\_\_\_ 1, 20\_\_\_\_\_.
2. The Series 2012 D Bonds shall be issued in the aggregate principal amount of \$\_\_\_\_\_. The interest rates on the Series 2012 D Bonds do not exceed 6.0%, being the maximum interest rate authorized by the Supplemental Parameters Resolution. The Net Present Value of the savings realized from such refunding is not less than 4.0%.
3. The Series 2012 D Bonds shall mature in the amounts and on the dates and shall be subject to mandatory sinking fund redemption in the amounts and on the dates set forth on Schedule 1 attached hereto and incorporated herein.
4. The Series 2012 D Bonds shall bear interest at the rates and produce the yields set forth on Schedule 1 attached hereto and incorporated herein.
5. The Series 2012 D Bonds shall be subject to optional and mandatory redemption as set forth on Schedule 3 attached hereto and incorporated herein.
6. The Series 2012 D Bonds shall be sold to Crews & Associates, Inc. and Piper Jaffray & Co. (collectively, the "Underwriter"), pursuant to the terms of the Bond Purchase Agreement by and between the Underwriter and the Issuer, at an aggregate purchase price of \$\_\_\_\_\_ (representing par value less an Underwriter's discount of \$\_\_\_\_\_ and a net original issue discount of \$\_\_\_\_\_).
7. The forms of the Bond Purchase Agreement, the Tax Certificate, the Continuing Disclosure Agreement, the Official Statement, the Rule 15c2-12 Certificate and the Registrar Agreement attached hereto are hereby approved.
8. The covenants and provisions to be required by the Bond Insurer as a condition precedent to issuance of its Insurance Policy for the Bonds set forth in Exhibit A, and incorporated herein by reference as part hereof, such covenants and provisions to be supplemental and amendatory of, and controlling with respect to the Bond Legislation and applicable to the Bonds.

The undersigned hereby certifies that the foregoing terms and conditions of the Series 2012 D Bonds are within the parameters prescribed by the Supplemental Parameters Resolution, and the Series 2012 D Bonds may be issued with such terms and conditions as authorized by the Supplemental Parameters Resolution.

WITNESS my signature on the day and year first written above.

CITY OF FAIRMONT

By: \_\_\_\_\_  
Its: Mayor

268460.00017

**SCHEDULE 1**

**SERIES 2012 D BOND TERMS**

<u>Bond No.</u>	<u>Maturity Date</u> (December 1)	<u>Principal</u> <u>Amount</u> (thousands)	<u>Interest</u> <u>Rate</u>	<u>Price or</u> <u>Yield</u>
AR-1	20__	\$ ____	___.____%	___.____%

**SCHEDULE 2**

**SERIES 2012 D BONDS REDEMPTION PROVISIONS:**

[to be inserted after pricing]

City of Fairmont, West Virginia  
Water Refunding Revenue Bonds, Series 2012 D

**SECOND SUPPLEMENTAL RESOLUTION**

SECOND SUPPLEMENTAL RESOLUTION PROVIDING TERMS AND OTHER PROVISIONS RELATING TO A COMMITMENT FOR MUNICIPAL BOND INSURANCE FOR THE WATER REFUNDING REVENUE BONDS, SERIES 2012 D; APPROVING THE FORM OF THE PRELIMINARY OFFICIAL STATEMENT AND MAKING OTHER PROVISIONS AS TO THE BONDS.

**WHEREAS**, the City of Fairmont (the “Issuer”) in the County of Marion, State of West Virginia, is a municipal corporation and political subdivision of said State, the governing body of which is its Council (the “Governing Body”);

**WHEREAS**, the Governing Body has duly and officially enacted on March 27, 2012 which became effective on April 26, 2012, an Ordinance (the “Ordinance”) entitled:

AN ORDINANCE AUTHORIZING THE REFUNDING OF THE ISSUER’S OUTSTANDING WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997 A; WATER REVENUE BONDS, SERIES 1998 AND A PORTION OF THE WATER REVENUE BONDS, SERIES 1999 AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, AND PAYING COSTS OF ISSUANCE AND RELATED COSTS, THROUGH THE ISSUANCE OF WATER REFUNDING REVENUE BONDS, SERIES 2012 C (BANK QUALIFIED) OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$10,000,000; AND WATER REFUNDING REVENUE BONDS, SERIES 2012 D (NON-BANK QUALIFIED) OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$30,000,000 PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TAX AND NON-ARBITRAGE CERTIFICATE, AN OFFICIAL STATEMENT, A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER DOCUMENTS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

**WHEREAS**, the Governing Body has duly and officially adopted on June 12, 2012, a Supplemental Parameters Resolution (the “Supplemental Parameters Resolution”) entitled:

SUPPLEMENTAL RESOLUTION PROVIDING PARAMETERS AS TO THE PRINCIPAL AMOUNTS, DATES, MATURITY DATES,

INTEREST RATES, INTEREST AND PRINCIPAL PAYMENT DATES AND OTHER TERMS OF THE WATER REFUNDING REVENUE BONDS, SERIES 2012 D; AUTHORIZING AND APPROVING A BOND PURCHASE AGREEMENT; A COMMITMENT FOR MUNICIPAL BOND INSURANCE; THE SALE AND DELIVERY OF SUCH BONDS TO THE ORIGINAL PURCHASER; APPOINTING A REGISTRAR AND PAYING AGENT FOR SUCH BONDS; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

**WHEREAS**, capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Ordinance, as supplemented (collectively, the “Bond Legislation”) when used herein;

**WHEREAS**, the Bond Legislation provides for the purchase of insurance and the covenants and provisions to be required by the Bond Insurer as a condition precedent to issuance of its Insurance Policy for the Bonds and be set forth in an exhibit to the Certificate of Determinations, attached to the Supplemental Parameters Resolution;

**WHEREAS**, the covenants and provisions required by the Bond Insurer were not available at the adoption of the Supplemental Parameters Resolution and are now available and attached hereto as Exhibit A;

**WHEREAS**, the Governing Body has been provided the form of the Preliminary Official Statement for approval; attached hereto as Exhibit B and incorporated herein by reference; and

**WHEREAS**, the Governing Body deems it essential and desirable that this second supplemental resolution (the “Second Supplemental Resolution”) be adopted, that the covenants and provisions required by the Bond Insurer are hereby approved by the Governing Body, that the Preliminary Official Statement be approved and that other matters relating to the Series 2012 D Bonds herein provided for all in accordance with the Bond Legislation;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAIRMONT:**

SECTION 1. The Issuer hereby approves the purchase of insurance and the covenants and provisions to be required by the Bond Insurer as a condition precedent to issuance of its Insurance Policy for the Bonds as shall be set forth in Exhibit A attached hereto.

SECTION 2. The Issuer hereby approves the Preliminary Official Statement as set forth in Exhibit B attached hereto.

SECTION 3. This Second Supplemental Resolution shall be effective immediately following adoption hereof.

[Remainder of Page Intentionally Left Blank]

Adopted this 12th day of September, 2012.

CITY OF FAIRMONT

By: \_\_\_\_\_  
Its: Mayor

CERTIFICATION

Certified a true copy of a Second Supplemental Resolution duly adopted by the Council of the CITY OF FAIRMONT on September 12, 2012, which Second Supplemental Resolution has not been repealed, rescinded, modified, amended or revoked, as of the date hereof.

[SEAL]

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

268460.00017

**EXHIBIT A**  
**BOND INSURANCE COVENANTS**

**A. ORDINANCE REQUIREMENTS**

The Ordinance shall incorporate the following requirements either in one section or article entitled "Provisions Relating to Bond Insurance" (or the like), **the provisions of which section or article shall be stated in the Ordinance to govern, notwithstanding anything to the contrary set forth in the Ordinance,** or individually in the appropriate sections:

- (a) "Insurance Policy" shall be defined as follows: "the insurance policy issued by the Insurer guaranteeing the scheduled payment of principal of and interest on the Bonds when due". "Insurer" shall be defined as follows: "Assured Guaranty Municipal Corp. , a New York stock insurance company, or any successor thereto or assignee thereof".
- (b) The prior written consent of the Insurer shall be a condition precedent to the deposit of any credit instrument provided in lieu of a cash deposit into the Debt Service Reserve Fund, if any. Notwithstanding anything to the contrary set forth in the Ordinance, amounts on deposit in the Debt Service Reserve Fund shall be applied solely to the payment of debt service due on the Bonds.
- (c) The Insurer shall be deemed to be the sole holder of the Insured Bonds for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the holders of the Bonds insured by it are entitled to take pursuant to the Ordinance pertaining to (i) defaults and remedies and (ii) the duties and obligations of the Paying Agent. Remedies granted to the Bondholders shall expressly include mandamus.
- (d) The security for the Bonds shall include a pledge of any agreement with any underlying obligor that is a source of payment for the Bonds and a default under any such agreement shall constitute an Event of Default under the Ordinance.
- (e) If acceleration is permitted under the Ordinance, the maturity of Bonds insured by the Insurer shall not be accelerated without the consent of the Insurer and in the event the maturity of the Bonds is accelerated, the Insurer may elect, in its sole discretion, to pay accelerated principal and interest accrued on such principal to the date of acceleration (to the extent unpaid by the Issuer) and the Paying Agent shall be required to accept such amounts. Upon payment of such accelerated principal and interest accrued to the acceleration date as provided above, the Insurer's obligations under the Insurance Policy with respect to such Bonds shall be fully discharged.
- (f) No grace period for a covenant default shall exceed 30 days or be extended for more than 60 days, without the prior written consent of the Insurer. No grace period shall be permitted for payment defaults.
- (g) The Insurer shall be included as a third party beneficiary to the Ordinance.

- (h) Upon the occurrence of an extraordinary optional, special or extraordinary mandatory redemption in part, the selection of Bonds to be redeemed shall be subject to the approval of the Insurer. The exercise of any provision of the Ordinance which permits the purchase of Bonds in lieu of redemption shall require the prior written approval of the Insurer if any Bond so purchased is not cancelled upon purchase.
- (i) Any amendment, supplement, modification to, or waiver of, the Ordinance or any other transaction document, including any underlying security agreement (each a "Related Document"), that requires the consent of Bondowners or adversely affects the rights and interests of the Insurer shall be subject to the prior written consent of the Insurer.
- (j) Unless the Insurer otherwise directs, upon the occurrence and continuance of an Event of Default or an event which with notice or lapse of time would constitute an Event of Default, amounts on deposit in the Construction Fund shall not be disbursed, but shall instead be applied to the payment of debt service or redemption price of the Bonds.
- (k) The rights granted to the Insurer under the Ordinance or any other Related Document to request, consent to or direct any action are rights granted to the Insurer in consideration of its issuance of the Insurance Policy. Any exercise by the Insurer of such rights is merely an exercise of the Insurer's contractual rights and shall not be construed or deemed to be taken for the benefit, or on behalf, of the Bondholders and such action does not evidence any position of the Insurer, affirmative or negative, as to whether the consent of the Bondowners or any other person is required in addition to the consent of the Insurer.
- (l) Only (1) cash, (2) non-callable direct obligations of the United States of America ("Treasuries"), (3) evidences of ownership of proportionate interests in future interest and principal payments on Treasuries held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying Treasuries are not available to any person claiming through the custodian or to whom the custodian may be obligated, (4) subject to the prior written consent of the Insurer, pre-refunded municipal obligations rated "AAA" and "Aaa" by S&P and Moody's, respectively, or (5) subject to the prior written consent of the Insurer, securities eligible for "AAA" defeasance under then existing criteria of S & P or any combination thereof, shall be used to effect defeasance of the Bonds unless the Insurer otherwise approves.

To accomplish defeasance, the Issuer shall cause to be delivered (i) a report of an independent firm of nationally recognized certified public accountants or such other accountant as shall be acceptable to the Insurer ("Accountant") verifying the sufficiency of the escrow established to pay the Bonds in full on the maturity or redemption date ("Verification"), (ii) an Escrow Deposit Agreement (which shall be acceptable in form and substance to the Insurer), (iii) an opinion of nationally recognized bond counsel to the effect that the Bonds are no longer "Outstanding" under the Ordinance and (iv) a certificate of discharge of the Paying Agent with respect to the Bonds; each Verification and defeasance opinion shall be acceptable in form and substance, and addressed, to the Issuer, Paying Agent and Insurer. The Insurer shall be provided with final drafts of the

above-referenced documentation not less than five business days prior to the funding of the escrow.

Bonds shall be deemed "Outstanding" under the Ordinance unless and until they are in fact paid and retired or the above criteria are met.

- (m) Amounts paid by the Insurer under the Insurance Policy shall not be deemed paid for purposes of the Ordinance and the Bonds relating to such payments shall remain Outstanding and continue to be due and owing until paid by the Issuer in accordance with the Ordinance. The Ordinance shall not be discharged unless all amounts due or to become due to the Insurer have been paid in full or duly provided for.
- (n) Each of the Issuer and Paying Agent covenant and agree to take such action (including, as applicable, filing of UCC financing statements and continuations thereof) as is necessary from time to time to preserve the priority of the pledge of the Trust Estate under applicable law.
- (o) Claims Upon the Insurance Policy and Payments by and to the Insurer.

If, on the third Business Day prior to the related scheduled interest payment date or principal payment date ("Payment Date") there is not on deposit with the Paying Agent, after making all transfers and deposits required under the Ordinance, moneys sufficient to pay the principal of and interest on the Bonds due on such Payment Date, the Paying Agent shall give notice to the Insurer and to its designated agent (if any) (the "Insurer's Fiscal Agent") by telephone or telecopy of the amount of such deficiency by 12:00 noon, New York City time, on such Business Day. If, on the second Business Day prior to the related Payment Date, there continues to be a deficiency in the amount available to pay the principal of and interest on the Bonds due on such Payment Date, the Paying Agent shall make a claim under the Insurance Policy and give notice to the Insurer and the Insurer's Fiscal Agent (if any) by telephone of the amount of such deficiency, and the allocation of such deficiency between the amount required to pay interest on the Bonds and the amount required to pay principal of the Bonds, confirmed in writing to the Insurer and the Insurer's Fiscal Agent by 12:00 noon, New York City time, on such second Business Day by filling in the form of Notice of Claim and Certificate delivered with the Insurance Policy.

The Paying Agent shall designate any portion of payment of principal on Bonds paid by the Insurer, whether by virtue of mandatory sinking fund redemption, maturity or other advancement of maturity, on its books as a reduction in the principal amount of Bonds registered to the then current Bondholder, whether DTC or its nominee or otherwise, and shall issue a replacement Bond to the Insurer, registered in the name of Assured Guaranty Municipal Corp., in a principal amount equal to the amount of principal so paid (without regard to authorized denominations); provided that the Paying Agent's failure to so designate any payment or issue any replacement Bond shall have no effect on the amount of principal or interest payable by the Issuer on any Bond or the subrogation rights of the Insurer.

The Paying Agent shall keep a complete and accurate record of all funds deposited by the Insurer into the Policy Payments Account (defined below) and the allocation of such funds to payment of interest on and principal of any Bond. The Insurer shall have the right to inspect such records at reasonable times upon reasonable notice to the Paying Agent.

Upon payment of a claim under the Insurance Policy, the Paying Agent shall establish a separate special purpose trust account for the benefit of Bondholders referred to herein as the "Policy Payments Account" and over which the Paying Agent shall have exclusive control and sole right of withdrawal. The Paying Agent shall receive any amount paid under the Insurance Policy in trust on behalf of Bondholders and shall deposit any such amount in the Policy Payments Account and distribute such amount only for purposes of making the payments for which a claim was made. Such amounts shall be disbursed by the Paying Agent to Bondholders in the same manner as principal and interest payments are to be made with respect to the Bonds under the sections hereof regarding payment of Bonds. It shall not be necessary for such payments to be made by checks or wire transfers separate from the check or wire transfer used to pay debt service with other funds available to make such payments. Notwithstanding anything herein to the contrary, the Issuer agrees to pay to the Insurer (i) a sum equal to the total of all amounts paid by the Insurer under the Insurance Policy (the "Insurer Advances"); and (ii) interest on such Insurer Advances from the date paid by the Insurer until payment thereof in full, payable to the Insurer at the Late Payment Rate per annum (collectively, the "Insurer Reimbursement Amounts"). "Late Payment Rate" means the lesser of (a) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank at its principal office in The City of New York, as its prime or base lending rate (any change in such rate of interest to be effective on the date such change is announced by JPMorgan Chase Bank) plus 3%, and (ii) the then applicable highest rate of interest on the Bonds and (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Late Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. The Issuer hereby covenants and agrees that the Insurer Reimbursement Amounts are secured by a lien on and pledge of the Gross Revenues and payable from such Gross Revenues on a parity with debt service due on the Bonds.

Funds held in the Policy Payments Account shall not be invested by the Paying Agent and may not be applied to satisfy any costs, expenses or liabilities of the Paying Agent. Any funds remaining in the Policy Payments Account following a Bond payment date shall promptly be remitted to the Insurer.

- (p) The Insurer shall, to the extent it makes any payment of principal of or interest on the Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Insurance Policy. Each obligation of the Issuer to the Insurer under the Related Documents shall survive discharge or termination of such Related Documents.
- (q) The Issuer shall pay or reimburse the Insurer any and all charges, fees, costs and expenses that the Insurer may reasonably pay or incur in connection with (i) the

administration, enforcement, defense or preservation of any rights or security in any Related Document; (ii) the pursuit of any remedies under the Ordinance or any other Related Document or otherwise afforded by law or equity, (iii) any amendment, waiver or other action with respect to, or related to, the Ordinance or any other Related Document whether or not executed or completed, or (iv) any litigation or other dispute in connection with the Ordinance or any other Related Document or the transactions contemplated thereby, other than costs resulting from the failure of the Insurer to honor its obligations under the Insurance Policy. The Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect of the Ordinance or any other Related Document.

- (r) After payment of reasonable expenses of the Paying Agent, the application of funds realized upon default shall be applied to the payment of expenses of the Issuer or rebate only after the payment of past due and current debt service on the Bonds and amounts required to restore the Debt Service Reserve Fund to the Debt Service Reserve Requirement.
- (s) The Insurer shall be entitled to pay principal or interest on the Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Issuer (as such terms are defined in the Insurance Policy) and any amounts due on the Bonds as a result of acceleration of the maturity thereof in accordance with the Ordinance, whether or not the Insurer has received a Notice of Nonpayment (as such terms are defined in the Insurance Policy) or a claim upon the Insurance Policy.
- (t) The notice address of the Insurer is: Assured Guaranty Municipal Corp., 31 West 52nd Street, New York, New York 10019, Attention: Managing Director – Surveillance, Re: Policy No. \_\_\_\_, Telephone: (212) 826-0100; Telecopier: (212) 339-3556. In each case in which notice or other communication refers to an Event of Default, then a copy of such notice or other communication shall also be sent to the attention of the General Counsel and shall be marked to indicate "URGENT MATERIAL ENCLOSED."
- (u) The Insurer shall be provided with the following information by the Issuer or Paying Agent, as the case may be:
  - (i) Annual audited financial statements within 150 days after the end of the Issuer's fiscal year (together with a certification of the Issuer that it is not aware of any default or Event of Default under the Ordinance), and the Issuer's annual budget within 30 days after the approval thereof together with such other information, data or reports as the Insurer shall reasonably request from time to time;
  - (ii) Notice of any draw upon the Debt Service Reserve Fund within two Business Days after knowledge thereof other than (i) withdrawals of amounts in excess of the Debt Service Reserve Requirement and (ii) withdrawals in connection with a refunding of Bonds;

- (iii) Notice of any default known to the Paying Agent or Issuer within five Business Days after knowledge thereof;
- (iv) Prior notice of the advance refunding or redemption of any of the Bonds, including the principal amount, maturities and CUSIP numbers thereof;
- (v) Notice of the resignation or removal of the Paying Agent and Bond Registrar and the appointment of, and acceptance of duties by, any successor thereto;
- (vi) Notice of the commencement of any proceeding by or against the Issuer commenced under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an "Insolvency Proceeding");
- (vii) Notice of the making of any claim in connection with any Insolvency Proceeding seeking the avoidance as a preferential transfer of any payment of principal of, or interest on, the Bonds;
- (viii) A full original transcript of all proceedings relating to the execution of any amendment, supplement, or waiver to the Related Documents; and
- (ix) All reports, notices and correspondence to be delivered to Bondholders under the terms of the Related Documents.

In addition, to the extent that the Issuer has entered into a continuing disclosure agreement, covenant or undertaking with respect to the Bonds, all information furnished pursuant to such agreements shall also be provided to the Insurer, simultaneously with the furnishing of such information.

- (v) The Insurer shall have the right to receive such additional information as it may reasonably request.
- (w) The Issuer will permit the Insurer to discuss the affairs, finances and accounts of the Issuer or any information the Insurer may reasonably request regarding the security for the Bonds with appropriate officers of the Issuer and will use commercially reasonable efforts to enable the Insurer to have access to the facilities, books and records of the Issuer on any business day upon reasonable prior notice.
- (x) The Issuer shall notify the Insurer of any failure of the Issuer to provide notices, certificates and other information under the transaction documents.
- (y) Notwithstanding satisfaction of the other conditions to the issuance of Additional Bonds set forth in the Ordinance, no such issuance may occur (1) if an Event of Default (or any event which, once all notice or grace periods have passed, would constitute an Event of Default) exists unless such default shall be cured upon such issuance and (2) unless the

Debt Service Reserve Fund is fully funded at the Debt Service Reserve Requirement (including the proposed issue) upon the issuance of such Additional Bonds, in either case unless otherwise permitted by the Insurer.

- (z) In determining whether any amendment, consent, waiver or other action to be taken, or any failure to take action, under the Ordinance would adversely affect the security for the Bonds or the rights of the Bondholders, the Paying Agent shall consider the effect of any such amendment, consent, waiver, action or inaction as if there were no Insurance Policy.
- (aa) No contract shall be entered into or any action taken by which the rights of the Insurer or security for or sources of payment of the Bonds may be impaired or prejudiced in any material respect except upon obtaining the prior written consent of the Insurer.
- (bb) If the Bonds are issued for refunding purposes, there shall be delivered an opinion of Bond Counsel addressed to the Insurer (or a reliance letter relating thereto), or a certificate of discharge of the Paying Agent for the Refunded Bonds, to the effect that, upon the making of the required deposit to the escrow, the legal defeasance of the Refunded Bonds shall have occurred. If the Refunded Bonds are insured by Assured Guaranty Municipal Corp., at least three business days prior to the proposed date for delivery of the Policy with respect to the Refunding Bonds, the Insurer shall also receive (i) the verification letter, of which the Insurer shall be an addressee, by an independent firm of certified public accountants which is either nationally recognized or otherwise acceptable to the Insurer, of the adequacy of the escrow established to provide for the payment of the Refunded Bonds in accordance with the terms and provisions of the Escrow Deposit Agreement, and (ii) the form of an opinion of Bond Counsel addressed to the Insurer (or a reliance letter relating thereto) to the effect that the Escrow Deposit Agreement is a valid and binding obligation of the parties thereto, enforceable in accordance with its terms (such Escrow Deposit Agreement shall provide that no amendments are permitted without the prior written consent of the Insurer). An executed copy of each of such opinion and reliance letter, if applicable, or Paying Agent's discharge certificate, as the case may be, shall be forwarded to the Insurer prior to delivery of the Bonds.
- (cc) Any interest rate exchange agreement ("Swap Agreement") entered into by the Issuer shall meet the following conditions: (i) the Swap Agreement must be entered into to manage interest costs related to, or a hedge against (a) assets then held, or (b) debt then outstanding, or (iii) debt reasonably expected to be issued within the next twelve (12) months, and (ii) the Swap Agreement shall not contain any leverage element or multiplier component greater than 1.0x unless there is a matching hedge arrangement which effectively off-sets the exposure from any such element or component. Unless otherwise consented to in writing by the Insurer, any uninsured net settlement, breakage or other termination amount then in effect shall be subordinate to debt service on the Bonds and on any debt on parity with the Bonds. The Issuer shall not terminate a Swap Agreement unless it demonstrates to the satisfaction of the Insurer prior to the payment of any such termination amount that such payment will not cause the Issuer to be in default under the Related Documents, including but not limited to, any monetary obligations thereunder. All counterparties or guarantors to any Swap Agreement must have a rating of at least

“A-” and “A3” by Standard & Poor’s (“S&P”) and Moody’s Investors Service (“Moody’s”). If the counterparty or guarantor’s rating falls below “A-“ or “A3” by either S&P or Moody’s, the counterparty or guarantor shall execute a credit support annex to the Swap Agreement, which credit support annex shall be acceptable to the Insurer. If the counterparty or the guarantor’s long term unsecured rating falls below “Baa1” or “BBB+” by either Moody’s or S&P, a replacement counterparty or guarantor, acceptable to the Insurer, shall be required.

**EXHIBIT B**  
**PRELIMINARY OFFICIAL STATEMENT**

**EXHIBIT A**  
**BOND INSURANCE COVENANTS**

## APPENDIX G

### Book-Entry Only System

1. The Depository Trust Company (“DTC”), New York, NY, will act as securities depository for the securities (the “Securities”). The Securities will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Security certificate will be issued for the Securities, in the aggregate principal amount of such issue, and will be deposited with DTC.

2. DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has a Standard & Poor’s rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

3. Purchases of Securities under the DTC system must be made by or through Direct Participants, which will receive a credit for the Securities on DTC’s records. The ownership interest of each actual purchaser of each Security (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Securities are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Securities, except in the event that use of the book-entry system for the Securities is discontinued.

4. To facilitate subsequent transfers, all Securities deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Securities with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Securities; DTC's records reflect only the identity of the Direct Participants to whose accounts such Securities are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

5. Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Securities may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Securities, such as redemptions, tenders, defaults, and proposed amendments to the Security documents. For example, Beneficial Owners of Securities may wish to ascertain that the nominee holding the Securities for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

6. Redemption notices shall be sent to DTC. If less than all of the Securities within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

7. Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Securities unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to City as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Securities are credited on the record date (identified in a listing attached to the Omnibus Proxy).

8. Redemption proceeds, distributions, and dividend payments on the Securities will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from City or Agent, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, Agent, or City, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of City or Agent, disbursement of such payments to Direct Participants will be the responsibility of

DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

9. DTC may discontinue providing its services as depository with respect to the Securities at any time by giving reasonable notice to City or Agent. Under such circumstances, in the event that a successor depository is not obtained, Security certificates are required to be printed and delivered.

10. City may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Security certificates will be printed and delivered to DTC.

11. The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that City believes to be reliable, but City takes no responsibility for the accuracy thereof.

**APPENDIX H**

**Annual Debt Service for Series 2012 D Bonds**

FINAL

\$25,555,000

City of Fairmont, West Virginia

Water Revenue Bonds (Insured/NBQ)

Series 2012

**Net Debt Service Schedule**

Date	Principal	Coupon	Interest	Total P+I	DSR	Net New D/S	Fiscal Total
10/24/2012	-	-	-	-	-	-	-
01/01/2013	-	-	130,562.06	130,562.06	-	130,562.06	-
07/01/2013	910,000.00	2.000%	350,763.75	1,260,763.75	-	1,260,763.75	1,391,325.81
01/01/2014	-	-	341,663.75	341,663.75	-	341,663.75	-
07/01/2014	1,400,000.00	2.000%	341,663.75	1,741,663.75	-	1,741,663.75	2,033,327.50
01/01/2015	-	-	327,663.75	327,663.75	-	327,663.75	-
07/01/2015	1,425,000.00	2.000%	327,663.75	1,752,663.75	-	1,752,663.75	2,050,327.50
01/01/2016	-	-	313,413.75	313,413.75	-	313,413.75	-
07/01/2016	1,455,000.00	2.000%	313,413.75	1,768,413.75	-	1,768,413.75	2,061,827.50
01/01/2017	-	-	298,863.75	298,863.75	-	298,863.75	-
07/01/2017	1,485,000.00	2.000%	298,863.75	1,783,863.75	-	1,783,863.75	2,062,727.50
01/01/2018	-	-	284,013.75	284,013.75	-	284,013.75	-
07/01/2018	1,510,000.00	3.000%	284,013.75	1,794,013.75	-	1,794,013.75	2,078,027.50
01/01/2019	-	-	261,363.75	261,363.75	-	261,363.75	-
07/01/2019	1,560,000.00	2.000%	261,363.75	1,821,363.75	-	1,821,363.75	2,082,727.50
01/01/2020	-	-	245,763.75	245,763.75	-	245,763.75	-
07/01/2020	690,000.00	2.250%	245,763.75	935,763.75	-	935,763.75	1,131,327.50
01/01/2021	-	-	238,001.25	238,001.25	-	238,001.25	-
07/01/2021	655,000.00	2.500%	238,001.25	893,001.25	-	893,001.25	1,131,002.50
01/01/2022	-	-	229,813.75	229,813.75	-	229,813.75	-
07/01/2022	620,000.00	2.700%	229,813.75	849,813.75	-	849,813.75	1,079,627.50
01/01/2023	-	-	221,443.75	221,443.75	-	221,443.75	-
07/01/2023	1,795,000.00	2.750%	221,443.75	2,016,443.75	-	2,016,443.75	2,237,887.50
01/01/2024	-	-	196,762.50	196,762.50	-	196,762.50	-
07/01/2024	1,845,000.00	4.000%	196,762.50	2,041,762.50	-	2,041,762.50	2,238,325.00
01/01/2025	-	-	159,862.50	159,862.50	-	159,862.50	-
07/01/2025	1,920,000.00	3.000%	159,862.50	2,079,862.50	-	2,079,862.50	2,239,725.00
01/01/2026	-	-	131,062.50	131,062.50	-	131,062.50	-
07/01/2026	1,975,000.00	3.100%	131,062.50	2,106,062.50	-	2,106,062.50	2,237,125.00
01/01/2027	-	-	100,450.00	100,450.00	-	100,450.00	-
07/01/2027	2,040,000.00	3.150%	100,450.00	2,140,450.00	-	2,140,450.00	2,240,900.00
01/01/2028	-	-	68,320.00	68,320.00	-	68,320.00	-
07/01/2028	2,100,000.00	3.200%	68,320.00	2,168,320.00	-	2,168,320.00	2,236,640.00
01/01/2029	-	-	34,720.00	34,720.00	-	34,720.00	-
07/01/2029	2,170,000.00	3.200%	34,720.00	2,204,720.00	(2,240,900.00)	(36,180.00)	(1,450.00)
<b>Total</b>	<b>\$25,555,000.00</b>	<b>-</b>	<b>\$7,387,690.81</b>	<b>\$32,942,690.81</b>	<b>(2,240,900.00)</b>	<b>\$30,701,790.81</b>	<b>-</b>

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**Crews & Associates, Inc.**  
Capital Markets Group

## APPENDIX I

### Specimen Municipal Bond Insurance Policy

**ASSURED  
GUARANTY**  
MUNICIPAL

### MUNICIPAL BOND INSURANCE POLICY

ISSUER:

BONDS: \$ in aggregate principal amount of

Policy No: -N

Effective Date:

Premium: \$

ASSURED GUARANTY MUNICIPAL CORP. ("AGM"), for consideration received, hereby UNCONDITIONALLY AND IRREVOCABLY agrees to pay to the trustee (the "Trustee") or paying agent (the "Paying Agent") (as set forth in the documentation providing for the issuance of and securing the Bonds) for the Bonds, for the benefit of the Owners or, at the election of AGM, directly to each Owner, subject only to the terms of this Policy (which includes each endorsement hereto), that portion of the principal of and interest on the Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Issuer.

On the later of the day on which such principal and interest becomes Due for Payment or the Business Day next following the Business Day on which AGM shall have received Notice of Nonpayment, AGM will disburse to or for the benefit of each Owner of a Bond the face amount of principal of and interest on the Bond that is then Due for Payment but is then unpaid by reason of Nonpayment by the issuer, but only upon receipt by AGM, in a form reasonably satisfactory to it, of (a) evidence of the Owner's right to receive payment of the principal or interest then Due for Payment and (b) evidence, including any appropriate instruments of assignment, that all of the Owner's rights with respect to payment of such principal or interest that is Due for Payment shall thereupon vest in AGM. A Notice of Nonpayment will be deemed received on a given Business Day if it is received prior to 1:00 p.m. (New York time) on such Business Day; otherwise, it will be deemed received on the next Business Day. If any Notice of Nonpayment received by AGM is incomplete, it shall be deemed not to have been received by AGM for purposes of the preceding sentence and AGM shall promptly so advise the Trustee, Paying Agent or Owner, as appropriate, who may submit an amended Notice of Nonpayment. Upon disbursement in respect of a Bond, AGM shall become the owner of the Bond, any appurtenant coupon to the Bond or right to receipt of payment of principal of or interest on the Bond and shall be fully subrogated to the rights of the Owner, including the Owner's right to receive payments under the Bond, to the extent of any payment by AGM hereunder. Payment by AGM to the Trustee or Paying Agent for the benefit of the Owners shall, to the extent thereof, discharge the obligation of AGM under this Policy.

Except to the extent expressly modified by an endorsement hereto, the following terms shall have the meanings specified for all purposes of this Policy. "Business Day" means any day other than (a) a Saturday or Sunday or (b) a day on which banking institutions in the State of New York or the Insurer's Fiscal Agent are authorized or required by law or executive order to remain closed. "Due for Payment" means (a) when referring to the principal of a Bond, payable on the stated maturity date thereof or the date on which the same shall have been duly called for mandatory sinking fund redemption and does not refer to any earlier date on which payment is due by reason of call for redemption (other than by mandatory sinking fund redemption), acceleration or other advancement of maturity unless AGM shall elect, in its sole discretion, to pay such principal due upon such acceleration together with any accrued interest to the date of acceleration and (b) when referring to interest on a Bond, payable on the stated date for payment of interest. "Nonpayment" means, in respect of a Bond, the failure of the issuer to have provided sufficient funds to the Trustee or, if there is no Trustee, to the Paying Agent for payment in full of all principal and interest that is Due for Payment on such Bond. "Nonpayment" shall also include, in respect of a Bond, any payment of principal or interest that is Due for Payment made to an Owner by or on behalf of the Issuer which has been recovered from such Owner pursuant to the

United States Bankruptcy Code by a trustee in bankruptcy in accordance with a final, nonappealable order of a court having competent jurisdiction. "Notice" means telephonic or telecopied notice, subsequently confirmed in a signed writing, or written notice by registered or certified mail, from an Owner, the Trustee or the Paying Agent to AGM which notice shall specify (a) the person or entity making the claim, (b) the Policy Number, (c) the claimed amount and (d) the date such claimed amount became Due for Payment. "Owner" means, in respect of a Bond, the person or entity who, at the time of Nonpayment, is entitled under the terms of such Bond to payment thereof, except that "Owner" shall not include the Issuer or any person or entity whose direct or indirect obligation constitutes the underlying security for the Bonds.

AGM may appoint a fiscal agent (the "Insurer's Fiscal Agent") for purposes of this Policy by giving written notice to the Trustee and the Paying Agent specifying the name and notice address of the Insurer's Fiscal Agent. From and after the date of receipt of such notice by the Trustee and the Paying Agent, (a) copies of all notices required to be delivered to AGM pursuant to this Policy shall be simultaneously delivered to the Insurer's Fiscal Agent and to AGM and shall not be deemed received until received by both and (b) all payments required to be made by AGM under this Policy may be made directly by AGM or by the Insurer's Fiscal Agent on behalf of AGM. The Insurer's Fiscal Agent is the agent of AGM only and the Insurer's Fiscal Agent shall in no event be liable to any Owner for any act of the Insurer's Fiscal Agent or any failure of AGM to deposit or cause to be deposited sufficient funds to make payments due under this Policy.

To the fullest extent permitted by applicable law, AGM agrees not to assert, and hereby waives, only for the benefit of each Owner, all rights (whether by counterclaim, setoff or otherwise) and defenses (including, without limitation, the defense of fraud), whether acquired by subrogation, assignment or otherwise, to the extent that such rights and defenses may be available to AGM to avoid payment of its obligations under this Policy in accordance with the express provisions of this Policy.

This Policy sets forth in full the undertaking of AGM, and shall not be modified, altered or affected by any other agreement or instrument, including any modification or amendment thereto. Except to the extent expressly modified by an endorsement hereto, (a) any premium paid in respect of this Policy is nonrefundable for any reason whatsoever, including payment or provision being made for payment, of the Bonds prior to maturity and (b) this Policy may not be canceled or revoked. THIS POLICY IS NOT COVERED BY THE PROPERTY/CASUALTY INSURANCE SECURITY FUND SPECIFIED IN ARTICLE 76 OF THE NEW YORK INSURANCE LAW.

In witness whereof, ASSURED GUARANTY MUNICIPAL CORP. has caused this Policy to be executed on its behalf by its Authorized Officer.

ASSURED GUARANTY MUNICIPAL CORP.

By \_\_\_\_\_  
Authorized Officer

\$25,555,000  
CITY OF FAIRMONT (WEST VIRGINIA)  
WATER REFUNDING REVENUE BONDS  
SERIES 2012 D

BOND PURCHASE AGREEMENT

September 25, 2012

City of Fairmont  
P. O. Box 1428  
Fairmont, West Virginia 26555

Ladies and Gentlemen:

Crews & Associates, Inc., on behalf of itself and Piper Jaffray & Co. (collectively, the “Underwriters”), offer to enter into this Bond Purchase Agreement (the “Purchase Agreement”) with the City of Fairmont, West Virginia (the “City”). This offer is made subject to acceptance and execution of this Purchase Agreement by the City prior to 11:59 p.m., local prevailing time on the date hereof, or until withdrawn by the Underwriters upon written notice to the City as permitted herein, whichever shall occur earlier. Upon such acceptance and approval, as evidenced by the signature of the Mayor or the City Manager of the City in the space provided below, this Purchase Agreement shall be in full force and effect in accordance with its terms and shall be binding upon the City and the Underwriters.

All capitalized terms used in this Purchase Agreement and not otherwise defined herein shall have the meanings set forth in the hereinafter described Ordinance.

1. The City’s Water Refunding Revenue Bonds, Series 2012 D (the “Bonds”) are being issued, along with other available funds: (i) to finance the costs of currently refunding the City’s Waterworks Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of \$10,260,000, of which \$980,000 is outstanding (the “Series 1997 Bonds”), Water Revenue Bonds, Series 1998, dated December 15, 1998, issued in the original aggregate principal amount of \$9,600,000, of which \$8,270,000.00 is outstanding (the “Series 1998 Bonds”) and \$16,945,000 of the Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000, of which \$19,945,000 is outstanding (the “Series 1999 Bonds To Be Refunded”); (ii) to fund the Series 2012 D Bonds Reserve Account; and (iii) to pay costs of issuance of the Bonds and related costs.

The Bonds shall be as described in, and shall be issued and secured under and pursuant to the provisions of the Ordinance enacted by the City Council of the City on March 27, 2012 (the "Original Ordinance") and as supplemented and amended by Supplemental Resolutions adopted by the City Council of the City on June 12, 2012, and September 12, 2012 (collectively, the "Supplemental Resolutions" and together with the Original Ordinance, the "Ordinance"). The Bonds shall be secured by the Gross Revenues derived by the City from the operation of its waterworks system (the "System) and the Series 2012 D Bonds Sinking Fund and the Series 2012 D Bonds Reserve Account therein.

Upon the terms and conditions and upon the basis of the representations and warranties set forth in this Purchase Agreement, the Underwriters agree to purchase from the City, and the City agrees to sell to the Underwriters, the Bonds, at an aggregate purchase price of \$25,337,983.90 (\$25,555,000 minus Underwriters' discount of \$459,990 and plus an original issue premium of \$242,973.90).

The Bonds shall mature on the dates and in the amounts, and shall bear interest from their date (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if the Bonds are called for prior redemption and payment on such date provided therefore, payable semiannually on January 1 and July 1 of each year, commencing January 1, 2013, as more fully described on Exhibit A attached hereto and incorporated herein by reference.

The Underwriters agree to make a bona fide public offering of the Bonds at the initial offering prices as set forth in the Official Statement (as hereinafter defined) and in Exhibit A, which prices may be changed from time to time by the Underwriters.

2. Concurrently with the acceptance of this Purchase Agreement by the City, the City shall deliver or cause to be delivered to the Underwriters three copies of the Official Statement relating to the Bonds, substantially in the form of the Preliminary Official Statement, dated September 20, 2012 (the "Preliminary Official Statement"), and prior to delivery of the Bonds, seven copies of the Official Statement (the "Official Statement") dated the date of this Purchase Agreement, signed on behalf of the City by its Mayor as requested below.

3. The Official Statement has been approved for distribution by the Ordinance. The City authorizes the use of copies of the Official Statement and the Ordinance in connection with the public offering and sale of the Bonds.

On September 20, 2012, the City delivered to the Underwriters the Preliminary Official Statement and the Underwriters received a certificate from the City which deemed the Preliminary Official Statement "final" within the meaning of clause (b)(1) of Rule 15c2-12 ("Rule 15c2-12") under the Securities and Exchange Act of 1934 (17 C.F.R. § 240.15c2-12) and Rule G-32 and all other rules of the Municipal Securities Rulemaking Board. The City shall deliver

or cause to be delivered to the Underwriters, after the acceptance by the City of this Purchase Agreement, and within the time required by Rule 15c2-12, an adequate number of copies of the Official Statement.

Unless otherwise notified in writing by the Underwriters on or prior to the date of Closing, the “End of the Underwriting Period” for the Bonds for all purposes of Rule 15c2-12 is the date of the Closing, as hereinafter defined. In the event such notice is given in writing by the Underwriters, the Underwriters agree to notify the City in writing following the occurrence of the End of the Underwriting Period for the Bonds as defined in Rule 15c2-12.

The City covenants and agrees that if, after the date of this Purchase Agreement and until after the End of the Underwriting Period (as determined above), any event shall occur of which the City has actual knowledge as a result of which it is necessary to amend or supplement the Official Statement to make the Official Statement not misleading in any material respect in light of the circumstances then existing, or if it is necessary to amend or supplement the Official Statement to comply with law, to notify the Underwriters (and for the purposes hereof to provide the Underwriters with such information as they may from time to time reasonably request), and to cooperate in the preparation of a reasonable number of copies of either amendments or supplements to the Official Statement (in form and substance satisfactory to the Underwriters and its counsel) at the expense of the City so that the Official Statement as so amended and supplemented will not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances existing at the time the Official Statement is delivered to a purchaser, not misleading in any material respect.

For the purposes of this paragraph and for only so long as required by this paragraph, the City will furnish such information with respect to itself as the Underwriters from time to time reasonably requests. The Underwriters hereby agree that it will deposit or cause to be deposited with the Municipal Securities Rulemaking Board a copy of the Official Statement at or prior to the time contemplated by Rule 15c2-12.

The Underwriters acknowledge and agree that any liability of the City that may arise from its representations and agreements made in this paragraph 3 shall be limited to the proceeds of the Bonds (provided that the foregoing shall not be deemed to prevent the Underwriters or the City from seeking to enforce such agreements).

4. At 10:00 a.m. prevailing time, on October 24, 2012, or such other dates as shall be agreed upon by the parties to this Purchase Agreement (the “Closing”), the City will deliver or cause to be delivered to the Underwriters, (a) the Bonds in the form of one certificate for each maturity fully registered in the name of CEDE & CO., as registered owner and nominee of The Depository Trust Company, New York, New York (“DTC”), duly executed by the City and authenticated by the Registrar, and (b) at such other place as we mutually agree upon, will deliver to

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the Underwriters the other documents required in this Purchase Agreement and by the Ordinance. Upon such delivery of the Bonds, the Underwriters will accept such delivery and pay the purchase price therefor, plus any accrued interest thereon, in immediately available funds to the order of the Depository Bank, for the account of the City. Such delivery shall be made at DTC, with the payment and other requisite actions to be taken at the place designated by the parties to this Purchase Agreement. The Bonds shall be made available to the Underwriters at DTC at least forty-eight (48) hours before the Closing for the purpose of inspection and packaging; provided that if DTC Fast delivery is used, then the Bonds shall be made available to the Registrar by 4:00 p.m. on October 22, 2012. If the City does not have a Blanket DTC Letter of Representation (the "DTC Letter of Representations"), the City agrees to provide one to DTC.

5. The City represents and warrants to the Underwriters and agrees that:

(a) The City is a political subdivision and municipal corporation of the State of West Virginia in Marion County of said State. The Bonds are being issued pursuant to the Constitution and laws of the State of West Virginia (the "State"), specifically, Chapter 8, Article 19 and Chapter 13, Article 2 of the Code of West Virginia, 1931, as amended (collectively, the "Act");

(b) The City shall have complied and will comply at the Closing in all respects with all applicable statutes and laws, including the Act;

(c) The City has full legal right, power and authority to issue bonds for purposes provided in the Ordinance and to enter into this Purchase Agreement, to enact the Ordinance and to issue, sell and deliver the Bonds to the Underwriters as provided herein and to carry out and consummate all other transactions contemplated by each of the aforesaid documents;

(d) The information contained in the Preliminary Official Statement dated September 20, 2012, and in the Official Statement, is and, as of the Closing Date (as hereinafter defined), will be true and does not contain and will not contain any untrue statement of a material fact and does not omit and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

(e) At the time of the City's acceptance hereof and (unless an event occurs of the nature described in subparagraph (i)) at all times during the period from the date of this Purchase Agreement to and including the date which is twenty-five (25) days following the End of the Underwriting Period for the respective series of Bonds (as determined in accordance with subparagraph (i) hereof), the Official Statement does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(f) If the Official Statement is supplemented or amended, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such subparagraph) at all times during the period from the date of this Purchase Agreement to and including the date which is twenty-five (25) days following the End of the Underwriting Period for the respective series of Bonds (as determined in accordance with subparagraph (i) hereof), the Official Statement as so supplemented or amended, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(g) If during the period from the date of this Purchase Agreement to and including the date which is twenty-five (25) days following the End of the Underwriting Period for the respective series of Bonds (as determined in accordance with subparagraph (i) hereof) any event shall occur which might or would cause the Official Statement, as then supplemented or amended, to contain any untrue statement of a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the City shall notify the Underwriters of any such event of which it has knowledge and, if in the opinion of the Underwriters such event requires the preparation and publication of a supplement or amendment to the Official Statement, the City will prepare and furnish to the Underwriters (i) a reasonable number of copies of the supplement or amendment to the Official Statement in form and substance approved by the City and acceptable to the Underwriters, and (ii) if such notification shall be subsequent to the Closing, such legal opinion, certification, instruments and other documents as the Underwriters may reasonably deem necessary to evidence the truth and accuracy of such supplement or amendment to the Official Statement;

(h) Prior to the City's acceptance hereof, the City delivered to the Underwriters copies of the Preliminary Official Statement which the City deemed final (for purposes of Rule 15c2-12 under the Securities Exchange Act of 1934) as of the date thereof; provided, however, that in making the representation and warranty contained in this paragraph (h) the City shall not be deemed to have made any additional representation or warranty as to the Preliminary Official Statement other than the representation and warranty contained in paragraph (e);

(i) For purposes of this Purchase Agreement, the End of the Underwriting Period for the respective series of Bonds shall mean the earlier of (a) the day of the Closing unless the City has been notified in writing by the Underwriters, on or prior to the day of the Closing, that the End of the Underwriting Period for the respective series of Bonds for all purposes of Rule 15c2-12 of the Securities and Exchange Commission promulgated under the Securities Exchange Act of 1934 (the "Rule") will not occur on the day of the Closing, or (b) the date on which notice is given to the City by the Underwriters in accordance with the following sentence. In the event that the Underwriters have given notice to the City pursuant to clause (a) above that the End of the Underwriting Period for the respective series of Bonds will not occur on the day of the Closing, the Underwriters agree to

notify the City in writing as soon as practicable following the "end of the underwriting period" for the respective series of Bonds for all purposes of the Rule;

(j) At or prior to the Closing, the City shall have duly authorized, executed and delivered a written continuing disclosure undertaking (an "Undertaking") which complies with the provisions of Rule 15c2-12(b)(5) and which shall be substantially in the form described in the Preliminary Official Statement;

(k) The City has duly authorized all necessary action to be taken by it for: (1) the issuance and sale of the Bonds upon the terms set forth herein, in the Ordinance and in the Official Statement; (2) the execution and delivery of the Ordinance and the Undertaking; (3) the approval of the Official Statement and the execution, distribution and delivery of the Official Statement by the Mayor of the City; (4) the execution, delivery, receipt and due performance of this Purchase Agreement, the Bonds, the Undertaking, the Ordinance and any and all such other agreements and documents as may be required to be executed, delivered and received by the City in order to carry out, give effect to and consummate the transactions contemplated hereby and by the Official Statement; and (5) the carrying out, giving effect to and consummation of the transactions contemplated hereby and by the Ordinance and the Official Statement;

(l) When delivered to and paid for by the Underwriters in accordance with the terms of this Purchase Agreement, the Bonds will have been duly authorized, executed, authenticated, issued and delivered and will constitute valid and binding obligations of the City payable solely from the Gross Revenues of the System and moneys pledged therefor under the Ordinance and will be entitled to the benefit of the Ordinance. Neither the credit nor the taxing power of the City shall be deemed to be pledged to, nor shall a tax ever be levied for the payment of the principal of, premium, if any, or the interest on the Bonds;

(m) There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending or, to our knowledge, threatened against or affecting the City (or, to our knowledge, any basis therefor) wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby or by the Official Statement or the validity of the Bonds, the Ordinance, the Undertaking, this Purchase Agreement or any agreement or instrument to which you are a party and which is used or contemplated hereby or by the Official Statement or the validity of the Bonds, the Ordinance, this Purchase Agreement or any agreement or instrument to which you are a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby or by the Official Statement;

(n) The execution and delivery of the Official Statement, this Purchase Agreement, the Bonds, the Undertaking, the Ordinance and the other agreements contemplated hereby and by the Official Statement, and compliance with the provisions thereof, will not conflict with or constitute on the City's part a breach of or a default under any existing law, court or

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administrative regulation, decree or order or any agreement, indenture, mortgage, lease or other instrument to which the City is subject or by which the City is or may be bound, and to our knowledge all consents, approvals, authorizations and orders of governmental or regulatory authorities which are required for the consummation of the transactions contemplated thereby have been obtained;

(o) The City has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that the City is a bond issuer whose arbitrage certifications may not be relied upon;

(p) All financial statements of the City included as a part of the Preliminary Official Statement and the Official Statement (the "Financial Statements"), fairly present the financial condition of the City's System as of the respective dates and the results of its operations for the respective periods therein set forth and have been prepared when so indicated in accordance with generally accepted accounting principles consistently applied and since the respective most recent dates as of which information is given in the Preliminary Official Statement or the Official Statement, there has not been any material change in the long-term debt of the City or any material adverse change in the general affairs, management, financial position, or results of operations of the City's System and no material transactions or obligations other than in the ordinary course of business have been entered into with respect to the System by the City, except as reflected in or contemplated by the Official Statement; and

(q) Any certificate signed by the Mayor of the City or any of the City's authorized officers and delivered to the Underwriters shall be deemed a representation and warranty by the City to the Underwriters as to the statements made therein. It is understood that the representations, warranties and covenants by the City contained in this Section 5 and elsewhere in this Purchase Agreement shall not create any general obligation or liability of the City, and that any obligation or liability of the City hereunder or under the Ordinance will be payable solely out of the Gross Revenues and other income, charges and moneys derived by the City from, or in connection with the System, nor shall any member, official or employee of the City be personally liable therefor.

6. The Underwriters have entered into this Purchase Agreement in reliance upon the representations and agreements of the City made herein. The Underwriters' obligations under this Purchase Agreement are and shall be subject to the following further conditions:

(a) At or prior to the time of the Closing, the Ordinance and the Undertaking, as approved by the Underwriters or their counsel, shall have been approved by the appropriate parties, shall have been duly executed, acknowledged, sealed and delivered, shall be in full force and effect and shall not have been amended, modified or supplemented, except as therein permitted or as may have been agreed to in writing by the Underwriters;

(b) The Underwriters shall have the right to cancel its obligations hereunder to purchase the Bonds (such cancellation shall not constitute a default hereunder) by notifying the City in writing of their election to do so between the date hereof and the Closing Date, if at any time hereafter and prior to the Closing Date:

(i) Any legislation, rule or regulation shall be introduced in, or enacted by, the United States House of Representatives or the United States Senate or any committee thereof, or a decision by a court established under Article III of the Constitution of the United States of America, or the Tax Court of the United States, shall be rendered, or a ruling, regulation or order of the Treasury Department of the United States or the Internal Revenue Service shall be made or proposed, which, in the Underwriters' reasonable opinion, materially adversely affects the market price of the Bonds;

(ii) Any legislation, ordinance, rule or regulation shall be introduced in or enacted by any governmental body, department or agency of the State of West Virginia or political subdivision thereof, or a decision by any court of competent jurisdiction within the State of West Virginia shall have been rendered which, in the Underwriters' reasonable opinion, materially adversely affects the market price of the Bonds;

(iii) A stop order, ruling, regulation or official statement by, or on behalf of, the Securities and Exchange Commission or any other government agency having jurisdiction of the subject matter shall be issued or made to the effect that the issuance, offering for sale of obligations of the general character of the Bonds, or the issuance, offering or sale of the Bonds, including all the underlying obligations, as contemplated hereby or by the Official Statement, is in violation of any provisions of the Securities Act of 1933, as amended and as then in effect, or the registration provisions of the Securities and Exchange Act of 1934, as amended and as then in effect, or the qualification provisions of the Trust Indenture Act of 1939, as amended and as then in effect;

(iv) Any event shall have occurred or information become known which, in the Underwriters' reasonable opinion, makes untrue in any material respect any statement or information contained in the Preliminary Official Statement or the Official Statement or the Underwriters shall have determined that the Preliminary Official Statement or the Official Statement contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

(v) A general banking moratorium shall have been established by Federal, New York State or West Virginia authorities;

(vi) In the reasonable opinion of the Underwriters, the market price of the Bonds, or the market price generally of obligations of the general character of the Bonds, has been

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adversely affected because (1) additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange, (2) the New York Stock Exchange, other national securities exchange or any governmental authority shall have imposed as to the Bonds or similar obligations any material restrictions not now in force, or increased materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, the Underwriters, or (3) war or any outbreak of hostilities or other national or international calamity or crisis shall have occurred or any armed conflict shall have occurred or escalated to such a magnitude as in the reasonable opinion of the Underwriters to have a materially adverse effect on the ability of the Underwriters to market the Bonds; or

(vii) There shall have been any materially adverse change in the affairs of the City; and

(c) At or prior to the Closing, the Underwriters and the City shall receive the following documents, in each case in form and substance satisfactory to us and our counsel:

(i) An opinion, dated the date of the Closing and addressed to the City and the Underwriters, of Steptoe & Johnson PLLC, Bond Counsel, in substantially the form attached as Appendix D to the Official Statement;

(ii) A supplemental bond counsel opinion, dated the date of the Closing and addressed to the Underwriters, of Steptoe & Johnson PLLC, Bond Counsel, to the effect that (i) this Purchase Agreement has been duly authorized, executed and delivered by, and (assuming due authorization, execution and delivery by the other parties and that it is a binding agreement of the other parties in accordance with its terms) constitutes a binding agreement in accordance with its terms of, the City; (ii) the Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Ordinance is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended; (iii) the statements contained in the Official Statement under the caption “Tax Matters” are true and accurate in all material respects and presents a fair and accurate summary and description of the matters summarized and described under such caption; and (iv) the statements contained in the Official Statement under the captions “Security for the Series 2012 Bonds,” “The Series 2012 Bonds” (except for the statements referred to therein under “Appendix G - Book-Entry Only System” with respect to The Depository Trust Company), “Financing Plan,” “Appendix D – Form of Opinion of Bond Counsel,” “Appendix F – Form of Ordinance, Supplemental Parameters Resolution and Second Supplemental Resolution” and “Investment Considerations” insofar as such statements contained under such captions purport to summarize certain matters set forth therein and certain provisions of the Ordinance, are accurate and present a fair summary of the matters referred to therein;

(iii) An opinion, dated the date of Closing and addressed to the Underwriters, of Kevin Sansalone, Esq., City Attorney, to the effect that (i) the City has complied with all requirements of the Act that must be satisfied in connection with the issuance of the Bonds, (ii) any requirement as to legal matters as the Underwriters shall reasonably require, (iii) no litigation is pending, or to his knowledge, threatened in any court in any way affecting the existence of the City or the titles of its officers to their respective offices, or seeking to restrain or to enjoin the issuance or delivery of the Bonds, or the collection of revenues and assets of the City pledged or to be pledged to pay the principal of and interest on the Bonds, or the pledge thereof, or in any way contesting or affecting the validity or enforceability of the Bonds, the Ordinance or this Purchase Agreement, or contesting the powers of the State with respect to the Bonds, the Ordinance or this Purchase Agreement or any transaction described in or contemplated by the Official Statement, (iv) that the Official Statement, as amended or supplemented to the date of Closing (except as aforesaid) contains no untrue statement regarding the City of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein regarding the City, in light of the circumstances under which they were made, not misleading, and (v) the statements contained in the Official Statement under the captions “The System,” “Absence of Material Litigation,” “Financial Statements,” “Financing Plan,” “Investment Considerations,” and “Appendix B—The System,” insofar as such statements contained under such captions purport to summarize certain matters set forth therein and certain provisions of the Ordinance, are accurate and present a fair summary of the matters referred to therein;

(iv) Evidence of Bond Insurance;

(v) Two counterpart originals of a transcript of all proceedings relating to the authorization and issuance of the Bonds;

(vi) An opinion, dated the date of the Closing and addressed to the Underwriters, of Jackson Kelly PLLC, Underwriters’ Counsel, to the effect that (i) this Purchase Agreement has been duly authorized, executed and delivered by, and (assuming due authorization, execution and delivery by the other parties and that it is a binding agreement of the other parties in accordance with its terms) constitutes a binding agreement in accordance with its terms of, the Underwriters; (ii) the Continuing Disclosure Agreement complies as to form in all material respects with the requirements of paragraph (b)(5) of the Rule; and (iii) without having undertaken to determine independently the accuracy or completeness of the statements contained in the Official Statement, but on the basis of our conferences with representatives of the City, Counsel for the City, Bond Counsel and the Underwriter, and our examination of certain documents referred to in the Official Statement, nothing has come to our attention that would lead us to believe that the Official Statement (excluding therefrom the financial and statistical data included in the Official Statement, as to which we express no opinion) contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading;

(vii) A certificate, satisfactory to the Underwriters, of the Mayor of the City or any other of your duly authorized officers satisfactory to the Underwriters, dated as of the Closing, to the effect that: (i) you have duly performed all of your obligations to be performed at or prior to the Closing and that each of your representations and warranties contained herein are true as of Closing, (ii) you have authorized, by all necessary action, the execution, delivery, receipt and due performance of the Bonds, the Undertaking, the Ordinance and any and all such other agreements and documents as may be required to be executed, delivered and received by you in order to carry out, give effect to and consummate the transactions contemplated hereby and by the Official Statement, (iii) to your knowledge no litigation is pending, or to your knowledge threatened, to restrain or enjoin the collection of the Gross Revenues, the pledge of the Gross Revenues to the Bonds, the issuance or sale of the Bonds or in any way affecting any authority for or the validity of the Bonds or the Ordinance, (iv) the execution, delivery, receipt and due performance of the Bonds, the Undertaking, the Ordinance and the other agreements contemplated hereby and by the Official Statement under the circumstances contemplated thereby and your compliance with the provisions thereof will not conflict with or constitute on your part a breach of or a default under any existing law, court or administrative regulation, decree or order or any agreement, indenture, mortgage, lease or other instrument to which you are subject or by which you are or may be bound and (v) you are in compliance with all covenants in your outstanding resolutions which authorized bonds secured by the Gross Revenues of the System;

(viii) Copies of this Purchase Agreement executed by the parties thereto;

(ix) Duly authorized and executed copies of the Undertaking, in substantially the form attached as Appendix E to the Official Statement and incorporated herein, which complies with the provisions of Rule 15c2-12(b)(5) in form and substance satisfactory to the Underwriters;

(x) A certificate of the City executed by an authorized officer thereof, dated the Closing Date and in form and substance satisfactory to the Underwriters and counsel to the Underwriters, to the effect that the City is obligated by such Undertaking and except as provided in the Official Statement is in full compliance with all of its prior written continuing disclosure undertakings entered into pursuant to the provisions of Rule 15c2-12(b)(5);

(xi) A certificate from Bennett & Dobbins PLLC, Certified Public Accountants, that the City has Gross Revenues sufficient to meet the rate coverage requirements of the Ordinance;

(xii) A Certificate of the Registrar to the effect that all conditions precedent contained in the Ordinance for the issuance of the Bonds have been met, and the Bonds are entitled to the benefit and security of the Ordinance;

## CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (the “Agreement”) is by and between the City of Fairmont (the “Issuer”), and WesBanco Bank, Inc. (the “Dissemination Agent”), in connection with the issuance of \$25,555,000 City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 D (the “Bonds”). The Bonds are being issued pursuant to the Ordinance enacted by the City Council of the City on March 27, 2012 (the “Original Ordinance”), as supplemented, amended and conformed by Supplemental Resolutions adopted by the City Council of the City on June 12, 2012, and September 12, 2012 (the “Supplemental Resolutions” and together with the Original Ordinance as conformed, the “Ordinance”). The Issuer and Dissemination Agent covenant and agree as follows:

SECTION 1. Purpose of Agreement. The Agreement is being executed and delivered by the Issuer and Dissemination Agent for the benefit of the holders and Beneficial Owners of the Bonds and in order to assist the Participating Underwriter in complying with SEC Rule 15c2-12(b)(5).

SECTION 2. Definitions. In addition to the definitions set forth in the Ordinance and the Bond Purchase Agreement dated September 25, 2012, which apply to any capitalized term used in the Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“Annual Financial Information” shall mean the financial information (which shall be based on financial statements prepared in accordance with generally accepted accounting principles (“GAAP”)) and operating data with respect to the Issuer, provided at least annually, of the type included in those sections of the final official statement with respect to the Bonds attached thereto as Appendix C, which Annual Financial Information shall include Audited Financial Statements if available on the Report Date, and, if not then available, unaudited financial statements.

“Audited Financial Statements” shall mean the Issuer’s annual financial statements, prepared in accordance with GAAP, which financial statements shall have been audited by a firm of independent certified public accountants.

“Beneficial Owner” shall mean any person who has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries).

“Disclosure Representative” shall mean the current Mayor, City Manager, Utility Manager or Finance Director of the Issuer.

“Dissemination Agent” shall initially mean WesBanco Bank, Inc., or any successor Dissemination Agent designated in writing by the Issuer and which has filed with the Issuer a written acceptance of such designation.

“EMMA” shall mean the Electronic Municipal Market Access System described in the 1934 Act Release No. 59062 and maintained by the Municipal Securities Rulemaking Board for purposes of the Rule.

“Listed Events” shall mean any of the events listed in Section 5(a) of the Agreement.

“National Repository” shall mean the Municipal Securities Rulemaking Board, Washington, D.C., the sole Nationally Recognized Municipal Securities Information Repository for purposes of the Rule, effective as of July 1, 2009.

“Participating Underwriter” shall mean the original underwriter(s) of the Bonds who are required to comply with the Rule in connection with offering of the Bonds.

“Repository” shall mean each National Repository.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“State” shall mean the State of West Virginia.

### SECTION 3. Provision of Annual Reports.

(a) The Issuer shall, or shall cause the Dissemination Agent to, not later than 270 days after the end of the Issuer’s fiscal year (presently June 30) (the “Due Date”), commencing with the report for the Fiscal Year ending June 30, 2012, provide to EMMA Annual Financial Information and Audited Financial Statements, which are consistent with the requirements of Section 4 of the Agreement. The Annual Financial Information and Audited Financial Statements may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of the Agreement. The Issuer shall provide the Dissemination Agent with a copy of each report filed under the Agreement. If the Issuer’s fiscal year changes, the Issuer shall give notice of such change in the same manner as for a Listed Event under Section 5(a). The Dissemination Agent shall send written notice to the Issuer thirty (30) days prior to the Due Date of the Annual Financial Information and Audited Financial Statements that such information is due by the Due Date.

(b) Not later than fifteen (15) Business Days prior to the Due Date, the Issuer shall provide the Annual Financial Information and Audited Financial Statements to the Dissemination Agent. If by the Due Date the Dissemination Agent has not received a copy of the Annual Report, the Dissemination Agent shall contact the Issuer to determine if the Issuer is in compliance with the first sentence of this subsection (b). If the Dissemination Agent is unable to provide to EMMA its Annual Financial Information and Audited Financial Statements by the date required in subsection (a), the Dissemination Agent shall send a notice to EMMA in substantially the form attached as Exhibit A.

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(c) The Dissemination Agent shall file a report with the Issuer certifying that the Annual Financial Information and Audited Financial Statements have been provided to EMMA pursuant to the Agreement and the date provided.

SECTION 4. Content of Annual Financial Information. Within 270 days of the Issuer's 2012 fiscal year-end, and each subsequent fiscal year, the Dissemination Agent shall submit to EMMA information and data of the Issuer for the prior fiscal year, including the Audited Financial Statements, prepared in accordance with generally accepted accounting principles in effect from time to time.

Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the Issuer or related public entities, which have been submitted to EMMA or the Securities and Exchange Commission. If the document included by reference is a final official statement it must be available from the Municipal Securities Rulemaking Board. The Issuer shall clearly identify each such other document so included by reference.

SECTION 5. Reporting of Significant Events.

(a) Pursuant to the provisions of this Section 5, the Issuer shall give, or cause to be given, notice of the occurrence of any of the following events, if applicable, with respect to the Bonds:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
7. Modifications to rights of security holders, if material;
8. Bond calls, if material, and tender offers;
9. Defeasances;

10. Release, substitution, or sale of property securing repayment of the Bonds, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership, or similar event of the Issuer<sup>1</sup>;
13. The consummation of a merger, consolidation or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action; or the termination of a definitive agreement relating to any such actions, other than pursuant to its term, if material; and
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material.

(b) The Dissemination Agent shall, within one (1) Business Day of obtaining actual knowledge of the occurrence of any of the Listed Events contact the Disclosure Representative, inform such person of the event, and request that the Issuer promptly notify the Dissemination Agent in writing whether or not to report the event pursuant to subsection (f).

(c) Whenever the Issuer obtains knowledge of the occurrence of a Listed Event, classified under Section 5(a) (2), (7), (8), (10), (13) or (14), because of a notice from the Dissemination Agent pursuant to subsection (b) or otherwise, the Issuer shall as soon as possible determine if such event would be material under applicable federal securities laws, in any event such determination must be made and submitted to the Dissemination Agent within two (2) business days.

(d) If the Issuer determines that knowledge of the occurrence of any of the Listed Events, classified under Section 5(a) (2), (7), (8), (10), (13) or (14), would be material under applicable federal securities laws pursuant to subsection (b) or the Issuer received notice of any Listed Event that does not require a finding of materiality classified under Section 5(a) (1), (3), (4), (5), (6), (9), (11) or (12), the Issuer shall promptly file with the Dissemination Agent a notice of such occurrence to be provided to EMMA.

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<sup>1</sup> For the purposes of the event identified in Section 5(a)(12) above, the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for an obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person.  
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(e) If in response to a request under subsection (b), the Issuer determines that the Listed Event, classified under Section 5(a) (2), (7), (8), (10), (13) or (14), would not be material under applicable federal securities laws, the Issuer shall so notify the Dissemination Agent in writing and instruct the Dissemination Agent not to report the occurrence pursuant to subsection (f).

(f) If the Dissemination Agent has been instructed by the Issuer to report the occurrence of a Listed Event, the Dissemination Agent shall file a notice of such occurrence with EMMA with a copy to the Issuer. The Dissemination Agent must file such notice with EMMA within ten (10) business days of the occurrence of such Listed Event.

SECTION 6. Termination of Reporting Obligation. The Issuer's obligations under the Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the Issuer shall give notice of such termination in the same manner as for any of the Listed Events under Section 5(a).

SECTION 7. Dissemination Agent. WesBanco Bank, Inc., is hereby appointed as Dissemination Agent. The Issuer may, from time to time, appoint or engage an alternate or successor Dissemination Agent to assist it in carrying out its obligations under the Agreement, and may discharge any such Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the Issuer pursuant to the Agreement.

SECTION 8. Amendment, Waiver. Notwithstanding any other provision of the Agreement, the Issuer may amend the Agreement, and any provision of the Agreement may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Sections 3(a), 4 or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances, and

(c) The amendment or waiver either (i) is approved by the Holders of the Bonds in the same manner as provided in the Ordinance for amendments to the Ordinance with the consent of Holders, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Holders or Beneficial Owners of the Bonds.

In the event of any amendment or waiver of a provision of the Agreement, the Issuer shall describe such amendment in the next Annual Financial Information and Audited Financial Statements, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the Issuer. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for any of the Listed Events under Section 5(a), and (ii) the Annual Financial Information and Audited Financial Statements for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

SECTION 9. Additional Information. Nothing in the Agreement shall be deemed to prevent the Issuer from disseminating any other information, using the means of dissemination set forth in the Agreement or any other means of communication, or including any other information in any Annual Financial Information and Audited Financial Statements or notice of occurrence of any of the Listed Events, in addition to that which is required by the Agreement. If the Issuer chooses to include any information in any Annual Financial Information and Audited Financial Statements or notice of occurrence of any of the Listed Events in addition to that which is specifically required by the Agreement, the Issuer shall have no obligation under the Agreement to update such information or include it in any future Annual Financial Information and Audited Financial Statements or notice of occurrence of any of the Listed Events.

SECTION 10. Default. In the event of a failure of the Issuer or Dissemination Agent to comply with any provision of the Agreement (and, at the request of the Original Purchasers), the Dissemination Agent may or any Holder or Beneficial Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Issuer or Dissemination Agent to comply with its obligations under the Agreement. A default under the Agreement shall not be deemed an Event of Default under the Ordinance, and the sole remedy under the Agreement in the event of any failure of the Issuer or Dissemination Agent to comply with the Agreement shall be an action to compel performance.

SECTION 11. Duties, Immunities and Liabilities of Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in the Agreement, and the Issuer agrees to the extent allowed by State law to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys' fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's gross negligence or willful misconduct. The obligations of the Issuer under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

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SECTION 12. Notices. Any notices or communications to or among any of the parties to the Agreement may be given as follows:

To the Issuer: City of Fairmont, West Virginia  
P.O. Box 1428  
Fairmont, WV 26555

To the Dissemination Agent: WesBanco Bank, Inc.  
ATTN: Corporate Trust  
1 Bank Plaza  
Wheeling, WV 26003

Any person may, by written notice to the other persons listed above, designate a different address or telephone number(s) to which subsequent notices or communications should be sent.

SECTION 13. Beneficiaries. The Agreement shall inure solely to the benefit of the Issuer, the Dissemination Agent, the Participating Underwriter and Holders and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

SECTION 14. Counterparts. The Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 15. Fees. The Issuer agrees to pay all fees and expenses of the Dissemination Agent including, without limitation, all reasonable expenses, charges, costs, attorney's fees and other disbursements in the administration and performance of the Dissemination Agent's duties.

SECTION 16. Right to Resign. The Dissemination Agent may resign at any time by providing thirty (30) days' written notice to the Issuer.

SECTION 17. Right to Counsel. The Dissemination Agent shall have the right to consult with counsel in carrying out its duties under the Agreement and to rely upon an opinion of counsel.

Date: October 24, 2012

CITY OF FAIRMONT

By: William H. Bawick  
Its: Mayor

WESBANCO BANK, INC.,  
as Dissemination Agent

By: Stacy Delka  
Its: Assistant trust officer.

EXHIBIT A

NOTICE TO REPOSITORIES OF FAILURE TO FILE ANNUAL REPORT

Name of Issuer:       City of Fairmont (West Virginia)  
Name of Issue:       \$25,555,000 City of Fairmont (West Virginia) Water Refunding Revenue  
                              Bonds, Series 2012 D  
Date of Issuance:     October 24, 2012

Notice is hereby given that the Issuer has not provided an Annual Report with respect to the above-named Bonds as required by its covenant made in connection with the above-referenced bond issue. The Issuer anticipates that the Annual Report will be filed by \_\_\_\_\_.

Dated this \_\_\_\_\_.

CITY OF FAIRMONT

By: \_\_\_\_\_  
    Its: Mayor

By: \_\_\_\_\_  
    Its: City Manager

**CITY OF FAIRMONT (WEST VIRGINIA)  
WATER REFUNDING REVENUE BONDS  
SERIES 2012 D**

**RULE 15c2-12 CERTIFICATE**

The undersigned hereby certifies and represents to Crews & Associates, Inc., and Piper Jaffray & Co. (collectively, the “Underwriter”), that he is the duly elected and acting Mayor of the City of Fairmont, West Virginia (the “City”), authorized to execute and deliver this Certificate and further certifies on behalf of the City to the Underwriter as follows:

(1) This Certificate is delivered to enable the Underwriter to comply with Rule 15c2-12, as amended, under the Securities Exchange Act of 1934, as amended (the “Rule”), in connection with the offering and sale of City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 D (the “Bonds”).

(2) In connection with the offering and sale of the Bonds, there has been prepared a Preliminary Official Statement, dated the date hereof, setting forth information concerning the Bonds and the City (the “Preliminary Official Statement”).

(3) As used herein, “Permitted Omissions” shall mean the offering price(s), interest rate(s), selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings, and other terms of the Bonds, all with respect to the Bonds.

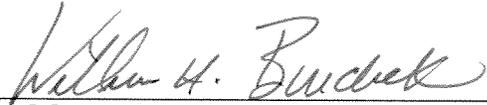
(4) The Preliminary Official Statement is, except for the Permitted Omissions, final as of its date, and the information therein is accurate and complete except for the Permitted Omissions.

(5) If, at any time prior to the execution of the final bond purchase agreement, any event occurs as a result of which the Preliminary Official Statement might include an 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, the City shall promptly notify the Underwriter thereof.

(6) The section of the Preliminary Official Statement entitled Continuing Disclosure describes the agreement the City expects to make for the benefit of the Bondholders in the Ordinance, as defined in the Preliminary Official Statement, by which the City will undertake to provide ongoing disclosure in accordance with Section (b)(5)(I) of the Rule.

IN WITNESS WHEREOF, I have hereunto set my hand as of this \_\_\_ day of  
September, 2012.

CITY OF FAIRMONT, WEST VIRGINIA

By:   
Its: Mayor

October 1, 2012

Assured Guaranty Municipal Corp.  
31 West 52nd Street  
New York, NY 10019  
Attention: Mr. Richard Bauerfeld, Managing Director

**Re: \$25,555,000 City of Fairmont (West Virginia), Water Refunding Revenue Bonds, Series 2012 D, dated: Date of Delivery, due: July 1, 2013-2027, 2029, (POLICY #215164-N)**

Dear Mr. Bauerfeld:

Standard & Poor's has reviewed the rating on the above-referenced obligations. After such review, we have changed the rating to "AA-" from "A". The rating reflects our assessment of the likelihood of repayment of principal and interest based on the bond insurance policy your company is providing. Therefore, rating adjustments may result from changes in the financial position of your company or from alterations in the documents governing the issue.

The rating is not investment, financial, or other advice and you should not and cannot rely upon the rating as such. The rating is based on information supplied to us by you but does not represent an audit. We undertake no duty of due diligence or independent verification of any information. The assignment of a rating does not create a fiduciary relationship between us and you or between us and other recipients of the rating. We have not consented to and will not consent to being named an "expert" under the applicable securities laws, including without limitation, Section 7 of the Securities Act of 1933. The rating is not a "market rating" nor is it a recommendation to buy, hold, or sell the obligations.

This letter constitutes Standard & Poor's permission to you to disseminate the above-assigned rating to interested parties. Standard & Poor's reserves the right to inform its own clients, subscribers, and the public of the rating.

Standard & Poor's relies on the issuer and its counsel, accountants, and other experts for the accuracy and completeness of the information submitted in connection with the rating. This rating is based on financial information and documents we received prior to the issuance of this letter. Standard & Poor's assumes that the documents you have provided to us are final. If any subsequent changes were made in the final documents, you must notify us of such changes by sending us the revised final documents with the changes clearly marked.

Standard & Poor's is pleased to be of service to you. For more information please visit our website at [www.standardandpoors.com](http://www.standardandpoors.com). If we can be of help in any other way, please contact us. Thank you for choosing Standard & Poor's and we look forward to working with you again.

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Sincerely yours,

A handwritten signature in black ink that reads "Standard & Poor's". The script is cursive and elegant, with the 'S' and 'P' being particularly large and stylized.

Standard & Poor's Ratings Services  
a Standard & Poor's Financial Services LLC business.

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**Standard & Poor's Ratings Services  
Terms and Conditions Applicable To Public Finance Ratings**

You understand and agree that:

**General.** The ratings and other views of Standard & Poor's Ratings Services ("Ratings Services") are statements of opinion and not statements of fact. A rating is not a recommendation to purchase, hold, or sell any securities nor does it comment on market price, marketability, investor preference or suitability of any security. While Ratings Services bases its ratings and other views on information provided by issuers and their agents and advisors, and other information from sources it believes to be reliable, Ratings Services does not perform an audit, and undertakes no duty of due diligence or independent verification, of any information it receives. Such information and Ratings Services' opinions should not be relied upon in making any investment decision. Ratings Services does not act as a "fiduciary" or an investment advisor. Ratings Services neither recommends nor will recommend how an issuer can or should achieve a particular rating outcome nor provides or will provide consulting, advisory, financial or structuring advice.

**All Rating Actions in Ratings Services' Sole Discretion.** Ratings Services may assign, raise, lower, suspend, place on CreditWatch, or withdraw a rating, and assign or revise an Outlook, at any time, in Ratings Services' sole discretion. Ratings Services may take any of the foregoing actions notwithstanding any request for a confidential or private rating or a withdrawal of a rating, or termination of this Agreement. Ratings Services will not convert a public rating to a confidential or private rating, or a private rating to a confidential rating.

**Publication.** Ratings Services reserves the right to use, publish, disseminate, or license others to use, publish or disseminate the rating provided hereunder and any analytical reports, including the rationale for the rating, unless you specifically request in connection with the initial rating that the rating be assigned and maintained on a confidential or private basis. If, however, a confidential or private rating or the existence of a confidential or private rating subsequently becomes public through disclosure other than by an act of Ratings Services or its affiliates, Ratings Services reserves the right to treat the rating as a public rating, including, without limitation, publishing the rating and any related analytical reports. Any analytical reports published by Ratings Services are not issued by or on behalf of you or at your request. Notwithstanding anything to the contrary herein, Ratings Services reserves the right to use, publish, disseminate or license others to use, publish or disseminate analytical reports with respect to public ratings that have been withdrawn, regardless of the reason for such withdrawal. Ratings Services may publish explanations of Ratings Services' ratings criteria from time to time and nothing in this Agreement shall be construed as limiting Ratings Services' ability to modify or refine its ratings criteria at any time as Ratings Services deems appropriate.

**Information to be Provided by You.** For so long as this Agreement is in effect, in connection with the rating provided hereunder, you warrant that you will provide, or cause to be provided, as promptly as practicable, to Ratings Services all information requested by Ratings Services in accordance with its applicable published ratings criteria. The rating, and the maintenance of the rating, may be affected by Ratings Services' opinion of the information received from you or your agents or advisors. You further warrant that all information provided to Ratings Services by you or your agents or advisors regarding the rating or, if applicable, surveillance of the rating, as of the date such information is provided, (i) is true, accurate and complete in all material respects and, in light of the circumstances in which it was provided, not misleading and (ii) does not infringe or violate the intellectual property rights of a third party. A material breach of the warranties in this paragraph shall constitute a material breach of this Agreement.

**Confidential Information.** For purposes of this Agreement, "Confidential Information" shall mean verbal or written information that you or your agents or advisors have provided to Ratings Services and, in a specific and particularized manner, have marked or otherwise indicated in writing (either prior to or promptly following such disclosure) that such information is "Confidential". Notwithstanding the foregoing, information disclosed by you or your agents or advisors to

Ratings Services shall not be deemed to be Confidential Information, and Ratings Services shall have no obligation to treat such information as Confidential Information, if such information (i) was known by Ratings Services or its affiliates at the time of such disclosure and was not known by Ratings Services to be subject to a prohibition on disclosure, (ii) was known to the public at the time of such disclosure, (iii) becomes known to the public (other than by an act of Ratings Services or its affiliates) subsequent to such disclosure, (iv) is disclosed to Ratings Services or its affiliates by a third party subsequent to such disclosure and Ratings Services reasonably believes that such third party's disclosure to Ratings Services or its affiliates was not prohibited, (v) is developed independently by Ratings Services or its affiliates without reference to the Confidential Information, (vi) is approved in writing by you for public disclosure, or (vii) is required by law or regulation to be disclosed by Ratings Services or its affiliates. Ratings Services is aware that U.S. and state securities laws may impose restrictions on trading in securities when in possession of material, non-public information and has adopted securities trading and communication policies to that effect.

Ratings Services' Use of Information. Except as otherwise provided herein, Ratings Services shall not disclose Confidential Information to third parties. Ratings Services may (i) use Confidential Information to assign, raise, lower, suspend, place on CreditWatch, or withdraw a rating, and assign or revise an Outlook, and (ii) share Confidential Information with its affiliates engaged in the ratings business who are bound by appropriate confidentiality obligations; in each case, subject to the restrictions contained herein, Ratings Services and such affiliates may publish information derived from Confidential Information. Ratings Services may also use, and share Confidential Information with any of its affiliates or agents engaged in the ratings or other financial services businesses who are bound by appropriate confidentiality obligations ("Relevant Affiliates and Agents"), for modelling, benchmarking and research purposes; in each case, subject to the restrictions contained herein, Ratings Services and such affiliates may publish information derived from Confidential Information. With respect to structured finance ratings not maintained on a confidential or private basis, Ratings Services may publish data aggregated from Confidential Information, excluding data that is specific to and identifies individual debtors ("Relevant Data"), and share such Confidential Information with any of its Relevant Affiliates and Agents for general market dissemination of Relevant Data; you confirm that, to the best of your knowledge, such publication would not breach any confidentiality obligations you may have toward third parties. Ratings Services will comply with all applicable U.S. and state laws, rules and regulations protecting personally-identifiable information and the privacy rights of individuals. Ratings Services acknowledges that you may be entitled to seek specific performance and injunctive or other equitable relief as a remedy for Ratings Services' disclosure of Confidential Information in violation of this Agreement. Ratings Services and its affiliates reserve the right to use, publish, disseminate, or license others to use, publish or disseminate any non-Confidential Information provided by you, your agents or advisors.

Ratings Services Not an Expert, Underwriter or Seller under Securities Laws. Ratings Services has not consented to and will not consent to being named an "expert" or any similar designation under any applicable securities laws or other regulatory guidance, rules or recommendations, including without limitation, Section 7 of the U.S. Securities Act of 1933. Ratings Services is not an "underwriter" or "seller" as those terms are defined under applicable securities laws or other regulatory guidance, rules or recommendations, including without limitation Sections 11 and 12(a)(2) of the U.S. Securities Act of 1933. Rating Services has not performed the role or tasks associated with an "underwriter" or "seller" under the United States federal securities laws or other regulatory guidance, rules or recommendations in connection with this engagement.

Office of Foreign Assets Control. As of the date of this Agreement, (a) neither you nor the issuer (if you are not the issuer) or any of your or the issuer's subsidiaries, or any director or corporate officer of any of the foregoing entities, is the subject of any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC Sanctions"), (b) neither you nor the issuer (if you are not the issuer) is 50% or more owned or controlled, directly or indirectly, by any person or entity ("parent") that is the subject of OFAC Sanctions, and (c) to the best of your knowledge, no entity 50% or more owned or controlled by a direct or indirect parent of you or the issuer (if you are not the issuer) is the subject of OFAC sanctions. For so long as this Agreement is in effect, you will promptly notify Ratings Services if any of these circumstances change.

Ratings Services' Use of Confidential and Private Ratings. Ratings Services may use confidential and private ratings in its analysis of the debt issued by collateralized debt obligation (CDO) and other investment vehicles. Ratings Services may disclose a confidential or private rating as a confidential credit estimate or assessment to the managers of CDO and similar investment vehicles. Ratings Services may permit CDO managers to use and disseminate credit estimates or assessments on a limited basis and subject to various restrictions; however, Ratings Services cannot control any such use or dissemination.

**Entire Agreement.** Nothing in this Agreement shall prevent you, the issuer (if you are not the issuer) or Ratings Services from acting in accordance with applicable laws and regulations. Subject to the prior sentence, this Agreement, including any amendment made in accordance with the provisions hereof, constitutes the complete and entire agreement between the parties on all matters regarding the rating provided hereunder. The terms of this Agreement supersede any other terms and conditions relating to information provided to Ratings Services by you or your agents and advisors hereunder, including without limitation, terms and conditions found on, or applicable to, websites or other means through which you or your agents and advisors make such information available to Ratings Services, regardless if such terms and conditions are entered into before or after the date of this Agreement. Such terms and conditions shall be null and void as to Ratings Services.

**Limitation on Damages.** Ratings Services does not and cannot guarantee the accuracy, completeness, or timeliness of the information relied on in connection with a rating or the results obtained from the use of such information. RATINGS SERVICES GIVES NO EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE. Ratings Services, its affiliates or third party providers, or any of their officers, directors, shareholders, employees or agents shall not be liable to you, your affiliates or any person asserting claims on your behalf, directly or indirectly, for any inaccuracies, errors, or omissions, in each case regardless of cause, actions, damages (consequential, special, indirect, incidental, punitive, compensatory, exemplary or otherwise), claims, liabilities, costs, expenses, legal fees or losses (including, without limitation, lost income or lost profits and opportunity costs) in any way arising out of or relating to the rating provided hereunder or the related analytic services even if advised of the possibility of such damages or other amounts except to the extent such damages or other amounts are finally determined by a court of competent jurisdiction in a proceeding in which you and Ratings Services are parties to result from gross negligence, intentional wrongdoing, or willful misconduct of Ratings Services. In furtherance and not in limitation of the foregoing, Ratings Services will not be liable to you, your affiliates or any person asserting claims on your behalf in respect of any decisions alleged to be made by any person based on anything that may be perceived as advice or recommendations. In the event that Ratings Services is nevertheless held liable to you, your affiliates, or any person asserting claims on your behalf for monetary damages under this Agreement, in no event shall Ratings Services be liable in an aggregate amount in excess of US\$5,000,000 except to the extent such monetary damages directly result from Ratings Services' intentional wrongdoing or willful misconduct. The provisions of this paragraph shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss, whether in contract, statute, tort (including, without limitation, negligence), or otherwise. Neither party waives any protections, privileges, or defenses it may have under law, including but not limited to, the First Amendment of the Constitution of the United States of America.

**Termination of Agreement.** This Agreement may be terminated by either party at any time upon written notice to the other party. Except where expressly limited to the term of this Agreement, these Terms and Conditions shall survive the termination of this Agreement.

**No Third-Party Beneficiaries.** Nothing in this Agreement, or the rating when issued, is intended or should be construed as creating any rights on behalf of any third parties, including, without limitation, any recipient of the rating. No person is intended as a third party beneficiary of this Agreement or of the rating when issued.

**Binding Effect.** This Agreement shall be binding on, and inure to the benefit of, the parties hereto and their successors and assigns.

**Severability.** In the event that any term or provision of this Agreement shall be held to be invalid, void, or unenforceable, then the remainder of this Agreement shall not be affected, impaired, or invalidated, and each such term and provision shall be valid and enforceable to the fullest extent permitted by law.

**Amendments.** This Agreement may not be amended or superseded except by a writing that specifically refers to this Agreement and is executed manually or electronically by authorized representatives of both parties.

**Reservation of Rights.** The parties to this Agreement do not waive, and reserve the right to contest, any issues regarding sovereign immunity, the applicable governing law and the appropriate forum for resolving any disputes arising out of or relating to this Agreement.

NOTICE OF REDEMPTION-CONDITIONAL  
ON OCTOBER 25, 2012  
CITY OF FAIRMONT (WEST VIRGINIA)  
WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997

Notice is hereby given that, the City of Fairmont (the "Issuer"), pursuant to a Bond Ordinance enacted March 27, 2012 (the "Bond Ordinance"), as supplemented by a Supplemental Parameters Resolution adopted June 12, 2012 and Second Supplemental Resolution adopted September 12, 2012 (collectively, the "Supplemental Resolution"), will issue its Refunding Revenue Bonds, Series 2012 D, dated October 24, 2012, in the original aggregate principal amount of \$26,235,000 (the "Series 2012 D Bonds"), for the purpose of effecting the current refunding of the entire outstanding principal amount of its Waterworks Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of \$10,260,000 (the "Series 1997 Bonds") in accordance with the redemption provisions of the Bond Ordinance enacted by the Issuer on April 8, 1997, as supplemented by the Supplemental Resolution adopted by the Issuer on June 5, 1997. The Series 1997 Bonds are to be redeemed in their entirety on October 25, 2012 (the "Redemption Date"). The payment which is to be made in order to effect such redemption in each case will include the principal amount at 100% of par (the "Redemption Price"), and accrued interest to the redemption date as follows:

<u>Bond No.</u>	<u>Cusip No.*</u>	<u>Unpaid Principal</u>	<u>Redemption Price</u>	<u>Principal Redemption</u>
R-15	305459 DW6	\$980,000	100%	\$980,000

On the Redemption Date the Redemption Price and all interest accrued on the Series 1997 Bonds will become due and payable upon the Series 1997 Bonds and interest thereon shall cease to accrue from and after said date. On the Redemption Date there will be on deposit with the Registrar for the Series 1997 Bonds an amount sufficient to pay, on the Redemption Date, the Redemption Price of the Series 1997 Bonds and the interest accrued and to accrue thereon.

The redemption described above is conditional on and subject to there being on deposit in the applicable funds and accounts with the Registrar on the Redemption Date sufficient moneys to pay the full Redemption Price of the Bonds. If such redemption moneys are not on deposit on the Redemption Date, this notice shall be of no force and effect, the Bonds shall not be redeemed pursuant hereto, and the Registrar shall give notice that such moneys were not received. Failure to make such deposit shall not constitute a default under the Bond Ordinance.

All Series 1997 Bonds outstanding may be surrendered for payment and delivered to the Registrar at the following address:

**BY MAIL:**

The Bank of New York Mellon  
P.O. Box 396  
East Syracuse, NY 13057  
Attn: Bond Redemption Unit

**HAND DELIVERY OVERNIGHT MAIL:**

The Bank of New York Mellon  
111 Sanders Creek Parkway  
East Syracuse , NY 13057  
Attn: Bond Redemption Unit

These securities will become due and payable on the Redemption Date at the office of the Registrar as indicated above.

Date of Notice: September 25, 2012

*Under the provisions of the Interest and Dividend Tax Compliance Act of 1983, Registrars and Paying Agents may be obligated to withhold 31% from payments of principal to individuals who have failed to furnish the Registrar and Paying Agent with a valid Taxpayer Identification Number. Holders of the above stated securities who wish to avoid the application of these provisions should submit certified Taxpayer Identification Numbers on Form W-9 when presenting their bonds. The above CUSIP Numbers are provided solely for the convenience of the bondholders. The Registrar does not certify as to their correctness or completeness.*

*\*The above CUSIP Numbers are provided solely for the convenience of the bondholders. The Registrar does not certify as to their correctness or completeness.*

268460.00017



# CITY OF FAIRMONT

CITY/COUNTY COMPLEX  
P.O. Box 1428  
200 Jackson Street  
Fairmont, West Virginia 26555-1428  
(304) 366-6211  
(304) 366-0228 FAX  
[www.cityoffairmontwv.com](http://www.cityoffairmontwv.com)

## **DIRECTION TO REDEEM**

**\$10,260,000 City of Fairmont, West Virginia  
Waterworks Refunding Revenue Bonds, Series 1997  
Dated June 1, 1997**

**To: VIA ELECTRONIC TRANSMISSION  
THOMAS.VLAHAKIS@BNYMELLON.COM  
BNY Mellon Global Corporate Trust  
385 Rifle Camp Road  
Third Floor  
Woodland Park, NJ 07424**

On this September 25, 2012 and pursuant to Section 3.07 of the Bond Ordinance enacted on April 8, 1997, as supplemented (collectively, the "1997 Ordinance") related to the City of Fairmont, West Virginia Waterworks Refunding Revenue Bonds, Series 1997, dated June 1, 1997 and issued in the original aggregate amount of \$10,260,000 (the "1997 Bonds"), you are hereby directed to redeem all the outstanding 1997 Bonds on October 25, 2012. The redemption shall be at the redemption price of 100% of par, plus interest accrued to the redemption date and shall be as otherwise specified in the 1997 Bonds.

*[Signature Page to Follow.]*

Dated the day and year first written above.

CITY OF FAIRMONT, WEST VIRGINIA

By:  \_\_\_\_\_  
Its Authorized Officer

**Receipt of Transfer (1997)**

City of Fairmont  
Waterworks Refunding Revenue Bonds, Series 1997

**RECEIPT OF TRANSFER**

The undersigned authorized representative of the West Virginia Municipal Bond Commission (the "Escrow Agent") hereby certifies this 24th day of October, 2012 as follows:

On the 24th day of October, 2012, the Escrow Agent received the sum of \$650,018.60 from the proceeds of the Water Refunding Revenue Bonds, Series 2012 D issued by the City of Fairmont (the "City") and such amount, together with funds then on deposit with the Escrow Agent in the Series 1997 Bonds Sinking Fund in the amount of \$344,225 and Series 1997 Bonds Reserve Account in the amount of \$2,436.82 (total of \$996,680.42) will be transferred to The Bank of New York Mellon as Paying Agent to pay the entire outstanding principal of and all accrued interest on the City of Fairmont Waterworks Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of \$10,260,000, of which \$980,000 is currently outstanding (the "Series 1997 Bonds"), on October 25, 2012, the redemption date for the Series 1997 Bonds (the "Redemption Date").

At least one Business Day prior to the Redemption Date, the Escrow Agent shall transfer the sum of \$996,680.42 to the Paying Agent in order to facilitate the payment by the Paying Agent of the Redemption Price (the "Redemption Price") on the Redemption Date to the registered owners of the Series 1997 Bonds upon the presentation and surrender of such Series 1997 Bonds for payment and cancellation.

[Remainder of Page Intentionally Blank]

WITNESS my signature the day and year first written above.

WEST VIRGINIA MUNICIPAL  
BOND COMMISSION

By:   
Its Authorized Representative

**Receipt and Release**

City of Fairmont  
Waterworks Refunding Revenue Bonds, Series 1997

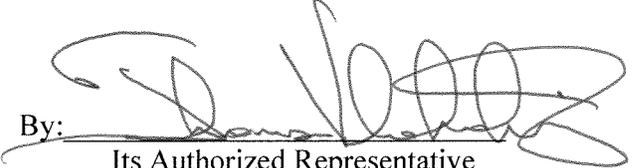
**RECEIPT AND RELEASE OF SERIES 1997 BONDS**

The undersigned authorized representative of the Bank of New York Mellon (the "Paying Agent") hereby certifies as follows:

On October 25, 2012, the Paying Agent received the sum of \$996,680.42 (the "Redemption Price") from the West Virginia Municipal Bond Commission, as Escrow Agent, and such amount is sufficient to: (i) pay the entire outstanding principal of and all accrued interest on the City of Fairmont Waterworks Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of \$10,260,000 (the "Series 1997 Bonds"), on October 25, 2012, the Redemption Date for the Series 1997 Bonds, and (ii) discharge the liens, pledges and encumbrances securing such Series 1997 Bonds.

WITNESS my signature this October 25, 2012.

BANK OF NEW YORK MELLON

By: 

Its Authorized Representative



WEST VIRGINIA  
MUNICIPAL BOND COMMISSION

CRAIG GRIFFITH  
State Tax Commissioner  
Chair

JOHN D. PERDUE  
State Treasurer

GLEN B. GAINER III  
State Auditor

Suite 1117  
900 Pennsylvania Avenue  
Charleston, West Virginia 25302  
(304) 558-3971  
FAX (304) 558-1280

LARRY CHAPMAN  
Member

JOHN ROACH  
Member

SARA L. ROGERS  
Executive Director

October 24, 2012

The Bank of New York Trust Company, N.A.  
385 Rifle Camp Road, 3rd Floor  
Corporate Trust  
Woodland Park, NJ 07424

Attn: Thomas Vlahakis, Vice President

FAX # 973-357-7840

Page 1 of 1

Ref #0003

Dear Mr. Vlahakis:

Please pay registered principal and interest on the following described account in the total amount of \$ **996,680.42** This issue is being called. Funds will be wired to you on Thursday, October 25, 2012.

**City of Fairmont Water Refunding Revenue**  
**REF #FAIWAT97**

Issue 06-01-97 - Registered Principal Called	980,000.00
Registered Interest	16,680.42

Very truly yours,

Sara Rogers  
Executive Director

SR:pl

REAL TIME CASH MANAGEMENT REPORT 10/25/12 12:18 Pm N.Y. TIME ALL FUNDS

407422 - WEST VIRGINIA PAYING AGENCY SUSPENSE OPEN PRN BAL 0.01  
OPEN INC BAL 0.00

TRAN	UNITS	SETTLED	UNSETTLED
WIRE RECEIVED FROM		996,680.42	F
STATE OF WEST VIRGINIA		0.00	
OFFICE OF THE ST TREASURER MAIN AC			
122 STATE CAPITOL ROOM E			
CHARLESTON WV 25305			
GLA 111565 FOR FINAL CREDIT TO			
407422WV D/S PYMNT ACCT. CONTACT:			
TOM VLAHAKIS RELATIONSHIP MGR 973			
247-4742			
TRNFDC1210253014000 CRN	2866730WTQP		
SYSTEM SEQ # 339146			
CSD:10/25/12			
PSTG TRAN#: 1299-77700-1430			

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**NOTICE OF REDEMPTION-CONDITIONAL  
ON OCTOBER 25, 2012  
CITY OF FAIRMONT (WEST VIRGINIA)  
WATER REVENUE BONDS, SERIES 1998**

Notice is hereby given that, the City of Fairmont (the "Issuer"), pursuant to a Bond Ordinance enacted March 27, 2012 (the "Bond Ordinance"), as supplemented by a Supplemental Parameters Resolution adopted June 12, 2012 and Second Supplemental Resolution adopted September 12, 2012 (collectively, the "Supplemental Resolution"), will issue its Refunding Revenue Bonds, Series 2012 D, dated October 24, 2012, in the original aggregate principal amount of \$26,235,000 (the "Series 2012 D Bonds"), for the purpose of effecting the current refunding of entire outstanding principal amount of its Water Revenue Bonds, Series 1998, dated December 15, 1998, issued in the original aggregate principal amount of \$9,600,000 (the "Series 1998 Bonds") in accordance with the redemption provisions of the Bond Ordinance enacted by the Issuer on November 10, 1998, as supplemented by the Supplemental Resolution adopted by the Issuer on December 17, 1998. The Series 1998 Bonds are to be redeemed in their entirety on October 25, 2012 (the "Redemption Date"). The payment which is to be made in order to effect such redemption in each case will include the principal amount at 100% of par (the "Redemption Price"), and accrued interest to the redemption date as follows:

<u>Bond No.</u>	<u>Cusip No.*</u>	<u>Unpaid Principal</u>	<u>Redemption Price</u>	<u>Principal Redemption</u>
R-12	305459 EJ4	\$145,000	100%	\$145,000
R-13	305459 EK1	\$1,625,000	100%	\$1,625,000
R-14	305459 EP0	\$3,055,000	100%	\$3,055,000
R-15	305459 EL9	\$3,445,000	100%	\$3,445,000

On the Redemption Date the Redemption Price and all interest accrued on the Series 1998 Bonds will become due and payable upon the Series 1998 Bonds and interest thereon shall cease to accrue from and after said date. On the Redemption Date there will be on deposit with the Paying Agent for the Series 1998 Bonds an amount sufficient to pay, on the Redemption Date, the Redemption Price of the Series 1998 Bonds and the interest accrued and to accrue thereon.

The redemption described above is conditional on and subject to there being on deposit in the applicable funds and accounts with the Paying Agent on the Redemption Date sufficient moneys to pay the full Redemption Price of the Bonds. If such redemption moneys are not on deposit on the Redemption Date, this notice shall be of no force and effect, the Bonds shall not be redeemed pursuant hereto, and the Paying Agent shall give notice that such moneys were not

received. Failure to make such deposit shall not constitute a default under the Bond Ordinance.

All Series 1998 Bonds outstanding may be surrendered for payment and delivered to the Paying Agent at the following address:

West Virginia Municipal Bond Commission  
900 Pennsylvania Avenue  
Suite 1117  
Charleston, WV 25302  
Phone: (304) 558-3971

These securities will become due and payable on the Redemption Date at the office of the Paying Agent as indicated above.

Date of Notice: September 25, 2012

BY: WESBANCO BANK, INC., Wheeling, WV, Registrar

*Under the provisions of the Interest and Dividend Tax Compliance Act of 1983, Registrars and Paying Agents may be obligated to withhold 31% from payments of principal to individuals who have failed to furnish the Registrar and Paying Agent with a valid Taxpayer Identification Number. Holders of the above stated securities who wish to avoid the application of these provisions should submit certified Taxpayer Identification Numbers on Form W-9 when presenting their bonds. The above CUSIP Numbers are provided solely for the convenience of the bondholders. The Registrar does not certify as to their correctness or completeness.*

*\*The above CUSIP Numbers are provided solely for the convenience of the bondholders. The Registrar does not certify as to their correctness or completeness.*



# CITY OF FAIRMONT

CITY/COUNTY COMPLEX  
P.O. Box 1428  
200 Jackson Street  
Fairmont, West Virginia 26555-1428  
(304) 366-6211  
(304) 366-0228 FAX  
[www.cityoffairmontwv.com](http://www.cityoffairmontwv.com)

## **DIRECTION TO REDEEM**

**\$9,600,000 City of Fairmont, West Virginia  
Water Revenue Bonds, Series 1998  
Dated December 15, 1998**

**To: VIA ELECTRONIC TRANSMISSION  
SHELBURNEJ@WESBANCO.COM  
WesBanco Bank, Inc.  
One Bank Plaza  
Wheeling, West Virginia 26003**

On this September 25, 2012 and pursuant to Section 3.07 of the Bond Ordinance enacted on November 10, 1998, as supplemented (collectively, the "1998 Ordinance") related to the City of Fairmont, West Virginia Water Revenue Bonds, Series 1998, dated December 15, 1998 and issued in the original aggregate amount of \$9,600,000 (the "1998 Bonds"), you are hereby directed to redeem all the outstanding 1998 Bonds on October 25, 2012. The redemption shall be at the redemption price of 100% of par, plus interest accrued to the redemption date and shall be as otherwise specified in the 1998 Bonds.

*[Signature Page to Follow.]*

Dated the day and year first written above.

CITY OF FAIRMONT, WEST VIRGINIA

By:  \_\_\_\_\_  
Its Authorized Officer

**Receipt and Release (1998)**

City of Fairmont  
Water Revenue Bonds, Series 1998

**RECEIPT AND RELEASE OF SERIES 1998 BONDS**

The undersigned authorized representative of the West Virginia Municipal Bond Commission (the "Prepayment Agent") hereby certifies this 24th day of October, 2012 as follows:

On the 24th day of October, 2012, the Prepayment Agent received the sum of \$7,012,993.57 from the proceeds of the Water Refunding Revenue Bonds, Series 2012 D issued by the City of Fairmont (the "City") and such amount, together with funds then on deposit with the Prepayment Agent in the Series 1998 Bonds Sinking Fund in the amount of \$178,125.92 and Series 1998 Bonds Reserve Account in the amount of \$1,204,542.55 (total of \$8,395,662.04) will be sufficient to: (i) pay the entire outstanding principal of and all accrued interest on the City of Fairmont Water Revenue Bonds, Series 1998, dated December 15, 1998, issued in the original aggregate principal amount of \$9,600,000, of which \$8,270,000 is currently outstanding (the "Series 1998 Bonds"), on October 25, 2012, the Redemption Date for the Series 1998 Bonds, and (ii) discharge the liens, pledges and encumbrances securing such Series 1998 Bonds.

[Remainder of Page Intentionally Blank]

WITNESS my signature the day and year first written above.

WEST VIRGINIA MUNICIPAL  
BOND COMMISSION

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

By: \_\_\_\_\_  
Its Authorized Representative

**NOTICE OF REDEMPTION-CONDITIONAL  
ON OCTOBER 25, 2012  
CITY OF FAIRMONT (WEST VIRGINIA)  
WATER REVENUE BONDS, SERIES 1999**

Notice is hereby given that, the City of Fairmont (the "Issuer"), pursuant to a Bond Ordinance enacted March 27, 2012 (the "Bond Ordinance"), as supplemented by a Supplemental Parameters Resolution adopted June 12, 2012 and Second Supplemental Resolution adopted September 12, 2012 (collectively, the "Supplemental Resolution"), will issue its Refunding Revenue Bonds, Series 2012 D, dated October 24, 2012, in the original aggregate principal amount of \$26,235,000 (the "Series 2012 D Bonds"), for the purpose of effecting the current refunding of a portion of the outstanding principal amount of its Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the "Series 1999 Bonds to be Redeemed") in accordance with the redemption provisions of the Bond Ordinance enacted by the Issuer on November 10, 1998, as supplemented by the Supplemental Resolution adopted by the Issuer on December 17, 1998. The Series 1999 Bonds to be Redeemed are to be redeemed on October 25, 2012 (the "Redemption Date"). The payment which is to be made in order to effect such redemption in each case will include the principal amount at 100% of par (the "Redemption Price"), and accrued interest to the Redemption date as follows:

<u>Bond No.</u>	<u>Cusip No.*</u>	<u>Unpaid Principal</u>	<u>Redemption Price</u>	<u>Principal Redemption</u>
R-1	305459 EQ8	\$1,825,000	100%	\$1,825,000
R-2	305459 EM7	\$2,020,000	100%	\$2,020,000
R-3	305459 ER6	\$2,235,000	100%	\$2,235,000
R-5	305459 ET2	\$2,500,000	100%	\$2,500,000
R-6	305459 EN5	\$8,365,000	100%	\$8,365,000

On the Redemption Date the Redemption Price and all interest accrued on the Series 1999 Bonds to be Redeemed will become due and payable upon the Series 1999 Bonds to be Redeemed and interest thereon shall cease to accrue from and after said date. On the Redemption Date there will be on deposit with the Paying Agent for the Series 1999 Bonds to be Redeemed an amount sufficient to pay, on the Redemption Date, the Redemption Price of the Series 1999 Bonds to be Redeemed and the interest accrued and to accrue thereon.

The redemption described above is conditional on and subject to there being on deposit in the applicable funds and accounts with the Paying Agent on the Redemption Date sufficient moneys to pay the full Redemption Price of the Series 1999 Bonds to be Redeemed. If such redemption moneys are not on deposit on the Redemption Date, this notice shall be of no force and effect, the Series 1999 Bonds to be Redeemed shall not be redeemed pursuant hereto, and the Paying Agent shall give notice that such moneys were not received. Failure to make such deposit shall not constitute a default under the Bond Ordinance.

All Series 1999 Bonds being redeemed may be surrendered for payment and delivered to the Paying Agent at the following address:

West Virginia Municipal Bond Commission  
900 Pennsylvania Avenue  
Suite 1117  
Charleston, WV 25302  
Phone: (304) 558-3971

These securities will become due and payable on the Redemption Date at the office of the Paying Agent as indicated above.

Date of Notice: September 25, 2012

BY: WESBANCO BANK, INC., Wheeling, WV, Registrar

*Under the provisions of the Interest and Dividend Tax Compliance Act of 1983, Registrars and Paying Agents may be obligated to withhold 31% from payments of principal to individuals who have failed to furnish the Registrar and Paying Agent with a valid Taxpayer Identification Number. Holders of the above stated securities who wish to avoid the application of these provisions should submit certified Taxpayer Identification Numbers on Form W-9 when presenting their bonds. The above CUSIP Numbers are provided solely for the convenience of the bondholders. The Registrar does not certify as to their correctness or completeness.*

*\*The above CUSIP Numbers are provided solely for the convenience of the bondholders. The Registrar does not certify as to their correctness or completeness.*



# CITY OF FAIRMONT

CITY/COUNTY COMPLEX  
P.O. Box 1428  
200 Jackson Street  
Fairmont, West Virginia 26555-1428  
(304) 366-6211  
(304) 366-0228 FAX  
[www.cityoffairmontwv.com](http://www.cityoffairmontwv.com)

## **DIRECTION TO REDEEM**

**\$19,945,000 City of Fairmont, West Virginia  
Water Revenue Bonds, Series 1999  
Dated January 1, 1999**

**To: VIA ELECTRONIC TRANSMISSION  
SHELBURNEJ@WESBANCO.COM  
WesBanco Bank, Inc.  
One Bank Plaza  
Wheeling, West Virginia 26003**

On this September 25, 2012 and pursuant to Section 3.07 of the Bond Ordinance enacted on November 10, 1998, as supplemented (collectively, the "1998 Ordinance") related to the City of Fairmont, West Virginia Water Revenue Bonds, Series 1999, dated January 1, 1999 and issued in the original aggregate amount of \$19,945,000 (the "1999 Bonds"), you are hereby directed to redeem a portion of the outstanding 1999 Bonds on October 25, 2012 for total principal redemption of \$16,945,000. The redemption shall be at the redemption price of 100% of par, plus interest accrued to the redemption date and shall be as otherwise specified in the 1999 Bonds.

*[Signature Page to Follow.]*

Dated the day and year first written above.

CITY OF FAIRMONT, WEST VIRGINIA

By:  \_\_\_\_\_  
Its Authorized Officer

**Receipt of Transfer (1999)**

City of Fairmont  
Water Revenue Bonds, Series 1999

**RECEIPT OF TRANSFER**

The undersigned authorized representative of the West Virginia Municipal Bond Commission (the "Prepayment Agent") hereby certifies this 24th day of October, 2012 as follows:

On the 24th day of October, 2012, the Prepayment Agent received the sum of \$15,089,230.39 from the proceeds of the Water Refunding Revenue Bonds, Series 2012 D issued by the City of Fairmont (the "City") and such amount, together with funds then on deposit with the Prepayment Agent in the Series 1999 Bonds Sinking Fund in the amount of \$281,454.16 and Series 1999 Bonds Reserve Account in the amount of \$1,841,696.91 (total of \$17,212,381.46) will be transferred to pay a portion of the outstanding principal of and the prorated accrued interest on the City of Fairmont Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000, of which \$19,945,000 is currently outstanding (the "Series 1999 Bonds"), on October 25, 2012, the prepayment date for the Series 1999 Bonds (the "Prepayment Date").

At least one Business Day prior to the Prepayment Date, the Prepayment Agent shall transfer the sum of \$17,212,381.46 in order to facilitate the payment of the Prepayment Price (the "Prepayment Price") on the Prepayment Date to the registered owners of the Series 1999 Bonds upon the presentation and surrender of such prepaid Series 1999 Bonds for payment and cancellation. A portion of the Series 1999 Bonds will remain Outstanding following the Prepayment Date.

[Remainder of Page Intentionally Blank]

WITNESS my signature the day and year first written above.

WEST VIRGINIA MUNICIPAL  
BOND COMMISSION

By:  \_\_\_\_\_  
Its Authorized Representative



# Blanket Issuer Letter of Representations

[To be Completed by Issuer]

CITY OF FAIRMONT, WEST VIRGINIA

[Name of Issuer]

December 17, 1998

[Date]

Attention: Underwriting Department — Eligibility  
**The Depository Trust Company**  
55 Water Street; 50th Floor  
New York, NY 10041-0099

Ladies and Gentlemen:

This letter sets forth our understanding with respect to all issues (the "Securities") that Issuer shall request be made eligible for deposit by The Depository Trust Company ("DTC").

To induce DTC to accept the Securities as eligible for deposit at DTC, and to act in accordance with DTC's Rules with respect to the Securities, Issuer represents to DTC that Issuer will comply with the requirements stated in DTC's Operational Arrangements, as they may be amended from time to time.

Note:

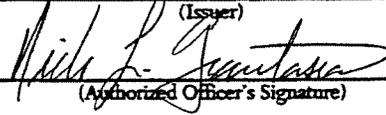
Schedule A contains statements that DTC believes accurately describe DTC, the method of effecting book-entry transfers of securities distributed through DTC, and certain related matters.

Very truly yours,

CITY OF FAIRMONT, WEST VIRGINIA

(Issuer)

By:

  
(Authorized Officer's Signature)

Nick L. Fantasia, Mayor

(Typewrite Name & Title)

200 Jackson Street

(Street Address)

Fairmont, West Virginia 26554

(City)

(State)

(Zip)

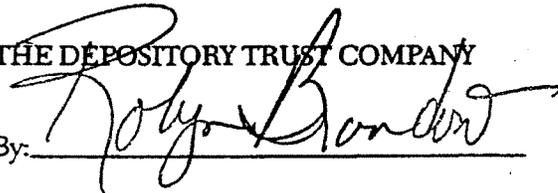
(304) 366-6211

(Phone Number)

Received and Accepted:

THE DEPOSITORY TRUST COMPANY

By:



## SCHEDULE A

### SAMPLE OFFERING DOCUMENT LANGUAGE DESCRIBING BOOK-ENTRY-ONLY ISSUANCE

(Prepared by DTC—bracketed material may be applicable only to certain issues)

1. The Depository Trust Company ("DTC"), New York, NY, will act as securities depository for the securities (the "Securities"). The Securities will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee). One fully-registered Security certificate will be issued for [each issue of] the Securities, [each] in the aggregate principal amount of such issue, and will be deposited with DTC. [If, however, the aggregate principal amount of [any] issue exceeds \$200 million, one certificate will be issued with respect to each \$200 million of principal amount and an additional certificate will be issued with respect to any remaining principal amount of such issue.]

2. DTC is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds securities that its participants ("Participants") deposit with DTC. DTC also facilitates the settlement among Participants of securities transactions, such as transfers and pledges, in deposited securities through electronic computerized book-entry changes in Participants' accounts, thereby eliminating the need for physical movement of securities certificates. Direct Participants include securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is owned by a number of its Direct Participants and by the New York Stock Exchange, Inc., the American Stock Exchange, Inc., and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as securities brokers and dealers, banks, and trust companies that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). The Rules applicable to DTC and its Participants are on file with the Securities and Exchange Commission.

3. Purchases of Securities under the DTC system must be made by or through Direct Participants, which will receive a credit for the Securities on DTC's records. The ownership interest of each actual purchaser of each Security ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase, but Beneficial Owners are expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Securities are to be accomplished by entries made on the books of Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Securities, except in the event that use of the book-entry system for the Securities is discontinued.

4. To facilitate subsequent transfers, all Securities deposited by Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. The deposit of Securities with DTC and their registration in the name of Cede & Co. effect no change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Securities; DTC's records reflect only the identity of the Direct Participants to whose accounts such Securities are credited, which may or may not be the Beneficial Owners. The Participants will remain responsible for keeping account of their holdings on behalf of their customers.

5. Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

[6. Redemption notices shall be sent to Cede & Co. If less than all of the Securities within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.]

7. Neither DTC nor Cede & Co. will consent or vote with respect to Securities. Under its usual procedures, DTC mails an Omnibus Proxy to the Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Securities are credited on the record date (identified in a listing attached to the Omnibus Proxy).

8. Principal and interest payments on the Securities will be made to DTC. DTC's practice is to credit Direct Participants' accounts on payable date in accordance with their respective holdings shown on DTC's records unless DTC has reason to believe that it will not receive payment on payable date. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Agent, or the Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal and interest to DTC is the responsibility of the Issuer or the Agent, disbursement of such payments to Direct Participants shall be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners shall be the responsibility of Direct and Indirect Participants.

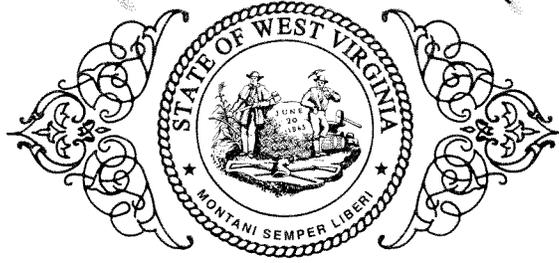
[9. A Beneficial Owner shall give notice to elect to have its Securities purchased or tendered, through its Participant, to the [Tender/Remarketing] Agent, and shall effect delivery of such Securities by causing the Direct Participant to transfer the Participant's interest in the Securities, on DTC's records, to the [Tender/Remarketing] Agent. The requirement for physical delivery of Securities in connection with a demand for purchase or a mandatory purchase will be deemed satisfied when the ownership rights in the Securities are transferred by Direct Participants on DTC's records.]

10. DTC may discontinue providing its services as securities depository with respect to the Securities at any time by giving reasonable notice to the Issuer or the Agent. Under such circumstances, in the event that a successor securities depository is not obtained, Security certificates are required to be printed and delivered.

11. The Issuer may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, Security certificates will be printed and delivered.

12. The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the Issuer believes to be reliable, but the Issuer takes no responsibility for the accuracy thereof.

# 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 19 OF 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*

October 2, 2012

*Natalie E. Tennant*

*Secretary of State*

## MUNICIPAL CORPORATIONS

Article	Section
31. INTERGOVERNMENTAL RELATIONS—FRANCHISE OBLIGATIONS. ....	8-31-1
32. INTERGOVERNMENTAL RELATIONS—CONTRIBUTIONS TO OR INVOLVEMENT WITH NONSTOCK, NONPROFIT CORPORATIONS OR HEALTH INSTITUTIONS FOR PUBLIC PURPOSES. ....	8-32-1
33. INTERGOVERNMENTAL RELATIONS—BUILDING COMMISSIONS. ....	8-33-1
34. JUDICIAL REVIEW. ....	8-34-1
35. DISSOLUTION OF MUNICIPALITIES. ....	8-35-1
36. CONSTITUTIONALITY AND SEVERABILITY. ....	8-36-1
37. MUNICIPAL FINANCIAL STABILIZATION FUND ACT. ....	8-37-1
38. MUNICIPAL ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS. ....	8-38-1

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## ARTICLE 19

### MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS

#### Part I—Municipal Waterworks and Electric Power Systems Authorized; Definition.

##### Section

- 8-19-1. Acquisition and operation of municipal and county waterworks and electric power systems; construction of improvements to municipal and county electric power systems; extension beyond corporate limits; definitions.

#### Part II—Limitations on Sale or Lease of Certain Municipal Waterworks.

- 8-19-2. Contracts for purchase of electric power or energy by a municipality; definitions; requirements; payments; rates and charges.

#### Part III—Right of Eminent Domain.

- 8-19-3. Right of eminent domain; limitations.

#### Part IV—Revenue Bond Financing.

- 8-19-4. Estimate of cost; ordinance or order for issuance of revenue bonds; interest on bonds; rates for services; exemption from taxation.

**Section**

- 8-19-5. Publication of abstract of ordinance or order and notice; hearing.
- 8-19-6. Amount, negotiability and execution of bonds.
- 8-19-7. Bonds payable solely from revenues; not to constitute municipal or county indebtedness.
- 8-19-8. Lien of bondholders; deeds of trust; security agreements; priority of liens.
- 8-19-9. Covenants with bondholders.
- 8-19-10. Operating contract.
- 8-19-11. Rates or charges for water and electric power must be sufficient to pay bonds, etc.; disposition of surplus.
- 8-19-12. Service charges; sinking fund; amount of bonds; additional bonds; surplus.
- 8-19-12a. Deposit required for new customers; lien for delinquent service rates and charges; failure to cure delinquency; payment from deposit; reconnecting deposit; return of deposit; liens; civil actions; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.
- 8-19-13. Discontinuance of water or electric power service for nonpayment of rates or charges.
- 8-19-14. Bonds for additions, betterments and improvements.
- 8-19-15. System of accounts; audit.
- 8-19-16. Protection and enforcement of rights of bondholders, etc.; receivership.

**Part V—Grants, Loans, Advances and Agreements; Cumulative Authority.**

- 8-19-17. Grants, loans, advances and agreements.
- 8-19-18. Additional and alternative method for constructing or improving and for financing waterworks or electric power system; cumulative authority.

**Part VI—Operation by Board; Construction.**

- 8-19-19. Alternative procedure for acquisition, construction or improvement of waterworks or electric power system.
- 8-19-20. Article to be liberally construed.
- 8-19-21. Specifications for water mains and water service pipes.
- 8-19-22. Identification requirement for fire hydrants that are inoperable or unavailable for use in emergency situations.

**PART I—MUNICIPAL WATERWORKS AND ELECTRIC  
POWER SYSTEMS AUTHORIZED; DEFINITION**

**§ 8-19-1. Acquisition and operation of municipal and county waterworks and electric power systems; construction of improvements to municipal and county electric power systems; extension beyond corporate limits; definitions**

(a) Subject to and in accordance with the provisions of this article, any municipality or county commission may acquire, construct, establish, extend, equip, repair, maintain and operate, or lease to others for operation, a waterworks system or an electric power system or construct, maintain and operate additions, betterments and improvements to an existing waterworks system or an existing electric power system, notwithstanding any provision or limitation to the contrary in any other law or charter: Provided, That such municipality or county commission shall not serve or supply water facilities or electric

power facilities or services within the corporate limits of any other municipality or county commission without the consent of the governing body of such other municipality or county commission.

(b) Any municipality or county commission which intends to file an application with the federal energy regulatory commission for a license to acquire, construct, establish, extend, maintain and operate, or lease to others for operation, an electric power system, shall give written notice by certified mail, return receipt requested, and shall give public notice by Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area shall be the municipality or county in which the system is to be located to the governing body of the municipality or the county commission in which such system is or shall be located or, if such system is or shall be located outside of a municipality or county, to the county commission of the county in which such system is or shall be located, at least sixty days prior to the filing of such application: Provided, That the provisions of this subsection shall not apply to any municipality or county commission which, on the date of the passage of this act, has obtained a license from the federal energy regulatory commission to acquire, construct, establish, extend, maintain and operate, or lease to others for operation, an electric power system. If the municipality or county commission receiving such notice does not respond to the notice within sixty days of receipt of such notice, then such other municipality or the county commission shall be deemed to have consented to the application for the proposed electric power system. If such other municipality or the county commission notifies the municipality or county commission that it objects to the proposed electric power system, such other municipality or the county commission shall hold a public hearing on the proposed system within sixty days of receipt of such notice from the municipality or county commission.

(c) As used in this article:

(1) "Waterworks system" means a waterworks system in its entirety or any integral part thereof, including mains, hydrants, meters, valves, standpipes, storage tanks, pump tanks, pumping stations, intakes, wells, impounding reservoirs, pumps, machinery, purification plants, softening apparatus and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a water supply system.

(2) "Electric power system" means a system or facility which produces electric power in its entirety or provides for the distribution of electric power for local consumption and use or for distribution and resale or any combination thereof, or any integral part thereof, including, but not limited to, power lines and wires, power poles, guy wires, insulators, transformers, generators, cables, power line towers, voltage regulators, meters, power substations, machinery and all other facilities necessary, appropriate, useful or convenient or incidental in connection with or to an electric power supply system.

Acts 1933, Ex. Sess., c. 26, § 1; Acts 1937, c. 52; Acts 1939, c. 97; Acts 1949, c. 90; Acts 1955, c. 133; Acts 1969, c. 86; Acts 1978, c. 72; Acts 1983, c. 151; Acts 1986, c. 118; Acts 1986, 1st Ex. Sess., c. 18; Acts 1990, c. 141.

**Cross References**

County commissions, waterworks, see § 7-1-3a.  
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.  
Public Energy Authority Act, see § 5D-1-1 et seq.

**Administrative Code References**

Water rationing, emergency, see W. Va. Code St. R. § 150-20-2.

**Library References**

Electricity Ⓒ1.5. Westlaw Topic Nos. 145, 405.  
Water Law Ⓒ1869. C.J.S. Electricity §§ 13 to 21.

**United States Code Annotated**

Transfer to municipal corporations, federal works supplying water, see 43 U.S.C.A. § 499b.

**PART II—LIMITATIONS ON SALE OR LEASE OF CERTAIN MUNICIPAL WATERWORKS**

**§ 8-19-2. Contracts for purchase of electric power or energy by a municipality; definitions; requirements; payments; rates and charges**

(a) For the purposes of this section:

(1) "Contract" means an agreement entered into by a municipality with any other party for the purchase of electric output, capacity or energy from a project as defined herein.

(2) "Any other party" means any other legal entity, including, but not limited to, another municipality, political subdivision, public authority, agency or instrumentality of any state or the United States, a partnership, a limited partnership, a limited liability company, a corporation, an electric cooperative or an investor-owned utility existing under the laws of any state; and

(3) "Project" or "projects" means systems or facilities owned by another party and used for the generation, transmission, transformation or supply of electric power, or any interest in them, whether an undivided interest as a tenant in common or otherwise, or any right to the output, capacity or services thereof.

(b) In addition to the general authority to purchase electricity on a wholesale basis for resale to its customers, any municipality that owns and operates an electric power system under the provisions of this article may enter into a contract with any other party for the purchase of electricity from one or more projects located in the United States that provide that the contracting municipality is obligated to make payments required by the contract whether or not a project is completed, operable or operating and notwithstanding the suspension, interruption, interference, reduction or curtailment of the output of a project or the power and energy contracted for and that the payments shall not be subject to any reduction, whether by offset or otherwise, and shall not be

conditioned upon performance or nonperformance by any other party. The contract may provide that, in the event of a default by the municipality or any other party to the contract in the performance of each entities' obligations under the contract, any nondefaulting municipality or any other party to the contract shall on a pro rata basis succeed to the rights and interests of, and assume the obligations of, the defaulting party.

(c) Notwithstanding any other provisions of law, ordinance or charter provision to the contrary, a contract under subsection (b) of this section may extend for more than fifty years or fifty years from the date a project is estimated to be placed into normal continuous operation and the execution and effectiveness of the contract is not subject to any authorizations or approvals by the state or any agency, commission, instrumentality or political subdivision thereof except as otherwise specifically required by law.

(d) A contract under subsection (b) of this section may provide that payments by the municipality are made solely from and may be secured by a pledge of and lien upon revenues derived by the municipality from ownership and operation and that payments shall constitute an operating expense of the electric power system. No obligation under the contract shall constitute a legal or equitable pledge, charge, lien or encumbrance upon any property of the municipality or upon any of its income, receipts or revenues, except the revenues of the municipality's electric power system. Neither the faith and credit nor the taxing power of the municipality shall be pledged for the payment of any obligation under the contract.

(e) A municipality contracting under the provisions of subsection (b) of this section is obligated to fix, charge and collect rents, rates, fees and charges for electric power and energy and other services it sells, furnishes or supplies through its electric power system in an amount sufficient to provide revenues adequate to meet its obligations under the contract and to pay any and all other amounts payable from or constituting a charge and lien upon the revenues, including the amounts necessary to pay the principal and interest on any municipal bonds issued related to its electric power system: *Provided*, That any change in the rates and charges of the municipality to the customers of the electric power system under the provisions of this section are subject to the provisions and requirements of section four-b, article two, chapter twenty-four of this code and the obligations of the municipality under the contract are costs of providing electric service within the meaning of that section.

Acts 2007, c. 186, eff. June 6, 2007.

### PART III—RIGHT OF EMINENT DOMAIN

#### § 8-19-3. Right of eminent domain; limitations

For the purpose of acquiring, constructing, establishing or extending any waterworks system or electric power system, or for the purpose of constructing any additions, betterments or improvements to any waterworks or electric

power system, or for the purpose of acquiring any property necessary, appropriate, useful, convenient or incidental for or to any waterworks or electric power system, under the provisions of this article, the municipality or county commission shall have the right of eminent domain as provided in chapter fifty-four of this code: Provided, That such right of eminent domain for the acquisition of a privately owned waterworks system, or electric power system, or any part thereof, shall not be exercised without prior approval of the public service commission, and in no event shall any municipality or county commission construct, establish or extend beyond the corporate limits of said municipality or county line a municipal or county waterworks or electric power system under the provisions of this article to supply service in competition with an existing privately or municipally or county owned waterworks or electric power system in such municipality or county or within the proposed extension of such system, unless a certificate of public convenience and necessity therefor shall have been issued by the public service commission: Provided, however, That a municipality or county commission may not exercise such right of eminent domain over a privately owned electric power system or any part thereof for the purpose of acquiring, constructing, establishing or extending an electric power system.

Subject to the provisions of this article and notwithstanding the provisions of section nineteen, article twelve of this chapter to the contrary, a municipality or county commission may acquire, construct, establish, extend, equip, repair, maintain and operate, or lease to others for operation, electric generators or electric generating systems or electric transmission systems more than one mile beyond the corporate limits of such municipality or county line and said electric generation systems shall not be under the jurisdiction of the public service commission.

Acts 1933, Ex. Sess., c. 26, § 9; Acts 1937, c. 52; Acts 1969, c. 86; Acts 1978, c. 72; Acts 1983, c. 151; Acts 1990, c. 141.

**Library References**

Eminent Domain ⇨28, 35.  
 Westlaw Topic No. 148.  
 C.J.S. Eminent Domain §§ 35, 45.

**Notes of Decisions**

**In general 1**

**1. In general**

The section of the municipal home rule statute enabling municipalities to acquire and establish water, gas and electric systems does not authorize the use of the power of eminent do-

main for the acquisition of privately owned public utilities, but merely authorizes the establishment of utility systems through the process of construction and by the purchase of franchises and properties of going utility concerns. Code 1937, 8A-4-26. *City of Mullens v. Union Power Co.*, 1940, 7 S.E.2d 870, 122 W.Va. 179. Eminent Domain ⇨ 47(1)

## PART IV—REVENUE BOND FINANCING

**§ 8-19-4. Estimate of cost; ordinance or order for issuance of revenue bonds; interest on bonds; rates for services; exemption from taxation**

Whenever a municipality or county commission shall, under the provisions of this article, determine to acquire, by purchase or otherwise, construct, establish, extend or equip a waterworks system or an electric power system, or to construct any additions, betterments or improvements to any waterworks or electric power system, it shall cause an estimate to be made of the cost thereof, and may, by ordinance or order, provide for the issuance of revenue bonds under the provisions of this article, which ordinance or order shall set forth a brief description of the contemplated undertaking, the estimated cost thereof, the amount, rate or rates of interest, the time and place of payment, and other details in connection with the issuance of the bonds. Such bonds shall be in such form and shall be negotiated and sold in such manner and upon such terms as the governing body of such municipality or county commission may by ordinance or order specify. All such bonds and the interest thereon shall be exempt from all taxation by this state, or any county, municipality or county commission, political subdivision or agency thereof. Notwithstanding any other provision of this code to the contrary, the real and personal property which a municipality or county has acquired and constructed according to the provisions of this article, and any leasehold interest therein held by other persons, shall be deemed public property and shall be exempt from taxation by the state, or any county, municipality or other levying body, so long as the same is owned by such municipality or county: Provided, That with respect to electric power systems, this exemption for real and personal property shall be applicable only for such real and personal property (1) physically situate within the municipal or county boundaries of the municipality or county which acquired or constructed such electric power system and there was in place prior to the effective date of the amendments to this section made in the year one thousand nine hundred ninety-two an agreement between the municipality and the county commission for payments in lieu of tax, or (2) acquired or constructed with the written agreement of the county school board, county commission and any municipal authority within whose jurisdiction the electric power system is or is to be physically situate. Notwithstanding anything contained in this statute to the contrary, this exemption shall be applicable to any leasehold or similar interest held by persons other than a municipality or county only if acquired or constructed with the written agreement of the county school board, county commission and any municipal authority within whose jurisdiction the electric power system is or is to be physically situate: Provided, however, That payments made to any county commission, county school board or municipality in lieu of tax pursuant to such an agreement shall be distributed as if the payments resulted from ad valorem property taxation. Such bonds shall bear interest at a rate per annum set by the municipality or county commission, payable at such times, and shall be payable as to principal at such times, not exceeding fifty years from their date, and at such place or places,

within or without the state, as shall be prescribed in the ordinance or order providing for their issuance. Unless the governing body of the municipality or county commission shall otherwise determine, such ordinance or order shall also declare that a statutory mortgage lien shall exist upon the property so to be acquired, constructed, established, extended or equipped, fix minimum rates or charges for water or electricity to be collected prior to the payment of all of said bonds and shall pledge the revenues derived from the waterworks or electric power system for the purpose of paying such bonds and interest thereon, which pledge shall definitely fix and determine the amount of revenues which shall be necessary to be set apart and applied to the payment of the principal of and interest upon the bonds and the proportion of the balance of such revenues, which are to be set aside as a proper and adequate depreciation account, and the remainder shall be set aside for the reasonable and proper maintenance and operation thereof. The rates or charges to be charged for the services from such waterworks or electric power system shall be sufficient at all times to provide for the payment of interest upon all bonds and to create a sinking fund to pay the principal thereof as and when the same become due, and reasonable reserves therefor, and to provide for the repair, maintenance and operation of the waterworks or electric power system, and to provide an adequate depreciation fund, and to make any other payments which shall be required or provided for in the ordinance or order authorizing the issuance of said bonds.

Acts 1933, Ex. Sess., c. 26, § 3; Acts 1933, 2nd Ex. Sess., c. 49; Acts 1955, c. 133; Acts 1969, c. 86; Acts 1970, c. 7; Acts 1978, c. 72; Acts 1980, c. 33; Acts 1981, 1st Ex. Sess., c. 2; Acts 1984, c. 128; Acts 1986, 1st Ex. Sess., c. 18; Acts 1990, c. 141; Acts 1992, c. 147.

**Library References**

Municipal Corporations ¶950(15).	C.J.S. Municipal Corporations §§ 1708 to 1709.
Taxation ¶2313, 2316.	
Westlaw Topic Nos. 268, 371.	C.J.S. Taxation §§ 292, 304.

**§ 8-19-5. Publication of abstract of ordinance or order and notice; hearing**

After the ordinance or order for any project under this article has been adopted, an abstract of the ordinance or order, determined by the governing body to contain sufficient information as to give notice of the contents of such ordinance or order, 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 the municipality or county. The notice to be published with said abstract of the ordinance or order shall state that said ordinance or order has been adopted, that the municipality or county commission contemplates the issuance of the bonds described in the ordinance or order, that any person interested may appear before the governing body, upon a certain date, which shall be not less than ten days subsequent to the date of the first publication of such abstract and notice and which shall not be prior to the date of the last publication by such abstract and notice, and present protests, and

that a certified copy of the ordinance or order is on file with the governing body for review by interested parties during the office hours of the governing body. At such hearing all protests and suggestions shall be heard and the governing body shall take such action as it considers proper in the premises: Provided, That if at such hearing written protest is filed by thirty percent or more of the freeholders of the municipality or county, then the governing body of said municipality or county shall not take further action unless four fifths of the qualified members of said governing body assent thereto.

Acts 1933, Ex. Sess., c. 26, § 4; Acts 1967, c. 105; Acts 1969, c. 86; Acts 1971, c. 103; Acts 1981, 1st Ex. Sess., c. 2; Acts 1990, c. 141.

**Library References**

Municipal Corporations ¶294(7).  
Westlaw Topic No. 268.  
C.J.S. Municipal Corporations §§ 979, 981.

**§ 8-19-6. Amount, negotiability and execution of bonds**

Bonds herein provided for shall be issued in such amounts as may be necessary to provide sufficient funds to pay all costs of acquisition, construction, establishment, extension or equipment, including engineering, legal and other expenses, together with interest to a date six months subsequent to the estimated date of completion. Bonds issued under the provisions of this article are hereby declared to be negotiable instruments, and the same shall be executed by the proper legally constituted authorities of the municipality or county commission, and be sealed with the corporate seal of the municipality or certified by the county commission, and in case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery. All signatures on the bonds or coupons and the corporate seal may be mechanically reproduced if authorized in the ordinance or order authorizing the issuance of the bonds.

Acts 1933, Ex. Sess., c. 26, § 5; Acts 1933, 2nd Ex. Sess., c. 49, § 5; Acts 1969, c. 86; Acts 1970, c. 7; Acts 1980, c. 33; Acts 1981, 1st Ex. Sess., c. 2; Acts 1984, c. 128; Acts 1990, c. 141.

**Library References**

Municipal Corporations ¶927.  
Westlaw Topic No. 268.  
C.J.S. Municipal Corporations § 1699.

**§ 8-19-7. Bonds payable solely from revenues; not to constitute municipal or county indebtedness**

Bonds issued under the provisions of this article shall be payable solely from the revenues derived from such waterworks or electric power system, and such bonds shall not in any event constitute an indebtedness of such municipality or county within the meaning of any constitutional or statutory provision or

limitation, and it shall be plainly stated on the face of each bond that the same has been issued under the provisions of this article, and that it does not constitute an indebtedness of such municipality or county within constitutional or statutory provision or limitation. Subject to the provisions of subsection (b), section twelve of this article, the ordinance or order authorizing the issuance of the bonds may contain such covenants and restrictions upon the issuance of additional revenue bonds thereafter as may be considered necessary or advisable for the assurance of payment of the bonds thereby authorized and as may thereafter be issued.

Acts 1933, Ex. Sess., c. 26, § 6; Acts 1933, 2nd Ex. Sess., c. 49; Acts 1969, c. 86; Acts 1978, c. 72; Acts 1990, c. 141.

#### Library References

Municipal Corporations Ⓒ950(15).  
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1708 to  
1709.

### § 8-19-8. Lien of bondholders; deeds of trust; security agreements; priority of liens

Unless the governing body shall otherwise determine in the ordinance or order authorizing the issuance of bonds under this article, there shall be and there is hereby created and granted a statutory mortgage lien upon the waterworks or electric power system so acquired, constructed, established, equipped, extended or improved from the proceeds of bonds hereby authorized to be issued, 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 waterworks or electric power system shall remain subject to such statutory mortgage lien until payment in full of the principal of and interest upon said bonds.

Any municipality or county commission in acquiring an existing waterworks system or in improving an existing waterworks or electric power system may provide that financing therefor may be made by issuing revenue bonds and delivering the same at such prices as may be agreed upon within the limitations prescribed in section six of this article. Any revenue bonds so issued to provide financing for such existing waterworks or electric power system or for any improvements to an existing waterworks or electric power system may be secured by a mortgage or deed of trust upon and security interest in the property so acquired or improved or any other interest of the municipality or county commission in property related thereto as determined by the municipality or county commission in the ordinance or order authorizing the issuance of such revenue bonds; and in such event the holders thereof shall have, in addition to any other remedies and rights prescribed by this article, such remedies and rights as may now or hereafter exist in law in the case of mortgages or deeds of trust on real property and security interests in personal property. Such mortgage or deed of trust, upon its recordation, shall have priority over all other liens or encumbrances, however created or arising, on the property covered by such mortgage or deed of trust, to the same extent and for the same amount as if the municipality or county were obligated to pay the

full amount secured by such mortgage or deed of trust immediately upon the recordation of such mortgage or deed of trust and remained so obligated until the obligations secured are fully discharged.

Acts 1933, Ex. Sess., c. 26, § 7; Acts 1933, 2nd Ex. Sess., c. 49; Acts 1969, c. 86; Acts 1978, c. 72; Acts 1986, 1st Ex. Sess., c. 18; Acts 1990, c. 141.

**Library References**

Municipal Corporations ¶950(15).  
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1708 to  
1709.

**§ 8-19-9. Covenants with bondholders**

Any ordinance or order authorizing the issuance of bonds hereunder, or any trust indenture with any banking institution or trust company within or without the state for the security of said bonds, which any such municipality or county commission is hereby empowered and authorized to enter into and execute, may contain covenants with the holders of such bonds as to:

(a) The purpose or purposes to which the proceeds of sale of such bonds or the revenues derived from said waterworks or electric power system may be applied and the securing, use and disposition thereof, including, if deemed desirable, the appointment of a trustee or depository for any of such funds;

(b) The pledging of all or any part of the revenues derived from the ownership, control or operation of such waterworks or electric power system, including any part thereof heretofore or hereafter acquired, constructed, established, extended or equipped or derived from any other sources, to the payment of the principal of or interest thereon of bonds issued hereunder and for such reserve or other funds as may be considered necessary or desirable;

(c) The fixing, establishing and collecting of such rates or charges for the use of the services and facilities of the waterworks or electric power system, including the parts thereof heretofore or hereafter acquired, constructed, established, extended or equipped and the revision of same from time to time, as will always provide revenues at least sufficient to provide for all expenses of repair, maintenance and operation of such waterworks or electric power system, the payment of the principal of and interest upon all bonds or other obligations payable from the revenues of such waterworks or electric power system, and all reserve and other funds required by the terms of the ordinance or order authorizing the issuance of such bonds;

(d) The transfer from the general funds of the municipality or county commission to the account or accounts of the waterworks or electric power system of an amount equal to the cost of furnishing the municipality or county commission or any of its departments, boards or agencies or the county commission with the services and facilities of such waterworks or electric power system;

(e) Subject to the provisions of subsection (b), section twelve of this article, limitations or restrictions upon the issuance of additional bonds or other obligations payable from the revenues of such waterworks or electric power system, and the rank or priority, as to lien and source and security for payment

from the revenues of such waterworks or electric power system, between bonds payable from such revenues;

(f) The manner and terms upon which all bonds and other obligations issued hereunder may be declared immediately due and payable upon the happening of a default in the payment of the principal of or interest thereon, or in the performance of any covenant or agreement with bondholders, and the manner and terms upon which such defaults may be declared cured and the acceleration of the maturity of such bonds rescinded and repealed;

(g) Budgets for the annual repair, maintenance and operation of such waterworks or electric power system and restrictions and limitations upon expenditures for such purposes, and the manner of adoption, modification, repeal or amendment thereof, including the approval of such budgets by consulting engineers designated by holders of bonds issued hereunder;

(h) The amounts of insurance to be maintained upon such waterworks or electric power system, or any part thereof, and the use and disposition of the proceeds of any insurance; and

(i) The keeping of books of account, relating to such undertakings and the audit and inspection thereof, and the furnishing to the holders of bonds issued hereunder or their representatives, reports prepared, certified or approved by accountants designated or approved by the holders of bonds issued hereunder.

Any such ordinance, order or trust indenture may also contain such other additional covenants as shall be considered necessary or desirable for the security of the holders of bonds issued hereunder, notwithstanding that such other covenants are not expressly enumerated above, it being the intention hereof to grant to municipalities or county commissions plenary power and authority to make any and all covenants or agreements necessary in order to secure greater marketability for bonds issued hereunder as fully and to the same extent as such covenants or agreements could be made by a private corporation rendering similar services and facilities and to grant to municipalities and counties full and complete power and authority to enter into any contracts, covenants or agreements with holders of bonds issued hereunder not inconsistent with the constitution of this state.

Acts 1955, c. 133; Acts 1969, c. 86; Acts 1978, c. 72; Acts 1990, c. 141.

#### Library References

Municipal Corporations ¶919.

Westlaw Topic No. 268.

C.J.S. Municipal Corporations § 1661.

#### § 8-19-10. Operating contract

Any such municipality or county commission may enter into contracts or agreements with any persons for (1) the repair, maintenance and operation and management of the facilities and properties of said waterworks or electric power system, or any part thereof, or (2) the collection and disbursement of the income and revenues therefor, or for both (1) and (2), for such period of time

and under such terms and conditions as shall be agreed upon between such municipality or county commission and such persons. Any such municipality or county commission shall have plenary power and authority to provide in the ordinance or order authorizing the issuance of bonds hereunder, or in any trust indenture securing such bonds, that such contracts or agreements shall be valid and binding upon the municipality and county commission as long as any of said bonds, or interest thereon, is outstanding and unpaid.

Acts 1955, c. 133; Acts 1969, c. 86; Acts 1978, c. 72; Acts 1990, c. 141.

**Library References**

Municipal Corporations ¶232.  
 Westlaw Topic No. 268.  
 C.J.S. Municipal Corporations § 905.

**§ 8-19-11. Rates or charges for water and electric power must be sufficient to pay bonds, etc.; disposition of surplus**

Rates or charges for water or electric power fixed precedent to the issuance of bonds shall not be reduced until all of said bonds shall have been fully paid, and may, whenever necessary, be increased in amounts sufficient to provide for the payment of the principal of and interest upon such bonds, and to provide proper funds for the depreciation account and repair, maintenance and operation charges. If any surplus shall be accumulated in the repair, maintenance and operation fund which shall be in excess of the cost of repairing, maintaining and operating the waterworks or electric power system during the remainder of the fiscal year then current, and the cost of repairing, maintaining and operating the said waterworks or electric power system during the fiscal year then next ensuing, then any such excess may be transferred to either the depreciation account or to the bond and interest redemption account, and if any surplus shall be accumulated in the depreciation account over and above that which the municipality or county commission shall find may be necessary for the probable replacements which may be needed during the then present fiscal year, and the next ensuing fiscal year, such excess may be transferred to the bond and interest redemption account, and, if any surplus shall exist in the bond and interest redemption account, the same shall be applied insofar as possible in the purchase or retirement of outstanding revenue bonds payable from such account.

Acts 1933, Ex. Sess., c. 26, § 8; Acts 1969, c. 86; Acts 1978, c. 72; Acts 1990, c. 141.

**Library References**

Municipal Corporations ¶950(15).  
 Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1708 to 1709.

**§ 8-19-12. Service charges; sinking fund; amount of bonds; additional bonds; surplus**

(a) Every municipality or county commission issuing bonds under the provisions of this article shall thereafter, so long as any of such bonds remain outstanding, repair, maintain and operate its waterworks or electric power

system as hereinafter provided and shall charge, collect and account for revenues therefrom as will be sufficient to pay all repair, maintenance and operation costs, provide a depreciation fund, retire the bonds and pay the interest requirements of the bonds as the same become due. The ordinance or order pursuant to which any such bonds are issued shall pledge the revenues derived from the waterworks or electric power system to the purposes aforesaid and shall definitely fix and determine the amount of revenues which shall be necessary and set apart in a special fund for the bond requirements. The amounts as and when so set apart into said special fund for the bond requirements shall be remitted to the West Virginia municipal bond commission to be retained and paid out by said commission consistent with the provisions of this article and the ordinance or order pursuant to which such bonds have been issued: Provided, That payment of principal of and interest on any bonds owned by the United States of America or any agency or department thereof may be made by the municipality or county commission directly to the United States of America or said agency or department thereof. The bonds hereby authorized shall be issued in such amounts as may be determined necessary to provide funds for the purpose for which they are authorized, and in determining the amount of bonds to be issued it shall be proper to include interest on the bonds for a period not beyond six months from the estimated date of completion.

(b) If the proceeds of the bonds, because of error or otherwise, shall be less than the cost of the property or undertaking for which authorized, additional bonds may be issued to provide the amount of such deficit and such additional bonds shall be considered to be of the same issue and shall be entitled to payment from the same fund without preference or priority over the bonds first authorized and issued.

(c) If the proceeds of the bonds shall exceed the cost of the property or undertaking, the surplus shall be converted into the fund thereon.

Acts 1933, Ex. Sess., c. 26, § 11; Acts 1969, c. 86; Acts 1978, c. 72; Acts 1986, c. 118; Acts 1990, c. 141.

**Library References**

Municipal Corporations Ⓒ951.  
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1704 to 1705.

**§ 8-19-12a. Deposit required for new customers; lien for delinquent service rates and charges; failure to cure delinquency; payment from deposit; reconnecting deposit; return of deposit; liens; civil actions; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure**

(a)(1) Whenever any rates and charges for water services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the property and the owner thereof, as well as the user of the services and facilities provided, shall be delinquent and the owner, user and

property shall be held liable at law until such time as all such rates and charges are fully paid. When a payment has become delinquent, the municipality may utilize any funds held as a security deposit to satisfy the delinquent payment. All new applicants for service shall indicate to the municipality or governing body whether they are an owner or tenant with respect to the service location.

(2) The municipality or governing body, but only one of them, may collect from all new applicants for service a deposit of \$50 or two twelfths of the average annual usage of the applicant's specific customer class, whichever is greater, to secure the payment of water service rates, fees and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent and the user's service is disconnected or terminated, no reconnection or reinstatement of service may be made by the municipality or governing body until another deposit equal to \$50 or a sum equal to two twelfths of the average usage for the applicant's specific customer class, whichever is greater, is remitted to the municipality or governing body. After twelve months of prompt payment history, the municipality or governing body shall return the deposit to the customer or credit the customer's account with interest at a rate as the Public Service Commission may prescribe: *Provided*, That where the customer is a tenant, the municipality or governing body is not required to return the deposit until the time the tenant discontinues service with the municipality or governing body. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The municipality or governing body may, under reasonable rules promulgated by the Public Service Commission, shut off and discontinue water services to a delinquent user of water facilities ten days after the water services become delinquent regardless of whether the municipality or governing body utilizes the security deposit to satisfy any delinquent payments: *Provided further*, That nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the municipality or governing body to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

(b) All rates or charges for water service whenever delinquent shall be liens of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes for the amount thereof upon the real property served, and the municipality shall have plenary power and authority from time to time to enforce such lien in a civil action to recover the money due for such services rendered plus court fees and costs and a reasonable attorney's fee: *Provided*, That an owner of real property may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor shall any lien attach to real property for the reason of delinquent rates or charges for services or facilities of a tenant of such real property, unless the owner has contracted directly with the municipality to purchase such services or facilities.

(c) Municipalities are hereby granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of the delinquent rates and charges. If the municipality collects the delinquent account, plus fees and costs, from its customer or other responsible party, the municipality shall pay to the magistrate court the filing fees or other fees and costs which were previously deferred.

(d) No municipality may foreclose upon the premises served by it for delinquent rates or charges for which a lien is authorized by this section except through the bringing and maintenance of a civil action for such purpose brought in the circuit court of the county wherein the municipality lies. In every such action, the court shall be required to make a finding based upon the evidence and facts presented that the municipality had exhausted all other remedies for the collection of debts with respect to such delinquencies prior to the bringing of such action. In no event shall foreclosure procedures be instituted by any municipality or on its behalf unless such delinquency had been in existence or continued for a period of two years from the date of the first such delinquency for which foreclosure is being sought.

Acts 1989, c. 133; Acts 1990, c. 140; Acts 1990, c. 141; Acts 2004, c. 185, eff. 90 days after March 12, 2004; Acts 2010, c. 201, eff. June 11, 2010.

#### Library References

Water Law ☞2233.  
Westlaw Topic No. 405.

### § 8-19-13. Discontinuance of water or electric power service for nonpayment of rates or charges

Any such municipality or county commission shall also have plenary power and authority, and may covenant with the holders of any bonds issued hereunder, to shut off and discontinue the supplying of the water or electric power service of said waterworks or electric power system for the nonpayment of the rates or charges for said water or electric power service.

Acts 1955, c. 133; Acts 1969, c. 86; Acts 1978, c. 72; Acts 1990, c. 141.

#### Library References

Electricity ☞11.2(3).  
Water Law ☞2230.

Westlaw Topic Nos. 145, 405.  
C.J.S. Electricity § 55.

### § 8-19-14. Bonds for additions, betterments and improvements

Whenever any municipality or county commission shall now or hereafter own and operate a waterworks or electric power system, whether acquired, constructed, established, extended or equipped under the provisions of this article or not, and shall desire to construct additions, betterments or improvements thereto, it may issue revenue bonds under the provisions of this article to pay for the same, and the procedure therefor, including the fixing of rates or charges and the computation of the amount thereof, and the power and authority in connection therewith, shall be the same as in this article provided

for the issuance of bonds for the acquisition, construction, establishment, extension or equipment of a waterworks system or electric power system in a municipality or county which has not heretofore owned and operated a waterworks or electric power system: Provided, That nothing in this article shall be construed as authorizing any municipality or county commission to impair or commit a breach of the obligation of any valid lien or contract created or entered into by it, the intention being to authorize the pledging, setting aside and segregation of such revenues for the construction of such additions, betterments or improvements only where and to the extent consistent with outstanding obligations of such municipality or county commission, and in accordance with the provisions of this article.

Acts 1933, Ex. Sess., c. 26, § 10; Acts 1933, 2nd Ex. Sess., c. 49; Acts 1969, c. 86; Acts 1978, c. 72; Acts 1990, c. 141.

**Library References**

Municipal Corporations ¶911.  
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1647 to 1649.

**§ 8-19-15. System of accounts; audit**

Any municipality or county commission operating a waterworks or electric power system under the provisions of this article shall set up and maintain a proper system of accounts in accordance with the requirements of the public service commission, showing the amount of revenues received from such waterworks or electric power system and the application of the same. At least once each year such municipality or county commission shall cause such accounts to be properly audited, and a report of such audit shall be open to the public for inspection at all reasonable times.

Acts 1939, c. 98, § 10; Acts 1969, c. 86; Acts 1978, c. 72; Acts 1990, c. 141.

**Library References**

Municipal Corporations ¶885.  
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1628 to 1629.

**§ 8-19-16. Protection and enforcement of rights of bondholders, etc.; receivership**

Any holder of any bonds issued under the provisions of this article or of any coupons representing interest accrued thereon may by civil action, mandamus or other proper proceeding enforce the statutory mortgage lien created and granted in section eight of this article, protect and enforce any and all rights granted hereunder or under any such ordinance, order or trust indenture, and may enforce and compel performance of all duties required by the provisions of this article or by any such ordinance, order or trust indenture to be performed by the municipality or county commission, or by the governing body or any officer, including the making and collecting of reasonable and sufficient rates or charges for services rendered by the waterworks or electric power system. If there be default in the payment of the principal of or interest upon any of such bonds, or of both principal and interest, any court having jurisdiction shall

appoint a receiver to administer said waterworks or electric power system on behalf of the municipality or county commission, and the bondholders or trustee, or both, with power to charge and collect rates or charges sufficient to provide for the retirement of the bonds and pay the interest thereon, and for the payment of the repair, maintenance and operation expenses, and such receiver shall apply the revenues in conformity with the provisions of this article and the ordinance or order pursuant to which such bonds have been issued or any trust indenture, or both.

Acts 1933, Ex. Sess., c. 26, § 12; Acts 1969, c. 86; Acts 1978, c. 72; Acts 1990, c. 141.

#### Library References

Municipal Corporations Ⓒ955(1).  
Westlaw Topic No. 268.

#### PART V—GRANTS, LOANS, ADVANCES AND AGREEMENTS; CUMULATIVE AUTHORITY

#### § 8-19-17. Grants, loans, advances and agreements

As an alternative to, or in conjunction with, the issuance of revenue bonds authorized by this article, any municipality or county commission is hereby empowered and authorized to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, or otherwise enter into agreement, including, but not limited to, agreements of indemnity, assurance or guarantee with respect to, and for the purpose of financing part or all of, the cost of acquisition, construction, establishment, extension or equipment of waterworks or electric power systems and the construction of additions, betterments and improvements to existing waterworks systems or to existing electric power systems, and for the other purposes herein authorized, from or with any authorized agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, or the municipality's or county's financial obligations contained in such other agreements, which need not bear interest, may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article, the revenues of or proceeds from the said waterworks system or electric power system or grants to the municipality or county commission from any agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual or from any combination of such sources of payment, and may be secured in the manner provided in sections eight, nine and sixteen of this article to secure bonds issued under the provisions of this article, but shall not otherwise be subject to the requirements of sections eleven and twelve of this article, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any agency of the state, the United States of America or any federal or public agency or

department of the United States, or with any private agency, corporation or individual.

In no event shall any such loan or temporary advance or agreement be a general obligation of the municipality or county and such loans or temporary advances or agreements, including the interest thereon, shall be paid solely from the sources specified in this section.

Acts 1961, c. 105; Acts 1969, c. 86; Acts 1978, c. 72; Acts 1981, 1st Ex. Sess., c. 2; Acts 1986, c. 118; Acts 1986, 1st Ex. Sess., c. 18; Acts 1990, c. 141.

#### Library References

Municipal Corporations Ⓒ908.

Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1646, 1652.

#### § 8-19-18. Additional and alternative method for constructing or improving and for financing waterworks or electric power system; cumulative authority

This article shall, without reference to any other statute or charter provision, be deemed full authority for the acquisition, construction, establishment, extension, equipment, additions, betterment, improvement, repair, maintenance and operation of or to a waterworks or electric power system or for the construction of any additions, betterments, improvements, repairs, maintenance or operation of or to an existing electric power system as herein provided and for the issuance and sale of the bonds or the alternative methods of financing by this article authorized, and shall be construed as an additional and alternative method therefor and for the financing thereof, and no petition, referendum or election or other or further proceeding with respect to any such undertaking or to the issuance or sale of bonds or the alternative methods of financing under the provisions of this article and no publication of any resolution, ordinance, order, notice or proceeding relating to any such undertaking or to the issuance or sale of such bonds or the alternative methods of financing shall be required, except as prescribed by this article, any provisions of other statutes of the state to the contrary notwithstanding: Provided, That all functions, powers and duties of the state division of health shall remain unaffected by this article.

This article shall be construed as cumulative authority for any undertaking herein authorized, and shall not be construed to repeal any existing laws with respect thereto.

Acts 1933, Ex. Sess., c. 26, § 13; Acts 1969, c. 86; Acts 1978, c. 72; Acts 1986, 1st Ex. Sess., c. 18; Acts 1990, c. 141.

#### Library References

Municipal Corporations Ⓒ271, 272.

Westlaw Topic No. 268.

## PART VI—OPERATION BY BOARD; CONSTRUCTION

**§ 8-19-19. Alternative procedure for acquisition, construction or improvement of waterworks or electric power system**

As an alternative to the procedures hereinabove provided, any municipality or county commission is hereby empowered and authorized to acquire, construct, establish, extend, equip, repair, maintain and operate a waterworks or an electric power system or to construct, maintain and operate additions, betterments and improvements to an existing waterworks system or an existing electric power system, whether acquired, constructed, established, extended or equipped under the provisions of this article or not, and to collect the revenues therefrom for the services rendered thereby, through the supervision and control of a committee, by whatever name called, composed of all or a portion of the governing body, or of a board or commission appointed by such governing body, as may be provided by the governing body, and if such alternative is followed, said committee, board or commission shall have and be limited to all the powers, authority and duties granted to and imposed upon a board as provided in article sixteen of this chapter.

Acts 1961, c. 104; Acts 1969, c. 86; Acts 1978, c. 72; Acts 1990, c. 141.

**Library References**

Electricity ☞1.5.

Water Law ☞1869.

Westlaw Topic Nos. 145, 405.

C.J.S. Electricity §§ 13 to 21.

**§ 8-19-20. Article to be liberally construed**

This article is necessary for the public health, safety and welfare and shall be liberally construed to effectuate its purposes.

Acts 1933, Ex. Sess., c. 26, § 14; Acts 1969, c. 86; Acts 1990, c. 141.

**§ 8-19-21. Specifications for water mains and water service pipes**

Considering the importance of public fire protection, any state or local government, public service district, public or private utility which installs or constructs water mains, shall ensure that all new mains specifically intended to provide fire protection are not less than six inches in diameter. Effective the first day of July, two thousand seven, when any state or local government, public service district, public or private utility installs or constructs water mains along a platted roadway or a public highway, using a six inch or greater line, that is specifically designed to provide fire protection, the state or local government, public service district, public or private utility shall install fire hydrants at intervals of not more than two thousand feet, unless there are no dwellings or businesses located one thousand feet from such proposed hydrant: *Provided*, That the Legislature shall study the effect, cost and feasibility of the internal hydrant valve and report the findings of that study to the regular session of the Legislature in the year two thousand and eight. A permit or other written approval shall be obtained from the Department of Health and Human Resources for each hydrant or group of hydrants installed in compli-

ance with section nine, article one, chapter sixteen of the West Virginia Code as amended: *Provided, however,* That all newly constructed water distribution systems transferred to a public or private utility shall have mains at least six inches in diameter where fire flows are required by the public or private utility: *Provided further,* That the utility providing service has sufficient hydraulic capacity as determined by the Department of Health and Human Resources. Acts 1994, c. 31; Acts 2007, c. 187, eff. June 16, 2007.

**Library References**

Water Law ⇄2080.  
Westlaw Topic No. 405.

**§ 8-19-22. Identification requirement for fire hydrants that are inoperable or unavailable for use in emergency situations**

(a) The owner or operator of a fire hydrant or any device having the appearance of a fire hydrant that is located in a place that an entity responsible for providing fire suppression services in a fire emergency would expect a fire hydrant to typically be located, shall mark the fire hydrant or device, as set out in subsection (b) of this section, if the owner or operator has actual knowledge that the fire hydrant or device is inoperable or is unavailable for use by an entity providing fire suppression services in a fire emergency.

(b) To mark the fire hydrant or device, the owner or operator of the fire hydrant or device shall:

(1) Paint the fire hydrant or device black if the fire hydrant or device is inoperable or unavailable for use; or

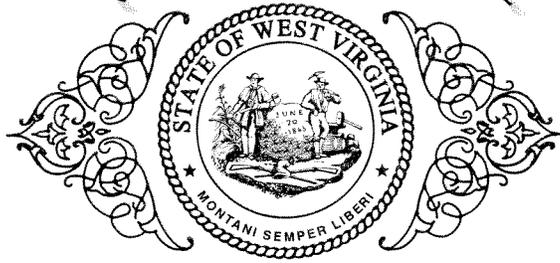
(2) Place a black tarp over the fire hydrant or device if the device is temporarily inoperable or temporarily unavailable for use in a fire emergency, for a period not to exceed fourteen days.

(c) For the purposes of this section, the word "inoperable" means a fire hydrant that does not produce water flow when activated.

Acts 2009, c. 163, eff. July 9, 2009.



# 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 13, ARTICLE 2 OF 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  
October 2, 2012*

*Natalie E. Tennant*  
Secretary of State

## ARTICLE 2

### REFUNDING BONDS

**Section**

- 13-2-1. What political divisions may issue refunding bonds; when issued.
- 13-2-2. Terms of refunding bonds; time, place and amount of payments.
- 13-2-3. Certain provisions of article one to apply to refunding bonds.
- 13-2-4. Disposition of bonds; cancellation of original bonds.
- 13-2-5. Article sufficient authority for issuing refunding bonds.
- 13-2-6. Issuance without election or notice.
- 13-2-7. Invalidity of part of article not to affect other parts.
- 13-2-8. Bonds exempt from taxation.
- 13-2-9. Funding of orders, drafts or warrants by county courts and boards of education at rate lower than six percent.

**§ 13-2-1. What political divisions may issue refunding bonds; when issued**

Any county, by and through its county commission, either for and on behalf of the county or for and on behalf of any magisterial district or group of magisterial districts therein; any municipal corporation, by and through its council or other governing body in lieu thereof; or any school district, or any independent school district, by and through its board of education or other fiscal body in lieu thereof, may, in the manner and subject to the limitations and conditions contained in this article, issue and sell its bonds for the purpose of refunding the bonds of such political division which have become or are becoming due and payable and for the discharge of which there are or will be when the bonds mature no funds or insufficient funds available; or when, in the opinion of the governing body of the political division obligated to the payment of such bonds, the rate of levy necessary to provide funds for their discharge will impose excessive taxes upon the taxpayers of such political division; or for the purpose of providing for the payment of outstanding bonds in advance of the maturity or redemption thereof through the making of a deposit as provided in section four of this article; or for the purpose of rendering outstanding bonds not due when such outstanding bonds are to be presented for payment before maturity by the exercise of option provisions or by agreement with the holders thereof. Such refunding bonds may be issued bearing the same or a higher or lesser rate of interest than the bonds to be refunded. Except to the extent that additional taxes for such purpose have been approved by the voters and the levy of such additional taxes provided for in the manner stipulated in sections seven through fourteen of article one of this chapter, no such refunding bonds shall be issued bearing a higher rate of interest than the bonds being refunded or shall be issued in a principal amount exceeding the principal amount of the bonds to be refunded unless the amount of debt service payable on such refunding bonds in each year is equal to or less than the amount of taxes expected to be available therefor as shall be certified by the chairman of the West Virginia municipal bond commission prior to the issuance of such refunding bonds. The amount of taxes expected to be available in each year for purposes of this section shall be based upon the rates



of levy stipulated in the order directing the election at which the issuance of the bonds being refunded was approved by the voters and upon the most recent assessed valuation of the affected property prior to such election. In the event only a portion of the bonds provided for such order are being refunded or have been issued, an appropriate reduction shall be made in the amount of taxes expected to be available based upon the actual debt service requirements of bonds which have been issued but are not being refunded and the estimated debt service requirements of bonds which have not been issued.

Acts 1925, c. 46, § 1; Acts 1984, c. 25.

**Library References**

**Key Numbers**

Counties ⇨175.  
 Municipal Corporations ⇨913.  
 Schools ⇨97(2).  
 Westlaw Key Number Searches: 104k175;  
 268k913; 345k97(2).

**Encyclopedias**

C.J.S. Counties § 218.  
 C.J.S. Municipal Corporations §§ 1651, 1653.  
 C.J.S. Schools and School Districts § 524.

**Notes of Decisions**

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- Nature and effect of refunding bonds 3
- Winkler decision 5

authorized by voters, and requiring this fact to be certified by chairman of the Bond Commission prior to issuing refunding bonds with a higher interest rate than original bonds, places a limitation on refunding bond interest and debt service, but does not preclude utilization of each current year's property valuation to set amount of that year's levy rate. Code, 13-2-1. Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇨ 97(9)

**1. Construction and application**

Refunding Bond Act is designed to provide some flexibility as to issuance of refunding bonds with regard to interest, maturity schedules, and sales at discount, as long as the refunding bond plan does not exceed basic constraints of original bonds approved by the voters. Code, 13-2-1 to 13-2-9. Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇨ 97(9)

**2. In general**

Fact that school board's refunding bond plan proposed a maturity schedule which was two years longer than maturity schedule of outstanding original bonds, and fact that annual debt service between the two schedules was somewhat different did not make the plan improper, since refunding bond's maturity schedule was still within 20-year schedule authorized by voters on original bond issue, and since annual debt service on refunding bonds remained within amount of annual tax levy. Code, 13-2-1 to 13-2-9. Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇨ 97(7)

Section of the Refunding Bond Act containing limitation that debt service on refunding bonds must be within confines of original tax levy

**3. Nature and effect of refunding bonds**

Refunding bonds generally do not constitute new indebtedness, because they provide method of refinancing earlier bond issue at lower interest rate. State ex rel. School Bldg. Authority of West Virginia v. Marockie, 1996, 481 S.E.2d 730, 198 W.Va. 424. Municipal Corporations ⇨ 913

Issuance of refunding bonds to retire existing bonds under the Refunding Bond Act does not create a new indebtedness, and levies to provide debt service for new refunding bonds may be laid to the same extent and with like effect as they could have been laid for the original bonds. Code, 13-1-19, 13-2-1 to 13-2-9; Const. Art. 10, §§ 8, 10. Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇨ 97(1)

County court's issuance of refunding bonds to retire existing road bonds of magisterial district does not create "new indebtedness," and levies to provide debt service for refunding bonds may be laid as if they were original bonds. Code 1931, 13-2-1 et seq. Keeney v. Kanawha County Court, 1934, 175 S.E. 60, 115 W.Va. 243. Counties ⇨ 192

**4. Bonds increasing total indebtedness**

Maturity schedule and interest rates proposed for refunding bonds cannot increase total indebtedness from that originally authorized by the voters. Const. Art. 10, §§ 8, 10; Code, 13-2-1 to 13-2-9. Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇨ 97(3)

Rule that refunding bonds do not create a new debt, and therefore, may be issued without voter approval under State Constitution, is subject to certain qualifications, including that amount of refunding bonds cannot increase total indebtedness authorized by voters on the original bond issue. Code, 13-2-1; Const. Art. 10, §§ 1, 8, 10. Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇨ 97(4)

Once voters have approved of a certain level of bonded indebtedness, this amount cannot be increased through issuance of refunding bonds without further voter approval. Code, 13-2-1; Const. Art. 10, §§ 1, 8, 10. Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇨ 97(4)

**5. Winkler decision**

State School Building Authority was authorized to issue refunding bonds with respect to those bonds forming that part of bond issue deemed unconstitutional in Winkler v. State School Building Authority issued prior to date of such opinion; bonds issued prior to date of opinion were not invalid under principle of retroactivity, and refunding of such bonds to replace them at lower interest rate did not create new debt. Const. Art. 10, § 4. State ex rel. School Bldg. Authority of West Virginia v. Marockie, 1996, 481 S.E.2d 730, 198 W.Va. 424. States ⇨ 148

School building capital improvements fund was available to fund bonds issued for purpose of refunding bonds issued by state School Building Authority (SBA) prior to promulgation of state Supreme Court's decision in Winkler v. State School Building Authority; previously granted authority to issue refunding bonds would have no practical effect absent source of funds from which to repay such bonds. State ex rel. School Bldg. Authority of West Virginia v. Marockie, 1996, 481 S.E.2d 730, 198 W.Va. 424. States ⇨ 152

State School Building Authority (SBA) was not permitted to issue bonds alleged to be refunding bonds for redemption of obligations created before Winkler v. State School Building Authority, which had practical effect of generating cash at closing in order to make immediate-

ly available to SBA anticipated debt service savings from so-called refunding bonds; rather, SBA's authority to issue refunding bonds to redeem pre-Winkler obligations was specifically limited to encompass only those bonds, proceeds of which SBA would use to discharge its preexisting obligations. State ex rel. School Bldg. Authority of West Virginia v. Marockie, 1996, 481 S.E.2d 730, 198 W.Va. 424. States ⇨ 148

**6. Interest rate**

State School Building Authority (SBA) was permitted to refund bonds other than those specifically designated for refunding in Winkler v. State School Building Authority, to receive greatest benefit from lower interest rates applicable to refunding bonds; bonds and their interest rates were affected by changing economic circumstances beyond control of SBA, and denial of authority to refund pre-Winkler bonds different from those specified in such decision would render SBA unable to realize the value of redeeming earlier bonds at lower interest rates and effectively abrogate SBA's capacity to refund any of its pre-Winkler bonds. State ex rel. School Bldg. Authority of West Virginia v. Marockie, 1996, 481 S.E.2d 730, 198 W.Va. 424. States ⇨ 148

Fact that under financing plan involving school board refunding bonds, refunding bonds would bear interest rates higher than interest rate on original bonds did not render them invalid, where bonds would be liquidated within the original 20-year period and taxpayers would save over \$4 million. Const. Art. 10, §§ 8, 10; Code, 13-2-1. Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇨ 97(7)

**7. Mandamus**

In a mandamus proceeding to compel a county court, which has issued, sold, and delivered to purchasers refunding bonds under the provisions of chapter 46, Acts 1925, to cancel all its refunding orders, recall the bonds and cancel them, on the ground that they are invalid as having been issued under an unconstitutional act, and as creating a debt without the sanction of the voters as provided by the Constitution, this court will not consider and pass upon the constitutionality of the statute nor upon the validity of the bonds, unless the bondholders are made parties or have their day in court. State ex rel. Hall, v. County Court of Mercer County, 1925, 129 S.E. 712, 100 W.Va. 11. Mandamus ⇨ 151(1)

**§ 13-2-2. Terms of refunding bonds; time, place and amount of payments**

Upon determining to issue such refunding bonds, the governing body of such political division shall, by resolution, authorize the issuance of such bonds in an

amount not exceeding the principal amount permitted by section one of this article, fix the date thereof, the rate or rates of interest which such bonds shall bear, payable semiannually, and require that the bonds shall bear, payable at the office of the state treasurer and at such other place or places as the body issuing the same may designate. Such resolution shall also provide that such bonds shall mature serially in annual installments beginning not more than three years after the date thereof, and the last of such annual installments shall mature in not exceeding thirty-four years from the date of such bonds. The amount payable in each year on the refunding bonds, together with any unrefunded or unissued bonds of the prior issue, may be so fixed that, when the amount of interest is added to the principal amount to be paid during the respective years, the total amount payable in each year shall be as nearly equal as practicable; or such bonds may be made payable in annual installments as nearly equal in principal as may be practicable.

All or a portion of the refunding bonds may be subject to redemption prior to the maturity thereof, at the option of the body issuing the same, at such times and prices and on such terms as shall be designated in the resolution required by this section. The body issuing the refunding bonds may not levy taxes in connection with the redemption of any refunding bonds in excess of the taxes that would have been levied for the payment of principal of and interest on such refunding bonds in such year.

Acts 1925, c. 46, § 2; Acts 1984, c. 25; Acts 1994, c. 13; Acts 1998, c. 320, eff. March 14, 1998.

**Library References**

**Key Numbers**

Counties ⇨183(2).  
 Municipal Corporations ⇨922.  
 Schools ⇨97(6).  
 Westlaw Key Number Searches: 104k183(2);  
 268k922; 345k97(6).

**Encyclopedias**

C.J.S. Counties § 222.  
 C.J.S. Schools and School Districts § 551.

**Notes of Decisions**

**Conformance with terms of initial bond issuance** 4  
**Interest rates** 6  
**Mandamus** 9  
**Maturity date** 5  
**Nature and effect of refunding bonds** 1  
**Partial issuance of original bonds** 2  
**Partial refunding** 3  
**Sale at discount** 8  
**Term of bonds** 7

10, §§ 8, 10. Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇨ 97(1)

Rule that refunding bonds do not create a new debt, and therefore, may be issued without voter approval under State Constitution, is subject to certain qualifications, including that amount of refunding bonds cannot increase total indebtedness authorized by voters on the original bond issue. Code, 13-2-1; Const. Art. 10, §§ 1, 8, 10. Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇨ 97(4)

**1. Nature and effect of refunding bonds**

Issuance of refunding bonds to retire existing bonds under the Refunding Bond Act does not create a new indebtedness, and levies to provide debt service for new refunding bonds may be laid to the same extent and with like effect as they could have been laid for the original bonds. Code, 13-1-19, 13-2-1 to 13-2-9; Const. Art.

**2. Partial issuance of original bonds**

Where school board presents a financing plan that includes refunding bonds and an additional amount of unissued original bonds, aggregate of the principal and interest payments made on original bonds prior to their refunding, when

added to amounts to be paid on refunding bonds and any outstanding original bonds that are issued but not refunded, cannot exceed original indebtedness authorized by the voters. Code, 13-2-1 to 13-2-9; Const. Art. 10, §§ 8, 10. Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇌ 97(3)

**3. Partial refunding**

Section of Refunding Bond Act providing that in event only a portion of bonds provided for, in order directing election at which issuance of bonds being refunded was approved, are being refunded or have been issued, an appropriate reduction shall be made in the amount of taxes expected to be available, is applicable to those situations where the refunding bond plan leaves a debt service which, when combined with any original bonds that will not be refunded, is below the levy originally authorized by the voters, and thus, did not apply to school board's refunding plan, which was constructed to utilize all annual tax revenues during maturity schedule of the bonds. Code, 13-2-1 to 13-2-9. Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇌ 103(1)

**4. Conformance with terms of initial bond issuance**

Fact that school board's bond refunding plan was premised upon maintaining level debt service rather than level principal payments, which was basis for original bonds, was not objectionable, where there was no increase in tax levy rate contemplated. Code, 13-2-2. Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇌ 97(9)

Refunding Bond Act gives bond-issuing authorities option of structuring their refunding bond plan to maintain either level debt service or level principal payments, and where level debt service is chosen, then the test is that the total amount payable in each year should be nearly equal as practicable. Code, 13-2-2. Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇌ 97(9)

Reduction in debt service for first and last years of school board's bond refunding plan were not consequential enough to constitute a violation of the "nearly equal as practicable" language in section of the Refunding Bond Act providing that amount payable in each year on refunding bonds, together with any unrefunded or unissued bonds of the prior issue, may be so fixed that, when amount of interest is added to principal amount to be paid during respective years, total amount payable in each year shall be as nearly equal as practicable, where present refunding bond plan was within limits of the original voter mandate. Code, 13-2-2. Board

of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇌ 97(9)

Once voters have approved of a certain level of bonded indebtedness, this amount cannot be increased through issuance of refunding bonds without further voter approval. Code, 13-2-1; Const. Art. 10, §§ 1, 8, 10. Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇌ 97(4)

As long as school board's refunding bond plan fell within total obligation authorized by voters pursuant to approval of original bond issue, it does not require voter approval or impinge upon mandate of the voters. Code, 13-2-1 to 13-2-9; Const. Art. 10, §§ 8, 10. Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇌ 97(4)

Section of the Refunding Bond Act containing limitation that debt service on refunding bonds must be within confines of original tax levy authorized by voters, and requiring this fact to be certified by chairman of the Bond Commission prior to issuing refunding bonds with a higher interest rate than original bonds, places a limitation on refunding bond interest and debt service, but does not preclude utilization of each current year's property valuation to set amount of that year's levy rate. Code, 13-2-1. Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇌ 97(9)

**5. Maturity date**

Maturity schedule and interest rates proposed for refunding bonds cannot increase total indebtedness from that originally authorized by the voters. Const. Art. 10, §§ 8, 10; Code, 13-2-1 to 13-2-9. Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇌ 97(3)

Fact that school board's refunding bond plan proposed a maturity schedule which was two years longer than maturity schedule of outstanding original bonds, and fact that annual debt service between the two schedules was somewhat different did not make the plan improper, since refunding bond's maturity schedule was still within 20-year schedule authorized by voters on original bond issue, and since annual debt service on refunding bonds remained within amount of annual tax levy. Code, 13-2-1 to 13-2-9. Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇌ 97(7)

**6. Interest rates**

Fact that under financing plan involving school board refunding bonds, refunding bonds would bear interest rates higher than interest rate on original bonds did not render them invalid, where bonds would be liquidated within the original 20-year period and taxpayers would save over \$4 million. Const. Art. 10, §§ 8, 10; Code, 13-2-1. Board of Educ. of Hancock

## § 13-2-2

### Note 6

County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇨ 97(7)

### 7. Term of bonds

Refunding bonds ordinarily may not be liquidated over a period longer than authorized for the original bond issue. Const. Art. 10, §§ 8, 10. Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇨ 97(9)

### 8. Sale at discount

Discount sale of a refunding bond is not prohibited under the Refunding Bond Act. Code,

## PUBLIC BONDED INDEBTEDNESS

13-2-1 to 13-2-9. Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇨ 97(5)

### 9. Mandamus

Once it is determined that a bond issue authorized by a governmental agency is lawful, mandamus will lie to compel secretary of the agency or other ministerial official responsible for executing the necessary documents to execute such documents. Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Mandamus ⇨ 103

## § 13-2-3. Certain provisions of article one to apply to refunding bonds

All the provisions of sections seventeen, eighteen, nineteen and twenty of article one of this chapter, relating to bonds issued for original indebtedness, shall apply to the same extent and with equal force and effect to refunding bonds issued under the provisions of this article.

### Library References

#### Key Numbers

Counties ⇨ 175.  
Municipal Corporations ⇨ 913.  
Schools ⇨ 97(2).  
Westlaw Key Number Searches: 104k175;  
268k913; 345k97(2).

#### Encyclopedias

C.J.S. Counties § 218.  
C.J.S. Municipal Corporations §§ 1651, 1653.  
C.J.S. Schools and School Districts § 524.

### Notes of Decisions

#### In general 1

#### Registration of bonds 2

#### 1. In general

Refunding Bond Act gives bond-issuing authorities option of structuring their refunding bond plan to maintain either level debt service or level principal payments, and where level debt service is chosen, then the test is that the total amount payable in each year should be nearly equal as practicable. Code, 13-2-2. Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇨ 97(9)

#### 2. Registration of bonds

Statutes authorizing a bond-issuing authority to have bonds payable at the office of the State Treasurer and at such other places that the bond-issuing authority may designate provides sufficient authority to permit bonds to be registered at place of payment. Code, 13-1-14, 13-2-2; 26 U.S.C.A. § 103(j). Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Bonds ⇨ 113

"Registration of a bond" means that it is payable to a designated person rather than payable generally to the bearer. Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Bonds ⇨ 113

## § 13-2-4. Disposition of bonds; cancellation of original bonds

The governing body of the political subdivision issuing bonds under this article may sell the same or any part thereof and collect the proceeds, or such bonds may be delivered to the holder or holders of the bonds to be refunded in exchange therefor.

It is the intention of this article to authorize political divisions to issue bonds for the purpose of refunding outstanding bonds without thereby contracting any additional indebtedness, and it shall be conditional upon the delivery of any refunding bonds that the bonds to be refunded be canceled and paid simulta-

neously with the issuance and delivery of such refunding bonds: Provided, That such refunding bonds shall be issued in an amount sufficient to effect the refunding and may include an amount sufficient to pay (1) the principal amount outstanding of the bonds to be refunded, (2) interest accrued or to accrue to the date of maturity or the date of redemption of the bonds to be refunded (which need not necessarily be on the first available redemption date), (3) any redemption premiums to be paid thereon, (4) any reasonable expenses incurred in connection with such refunding and (5) any other reasonable costs deemed appropriate by the state, including without limitation, the expenses of preparing and delivering the refunding bonds, legal fees, financial advisor fees, consultant fees, and other expenses incurred in connection with the issuance, sale and delivery of the refunding bonds.

For all purposes of this section, bonds shall be considered to have been canceled and paid in advance of their due date or date of redemption if there shall have been deposited with the West Virginia municipal bond commission either:

(a) Moneys, sufficient to pay when and as due at maturity or prior redemption all amounts of principal, redemption premium, if any, and interest payable on such bonds; or

(b) Direct obligations of the United State of America or the state of West Virginia, or obligations fully and irrevocably secured as to the payment of both principal and interest by such direct obligations, the payment on which when due will provide moneys, sufficient to pay when and as due at maturity or prior redemption all amounts of principal, redemption premium, if any, and interest payable on such bonds.

All such amounts shall be set aside and held in trust and irrevocably dedicated solely to the payment of such bonds, except that amount in excess of the amounts required for the payment of the bonds so refunded may be applied to the payment of costs related to the issuance, carrying, insuring or servicing the refunding bonds, including costs of credit or market enhancement services, such as letters of credit, remarketing arrangements and similar services. Any amount deposited pursuant to this section may include amounts already held on deposit by the West Virginia municipal bond commission for the payment of the bonds to be refunded.

Acts 1925, c. 46, § 7; Acts 1937, c. 118; Acts 1984, c. 25; Acts 1994, c. 13.

#### Library References

##### Key Numbers

Counties ⇨175.  
Municipal Corporations ⇨913.  
Schools ⇨97(2).  
Westlaw Key Number Searches: 104k175;  
268k913; 345k97(2).

##### Encyclopedias

C.J.S. Counties § 218.  
C.J.S. Municipal Corporations §§ 1651, 1653.  
C.J.S. Schools and School Districts § 524.

Notes of Decisions

Unissued original bonds 1  
Use of excess funds 2

1. Unissued original bonds

Where school board presents a financing plan that includes refunding bonds and an additional amount of unissued original bonds, aggregate of the principal and interest payments made on original bonds prior to their refunding, when added to amounts to be paid on refunding bonds and any outstanding original bonds that are issued but not refunded, cannot exceed original indebtedness authorized by the voters. Code, 13-2-1 to 13-2-9; Const. Art. 10, §§ 8, 10. Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇨ 97(3)

Where a bond-issuing authority has been unable to market all of its original bond issue and is unable to complete the project financed by the bond issue, it may utilize for the project any unencumbered funds in its account with the Bond Commission as a part of a refunding bond plan to complete the original project. Code, 13-3-9(c). Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇨ 92(1)

2. Use of excess funds

Statute authorizing transfer of funds remaining from liquidation of school bonds to school current fund does not preclude use of excess money from an escrow fund established with the Bond Commission and derived from sale of refunding bonds under the Bond Refunding Act, as long as the board complies with subsection of the Act enabling bond-issuing authority to withdraw excess funds held by the Bond Commission that are not needed to liquidate original

bond issue; such funds can be spent on school improvements when they are made a part of a refunding bond plan for school improvements, and it is only when last bond has been retired that any excess funds then remaining are turned back to the school board to the credit of its school current fund. Code, 13-2-1 to 13-2-9, 13-3-9(c), 18-9-2c. Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇨ 97(5)

School board's plan to spend some excess money from sale of refunding bonds on school improvements was not improper. Code, 13-2-1 to 13-2-9, 13-3-9(c), 18-9-2c. Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇨ 97(5)

School board's plan to spend some excess money from sale of refunding bonds on school improvements was not improper. Code, 13-2-1 to 13-2-9, 13-3-9(c), 18-9-2c. Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇨ 97(5)

Section of Bond Refunding Act providing that money received from sale of refunding bonds shall be set aside and held in trust and irrevocably dedicated solely to payment of such bonds, except that excess of amounts required for payment of bonds so refunded may be applied to payment of costs, was intended to enable school board to spend any excess money on expenses directly resulting from issuance of the refunding bonds, but does not foreclose the school board from utilizing any excess money for real purpose of the project for which bonds were issued, which was for school building improvements. Code, 13-2-4. Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇨ 97(5)

§ 13-2-5. Article sufficient authority for issuing refunding bonds

This article shall, without reference to any other act of the legislature, be full authority for the issuance, sale and exchange of bonds in this article authorized. No order, ordinance, resolution or proceeding in respect to the issuance of any bonds hereunder shall be necessary except such as are required by this article. No publication of any notice, order, ordinance or proceeding relating to the issuance of such bonds shall be necessary.

Acts 1925, c. 46, § 8.

Library References

Key Numbers

Counties ⇨ 175.  
Municipal Corporations ⇨ 913.  
Schools ⇨ 97(2).  
Westlaw Key Number Searches: 104k175;  
268k913; 345k97(2).

Encyclopedias

C.J.S. Counties § 218.  
C.J.S. Municipal Corporations §§ 1651, 1653.  
C.J.S. Schools and School Districts § 524.

§ 13-2-6. Issuance without election or notice

The issuance and sale of exchange bonds in this article authorized may be had without an election or publication of any notice.

Acts 1925, c. 46, § 9; Acts 1937, c. 118.

Library References

Key Numbers

Counties ⇨178.  
Municipal Corporations ⇨918.  
Schools ⇨97(4).  
Westlaw Key Number Searches: 104k178;  
268k918; 345k97(4).

Encyclopedias

C.J.S. Counties § 221.  
C.J.S. Municipal Corporations §§ 1664, 1672.  
C.J.S. Schools and School Districts §§ 532 to  
545.

Notes of Decisions

In general 1

1. In general

As long as school board's refunding bond plan fell within total obligation authorized by voters

pursuant to approval of original bond issue, it does not require voter approval or impinge upon mandate of the voters. Code, 13-2-1 to 13-2-9; Const. Art. 10, §§ 8, 10. Board of Educ. of Hancock County v. Slack, 1985, 327 S.E.2d 416, 174 W.Va. 437. Schools ⇨ 97(4)

§ 13-2-7. Invalidity of part of article not to affect other parts

If any clause, sentence, paragraph or part of this article shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of the article, but shall be confined in its application to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment has been rendered.

Acts 1925, c. 46, § 10.

§ 13-2-8. Bonds exempt from taxation

All bonds of the State of West Virginia or of any political subdivision thereof issued hereunder shall be exempt from all taxation by the State or by any political subdivision thereof.

Cross References

Bond issues for original indebtedness, bonds exempt from taxation, see § 13-1-33.

Library References

Key Numbers

Taxation ⇨218.  
Westlaw Key Number Search: 371k218.

Encyclopedias

C.J.S. Taxation § 260.

§ 13-2-9. Funding of orders, drafts or warrants by county courts and boards of education at rate lower than six percent

County courts and boards of education may, upon the application of the owner or holder or holders, by an order entered of record, fund any indebtedness represented by orders, drafts, or warrants by taking up one or more of such orders, drafts, or warrants issued on the same fund, and issue in lieu thereof new orders, drafts or warrants to the person or persons entitled to

receive the sums of money due upon said orders, drafts, or warrants, and in which orders there shall be set out in detail the number of each order, draft, or warrant, the date thereof, to whom issued, the fund or funds on which drawn, the name of the present holder thereof, or the person or persons entitled to receive the sum due thereon, if interest-bearing the date from which interest began, the credits, if any endorsed thereon, and the date thereof, and such other information so as to completely identify the orders, drafts or warrants for which new orders, drafts or warrants are issued: Provided, however, That no power or authority herein given or contained shall be construed to make legal and binding any order, draft or warrant not legal and/or binding when originally ordered and/or issued by any county court or board of education. The court and/or boards shall, when the orders, drafts or warrants are interest-bearing, in issuing such new orders, drafts or warrants, issue them on the same fund upon which the original order, draft or warrant was issued and for the aggregate amount of unpaid principal and interest to that date, and cancel all such orders, drafts or warrants funded and file the same with the clerk of the county court of their county for preservation. All such new orders, drafts or warrants shall not become interest-bearing until the same shall have been presented to the sheriff for payment and endorsed as provided by law, and when so presented shall draw interest at five and one-half percent per annum. Acts 1933, c. 43, § 1.

*W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.*

**Library References**

**Key Numbers**

Counties ↻164.  
Westlaw Key Number Search: 104k164.

**Encyclopedias**

C.J.S. Counties § 208.



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City, State	Ogden, Utah 84201	

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Internal Revenue Service  
 Internal Revenue Service Center  
 Ogden, Utah 84201

2. Article Number  
 (Transfer from service label) **7009 2250 0001 0923 0640**

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  X  Agent  Addressee

B. Received by (Printed Name) \_\_\_\_\_ C. Date of Delivery \_\_\_\_\_

D. Is delivery address different from item 1?  Yes  No  
 If YES, enter delivery address below: \_\_\_\_\_

NOV 15 2012

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes



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

Writer's Contact Information  
(304) 353-8196  
(304) 353-8181 Fax  
John.Stump@steptoe-johnson.com

November 9, 2012

City of Fairmont  
Water Refunding Revenue Bonds, Series 2012 D

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Internal Revenue Service  
Internal Revenue Service Center  
Ogden, Utah 84201

Ladies and Gentlemen:

Enclosed herewith is a completed and executed Internal Revenue Service Form 8038-G and a file copy thereof with regard to the above-captioned issue. Please file the original form in the appropriate Internal Revenue Service records and return the copy marked in red as the "File Copy" to me (after acknowledging receipt of the same) in the enclosed self-addressed envelope.

Thank you for your attention to this letter. If you have any questions regarding any of the issues set forth herein, or if I can be of any service, please do not hesitate to call.

My best regards.

Very truly yours,

A handwritten signature in black ink, appearing to read 'John C. Stump'. The signature is fluid and cursive, with a long horizontal stroke at the end.

John C. Stump

JCS/bsl  
Enclosure

268460.00017

**Information Return for Tax-Exempt Governmental Obligations**

► Under Internal Revenue Code section 149(e)

► See separate instructions.

Caution: If the issue price is under \$100,000, use Form 8038-GC.

<b>Part I Reporting Authority</b>		If Amended Return, check here <input type="checkbox"/>
1 Issuer's name <b>City of Fairmont</b>		2 Issuer's employer identification number (EIN) <b>55-6000171</b>
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)		3b Telephone number of other person shown on 3a
4 Number and street (or P.O. box if mail is not delivered to street address) <b>Post Office Box 1428</b>	Room/suite	5 Report number (For IRS Use Only) <b>3</b>
6 City, town, or post office, state, and ZIP code <b>Fairmont, West Virginia 26555</b>		7 Date of issue <b>10/24/2012</b>
8 Name of issue <b>Water Refunding Revenue Bonds, Series 2012 D</b>		9 CUSIP number <b>305459 EU9</b>
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information (see instructions) <b>William Burdick, Mayor</b>		10b Telephone number of officer or other employee shown on 10a <b>304.366.6211</b>

<b>Part II Type of Issue (enter the issue price). See the instructions and attach schedule.</b>	
11 Education	
12 Health and hospital	
13 Transportation	
14 Public safety	
15 Environment (including sewage bonds)	<b>25,797,974</b>
16 Housing	
17 Utilities	
18 Other. Describe ►	
19 If obligations are TANs or RANs, check only box 19a <input type="checkbox"/>	
If obligations are BANs, check only box 19b <input type="checkbox"/>	
20 If obligations are in the form of a lease or installment sale, check box <input type="checkbox"/>	

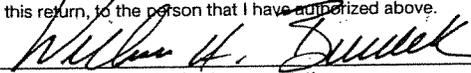
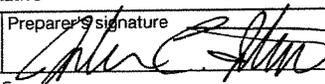
<b>Part III Description of Obligations. Complete for the entire issue for which this form is being filed.</b>					
21	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
	07/01/2029	\$ 25,797,974	\$ 25,555,000	9.554 years	2.9080 %

<b>Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)</b>					
22	Proceeds used for accrued interest				
23	Issue price of entire issue (enter amount from line 21, column (b))				<b>25,797,974</b>
24	Proceeds used for bond issuance costs (including underwriters' discount)	<b>633,529</b>			
25	Proceeds used for credit enhancement	<b>171,302</b>			
26	Proceeds allocated to reasonably required reserve or replacement fund	<b>2,240,900</b>			
27	Proceeds used to currently refund prior issues	<b>22,752,243</b>			
28	Proceeds used to advance refund prior issues				
29	Total (add lines 24 through 28)				<b>25,797,974</b>
30	Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)				<b>0</b>

<b>Part V Description of Refunded Bonds. Complete this part only for refunding bonds.</b>	
31	Enter the remaining weighted average maturity of the bonds to be currently refunded <b>6.86 9.945 10.506</b> years
32	Enter the remaining weighted average maturity of the bonds to be advance refunded _____ years
33	Enter the last date on which the refunded bonds will be called (MM/DD/YYYY) <b>10/25/2012</b>
34	Enter the date(s) the refunded bonds were issued (MM/DD/YYYY) <b>06/19/1997; 12/30/1998; 01/14/1999</b>

**Part VI Miscellaneous**

- |            |  |  |
|------------|--|--|
| <b>35</b>  |  |  |
| <b>36a</b> |  |  |
| <b>37</b>  |  |  |
- 35** Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) . . . . .
- 36a** Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions) . . . . .
- b** Enter the final maturity date of the GIC ▶ \_\_\_\_\_
- c** Enter the name of the GIC provider ▶ \_\_\_\_\_
- 37** Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units . . . . .
- 38a** If this issue is a loan made from the proceeds of another tax-exempt issue, check box ▶  and enter the following information:
- b** Enter the date of the master pool obligation ▶ \_\_\_\_\_
- c** Enter the EIN of the issuer of the master pool obligation ▶ \_\_\_\_\_
- d** Enter the name of the issuer of the master pool obligation ▶ \_\_\_\_\_
- 39** If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box . . . . . ▶
- 40** If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box . . . . . ▶
- 41a** If the issuer has identified a hedge, check here ▶  and enter the following information:
- b** Name of hedge provider ▶ \_\_\_\_\_
- c** Type of hedge ▶ \_\_\_\_\_
- d** Term of hedge ▶ \_\_\_\_\_
- 42** If the issuer has superintegrated the hedge, check box . . . . . ▶
- 43** If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box . . . . . ▶
- 44** If the issuer has established written procedures to monitor the requirements of section 148, check box . . . . . ▶
- 45a** If some portion of the proceeds was used to reimburse expenditures, check here ▶  and enter the amount of reimbursement . . . . . ▶ \_\_\_\_\_
- b** Enter the date the official intent was adopted ▶ \_\_\_\_\_

<b>Signature and Consent</b>	Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.				
	 Signature of issuer's authorized representative	10/24/2012 Date	William Burdick, Mayor Type or print name and title		
<b>Paid Preparer Use Only</b>	Print/Type preparer's name John Stump	Preparer's signature 	Date 10/24/12	Check <input type="checkbox"/> if self-employed	PTIN P01236822
	Firm's name ▶ Steptoe & Johnson PLLC			Firm's EIN ▶ 55-0286140	
	Firm's address ▶ PO Box 1588, Charleston, West Virginia 25326			Phone no. 304.353.8000	

Form **8038-G**  
(Rev. September 2011)  
Department of the Treasury  
Internal Revenue Service

## Information Return for Tax-Exempt Governmental Obligations

▶ Under Internal Revenue Code section 149(e)  
▶ See separate instructions.  
Caution: If the issue price is under \$100,000, use Form 8038-GC.

OMB No. 1545-0720

<b>Part I Reporting Authority</b>		If Amended Return, check here <input type="checkbox"/>	
1 Issuer's name <b>City of Fairmont</b>		2 Issuer's employer identification number (EIN) <b>55-6000171</b>	
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)		3b Telephone number of other person shown on 3a	
4 Number and street (or P.O. box if mail is not delivered to street address) <b>Post Office Box 1428</b>		Room/suite	5 Report number (For IRS Use Only) <b>3</b>
6 City, town, or post office, state, and ZIP code <b>Fairmont, West Virginia 26555</b>		7 Date of issue <b>10/24/2012</b>	
8 Name of issue <b>Water Refunding Revenue Bonds, Series 2012 D</b>		9 CUSIP number <b>305459 EU9</b>	
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information (see instructions) <b>William Burdick, Mayor</b>		10b Telephone number of officer or other employee shown on 10a <b>304.366.6211</b>	

<b>Part II Type of Issue (enter the issue price). See the instructions and attach schedule.</b>	
11 Education	
12 Health and hospital	
13 Transportation	
14 Public safety	
15 Environment (including sewage bonds)	25,797,974
16 Housing	
17 Utilities	
18 Other. Describe ▶	
19 If obligations are TANs or RANs, check only box 19a <input type="checkbox"/>	
If obligations are BANs, check only box 19b <input type="checkbox"/>	
20 If obligations are in the form of a lease or installment sale, check box <input type="checkbox"/>	

<b>Part III Description of Obligations. Complete for the entire issue for which this form is being filed.</b>					
	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	07/01/2029	\$ 25,797,974	\$ 25,555,000	9.554 years	2.9080 %

<b>Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)</b>					
22	Proceeds used for accrued interest				
23	Issue price of entire issue (enter amount from line 21, column (b))				25,797,974
24	Proceeds used for bond issuance costs (including underwriters' discount)				633,529
25	Proceeds used for credit enhancement				171,302
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27	Proceeds used to currently refund prior issues				22,752,243
28	Proceeds used to advance refund prior issues				
29	Total (add lines 24 through 28)				25,797,974
30	Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)				0

<b>Part V Description of Refunded Bonds. Complete this part only for refunding bonds.</b>	
31	Enter the remaining weighted average maturity of the bonds to be currently refunded ▶ <b>.686 9.945 10.506</b> years
32	Enter the remaining weighted average maturity of the bonds to be advance refunded ▶ _____ years
33	Enter the last date on which the refunded bonds will be called (MM/DD/YYYY) ▶ <b>10/25/2012</b>
34	Enter the date(s) the refunded bonds were issued ▶ (MM/DD/YYYY) <b>06/19/1997; 12/30/1998; 01/14/1999</b>

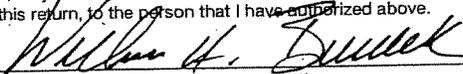
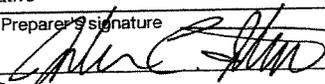
For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 63773S

Form **8038-G** (Rev. 9-2011)

**Part VI Miscellaneous**

<b>35</b>	Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) . . . . .	<b>35</b>		
<b>36a</b>	Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions) . . . . .	<b>36a</b>		
<b>b</b>	Enter the final maturity date of the GIC ▶ _____			
<b>c</b>	Enter the name of the GIC provider ▶ _____			
<b>37</b>	Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units . . . . .	<b>37</b>		
<b>38a</b>	If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the following information:			
<b>b</b>	Enter the date of the master pool obligation ▶ _____			
<b>c</b>	Enter the EIN of the issuer of the master pool obligation ▶ _____			
<b>d</b>	Enter the name of the issuer of the master pool obligation ▶ _____			
<b>39</b>	If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box . . . . .			<input type="checkbox"/>
<b>40</b>	If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box . . . . .			<input type="checkbox"/>
<b>41a</b>	If the issuer has identified a hedge, check here <input type="checkbox"/> and enter the following information:			
<b>b</b>	Name of hedge provider ▶ _____			
<b>c</b>	Type of hedge ▶ _____			
<b>d</b>	Term of hedge ▶ _____			
<b>42</b>	If the issuer has superintegrated the hedge, check box . . . . .			<input type="checkbox"/>
<b>43</b>	If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box . . . . .			<input checked="" type="checkbox"/>
<b>44</b>	If the issuer has established written procedures to monitor the requirements of section 148, check box . . . . .			<input checked="" type="checkbox"/>
<b>45a</b>	If some portion of the proceeds was used to reimburse expenditures, check here <input type="checkbox"/> and enter the amount of reimbursement . . . . . ▶ _____			
<b>b</b>	Enter the date the official intent was adopted ▶ _____			

<b>Signature and Consent</b>	Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.				
	 Signature of issuer's authorized representative		10/24/2012 Date	William Burdick, Mayor Type or print name and title	
<b>Paid Preparer Use Only</b>	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
	John Stump		10/24/12		P01236822
	Firm's name ▶ Steptoe & Johnson PLLC	Firm's EIN ▶		55-0286140	
	Firm's address ▶ PO Box 1588, Charleston, West Virginia 25326	Phone no.		304.353.8000	

**WV MUNICIPAL BOND COMMISSION**

900 Pennsylvania Avenue  
 Suite 1117  
 Charleston, WV 25302  
 (304) 558-3971

Date of Report: 10/24/2012

ISSUE: <u>City of Fairmont</u> <u>Water Revenue Bonds, Series 1999</u>	
ADDRESS: <u>Post Office Box 1428, Fairmont, WV 26554</u>	COUNTY: <u>Marion</u>
PURPOSE OF ISSUE: <u>Refunded a portion of the Series 1999 Bonds</u>	
New Money: _____	REFUNDS ISSUE(S) DATED: _____
Refunding: _____	CLOSING DATE: <u>January 1, 1999</u>
ISSUE DATE: <u>1/1/1999</u>	RATE: _____
ISSUE AMOUNT: <u>see Note below</u>	1ST PRINCIPAL DUE <u>see DSS</u>
1ST DEBT SERVICE DUE: <u>see DSS</u>	PAYING AGENT: <u>Municipal Bond Commission</u>
1ST DEBT SERVICE AMOUNT <u>see DSS</u>	
<b>BOND COUNSEL:</b>	
Firm: <u>Steptoe &amp; Johnson PLLC</u>	<b>UNDERWRITERS COUNSEL</b>
Contact: <u>John C. Stump, Esquire</u>	Firm: <u>Jackson Kelly, PLLC</u>
Phone: <u>(304) 353.8196</u>	Contact: <u>Samme Gee, Esquire</u>
	Phone: <u>(304) 340-1318</u>
<b>CLOSING BANK:</b>	
Bank: <u>WesBanco Bank, Inc.</u>	<b>ESCROW TRUSTEE:</b>
Contact: <u>Jan Shelburne, VP</u>	Firm: _____
Phone: <u>304.234.9436</u>	Contact: _____
	Phone: _____
<b>KNOWLEDGEABLE ISSUER CONTACT</b>	
Contact: <u>William Burdick</u>	<b>OTHER:</b>
Position: <u>Mayor</u>	<u>Underwriter- Crews &amp; Associates, Inc.</u>
Phone: <u>304.366.6211</u>	Contact: <u>Greg Isaacs</u>
	Position: <u>Vice- President</u>
	Phone: <u>304.344.1733</u>
<b>DEPOSITS TO MBC AT CLOSE</b>	
By: _____ Wire	Accrued Interest: \$ _____
_____ Check	Capitalized Interest: \$ _____
	Reserve Account: \$ _____
	Prepayment Fund \$ _____
	\$ _____
<b>REFUNDS &amp; TRANSFERS BY MBC AT CLOSE</b>	
By: _____ Wire From Prepayment Fund	\$ _____
_____ Check	\$ _____
_____ IGT To Prepayment Fund	\$ _____
	\$ _____ *
NOTES: <u>The Series 1999 Bonds were initially issued in amount of \$19,945,000. October 24, 2012, an amount of \$16,945,000 is Refunded. An amount of \$3,000,000 remains Un-Refunded. \$52,500 remains in Series 1999 Sinking Fund and \$300,000 remains in Series 1999 Reserve Account. \$300,000 is the new Series 1999 Reserve Requirement.</u>	
<b>FOR MUNICIPAL BOND COMMISSION USE ONLY:</b>	
DOCUMENTS REQUIRED: _____	
TRANSFERS REQUIRED: _____	

**\$3,000,000**

City of Fairmont, West Virginia

Water Revenue Bonds

Series 1999 - Non Callable

## Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I
07/01/1999	-	-	78,750.00	78,750.00
01/01/2000	-	-	78,750.00	78,750.00
07/01/2000	-	-	78,750.00	78,750.00
01/01/2001	-	-	78,750.00	78,750.00
07/01/2001	-	-	78,750.00	78,750.00
01/01/2002	-	-	78,750.00	78,750.00
07/01/2002	-	-	78,750.00	78,750.00
01/01/2003	-	-	78,750.00	78,750.00
07/01/2003	-	-	78,750.00	78,750.00
01/01/2004	-	-	78,750.00	78,750.00
07/01/2004	-	-	78,750.00	78,750.00
01/01/2005	-	-	78,750.00	78,750.00
07/01/2005	-	-	78,750.00	78,750.00
01/01/2006	-	-	78,750.00	78,750.00
07/01/2006	-	-	78,750.00	78,750.00
01/01/2007	-	-	78,750.00	78,750.00
07/01/2007	-	-	78,750.00	78,750.00
01/01/2008	-	-	78,750.00	78,750.00
07/01/2008	-	-	78,750.00	78,750.00
01/01/2009	-	-	78,750.00	78,750.00
07/01/2009	-	-	78,750.00	78,750.00
01/01/2010	-	-	78,750.00	78,750.00
07/01/2010	-	-	78,750.00	78,750.00
01/01/2011	-	-	78,750.00	78,750.00
07/01/2011	-	-	78,750.00	78,750.00
01/01/2012	-	-	78,750.00	78,750.00
07/01/2012	-	-	78,750.00	78,750.00
01/01/2013	-	-	78,750.00	78,750.00
07/01/2013	-	-	78,750.00	78,750.00
01/01/2014	-	-	78,750.00	78,750.00
07/01/2014	-	-	78,750.00	78,750.00
01/01/2015	-	-	78,750.00	78,750.00
07/01/2015	-	-	78,750.00	78,750.00
01/01/2016	-	-	78,750.00	78,750.00
07/01/2016	-	-	78,750.00	78,750.00
01/01/2017	-	-	78,750.00	78,750.00
07/01/2017	-	-	78,750.00	78,750.00
01/01/2018	-	-	78,750.00	78,750.00
07/01/2018	-	-	78,750.00	78,750.00
01/01/2019	-	-	78,750.00	78,750.00
07/01/2019	-	-	78,750.00	78,750.00
01/01/2020	-	-	78,750.00	78,750.00
07/01/2020	900,000.00	5.2500%	78,750.00	978,750.00
01/01/2021	-	-	55,125.00	55,125.00
07/01/2021	1,000,000.00	5.2500%	55,125.00	1,055,125.00
01/01/2022	-	-	28,875.00	28,875.00
07/01/2022	1,100,000.00	5.2500%	28,875.00	1,128,875.00
<b>Total</b>	<b>\$3,000,000.00</b>	<b>-</b>	<b>\$3,554,250.00</b>	<b>\$6,554,250.00</b>

### Yield Statistics

Accrued Interest from 01/01/1999 to 01/14/1999	5,687.50
Bond Year Dollars	\$67,700.00
Average Life	22.567 Years
Average Coupon	5.25000000%
Net Interest Cost (NIC)	5.25000000%
True Interest Cost (TIC)	5.2498269%
Bond Yield for Arbitrage Purposes	4.9325248%
All Inclusive Cost (AIC)	5.2498269%

### IRS Form 8038

Net Interest Cost	5.2415990%
Weighted Average Maturity	22.567 Years

Existing Debt | Series 1999 - Non Callable | 9/19/2012 1 2:24 PM

**Crews & Associates, Inc.**

Capital Markets Group

**WV MUNICIPAL BOND COMMISSION**

900 Pennsylvania Avenue  
Suite 1117  
Charleston, WV 25302  
(304) 558-3971

**NEW ISSUE REPORT FORM**

Date of Report: 10/24/2012

ISSUE: <u>City of Fairmont</u> <u>Water Refunding Revenue Bonds, Series 2012 D</u>	
ADDRESS: <u>Post Office Box 1428, Fairmont, WV 26554</u>	COUNTY: <u>Marion</u>
PURPOSE OF ISSUE: New Money: _____ Refunding: <u>X</u>	
ISSUE DATE: <u>10/24/2012</u>	REFUNDS ISSUE(S) DATED: <u>6/1/97, 12/15/98, 1/1/99</u>
ISSUE AMOUNT: <u>\$25,555,000</u>	CLOSING DATE: <u>10/24/2012</u>
1ST DEBT SERVICE DUE: <u>1/1/2013</u>	RATE: <u>2 % to 4%</u>
1ST DEBT SERVICE AMOUNT <u>see DSS</u>	1ST PRINCIPAL DUE: <u>7/1/2013</u>
PAYING AGENT: <u>Municipal Bond Commission</u>	
BOND COUNSEL: Firm: <u>Steptoe &amp; Johnson PLLC</u> Contact: <u>John C. Stump, Esquire</u> Phone: <u>(304) 353.8196</u>	
UNDERWRITERS COUNSEL Firm: <u>Jackson Kelly, PLLC</u> Contact: <u>Samme Gee, Esquire</u> Phone: <u>(304) 340-1318</u>	
CLOSING BANK: Bank: <u>WesBanco Bank, Inc.</u> Contact: <u>Jan Shelburne, VP</u> Phone: <u>304.234.9436</u>	
ESCROW TRUSTEE: Firm: _____ Contact: _____ Phone: _____	
KNOWLEDGEABLE ISSUER CONTACT Contact: <u>William Burdick</u> Position: <u>Mayor</u> Phone: <u>304.366.6211</u>	
OTHER: <u>Underwriter- Crews &amp; Associates, Inc.</u> Contact: <u>Greg Isaacs</u> Position: <u>Vice- President</u> Phone: <u>304.344.1733</u>	
DEPOSITS TO MBC AT CLOSE By: <u>X</u> Wire _____ <u>_____</u> Check _____	
Accrued Interest:	\$ _____
Capitalized Interest:	\$ _____
<u>X</u> Reserve Account:	\$ <u>2,240,900.00</u>
<u>X</u> Prepayment Fund	\$ <u>22,752,242.56</u>
	\$ _____
	\$ _____
REFUNDS & TRANSFERS BY MBC AT CLOSE	
By: <u>x<sup>1</sup></u> Wire From Prepayment Fund	<u>x<sup>1</sup></u> Payoff Series 1997 \$ <u>996,680.42</u>
<u>_____</u> Check	<u>x<sup>1</sup></u> Payoff Series 1998 \$ <u>8,395,662.04</u>
<u>x<sup>2</sup></u> IGT To Prepayment Fund	<u>x<sup>1</sup></u> Partial payoff 1999 \$ <u>17,212,381.46</u>
	<u>x<sup>2</sup></u> Prepayment Fund \$ <u>3,852,481.36 *</u>
NOTES: <u>*MBC will transfer \$344,225 from 1997 DSF, \$2,436.82 from 1997 DSRF, \$178,125.92 from 1998 DSF, \$1,204,542.55 from 1998 DSRF, \$281,454.16 from 1999 DSF and \$1,841,696.91 from 1999 DSRF to the Prepayment Fund.</u> <u>The Series 2012 D Bonds Reserve Fund will be fully funded at closing and 1999 DSRF remains fully funded.</u>	
FOR MUNICIPAL BOND COMMISSION USE ONLY: DOCUMENTS REQUIRED: _____ TRANSFERS REQUIRED: _____ _____	

Exhibit to New Issue Report

	2012 D Reserve	Prepayment Account
<u>Deposits to MBC</u>		
Series 2012 D Bonds Reserve Account	2,240,900.00	
Prepayment Fund		22,752,242.56
<u>Internal Transfers</u>		
Transfer from 1997 Sinking Fund tp Prepayment Fund	344,225.00	
Transfer from 1997 Reserve Account to Prepayment Fund	2,436.82	
Transfer from 1998 Sinking Fund tp Prepayment Fund	178,125.92	
Transfer from 1998 Reserve Account to Prepayment Fund	1,204,542.55	
Transfer from 1999 Sinking Fund tp Prepayment Fund	281,454.00	
Transfer from 1999 Reserve Account to Prepayment Fund	1,841,696.91	
		<u>3,852,481.20</u>
Total Transferred to Prepayment Fund		26,604,723.76
<u>Transfers From Prepayment Fund</u>		
Payoff 1997 Bonds	996,680.42	
Payoff 1998 Bonds	8,395,662.04	
Pay Portion of 1999 Bonds*	17,212,381.46	
		<u>26,604,723.92</u>

\* \$3,000,000 of Series 1999 Bonds remains unfunded  
 \$300,000 Remains in the Series 1999 Bonds Reserve Account  
 \$52,500 Remains in the Series 1999 Bonds Sinking Fund

CITY OF FAIRMONT (WV)  
 Water Refunding Revenue Bonds  
 Series 2012 D

DTC FAST CLOSING  
 Wednesday, October 24, 2012

SOURCES:	
2012 D - Par Amount	25,555,000.00
2012 D - Reoffering Premium	242,973.90
GIC Termination Payment	744,046.39
Transfers from Prior Issue DSRFs	2,304,629.89
Transfers from Prior Issue DS Funds	803,805.08
<b>TOTAL SOURCES OF FUNDS</b>	<b>29,650,455.26</b>
USES:	
Deposit to '97, '98 and '99 Refunding Fund	26,604,723.92
Deposit to 2012 D Reserve	2,240,900.00
Underwriters Discount	459,990.00
Bond Insurance - Assured Guaranty	171,301.99
<b>Costs of Issuance:</b>	
Bond Counsel - Steptoe & Johnson	80,000.00
Underwriters Counsel - Jackson Kelly	60,000.00
Rating Fee - Standard & Poor's	19,000.00
GIC Transfer Fees - mGIC	7,500.00
WV Municipal Bond Commission - 1998	1,202.98
WV Municipal Bond Commission - 1999	847.86
Tetrick & Bartlett - Coverage Verification	1,375.00
Registrar - Annual DTC, Continuing Disclosure	750.00
Registrar - Acceptance fee	500.00
Miscellaneous (function)	324.16
<b>Total COI</b>	<b>171,500.00</b>
Rounding	2,039.35
<b>TOTAL USES OF FUNDS</b>	<b>29,650,455.26</b>

CONTACTS:	
<b>WesBanco Bank (#2271)</b>	
Jan Shelburne	304-234-9436 Tel
<b>DTC</b>	
	212-855-3752 Tel
	212-855-3753 Tel
	212-855-3754 Tel

Crews BD# 5158

\$0.00 Sources & Uses Balance Test

WIRE INSTRUCTIONS:

WIRES FROM CREWS

<b>From: Crews &amp; Associates, Inc.</b>		<b>To: WV Municipal Bond Commission</b>	
Deposit to Refunding Fund (97, 98 and 99)	22,752,242.56	Bank:	Branch Banking & Trust
MBC Fees	2,050.84	City:	Charleston, WV
Deposit to Series 2012 D DSR Funds	2,240,900.00	ABA#:	051 5033 94
		Acct. Name:	State of West Virginia
		Account No.:	5270517317
<b>Total Wire</b>	<b>24,995,193.40</b>		
<b>From: Crews &amp; Associates, Inc.</b>		<b>To: Assured Guaranty</b>	
Bond Insurance Premium	171,301.99	Bank:	The Bank of New York
		City:	Woodland Park, NJ
		ABA#:	021-000-018
		Acct. Name:	Assured Guaranty Municipal Corp.
		Account No.:	8900297263
		Policy #:	215164-N
<b>Total Wire</b>	<b>171,301.99</b>		
<b>From: Crews &amp; Associates, Inc.</b>		<b>To: WesBanco Bank - Wheeling, WV</b>	
Costs of Issuance and Rounding	171,488.51	Bank:	WesBanco Bank
		City:	Wheeling, WV 26003
		ABA#:	043-4000-36
		Acct. Name:	Fairmont Water 2012 D
		Credit Acct:	A/C #20520700
		Attn:	Jan Shelburne
<b>Total Wire</b>	<b>171,488.51</b>		

EXISTING MBC BALANCES

<b>From: Existing Series 1997 Account</b>		<b>To: WV Municipal Bond Commission</b>	
Transfer from Prior Issue DSR Funds	2,436.82		
Transfer from Prior Issue DS Funds	344,225.00		
<b>Total Wire</b>	<b>346,661.82</b>		
<b>From: Existing Series 1998 and 1999 Accounts</b>		<b>To: WV Municipal Bond Commission</b>	
Transfer from Prior Issue DSR Funds	1,204,542.55		
Transfer from Prior Issue DS Funds	178,125.92		
Transfer from Prior Issue DSR Funds	1,097,650.52		
Transfer from Prior Issue DS Funds	281,454.16		
<b>Total Wire</b>	<b>2,761,773.15</b>		

<b>From: Wells Fargo</b>		<b>To: WV Municipal Bond Commission</b>	
Deposit to Refunding Fund - GIC Termination	744,046.39	Bank:	Branch Banking & Trust
COMPLETED on 9-27-12		City:	Charleston, WV
		ABA#:	051 5033 94
		Acct. Name:	State of West Virginia
		Account No.:	5270517317
<b>Total Wire</b>	<b>744,046.39</b>		

FINAL

**\$25,555,000**

City of Fairmont, West Virginia  
Water Revenue Bonds (Insured/NBQ)  
Series 2012

## Sources & Uses

Dated 10/24/2012 | Delivered 10/24/2012

### Sources Of Funds

Par Amount of Bonds	\$25,555,000.00
Transfers from Prior Issue DSR Funds	2,302,193.07
Transfers from Prior Issue Debt Service Funds	806,288.29
GIC Termination Payment	744,000.00
Reoffering Premium	242,973.90

**Total Sources** **\$29,650,455.26**

### Uses Of Funds

Deposit to Current Refunding Fund	26,604,723.92
Deposit to Debt Service Reserve Fund (DSRF)	2,240,900.00
Total Underwriter's Discount (1.800%)	459,990.00
Costs of Issuance	171,500.00
Gross Bond Insurance Premium ( 52.0 bp)	171,301.99
Rounding Amount	2,039.35

**Total Uses** **\$29,650,455.26**

FINAL

**\$25,555,000**

City of Fairmont, West Virginia  
Water Revenue Bonds (Insured/NBQ)  
Series 2012

## Debt Service Comparison

Date	Total P+I	DSR	Net New D/S	Old Net D/S	Savings
07/01/2013	1,391,325.81	-	1,391,325.81	1,500,101.26	108,775.45
07/01/2014	2,083,327.50	-	2,083,327.50	2,314,364.36	231,036.86
07/01/2015	2,080,327.50	-	2,080,327.50	2,313,626.86	233,299.36
07/01/2016	2,081,827.50	-	2,081,827.50	2,314,814.36	232,986.86
07/01/2017	2,082,727.50	-	2,082,727.50	2,312,664.36	229,936.86
07/01/2018	2,078,027.50	-	2,078,027.50	2,312,176.86	234,149.36
07/01/2019	2,082,727.50	-	2,082,727.50	2,315,814.36	233,086.86
07/01/2020	1,181,527.50	-	1,181,527.50	1,415,189.36	233,661.86
07/01/2021	1,131,002.50	-	1,131,002.50	1,361,134.36	230,131.86
07/01/2022	1,079,627.50	-	1,079,627.50	1,313,059.36	233,431.86
07/01/2023	2,237,887.50	-	2,237,887.50	2,470,719.36	232,831.86
07/01/2024	2,238,525.00	-	2,238,525.00	2,469,869.36	231,344.36
07/01/2025	2,239,725.00	-	2,239,725.00	2,471,206.86	231,481.86
07/01/2026	2,237,125.00	-	2,237,125.00	2,471,231.86	234,106.86
07/01/2027	2,240,900.00	-	2,240,900.00	2,471,319.36	230,419.36
07/01/2028	2,236,640.00	-	2,236,640.00	2,471,219.36	234,579.36
07/01/2029	2,239,440.00	(2,240,900.00)	(1,460.00)	226,104.91	227,564.91
<b>Total</b>	<b>\$32,942,690.81</b>	<b>(2,240,900.00)</b>	<b>\$30,701,790.81</b>	<b>\$34,524,616.57</b>	<b>\$3,822,825.76</b>

### PV Analysis Summary (Net to Net)

Gross PV Debt Service Savings	5,227,921.20
Effects of changes in DSR investments	(1,429,295.07)
Net PV Cashflow Savings @ 2.908%(Bond Yield)	3,798,626.13
Transfers from Prior Issue Debt Service Fund	(806,288.29)
Net Present Value Benefit	\$2,992,337.84
Net PV Benefit / \$26,195,000 Refunded Principal	11.423%
Net PV Benefit / \$25,555,000 Refunding Principal	11.709%

### Refunding Bond Information

Refunding Dated Date	10/24/2012
Refunding Delivery Date	10/24/2012

FINAL

**\$25,555,000**

City of Fairmont, West Virginia  
 Water Revenue Bonds (Insured/NBQ)  
 Series 2012

## Net Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I	DSR	Net New D/S	Fiscal Total
10/24/2012	-	-	-	-	-	-	-
01/01/2013	-	-	130,562.06	130,562.06	-	130,562.06	-
07/01/2013	910,000.00	2.000%	350,763.75	1,260,763.75	-	1,260,763.75	1,391,325.81
01/01/2014	-	-	341,663.75	341,663.75	-	341,663.75	-
07/01/2014	1,400,000.00	2.000%	341,663.75	1,741,663.75	-	1,741,663.75	2,083,327.50
01/01/2015	-	-	327,663.75	327,663.75	-	327,663.75	-
07/01/2015	1,425,000.00	2.000%	327,663.75	1,752,663.75	-	1,752,663.75	2,080,327.50
01/01/2016	-	-	313,413.75	313,413.75	-	313,413.75	-
07/01/2016	1,455,000.00	2.000%	313,413.75	1,768,413.75	-	1,768,413.75	2,081,827.50
01/01/2017	-	-	298,863.75	298,863.75	-	298,863.75	-
07/01/2017	1,485,000.00	2.000%	298,863.75	1,783,863.75	-	1,783,863.75	2,082,727.50
01/01/2018	-	-	284,013.75	284,013.75	-	284,013.75	-
07/01/2018	1,510,000.00	3.000%	284,013.75	1,794,013.75	-	1,794,013.75	2,078,027.50
01/01/2019	-	-	261,363.75	261,363.75	-	261,363.75	-
07/01/2019	1,560,000.00	2.000%	261,363.75	1,821,363.75	-	1,821,363.75	2,082,727.50
01/01/2020	-	-	245,763.75	245,763.75	-	245,763.75	-
07/01/2020	690,000.00	2.250%	245,763.75	935,763.75	-	935,763.75	1,181,527.50
01/01/2021	-	-	238,001.25	238,001.25	-	238,001.25	-
07/01/2021	655,000.00	2.500%	238,001.25	893,001.25	-	893,001.25	1,131,002.50
01/01/2022	-	-	229,813.75	229,813.75	-	229,813.75	-
07/01/2022	620,000.00	2.700%	229,813.75	849,813.75	-	849,813.75	1,079,627.50
01/01/2023	-	-	221,443.75	221,443.75	-	221,443.75	-
07/01/2023	1,795,000.00	2.750%	221,443.75	2,016,443.75	-	2,016,443.75	2,237,887.50
01/01/2024	-	-	196,762.50	196,762.50	-	196,762.50	-
07/01/2024	1,845,000.00	4.000%	196,762.50	2,041,762.50	-	2,041,762.50	2,238,525.00
01/01/2025	-	-	159,862.50	159,862.50	-	159,862.50	-
07/01/2025	1,920,000.00	3.000%	159,862.50	2,079,862.50	-	2,079,862.50	2,239,725.00
01/01/2026	-	-	131,062.50	131,062.50	-	131,062.50	-
07/01/2026	1,975,000.00	3.100%	131,062.50	2,106,062.50	-	2,106,062.50	2,237,125.00
01/01/2027	-	-	100,450.00	100,450.00	-	100,450.00	-
07/01/2027	2,040,000.00	3.150%	100,450.00	2,140,450.00	-	2,140,450.00	2,240,900.00
01/01/2028	-	-	68,320.00	68,320.00	-	68,320.00	-
07/01/2028	2,100,000.00	3.200%	68,320.00	2,168,320.00	-	2,168,320.00	2,236,640.00
01/01/2029	-	-	34,720.00	34,720.00	-	34,720.00	-
07/01/2029	2,170,000.00	3.200%	34,720.00	2,204,720.00	(2,240,900.00)	(36,180.00)	(1,460.00)
<b>Total</b>	<b>\$25,555,000.00</b>	<b>-</b>	<b>\$7,387,690.81</b>	<b>\$32,942,690.81</b>	<b>(2,240,900.00)</b>	<b>\$30,701,790.81</b>	<b>-</b>

FINAL

**\$25,555,000**

City of Fairmont, West Virginia  
Water Revenue Bonds (Insured/NBQ)  
Series 2012

## Pricing Summary

Maturity	Type of Bond	Coupon	Yield	Maturity Value	Price	Dollar Price
07/01/2013	Serial Coupon	2.000%	0.400%	910,000.00	101.094%	919,955.40
07/01/2014	Serial Coupon	2.000%	0.600%	1,400,000.00	102.344%	1,432,816.00
07/01/2015	Serial Coupon	2.000%	0.850%	1,425,000.00	103.047%	1,468,419.75
07/01/2016	Serial Coupon	2.000%	1.000%	1,455,000.00	103.609%	1,507,510.95
07/01/2017	Serial Coupon	2.000%	1.300%	1,485,000.00	103.171%	1,532,089.35
07/01/2018	Serial Coupon	3.000%	1.600%	1,510,000.00	107.578%	1,624,427.80
07/01/2019	Serial Coupon	2.000%	2.000%	1,560,000.00	100.000%	1,560,000.00
07/01/2020	Serial Coupon	2.250%	2.250%	690,000.00	100.000%	690,000.00
07/01/2021	Serial Coupon	2.500%	2.550%	655,000.00	99.610%	652,445.50
07/01/2022	Serial Coupon	2.700%	2.800%	620,000.00	99.154%	614,754.80
07/01/2023	Serial Coupon	2.750%	2.900%	1,795,000.00	98.627%	1,770,354.65
07/01/2024	Serial Coupon	4.000%	2.800%	1,845,000.00	107.267% c	1,979,076.15
07/01/2025	Serial Coupon	3.000%	3.100%	1,920,000.00	98.954%	1,899,916.80
07/01/2026	Serial Coupon	3.100%	3.200%	1,975,000.00	98.895%	1,953,176.25
07/01/2027	Serial Coupon	3.150%	3.300%	2,040,000.00	98.262%	2,004,544.80
07/01/2029	Term 1 Coupon	3.200%	3.350%	4,270,000.00	98.091%	4,188,485.70
<b>Total</b>	-	-	-	<b>\$25,555,000.00</b>	-	<b>\$25,797,973.90</b>

### Bid Information

Par Amount of Bonds	\$25,555,000.00
Reoffering Premium or (Discount)	242,973.90
Gross Production	\$25,797,973.90
Total Underwriter's Discount (1.800%)	\$(459,990.00)
Bid (99.151%)	25,337,983.90
Total Purchase Price	\$25,337,983.90
Bond Year Dollars	\$246,388.57
Average Life	9.642 Years
Average Coupon	2.9983902%
Net Interest Cost (NIC)	3.0864690%
True Interest Cost (TIC)	3.0851248%

FINAL

**\$25,555,000**

City of Fairmont, West Virginia  
Water Revenue Bonds (Insured/NBQ)  
Series 2012

## Current Refunding Escrow

Date	Rate	Receipts	Disbursements	Cash Balance
10/24/2012	-	26,604,723.92	-	26,604,723.92
10/25/2012	-	-	26,604,723.92	-
<b>Total</b>	-	<b>\$26,604,723.92</b>	<b>\$26,604,723.92</b>	-

### Investment Parameters

Investment Model [PV, GIC, or Securities]	Securities
Default investment yield target	Unrestricted
Cash Deposit	26,604,723.92
Total Cost of Investments	\$26,604,723.92
Target Cost of Investments at bond yield	\$26,602,590.42
Actual positive or (negative) arbitrage	(2,133.50)
Yield to Receipt	-
Yield for Arbitrage Purposes	2.9079872%

FINAL

**\$2,780,000**

City of Fairmont, West Virginia

Water Revenue Bonds

Series 1997

## Debt Service To Maturity And To Call

Date	Refunded Bonds	Refunded Interest	D/S To Call	Principal	Coupon	Interest	Refunded D/S
10/24/2012	-	-	-	-	-	-	-
10/25/2012	980,000.00	16,680.42	996,680.42	-	-	-	-
01/01/2013	-	-	-	-	-	26,337.50	26,337.50
07/01/2013	-	-	-	980,000.00	5.375%	26,337.50	1,006,337.50
<b>Total</b>	<b>\$980,000.00</b>	<b>\$16,680.42</b>	<b>\$996,680.42</b>	<b>\$980,000.00</b>	-	<b>\$52,675.00</b>	<b>\$1,032,675.00</b>

### Yield Statistics

Base date for Avg. Life & Avg. Coupon Calculation	10/24/2012
Average Life	0.686 Years
Average Coupon	5.3750000%
Weighted Average Maturity (Par Basis)	0.686 Years

### Refunding Bond Information

Refunding Dated Date	10/24/2012
Refunding Delivery Date	10/24/2012

FINAL

**\$9,600,000**

City of Fairmont, West Virginia

Water Revenue Bonds

Series 1998

## Debt Service To Maturity And To Call

Date	Refunded Bonds	Refunded Interest	D/S To Call	Principal	Coupon	Interest	Refunded D/S
10/24/2012	-	-	-	-	-	-	-
10/25/2012	8,270,000.00	125,662.04	8,395,662.04	-	-	-	-
01/01/2013	-	-	-	-	-	198,413.75	198,413.75
07/01/2013	-	-	-	145,000.00	4.350%	198,413.75	343,413.75
01/01/2014	-	-	-	-	-	195,260.00	195,260.00
07/01/2014	-	-	-	295,000.00	4.750%	195,260.00	490,260.00
01/01/2015	-	-	-	-	-	188,253.75	188,253.75
07/01/2015	-	-	-	310,000.00	4.750%	188,253.75	498,253.75
01/01/2016	-	-	-	-	-	180,891.25	180,891.25
07/01/2016	-	-	-	325,000.00	4.750%	180,891.25	505,891.25
01/01/2017	-	-	-	-	-	173,172.50	173,172.50
07/01/2017	-	-	-	340,000.00	4.750%	173,172.50	513,172.50
01/01/2018	-	-	-	-	-	165,097.50	165,097.50
07/01/2018	-	-	-	355,000.00	4.750%	165,097.50	520,097.50
01/01/2019	-	-	-	-	-	156,666.25	156,666.25
07/01/2019	-	-	-	375,000.00	4.900%	156,666.25	531,666.25
01/01/2020	-	-	-	-	-	147,478.75	147,478.75
07/01/2020	-	-	-	695,000.00	4.900%	147,478.75	842,478.75
01/01/2021	-	-	-	-	-	130,451.25	130,451.25
07/01/2021	-	-	-	675,000.00	4.900%	130,451.25	805,451.25
01/01/2022	-	-	-	-	-	113,913.75	113,913.75
07/01/2022	-	-	-	660,000.00	4.900%	113,913.75	773,913.75
01/01/2023	-	-	-	-	-	97,743.75	97,743.75
07/01/2023	-	-	-	650,000.00	4.900%	97,743.75	747,743.75
01/01/2024	-	-	-	-	-	81,818.75	81,818.75
07/01/2024	-	-	-	635,000.00	4.750%	81,818.75	716,818.75
01/01/2025	-	-	-	-	-	66,737.50	66,737.50
07/01/2025	-	-	-	510,000.00	4.750%	66,737.50	576,737.50
01/01/2026	-	-	-	-	-	54,625.00	54,625.00
07/01/2026	-	-	-	535,000.00	4.750%	54,625.00	589,625.00
01/01/2027	-	-	-	-	-	41,918.75	41,918.75
07/01/2027	-	-	-	560,000.00	4.750%	41,918.75	601,918.75
01/01/2028	-	-	-	-	-	28,618.75	28,618.75
07/01/2028	-	-	-	590,000.00	4.750%	28,618.75	618,618.75
01/01/2029	-	-	-	-	-	14,606.25	14,606.25
07/01/2029	-	-	-	615,000.00	4.750%	14,606.25	629,606.25
<b>Total</b>	<b>\$8,270,000.00</b>	<b>\$125,662.04</b>	<b>\$8,395,662.04</b>	<b>\$8,270,000.00</b>	<b>-</b>	<b>\$4,071,335.00</b>	<b>\$12,341,335.00</b>

### Yield Statistics

Base date for Avg. Life & Avg. Coupon Calculation	10/24/2012
Average Life	9.945 Years
Average Coupon	4.7988529%
Weighted Average Maturity (Par Basis)	9.945 Years

### Refunding Bond Information

Refunding Dated Date	10/24/2012
Refunding Delivery Date	10/24/2012

Existing Debt | Series 1998 | 9/25/2012 | 12:35 PM

**Crews & Associates, Inc.**

Capital Markets Group

FINAL

**\$16,945,000**

City of Fairmont, West Virginia

Water Revenue Bonds

Series 1999 - Callable

## Debt Service To Maturity And To Call

Date	Refunded Bonds	Refunded Interest	D/S To Call	Principal	Coupon	Interest	Refunded D/S
10/24/2012	-	-	-	-	-	-	-
10/25/2012	16,945,000.00	267,381.46	17,212,381.46	-	-	-	-
01/01/2013	-	-	-	-	-	422,181.25	422,181.25
07/01/2013	-	-	-	-	-	422,181.25	422,181.25
01/01/2014	-	-	-	-	-	422,181.25	422,181.25
07/01/2014	-	-	-	890,000.00	5.250%	422,181.25	1,312,181.25
01/01/2015	-	-	-	-	-	398,818.75	398,818.75
07/01/2015	-	-	-	935,000.00	5.250%	398,818.75	1,333,818.75
01/01/2016	-	-	-	-	-	374,275.00	374,275.00
07/01/2016	-	-	-	985,000.00	5.250%	374,275.00	1,359,275.00
01/01/2017	-	-	-	-	-	348,418.75	348,418.75
07/01/2017	-	-	-	1,035,000.00	5.250%	348,418.75	1,383,418.75
01/01/2018	-	-	-	-	-	321,250.00	321,250.00
07/01/2018	-	-	-	1,090,000.00	5.000%	321,250.00	1,411,250.00
01/01/2019	-	-	-	-	-	294,000.00	294,000.00
07/01/2019	-	-	-	1,145,000.00	5.000%	294,000.00	1,439,000.00
01/01/2020	-	-	-	-	-	265,375.00	265,375.00
07/01/2020	-	-	-	-	-	265,375.00	265,375.00
01/01/2021	-	-	-	-	-	265,375.00	265,375.00
07/01/2021	-	-	-	-	-	265,375.00	265,375.00
01/01/2022	-	-	-	-	-	265,375.00	265,375.00
07/01/2022	-	-	-	-	-	265,375.00	265,375.00
01/01/2023	-	-	-	-	-	265,375.00	265,375.00
07/01/2023	-	-	-	1,200,000.00	4.500%	265,375.00	1,465,375.00
01/01/2024	-	-	-	-	-	238,375.00	238,375.00
07/01/2024	-	-	-	1,300,000.00	4.500%	238,375.00	1,538,375.00
01/01/2025	-	-	-	-	-	209,125.00	209,125.00
07/01/2025	-	-	-	1,515,000.00	5.000%	209,125.00	1,724,125.00
01/01/2026	-	-	-	-	-	171,250.00	171,250.00
07/01/2026	-	-	-	1,590,000.00	5.000%	171,250.00	1,761,250.00
01/01/2027	-	-	-	-	-	131,500.00	131,500.00
07/01/2027	-	-	-	1,670,000.00	5.000%	131,500.00	1,801,500.00
01/01/2028	-	-	-	-	-	89,750.00	89,750.00
07/01/2028	-	-	-	1,750,000.00	5.000%	89,750.00	1,839,750.00
01/01/2029	-	-	-	-	-	46,000.00	46,000.00
07/01/2029	-	-	-	1,840,000.00	5.000%	46,000.00	1,886,000.00
<b>Total</b>	<b>\$16,945,000.00</b>	<b>\$267,381.46</b>	<b>\$17,212,381.46</b>	<b>\$16,945,000.00</b>	<b>-</b>	<b>\$9,057,250.00</b>	<b>\$26,002,250.00</b>

### Yield Statistics

Base date for Avg. Life & Avg. Coupon Calculation	10/24/2012
Average Life	10.506 Years
Average Coupon	4.9388592%
Weighted Average Maturity (Par Basis)	10.506 Years

### Refunding Bond Information

Refunding Dated Date	10/24/2012
Refunding Delivery Date	10/24/2012

Existing Debt | Series 1999 - Callable | 9/25/2012 | 12:35 PM

**Crews & Associates, Inc.**

Capital Markets Group

FINAL

**\$25,555,000**

City of Fairmont, West Virginia  
 Water Revenue Bonds (Insured/NBQ)  
 Series 2012

## Summary Of Bonds Refunded

Issue	Purpose	Maturity	Type	of Bond	Coupon	Maturity Value	Call Date	Call Price
<b>Dated 7/01/2010   Delivered 12/30/1998</b>								
Existing Debt	Series 1997	07/01/2013	Serial	Coupon	5.375%	980,000	10/25/2012	100.000%
<b>Subtotal</b>		-	-	-	-	<b>\$980,000</b>	-	-
<b>Dated 7/01/2010   Delivered 12/30/1998</b>								
Existing Debt	Series 1998	07/01/2013	Serial	Coupon	4.350%	145,000	10/25/2012	100.000%
Existing Debt	Series 1998	07/01/2014	Term 1	Coupon	4.750%	295,000	10/25/2012	100.000%
Existing Debt	Series 1998	07/01/2015	Term 1	Coupon	4.750%	310,000	10/25/2012	100.000%
Existing Debt	Series 1998	07/01/2016	Term 1	Coupon	4.750%	325,000	10/25/2012	100.000%
Existing Debt	Series 1998	07/01/2017	Term 1	Coupon	4.750%	340,000	10/25/2012	100.000%
Existing Debt	Series 1998	07/01/2018	Term 1	Coupon	4.750%	355,000	10/25/2012	100.000%
Existing Debt	Series 1998	07/01/2019	Term 2	Coupon	4.900%	375,000	10/25/2012	100.000%
Existing Debt	Series 1998	07/01/2020	Term 2	Coupon	4.900%	695,000	10/25/2012	100.000%
Existing Debt	Series 1998	07/01/2021	Term 2	Coupon	4.900%	675,000	10/25/2012	100.000%
Existing Debt	Series 1998	07/01/2022	Term 2	Coupon	4.900%	660,000	10/25/2012	100.000%
Existing Debt	Series 1998	07/01/2023	Term 2	Coupon	4.900%	650,000	10/25/2012	100.000%
Existing Debt	Series 1998	07/01/2024	Term 3	Coupon	4.750%	635,000	10/25/2012	100.000%
Existing Debt	Series 1998	07/01/2025	Term 3	Coupon	4.750%	510,000	10/25/2012	100.000%
Existing Debt	Series 1998	07/01/2026	Term 3	Coupon	4.750%	535,000	10/25/2012	100.000%
Existing Debt	Series 1998	07/01/2027	Term 3	Coupon	4.750%	560,000	10/25/2012	100.000%
Existing Debt	Series 1998	07/01/2028	Term 3	Coupon	4.750%	590,000	10/25/2012	100.000%
Existing Debt	Series 1998	07/01/2029	Term 3	Coupon	4.750%	615,000	10/25/2012	100.000%
<b>Subtotal</b>		-	-	-	-	<b>\$8,270,000</b>	-	-
<b>Dated 7/01/2010   Delivered 12/30/1998</b>								
Existing Debt	Series 1999 - Callable	07/01/2014	Term 1	Coupon	5.250%	890,000	10/25/2012	100.000%
Existing Debt	Series 1999 - Callable	07/01/2015	Term 1	Coupon	5.250%	935,000	10/25/2012	100.000%
Existing Debt	Series 1999 - Callable	07/01/2016	Term 2	Coupon	5.250%	985,000	10/25/2012	100.000%
Existing Debt	Series 1999 - Callable	07/01/2017	Term 2	Coupon	5.250%	1,035,000	10/25/2012	100.000%
Existing Debt	Series 1999 - Callable	07/01/2018	Term 3	Coupon	5.000%	1,090,000	10/25/2012	100.000%
Existing Debt	Series 1999 - Callable	07/01/2019	Term 3	Coupon	5.000%	1,145,000	10/25/2012	100.000%
Existing Debt	Series 1999 - Callable	07/01/2023	Term 5	Coupon	4.500%	1,200,000	10/25/2012	100.000%
Existing Debt	Series 1999 - Callable	07/01/2024	Term 5	Coupon	4.500%	1,300,000	10/25/2012	100.000%
Existing Debt	Series 1999 - Callable	07/01/2025	Term 6	Coupon	5.000%	1,515,000	10/25/2012	100.000%
Existing Debt	Series 1999 - Callable	07/01/2026	Term 6	Coupon	5.000%	1,590,000	10/25/2012	100.000%
Existing Debt	Series 1999 - Callable	07/01/2027	Term 6	Coupon	5.000%	1,670,000	10/25/2012	100.000%
Existing Debt	Series 1999 - Callable	07/01/2028	Term 6	Coupon	5.000%	1,750,000	10/25/2012	100.000%
Existing Debt	Series 1999 - Callable	07/01/2029	Term 6	Coupon	5.000%	1,840,000	10/25/2012	100.000%
<b>Subtotal</b>		-	-	-	-	<b>\$16,945,000</b>	-	-
<b>Total</b>		-	-	-	-	<b>\$26,195,000</b>	-	-

Final | Series 1998 BQ | 9/25/2012 | 12:35 PM

**Crews & Associates, Inc.**  
 Capital Markets Group

FINAL

**\$25,555,000**

City of Fairmont, West Virginia

Water Revenue Bonds (Insured/NBQ)

Series 2012

## Proof of Premium Bond Selection of Call Dates/Prices

<u>Maturity</u>	<u>Call Date</u>	<u>Call Price</u>	<u>PV at Bond Yield</u>	<u>Lowest?</u>
07/01/2024	-	-	2,043,466.43	No
07/01/2024	07/01/2019	100.000%	1,966,685.28	Yes

FINAL

**\$25,555,000**

City of Fairmont, West Virginia  
Water Revenue Bonds (Insured/NBQ)  
Series 2012

## Proof of D/S for Arbitrage Purposes

Date	Principal	Interest	Total
10/24/2012	-	-	-
01/01/2013	-	130,562.06	130,562.06
07/01/2013	910,000.00	350,763.75	1,260,763.75
01/01/2014	-	341,663.75	341,663.75
07/01/2014	1,400,000.00	341,663.75	1,741,663.75
01/01/2015	-	327,663.75	327,663.75
07/01/2015	1,425,000.00	327,663.75	1,752,663.75
01/01/2016	-	313,413.75	313,413.75
07/01/2016	1,455,000.00	313,413.75	1,768,413.75
01/01/2017	-	298,863.75	298,863.75
07/01/2017	1,485,000.00	298,863.75	1,783,863.75
01/01/2018	-	284,013.75	284,013.75
07/01/2018	1,510,000.00	284,013.75	1,794,013.75
01/01/2019	-	261,363.75	261,363.75
07/01/2019	3,405,000.00	261,363.75	3,666,363.75
01/01/2020	-	208,863.75	208,863.75
07/01/2020	690,000.00	208,863.75	898,863.75
01/01/2021	-	201,101.25	201,101.25
07/01/2021	655,000.00	201,101.25	856,101.25
01/01/2022	-	192,913.75	192,913.75
07/01/2022	620,000.00	192,913.75	812,913.75
01/01/2023	-	184,543.75	184,543.75
07/01/2023	1,795,000.00	184,543.75	1,979,543.75
01/01/2024	-	159,862.50	159,862.50
07/01/2024	-	159,862.50	159,862.50
01/01/2025	-	159,862.50	159,862.50
07/01/2025	1,920,000.00	159,862.50	2,079,862.50
01/01/2026	-	131,062.50	131,062.50
07/01/2026	1,975,000.00	131,062.50	2,106,062.50
01/01/2027	-	100,450.00	100,450.00
07/01/2027	2,040,000.00	100,450.00	2,140,450.00
01/01/2028	-	68,320.00	68,320.00
07/01/2028	2,100,000.00	68,320.00	2,168,320.00
01/01/2029	-	34,720.00	34,720.00
07/01/2029	2,170,000.00	34,720.00	2,204,720.00
<b>Total</b>	<b>\$25,555,000.00</b>	<b>\$7,018,690.81</b>	<b>\$32,573,690.81</b>

FINAL

**\$25,555,000**

City of Fairmont, West Virginia  
Water Revenue Bonds (Insured/NBQ)  
Series 2012

**Proof Of Bond Yield @ 2.9079872%**

Date	Cashflow	PV Factor	Present Value	Cumulative PV
10/24/2012	-	1.0000000x	-	-
01/01/2013	130,562.06	0.9946413x	129,862.42	129,862.42
07/01/2013	1,260,763.75	0.9803865x	1,236,035.80	1,365,898.22
01/01/2014	341,663.75	0.9663361x	330,162.01	1,696,060.22
07/01/2014	1,741,663.75	0.9524870x	1,658,912.03	3,354,972.25
01/01/2015	327,663.75	0.9388363x	307,622.64	3,662,594.89
07/01/2015	1,752,663.75	0.9253814x	1,621,882.37	5,284,477.26
01/01/2016	313,413.75	0.9121192x	285,870.70	5,570,347.96
07/01/2016	1,768,413.75	0.8990471x	1,589,887.29	7,160,235.25
01/01/2017	298,863.75	0.8861624x	264,841.81	7,425,077.06
07/01/2017	1,783,863.75	0.8734623x	1,558,137.72	8,983,214.78
01/01/2018	284,013.75	0.8609442x	244,520.00	9,227,734.78
07/01/2018	1,794,013.75	0.8486055x	1,522,410.02	10,750,144.80
01/01/2019	261,363.75	0.8364437x	218,616.06	10,968,760.87
07/01/2019	3,666,363.75	0.8244562x	3,022,756.22	13,991,517.08
01/01/2020	208,863.75	0.8126404x	169,731.13	14,161,248.21
07/01/2020	898,863.75	0.8009940x	719,984.50	14,881,232.71
01/01/2021	201,101.25	0.7895145x	158,772.36	15,040,005.07
07/01/2021	856,101.25	0.7781996x	666,217.62	15,706,222.69
01/01/2022	192,913.75	0.7670468x	147,973.87	15,854,196.55
07/01/2022	812,913.75	0.7560538x	614,606.52	16,468,803.07
01/01/2023	184,543.75	0.7452184x	137,525.39	16,606,328.46
07/01/2023	1,979,543.75	0.7345382x	1,454,050.54	18,060,379.00
01/01/2024	159,862.50	0.7240111x	115,742.23	18,176,121.23
07/01/2024	159,862.50	0.7136349x	114,083.46	18,290,204.69
01/01/2025	159,862.50	0.7034074x	112,448.47	18,402,653.16
07/01/2025	2,079,862.50	0.6933265x	1,442,023.81	19,844,676.98
01/01/2026	131,062.50	0.6833901x	89,566.81	19,934,243.79
07/01/2026	2,106,062.50	0.6735960x	1,418,635.32	21,352,879.11
01/01/2027	100,450.00	0.6639423x	66,693.01	21,419,572.12
07/01/2027	2,140,450.00	0.6544270x	1,400,768.31	22,820,340.43
01/01/2028	68,320.00	0.6450481x	44,069.68	22,864,410.11
07/01/2028	2,168,320.00	0.6358035x	1,378,625.48	24,243,035.59
01/01/2029	34,720.00	0.6266915x	21,758.73	24,264,794.32
07/01/2029	2,204,720.00	0.6177100x	1,361,877.59	25,626,671.91
<b>Total</b>	<b>\$32,573,690.81</b>	<b>-</b>	<b>\$25,626,671.91</b>	<b>-</b>

**Derivation Of Target Amount**

Par Amount of Bonds	\$25,555,000.00
Reoffering Premium or (Discount)	242,973.90
Bond Insurance Premium..... ( 52.0 bp)	(171,301.99)
Original Issue Proceeds	\$25,626,671.91

Final | Series 1998 BQ | 9/25/2012 | 12:35 PM

**Crews & Associates, Inc.**  
Capital Markets Group

FINAL

**\$25,555,000**

City of Fairmont, West Virginia  
Water Revenue Bonds (Insured/NBQ)  
Series 2012

## Proof of Premium Bond Yield Rule

Maturity Date	7/01/2024
Bond Type	Coupon

### PRICE SUMMARY

Price to Maturity	111.8860000%
Price to Call (7/01/2019)	107.2670000%
Lowest Price	107.2670000%

### CRITERIA 1

First Available Call Date	7/01/2019
Delivery Date	10/24/2012
Years to First Call	6.686 Years
Yield to Maturity	3.2473482%
Yield to Call	2.8000000%
Callable in 5 years and (YTM-YTC) gt/eq 0.125%	No

### CRITERIA 2

Original Issue Premium	7.2670000%
Integer Years to First Call	6.000 Years
25% * Years to Call	1.500 Years
OIP > 25% * Years to Call?	Yes

### CRITERIA 3

Stepped Coupon?	No
Price to Call Less than Price to Maturity?	Yes
Yield to Call Adjustment Necessary?	Yes

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**\$25,555,000**

City of Fairmont, West Virginia  
Water Revenue Bonds (Insured/NBQ)  
Series 2012

## Derivation Of Form 8038 Yield Statistics

Maturity	Issuance Value	Price	Issuance Price	Exponent	Bond Years
10/24/2012	-	-	-	-	-
07/01/2013	910,000.00	101.094%	919,955.40	0.6861111x	631,191.62
07/01/2014	1,400,000.00	102.344%	1,432,816.00	1.6861111x	2,415,886.98
07/01/2015	1,425,000.00	103.047%	1,468,419.75	2.6861111x	3,944,338.61
07/01/2016	1,455,000.00	103.609%	1,507,510.95	3.6861111x	5,556,852.86
07/01/2017	1,485,000.00	103.171%	1,532,089.35	4.6861111x	7,179,540.93
07/01/2018	1,510,000.00	107.578%	1,624,427.80	5.6861111x	9,236,676.96
07/01/2019	1,560,000.00	100.000%	1,560,000.00	6.6861111x	10,430,333.33
07/01/2020	690,000.00	100.000%	690,000.00	7.6861111x	5,303,416.67
07/01/2021	655,000.00	99.610%	652,445.50	8.6861111x	5,667,214.11
07/01/2022	620,000.00	99.154%	614,754.80	9.6861111x	5,954,583.30
07/01/2023	1,795,000.00	98.627%	1,770,354.65	10.6861111x	18,918,206.50
07/01/2024	1,845,000.00	107.267%	1,979,076.15	11.6861111x	23,127,703.79
07/01/2025	1,920,000.00	98.954%	1,899,916.80	12.6861111x	24,102,555.63
07/01/2026	1,975,000.00	98.895%	1,953,176.25	13.6861111x	26,731,387.18
07/01/2027	2,040,000.00	98.262%	2,004,544.80	14.6861111x	29,438,967.66
07/01/2028	2,100,000.00	98.091%	2,059,911.00	15.6861111x	32,311,992.83
07/01/2029	2,170,000.00	98.091%	2,128,574.70	16.6861111x	35,517,633.95
<b>Total</b>	<b>\$25,555,000.00</b>	-	<b>\$25,797,973.90</b>	-	<b>\$246,468,482.89</b>

### IRS Form 8038

Weighted Average Maturity = Bond Years/Issue Price	9.554 Years
Total Interest from Debt Service	7,387,690.81
Reoffering (Premium) or Discount	(242,973.90)
Total Interest	7,144,716.91
NIC = Interest / (Issue Price * Average Maturity)	2.8988359%
Bond Yield for Arbitrage Purposes	2.9079872%



October 22, 2012

**VIA OVERNIGHT MAIL**

John C. Stump, Esq.  
Steptoe & Johnson PLLC  
Bank One Center, 7th Floor  
Charleston, West Virginia 25301

Re: \$25,555,000 in aggregate principal amount of City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 D (Policy No. 215164-N)

Dear Mr. Stump:

Enclosed herewith please find Assured Guaranty Municipal Corp.'s ("AGM") original Municipal Bond Insurance Policy (the "Policy") relating to the above-referenced issue scheduled to close on October 24, 2012. The Policy should be held in escrow by you subject to the terms of our transmittal letter of even date herewith detailing the conditions to the release of the Policy.

Please forward said Policy to the Paying Agent/Trustee for this transaction.

Please contact me if you have any questions about the enclosed document.

Very truly yours,

A handwritten signature in cursive script that reads "Stephanie Cain".

Stephanie Cain  
Closing Coordinator

Enclosures



October 22, 2012

**VIA EMAIL**

John C. Stump, Esq.  
Steptoe & Johnson PLLC  
Bank One Center, 7th Floor  
Charleston, West Virginia 25301

Re: \$25,555,000 in aggregate principal amount of City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 D (Policy No. 215164-N)

Dear Mr. Stump:

Enclosed please find a copy of the municipal bond insurance policy of Assured Guaranty Municipal Corp. ("AGM"), the executed disclosure, no default and tax certificate and the executed opinion of Counsel in connection with the above-referenced issue scheduled to close on October 24, 2012. The opinion and certificate shall be treated as originals. The original municipal bond insurance policy will be sent to your attention via overnight mail to be held in escrow until the closing. Upon successful completion of the closing, the policy may be released and the original sent to the Paying Agent / Registrar / Trustee.

In addition to your receiving my verbal instruction, I must receive the following before the insurance policy and opinion may be released:

1. A copy of the executed final approving opinion delivered by Bond Counsel, and a reliance letter addressed to AGM.
2. A copy of the executed opinions delivered by counsel, addressed to AGM, to the effect that:
  - a. Each of the Ordinance, Bonds and other transaction documents (collectively, the "Related Documents") is a legal, valid and binding obligation of the parties thereto, has been duly authorized, executed and delivered and is enforceable in accordance with its terms.
  - b. There is no litigation or other proceeding pending or, to the best of such counsel's knowledge, threatened in any court, agency or other administrative body (either State or Federal) which could have a material adverse effect on (a) the financial condition of the Issuer, (b) the ability of the Issuer to perform its obligations under the Related Documents, (c) the security for the Bonds, (d) the transactions contemplated by the Related Documents or (e) the ability of the Issuer to maintain and operate the System.
  - c. The Bonds are payable from and secured by a valid lien on and pledge of Gross Revenues in the manner and to the extent provided in the Ordinance. The Issuer is duly authorized to pledge such Gross Revenues, and no further action on the part of the Issuer or any other party is required to perfect the same or the interest of the Bondowners therein.
3. A copy of the executed opinion delivered by disclosure counsel to the effect that nothing has come to the attention of disclosure counsel which would cause them to believe that the final Official Statement (excluding information provided by AGM), as of its date and the Closing Date, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.
4. The escrow agreement in form and substance acceptable to AGM.
5. The escrow verification addressed to AGM.

Assured Guaranty Municipal Corp.

31 West 52<sup>nd</sup> Street  
New York, NY 10019

main 1 212 828 9100  
fax 1 212 688 3101

info@assuredguaranty.com

www.assuredguaranty.com

6. A copy of the executed defeasance opinion delivered by Bond Counsel addressed to AGM or a discharge certificate from the trustee for the refunded issue, if applicable.
7. The wire transfer in federal funds of an amount equal to the insurance premium, as described in our Commitment Letter, in accordance with our payment instructions. Verbal confirmation of the wire number shall be sufficient evidence for the release of the insurance policy.
8. **Your assurance that you will promptly cause to be delivered to AGM one original and two copies of the final closing transcript of proceedings. Such closing transcript may be in the form of either hard copies or three CD-ROMs thereof required by the Commitment Letter. Closing documents should be addressed to the attention of the Records Department.**

I ask you to send items 1. through 6. to my attention via fax (212) 581-3268 or email at SCain@assuredguaranty.com, and call me at (212) 261-5578 with respect to item 7. Instructions for wiring of funds are attached for your convenience. I need to receive the documents referred to in item 8. by November 9, 2012.

I will fax the rating letters from Standard & Poor's to you at the closing.

Please let me know if you have any further questions.

Very truly yours,



Stephanie Cain  
Closing Coordinator

Enclosures

**PROCEDURES FOR PREMIUM PAYMENT  
TO  
ASSURED GUARANTY MUNICIPAL CORP.  
("AGM")**

AGM's issuance of its municipal bond insurance policy at bond closing is contingent upon payment and receipt of the premium. NO POLICY MAY BE RELEASED UNTIL PAYMENT OF SUCH AMOUNT HAS BEEN CONFIRMED. Set forth below are the procedures to be followed for confirming the amount of the premium to be paid and for paying such amount:

Confirmation of Amount to be Paid:	<b>Upon determination of the final debt service schedule, fax such schedule to AGM</b> Attention: Scott Madden, Director Phone No.: (212) 408-6040 Fax No.: (212) 893-9645
---------------------------------------	---

**Confirm with AGM's credit analyst that you are in agreement with respect to par and premium on the transaction prior to the closing date.**

Payment Date: Date of Delivery of the insured bonds.

Method of Payment: Wire transfer of Federal Funds.

**Wire Transfer Instructions:**

Bank:	The Bank of New York
ABA#:	021 000 018
Acct. Name:	Assured Guaranty Municipal Corp.
Account No.:	8900297263
Policy No.:	215164-N

**CONFIRMATION OF PREMIUM WIRE NUMBER AT CLOSING**

AGM will accept as confirmation of the premium payment a wire transfer number and the name of the sending bank, to be communicated on the closing date to Stephanie Cain, Closing Coordinator , (212) 261-5578.



October 24, 2012

Municipal Bond Insurance Policy No. 215164-N With Respect to  
\$25,555,000 In Aggregate Principal Amount of  
City of Fairmont (West Virginia)  
Water Refunding Revenue Bonds, Series 2012 D

Ladies and Gentlemen:

I am Counsel of Assured Guaranty Municipal Corp., a New York stock insurance company ("AGM"). You have requested my opinion in such capacity as to the matters set forth below in connection with the issuance by AGM of its above-referenced policy (the "Policy"). In that regard, and for purposes of this opinion, I have examined such corporate records, documents and proceedings as I have deemed necessary and appropriate.

Based upon the foregoing, I am of the opinion that:

1. AGM is a stock insurance company duly organized and validly existing under the laws of the State of New York and authorized to transact financial guaranty insurance business therein.
2. The Policy has been duly authorized, executed and delivered by AGM.
3. The Policy constitutes the valid and binding obligation of AGM, enforceable in accordance with its terms, subject, as to the enforcement of remedies, to bankruptcy, insolvency, reorganization, rehabilitation, moratorium and other similar laws affecting the enforceability of creditors' rights generally applicable in the event of the bankruptcy or insolvency of AGM and to the application of general principles of equity.

In addition, please be advised that I have reviewed the description of the Policy under the caption "BOND INSURANCE – Bond Insurance Policy" in the official statement relating to the above-referenced Bonds dated September 25, 2012 (the "Official Statement"). There has not come to my attention any information which would cause me to believe that the description of the Policy referred to above, as of the date of the Official Statement or as of the date of this opinion, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. Please be advised that I express no opinion with respect to any information contained in, or omitted from, the caption "BOND INSURANCE – Assured Guaranty Municipal Corp."

I am a member of the Bar of the State of New York, and do not express any opinion as to any law other than the laws of the State of New York.

Very truly yours,

Counsel

City of Fairmont,  
P.O. Box 1428,  
Fairmont, West Virginia 26555

Crews & Associates, Inc.,  
as Representative of the Underwriters,  
300 Summers Street, Suite 930,  
Charleston, West Virginia 25301

Assured Guaranty Municipal Corp.

31 West 52<sup>nd</sup> Street  
New York, NY 10019

main 1 212 826 0100  
fax 1 212 688 3101

info@assuredguaranty.com

www.assuredguaranty.com

**DISCLOSURE, NO DEFAULT AND TAX CERTIFICATE OF  
ASSURED GUARANTY MUNICIPAL CORP.**

The undersigned hereby certifies on behalf of Assured Guaranty Municipal Corp. ("AGM"), in connection with the issuance by AGM of its Policy No. 215164-N (the "Policy") in respect of the \$25,555,000 in aggregate principal amount of the City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 D (the "Bonds") that:

- (i) the information set forth under the caption "BOND INSURANCE – Assured Guaranty Municipal Corp." in the official statement dated September 25, 2012, relating to the Bonds (the "Official Statement") is true and correct,
- (ii) AGM is not currently in default nor has AGM ever been in default under any policy or obligation guaranteeing the payment of principal of or interest on an obligation,
- (iii) the Policy is an unconditional and recourse obligation of AGM (enforceable by or on behalf of the holders of the Bonds) to pay the scheduled principal of and interest on the Bonds in the event of Nonpayment by the Issuer (as set forth in the Policy),
- (iv) the insurance premium of \$171,301.99 (the "Premium") is a charge for the transfer of credit risk and was determined in arm's length negotiations and is required to be paid to AGM as a condition to the issuance of the Policy,
- (v) no portion of such Premium represents an indirect payment of costs of issuance, including rating agency fees, other than fees paid by AGM to maintain its ratings, which, together with all other overhead expenses of AGM, are taken into account in the formulation of its rate structure, or for the provision of additional services by us, nor the direct or indirect payment for a cost, risk or other element that is not customarily borne by insurers of tax-exempt bonds (in transactions in which the guarantor has no involvement other than as a guarantor),
- (vi) AGM is not providing any services in connection with the Bonds other than providing the Policy, and except for the Premium, AGM will not use any portion of the Bond proceeds; provided, however, that AGM or its affiliates may independently provide a guaranteed investment contract for the investment of all or a portion of the proceeds of the Bonds,
- (vii) except for payments under the Policy in the case of Nonpayment by the Issuer, there is no obligation to pay any amount of principal or interest on the Bonds by AGM,
- (viii) AGM does not expect that a claim will be made on the Policy,
- (ix) the Issuer is not entitled to a refund of the premium for the Policy in the event a Bond is retired before the final maturity date, and
- (x) for Bonds which are secured by a debt service reserve fund, AGM would not have issued the Policy unless the authorizing or security agreement for the Bonds provided for a debt service reserve fund funded and maintained in an amount at least equal to, as of any particular date of computation, the reserve requirement as set forth in such agreement.

AGM makes no representation as to the nature of the interest to be paid on the Bonds or the treatment of the Policy under Section 1.148-4(f) of the Income Tax Regulations.

ASSURED GUARANTY MUNICIPAL CORP.

  
By: \_\_\_\_\_  
Authorized Officer

Dated: October 24, 2012



## MUNICIPAL BOND INSURANCE POLICY

ISSUER: City of Fairmont (West Virginia)

Policy No.: 215164-N

BONDS: \$25,555,000 in aggregate principal amount of  
Water Refunding Revenue Bonds, Series 2012 D

Effective Date: October 24, 2012

Premium: \$171,301.99

ASSURED GUARANTY MUNICIPAL CORP. ("AGM"), for consideration received, hereby UNCONDITIONALLY AND IRREVOCABLY agrees to pay to the trustee (the "Trustee") or paying agent (the "Paying Agent") (as set forth in the documentation providing for the issuance of and securing the Bonds) for the Bonds, for the benefit of the Owners or, at the election of AGM, directly to each Owner, subject only to the terms of this Policy (which includes each endorsement hereto), that portion of the principal of and interest on the Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Issuer.

On the later of the day on which such principal and interest becomes Due for Payment or the Business Day next following the Business Day on which AGM shall have received Notice of Nonpayment, AGM will disburse to or for the benefit of each Owner of a Bond the face amount of principal of and interest on the Bond that is then Due for Payment but is then unpaid by reason of Nonpayment by the Issuer, but only upon receipt by AGM, in a form reasonably satisfactory to it, of (a) evidence of the Owner's right to receive payment of the principal or interest then Due for Payment and (b) evidence, including any appropriate instruments of assignment, that all of the Owner's rights with respect to payment of such principal or interest that is Due for Payment shall thereupon vest in AGM. A Notice of Nonpayment will be deemed received on a given Business Day if it is received prior to 1:00 p.m. (New York time) on such Business Day; otherwise, it will be deemed received on the next Business Day. If any Notice of Nonpayment received by AGM is incomplete, it shall be deemed not to have been received by AGM for purposes of the preceding sentence and AGM shall promptly so advise the Trustee, Paying Agent or Owner, as appropriate, who may submit an amended Notice of Nonpayment. Upon disbursement in respect of a Bond, AGM shall become the owner of the Bond, any appurtenant coupon to the Bond or right to receipt of payment of principal of or interest on the Bond and shall be fully subrogated to the rights of the Owner, including the Owner's right to receive payments under the Bond, to the extent of any payment by AGM hereunder. Payment by AGM to the Trustee or Paying Agent for the benefit of the Owners shall, to the extent thereof, discharge the obligation of AGM under this Policy.

Except to the extent expressly modified by an endorsement hereto, the following terms shall have the meanings specified for all purposes of this Policy. "Business Day" means any day other than (a) a Saturday or Sunday or (b) a day on which banking institutions in the State of New York or the Insurer's Fiscal Agent are authorized or required by law or executive order to remain closed. "Due for Payment" means (a) when referring to the principal of a Bond, payable on the stated maturity date thereof or the date on which the same shall have been duly called for mandatory sinking fund redemption and does not refer to any earlier date on which payment is due by reason of call for redemption (other than by mandatory sinking fund redemption), acceleration or other advancement of maturity unless AGM shall elect, in its sole discretion, to pay such principal due upon such acceleration together with any accrued interest to the date of acceleration and (b) when referring to interest on a Bond, payable on the stated date for payment of interest. "Nonpayment" means, in respect of a Bond, the failure of the Issuer to have provided sufficient funds to the Trustee or, if there is no Trustee, to the Paying Agent for payment in full of all principal and interest that is Due for Payment on such Bond. "Nonpayment" shall also include, in respect of a Bond, any payment of principal or interest that is Due for Payment made to an Owner by or on behalf of the Issuer which has been recovered from such Owner pursuant to the

United States Bankruptcy Code by a trustee in bankruptcy in accordance with a final, nonappealable order of a court having competent jurisdiction. "Notice" means telephonic or telecopied notice, subsequently confirmed in a signed writing, or written notice by registered or certified mail, from an Owner, the Trustee or the Paying Agent to AGM which notice shall specify (a) the person or entity making the claim, (b) the Policy Number, (c) the claimed amount and (d) the date such claimed amount became Due for Payment. "Owner" means, in respect of a Bond, the person or entity who, at the time of Nonpayment, is entitled under the terms of such Bond to payment thereof, except that "Owner" shall not include the Issuer or any person or entity whose direct or indirect obligation constitutes the underlying security for the Bonds.

AGM may appoint a fiscal agent (the "Insurer's Fiscal Agent") for purposes of this Policy by giving written notice to the Trustee and the Paying Agent specifying the name and notice address of the Insurer's Fiscal Agent. From and after the date of receipt of such notice by the Trustee and the Paying Agent, (a) copies of all notices required to be delivered to AGM pursuant to this Policy shall be simultaneously delivered to the Insurer's Fiscal Agent and to AGM and shall not be deemed received until received by both and (b) all payments required to be made by AGM under this Policy may be made directly by AGM or by the Insurer's Fiscal Agent on behalf of AGM. The Insurer's Fiscal Agent is the agent of AGM only and the Insurer's Fiscal Agent shall in no event be liable to any Owner for any act of the Insurer's Fiscal Agent or any failure of AGM to deposit or cause to be deposited sufficient funds to make payments due under this Policy.

To the fullest extent permitted by applicable law, AGM agrees not to assert, and hereby waives, only for the benefit of each Owner, all rights (whether by counterclaim, setoff or otherwise) and defenses (including, without limitation, the defense of fraud), whether acquired by subrogation, assignment or otherwise, to the extent that such rights and defenses may be available to AGM to avoid payment of its obligations under this Policy in accordance with the express provisions of this Policy.

This Policy sets forth in full the undertaking of AGM, and shall not be modified, altered or affected by any other agreement or instrument, including any modification or amendment thereto. Except to the extent expressly modified by an endorsement hereto, (a) any premium paid in respect of this Policy is nonrefundable for any reason whatsoever, including payment, or provision being made for payment, of the Bonds prior to maturity and (b) this Policy may not be canceled or revoked. THIS POLICY IS NOT COVERED BY THE PROPERTY/CASUALTY INSURANCE SECURITY FUND SPECIFIED IN ARTICLE 76 OF THE NEW YORK INSURANCE LAW.

In witness whereof, ASSURED GUARANTY MUNICIPAL CORP. has caused this Policy to be executed on its behalf by its Authorized Officer.

ASSURED GUARANTY MUNICIPAL CORP.



By \_\_\_\_\_  
Authorized Officer

A subsidiary of Assured Guaranty Municipal Holdings Inc.  
31 West 52nd Street, New York, N.Y. 10019

(212) 826-0100

Form 500NY (5/90)

**NOTICE OF CLAIM AND CERTIFICATE**

Assured Guaranty Municipal Corp.  
31 West 52nd Street  
New York, NY 10019

The undersigned, a duly authorized officer of [FULL NAME OF TRUSTEE or PAYING AGENT] (the "Trustee/Paying Agent"), hereby certifies to Assured Guaranty Municipal Corp. ("AGM"), with reference to Municipal Bond Insurance Policy No. 215164-N dated October 24, 2012 (the "Policy") issued by AGM in respect of the City of Fairmont (West Virginia) Water Refunding Revenue Bonds, Series 2012 D (the "Bonds"), that:

(i) The Trustee/Paying Agent is the Trustee/Paying Agent under the document authorizing the issuance of the Bonds (the "Ordinance") for the Holders.

(ii) The sum of all amounts on deposit (or scheduled to be on deposit) in the [RELEVANT ACCOUNTS] and available for distribution to the Holders pursuant to the Ordinance will be \$ \_\_\_\_\_ (the "Shortfall") less than the aggregate amount of principal and interest Due for Payment on \_\_\_\_\_ ("Scheduled Payments").

(iii) The Trustee/Paying Agent is making a claim under the Policy for the Shortfall to be applied to the payment of Scheduled Payments.

(iv) The Trustee/Paying Agent agrees that, following receipt of funds from AGM, it shall (a) hold such amounts in trust and apply the same directly to the payment of Scheduled Payments on the Bonds when due; (b) not apply such funds for any other purpose; (c) not commingle such funds with other funds held by the Trustee/Paying Agent and (d) maintain an accurate record of such payments with respect to each Bond and the corresponding claim on the Policy and proceeds thereof, and, if the Bond is required to be [SURRENDERED/PRESENTED] for such payment, shall stamp on each such Bond the legend "\$[insert applicable amount] paid by AGM and the balance hereof has been canceled and reissued" and then shall deliver such Bond to AGM.

(v) The Trustee/Paying Agent, on behalf of the Holders, hereby assigns to AGM the rights of the Holders with respect to the Bonds to the extent of any payments under the Policy, including, without limitation, any amounts due to the Holders in respect of securities law violations arising from the offer and sale of the Bonds. The foregoing assignment is in addition to, and not in limitation of, rights of subrogation otherwise available to AGM in respect of such payments. Payments to AGM in respect of the foregoing assignment shall in all cases be subject to and subordinate to the rights of the Holders to receive all Scheduled Payments in respect of the Bonds. The Trustee/Paying Agent shall take such action and deliver such instruments as may be reasonably requested or required by AGM to effectuate the purpose or provisions of this clause (v).

(vi) The Trustee/Paying Agent, on its behalf and on behalf of the Holders, hereby appoints AGM as agent and attorney-in-fact for the Trustee/Paying Agent and each such Holder in any legal proceeding with respect to the Bonds. The Trustee/Paying Agent hereby agrees that, so long as AGM shall not be in default in its payment obligations under the Policy, AGM may at any time during the continuation of any proceeding by or against the Issuer under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an "Insolvency Proceeding") direct all matters relating to such Insolvency Proceeding, including without limitation, (A) all matters relating to any claim in connection with an Insolvency Proceeding seeking the avoidance as a preferential transfer of any payment made with respect to

the Bonds (a "Preference Claim"), (B) the direction of any appeal of any order relating to any Preference Claim at the expense of AGM but subject to reimbursement as provided in the Ordinance and (C) the posting of any surety, supersedeas or performance bond pending any such appeal. In addition, the Trustee/Paying Agent hereby agrees that AGM shall be subrogated to, and the Trustee/Paying Agent on its behalf and on behalf of each Holder, hereby delegates and assigns, to the fullest extent permitted by law, the rights of the Trustee/Paying Agent and each Holder in the conduct of any Insolvency Proceeding, including, without limitation, all rights of any party to an adversary proceeding or action with respect to any court order issued in connection with any such Insolvency Proceeding.

(vii) Payment should be made by wire transfer directed to [SPECIFY INSURANCE ACCOUNT].

Unless the context otherwise requires, capitalized terms used in this Notice of Claim and Certificate and not defined herein shall have the meanings provided in the Policy.

IN WITNESS WHEREOF, the Trustee/Paying Agent has executed and delivered this Notice of Claim and Certificate as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

By \_\_\_\_\_

Title \_\_\_\_\_

---

For AGM or  
Fiscal Agent Use Only  
Wire transfer sent on \_\_\_\_\_ By \_\_\_\_\_  
Confirmation Number \_\_\_\_\_

## TERMINATION AGREEMENT

This **TERMINATION AGREEMENT** (this "Termination Agreement"), dated as of September 25, 2012 (the "Effective Date"), by and among the **WEST VIRGINIA MUNICIPAL BOND COMMISSION** (the "Commission"), **CITY OF FAIRMONT, WEST VIRGINIA** (the "Issuer") and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, as successor in interest to Wachovia Bank, National Association and First Union National Bank, as provider (the "Provider").

### WITNESSETH:

WHEREAS, the Commission, the Issuer and the Provider have previously entered into that Debt Service Reserve Forward Delivery Agreement dated as of June 17, 1999 (the "Agreement") in connection with \$9,600,000 City of Fairmont, West Virginia Water Revenue Bonds, Series 1998 and \$19,945,000 City of Fairmont, West Virginia Water Revenue Bonds, Series 1999 (collectively, the "Bonds"); and

WHEREAS, the Commission, the Issuer and the Provider wish to terminate the Agreement upon satisfaction of the conditions set forth in Section 1 below.

NOW, THEREFORE, in consideration of the foregoing and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### **SECTION 1. TERMINATION.**

On September 27, 2012, the Provider agrees to pay to the Issuer a termination fee of \$744,000.00 (the "Termination Fee") in consideration for the termination of the Agreement as provided herein. The parties hereby agree that upon the execution and delivery of this Termination Agreement and payment of the Termination Fee to the Issuer, the Agreement shall terminate and none of the parties shall have any further rights, duties or obligations thereunder.

The Termination Fee shall be paid to the following account of the Issuer:

Bank: Branch Banking & Trust  
City: Charleston, WV  
ABA: 051 5033 94  
GLA: State of West Virginia  
Acct #: 5270517317  
Name: City of Fairmont - Series 2012 D  
Attn: Sara Rogers

For and in consideration of the mutual promises contained herein and other good and valuable consideration, each of the parties to this Termination Agreement hereby irrevocably and unconditionally releases, remises, acquits, and forever discharges each of the other parties to this Termination Agreement from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, compensation, advances, taxes, reimbursements and expenses, and any other claims of any kind or nature whatsoever, known or unknown, suspected or unsuspected, foreseen or unforeseen, based upon, arising out of, or relating to any agreement, transaction or occurrence from the beginning of time to the date of this Termination Agreement relating to the Agreement.

## **SECTION 2. DEFINITIONS.**

All capitalized terms used in this Termination Agreement and not otherwise defined shall have the meanings set forth in the Agreement.

## **SECTION 3. GOVERNING LAW.**

**THIS TERMINATION AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK AND APPLICABLE FEDERAL LAW WITHOUT REGARD TO CHOICE OF LAW RULES.**

## **SECTION 4. HEADINGS.**

Section headings in this Termination Agreement are included herein for convenience of reference only and shall not have any effect for purposes of interpretation or construction of the terms of this Termination Agreement.

## **SECTION 5. COUNTERPARTS.**

This Termination Agreement may be signed in any number of counterpart copies, but all such copies shall constitute one and the same instrument.

## **SECTION 6. REPRESENTATIONS.**

Each party hereto hereby represents and warrants to the other that this Termination Agreement has been duly authorized and has been validly executed by its duly authorized representative.

## **SECTION 7. CLOSING CONDITIONS**

**Section 7.01.** The parties hereto agree that this Termination Agreement shall become effective only upon the occurrence of each of the following conditions:

- (a) delivery to the Provider and the Commission of an executed original opinion of counsel to the Issuer in the form attached hereto as Exhibit A; and

(b) delivery to the Provider of the resolution of the Issuer pursuant to which the Issuer is authorized to enter into this Termination Agreement.

**Section 7.02. Post Closing Conditions.** In the event that the Provider elects to close this Termination Agreement without requiring that all of the conditions set forth in Section 7.01 be satisfied, the Issuer covenants and agrees that it shall cause all such unsatisfied conditions to be satisfied and cause all original executed signature pages to this Termination Agreement to be delivered to the Provider within three Business Days of the Effective Date. In the event that all such documents are not received by the Provider within three Business Days of the Effective Date, the Issuer shall pay, on demand, the fees and expenses of counsel to the Provider incurred in connection with the satisfaction of this Section 7.02.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Termination Agreement to be executed by their respective duly authorized representatives, all as of the date and year first written above.

WEST VIRGINIA MUNICIPAL BOND  
COMMISSION

By:   
Name: Sara Rogers  
Title: Executive Director

CITY OF FAIRMONT, WEST VIRGINIA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Provider

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

11/15/2011 10:45:11 AM

IN WITNESS WHEREOF, the parties hereto have caused this Termination Agreement to be executed by their respective duly authorized representatives, all as of the date and year first written above.

WEST VIRGINIA MUNICIPAL BOND  
COMMISSION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY OF FAIRMONT, WEST VIRGINIA

By:   
Name: William Burdick  
Title: Mayor

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Provider

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused this Termination Agreement to be executed by their respective duly authorized representatives, all as of the date and year first written above.

WEST VIRGINIA MUNICIPAL BOND  
COMMISSION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY OF FAIRMONT, WEST VIRGINIA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Provider

By: \_\_\_\_\_  
Name: Harold E. Sprague  
Title: Authorized Signatory

**EXHIBIT A**

[LETTERHEAD OF COUNSEL TO ISSUER]

[DATE]

[Commission]

[Issuer]

Wells Fargo Bank, National Association  
MAC D1053-077  
One Wachovia Center  
301 South College Street  
Charlotte, NC 28288-0601

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

Ladies and Gentlemen:

We have acted as counsel to \_\_\_\_\_ (the "Corporation") in connection with the execution and delivery by the Issuer of the Termination Agreement, dated as of [DATE] (the "Termination Agreement"), by and among the Issuer, \_\_\_\_\_ (the "Commission") and Wells Fargo Bank, National Association (the "Provider") with respect to that \_\_\_\_\_ Agreement dated as \_\_\_\_\_ (the "Original Agreement"), by and among the Issuer, the Commission, and the Provider. Capitalized terms used herein and not defined herein have the respective meanings given to them in the Original Agreement.

In connection with the rendering of this opinion, we have examined the Original Agreement, the Termination Agreement, the Financing Documents, and such other documents, records, certificates and instruments as we have deemed necessary in connection with the rendering of this opinion (such documents are collectively referred to herein as the "Documents"). In such examination we have assumed, without any independent investigation or inquiry on our part: (i) the genuineness of all signatures (other than those of the Issuer) on each of the Documents; (ii) the legal capacity of all natural persons who have signed the Documents; (iii) the authenticity of all Documents submitted to us as originals, the conformity to the original documents of all Documents submitted to us as certified, facsimile or photostatic copies or in electronic form and the authenticity of the originals of all such Documents; (iv) that each of the parties (other than the Issuer) to the Documents has been duly formed and organized and is validly existing and in good standing under the laws of the jurisdiction of its incorporation or establishment; (v) that each of the parties (other than the Issuer) to the Documents (A) has duly authorized, executed and delivered such Documents, (B) has all requisite power and authority to enter into and perform its respective obligations under such Documents and (C) has obtained, secured or made all consents and approvals of, notice to, or registrations required with or by any governmental authorities, agencies or instrumentalities in connection with its execution, delivery

and performance of, the Documents to which it is a party; (vi) the execution, delivery and performance by each of the parties (other than the Issuer) of such Documents to which it is a party will not contravene any provision of such party's articles of incorporation, by-laws, articles of organization, operating agreement, certificate of formation, limited liability company agreement or other governing instrument; and (vii) that there are no other agreements or understandings among the parties to such Documents, written or oral, and there is no usage of trade or course of prior dealings among the parties thereto that would, in any case, define, supplement, alter or qualify the terms of such Documents. As to all matters of fact we have relied in good faith on certificates and other statements of public officials and officers and other representatives of the Issuer, and we have made no inquiries to establish or verify these or any other facts material to this opinion.

In giving the opinions expressed below we do not purport to be experts in or generally familiar with or qualified to express legal opinions based on the laws of any jurisdiction other than the federal laws of the United States of America and the laws of \_\_\_\_\_ (the "State"). We express no opinion as to the validity or enforceability of any choice of law, choice of forum or waiver provision contained in the Termination Agreement. We express no opinion as to the availability of equitable remedies to persons seeking to enforce the obligations of the Issuer under the Termination Agreement.

Based upon the foregoing examination and review, we are of the opinion that:

(a) The Issuer has full legal right, power and authority to enter into the Termination Agreement.

(b) The Termination Agreement has been duly authorized, executed and delivered by the Issuer.

(c) Assuming for purposes of the opinion expressed in this paragraph (c) that the Original Agreement and the Termination Agreement were governed by and construed in accordance with the law of the State, the Termination Agreement, is a legal, valid and binding obligation of the Issuer, enforceable against it in accordance with the terms thereof, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(d) The execution and delivery by the Issuer of the Termination Agreement, does not and will not conflict with or constitute or result in a default under, a breach or violation of, or the creation of any lien or encumbrance on any of its property under, its charter or bylaws, or the Financing Documents or any other agreement, instrument, judgment, injunction or order applicable to it or any of its property.

We are furnishing this opinion to you solely for your benefit and no other person is entitled to rely hereon. This opinion is not to be used, circulated, quoted or otherwise referred to for any other purpose. This opinion is given as of the date hereof and we expressly disclaim any responsibility to update this opinion or advise you of any changes of law, facts or circumstances of any kind that may occur after the date hereof which might affect the opinion expressed herein.

Very truly yours,



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

Writer's Contact Information

September 25, 2012

City of Fairmont  
200 Jackson Street  
PO Box 1428  
Fairmont, West Virginia 26555-1428

West Virginia Municipal Bond Commission  
State Lottery Building  
900 Pennsylvania Avenue, Suite 1117  
Charleston, West Virginia 25302

Wells Fargo Bank, National Association  
MAC D1053-077  
One Wachovia Center  
301 South College Street  
Charlotte, NC 28288-0601

Re: Termination of Debt Service Reserve Forward Delivery Agreement dated as of June 17, 1999 for the City of Fairmont, West Virginia, Water Revenue Bonds, Series 1998 and Series 1999

Ladies and Gentlemen:

We have acted as counsel to the City of Fairmont, West Virginia (the "Issuer") in connection with the execution and delivery by the Issuer of the Termination Agreement, dated as of September 25, 2012 (the "Termination Agreement"), by and among the Issuer, the West Virginia Municipal Bond Commission (the "Commission") and Wells Fargo Bank, National Association (the "Provider") with respect to that Debt Service Reserve Forward Delivery Agreement dated as of June 17, 1999 (the "Original Agreement"), by and among the Issuer, the Commission, and the Provider. Capitalized terms used herein and not defined herein have the respective meanings given to them in the Original Agreement.

In connection with the rendering of this opinion, we have examined the Original Agreement, the Termination Agreement, the Financing Documents, and such other documents, records, certificates and instruments as we have deemed necessary in connection with the rendering of this opinion (such documents are collectively referred to herein as the "Documents"). In such examination we have assumed, without any independent investigation or inquiry on our part: (i) the genuineness of all signatures (other than those of the Issuer) on each of the Documents; (ii) the legal capacity of all natural persons who have signed the Documents;

6101147

(iii) the authenticity of all Documents submitted to us as originals, the conformity to the original documents of all Documents submitted to us as certified, facsimile or photostatic copies or in electronic form and the authenticity of the originals of all such Documents; (iv) that each of the parties (other than the Issuer) to the Documents has been duly formed and organized and is validly existing and in good standing under the laws of the jurisdiction of its incorporation or establishment; (v) that each of the parties (other than the Issuer) to the Documents (A) has duly authorized, executed and delivered such Documents, (B) has all requisite power and authority to enter into and perform its respective obligations under such Documents, and (C) has obtained, secured or made all consents and approvals of, notice to, or registrations required with or by any governmental authorities, agencies or instrumentalities in connection with its execution, delivery and performance of, the Documents to which it is a party; (vi) the execution, delivery and performance by each of the parties (other than the Issuer) of such Documents to which it is a party will not contravene any provision of such party's articles of incorporation, by-laws, articles of organization, operating agreement, certificate of formation, limited liability company agreement or other governing instrument; and (vii) that there are no other agreements or understandings among the parties to such Documents, written or oral, and there is no usage of trade or course of prior dealings among the parties thereto that would, in any case, define, supplement, alter or qualify the terms of such Documents. As to all matters of fact we have relied in good faith on certificates and other statements of public officials and officers and other representatives of the Issuer, and we have made no inquiries to establish or verify these or any other facts material to this opinion.

In giving the opinions expressed below we do not purport to be experts in or generally familiar with or qualified to express legal opinions based on the laws of any jurisdiction other than the federal laws of the United States of America and the laws of the State of West Virginia (the "State"). We express no opinion as to the validity or enforceability of any choice of law, choice of forum or waiver provision contained in the Termination Agreement. We express no opinion as to the availability of equitable remedies to persons seeking to enforce the obligations of the Issuer under the Termination Agreement.

Based upon the foregoing examination and review, we are of the opinion that:

(a) The Issuer has full legal right, power and authority to enter into the Termination Agreement.

(b) The Termination Agreement has been duly authorized, executed and delivered by the Issuer.

(c) Assuming for purposes of the opinion expressed in this paragraph (c) that the Original Agreement and the Termination Agreement were governed by and construed in accordance with the law of the State, the Termination Agreement is a legal, valid and binding obligation of the Issuer, enforceable against it in accordance with the terms thereof, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(d) The execution and delivery by the Issuer of the Termination Agreement, does not and will not conflict with or constitute or result in a default under, a breach or violation of, or the creation of any lien or encumbrance on any of its property under, its charter or bylaws, or the Financing Documents or any other agreement, instrument, judgment, injunction or order applicable to it or any of its property.

We are furnishing this opinion to you solely for your benefit and no other person is entitled to rely hereon. This opinion is not to be used, circulated, quoted or otherwise referred to for any other purpose. This opinion is given as of the date hereof and we expressly disclaim any responsibility to update this opinion or advise you of any changes of law, facts or circumstances of any kind that may occur after the date hereof which might affect the opinion expressed herein.

Very truly yours,

  
Steph & Johnson PLLC



WEST VIRGINIA  
**Water Development Authority**  
Celebrating 38 Years of Service 1974 - 2012

October 24, 2012

CITY OF FAIRMONT

Water Refunding Revenue Bonds, Series 2012 D

TO WHOM IT MAY CONCERN:

In reliance upon the certificate of Bennett & Dobbins, PLLC, the independent certified public accountant, and the opinion of Steptoe & Johnson PLLC, bond counsel, that the coverage and parity tests have been met, the undersigned duly authorized representative for the West Virginia Water Development Authority, the registered owner of the entire outstanding aggregate principal amount of the Prior Bonds, hereinafter defined and described, hereby consents to the issuance of the Water Refunding Revenue Bonds, Series 2012 D, in the original aggregate principal amount of \$25,555,000 (the "Series 2012 D Bonds") by the City of Fairmont (the "Issuer"), under the terms of the bond ordinance authorizing the Series 2012 D Bonds, on a parity, with respect to liens, pledge and source of and security for payment, with the Issuer's outstanding: (1) Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000; (2) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000; (3) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618; (4) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), dated January 21, 2010, issued in the original aggregate principal amount of \$4,447,618; (5) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), dated January 21, 2010, issued in the original aggregate principal amount of \$2,000,000; and (6) Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), dated January 21, 2010, issued in the original aggregate principal amount of \$1,250,104 (collectively, the "Prior Bonds").

WEST VIRGINIA WATER DEVELOPMENT  
AUTHORITY

By: Sheila A. Miller  
Its: Authorized Representative

268460.00017

Prepayment Agreement

City of Fairmont  
Water Refunding Revenue Bonds, Series 2012 D

**PREPAYMENT AGREEMENT FOR SERIES 1997 BONDS,  
SERIES 1998 BONDS AND A PORTION OF SERIES 1999 BONDS**

This **PREPAYMENT AGREEMENT** (the "Agreement"), made and entered into as of October 24, 2012, by and between the **CITY OF FAIRMONT** (the "Issuer"), and the **WEST VIRGINIA MUNICIPAL BOND COMMISSION** (the "Prepayment Agent").

WITNESETH THAT:

**WHEREAS**, the Issuer presently owns and operates a public waterworks system (the "System") and has heretofore financed and refinanced the acquisition and construction of the System and certain additions, extensions and improvements thereto by the issuance of several series of bonds;

**WHEREAS**, the Issuer has determined to issue its Water Refunding Revenue Bonds, Series 2012 D, dated October 24, 2012, in the aggregate principal amount of \$25,555,000 (the "Series 2012 D Bonds") and contemporaneously therewith defease its: (1) Waterworks Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of \$10,260,000 of which \$980,000 is currently outstanding (the "Series 1997 Bonds"); (2) Water Revenue Bonds, Series 1998, dated December 15, 1998, issued in the original aggregate principal amount of \$9,600,000 of which \$8,270,000 is currently outstanding (the "Series 1998 Bonds"); and (3) a portion of its Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 of which \$19,945,000 is currently outstanding (the "Series 1999 Bonds");

**WHEREAS**, the Issuer intends to defease all of the Series 1997 Bonds and Series 1998 Bonds currently outstanding and \$16,945,000 of the Series 1999 Bonds currently outstanding by depositing with the Prepayment Agent on October 24, 2012 (the "Closing Date") a portion of the proceeds of the Series 2012 D Bonds in the amount of \$22,752,242.56 and moneys on deposit in various accounts relating to the Series 1997 Bonds, Series 1998 Bonds and Series 1999 Bonds, held by the Prepayment Agent in the collective amount of \$3,852,481.36, which amounts will be deposited by the Prepayment Agent accounts to be created and known as the "Series 1997 Bonds Prepayment Fund", "Series 1998 Bonds Prepayment Fund" and "Series 1999 Bonds Prepayment Fund."

**WHEREAS**, the amount deposited in the Series 1997 Bonds Prepayment Fund from the Series 2012 D Bonds in the amount of \$650,018.60, the Series 1997 Bonds Sinking Fund transfer in the amount of \$344,225 and the Series 1997 Bonds Reserve Account transfer in

the amount of \$2,436.82 shall collectively be known as the “Series 1997 Redemption Deposit Amount”;

**WHEREAS**, the amount deposited in the Series 1998 Bonds Prepayment Fund from the Series 2012 D Bonds in the amount of \$7,012,993.57, the Series 1998 Bonds Sinking Fund transfer in the amount of \$178,125.92 and the Series 1998 Bonds Reserve Account transfer in the amount of \$1,204,542.55 shall collectively be known as the “Series 1998 Redemption Deposit Amount”;

**WHEREAS**, the amount deposited in the Series 1999 Bonds Prepayment Fund from the Series 2012 D Bonds in the amount of \$15,089,230.39, the Series 1999 Bonds Revenue Fund transfer in the amount of \$281,454.16 and the Series 1999 Bonds Reserve Account transfer in the amount of \$1,841,696.91 shall collectively be known as the “Series 1999 Prepayment Deposit Amount”;

**WHEREAS**, the Series 1997 Redemption Deposit Amount is in such amount as to insure the payment on October 25, 2012 (the “Redemption Date”), pursuant to the Bond Ordinance enacted by the Issuer on March 27, 2012, as supplemented (collectively, the “Bond Ordinance”), of the entire principal amount of the Series 1997 Bonds then outstanding, and all interest accrued thereon (collectively, the “Series 1997 Redemption Price”);

**WHEREAS**, the Series 1998 Redemption Deposit Amount is in such amount as to insure the payment on the Redemption Date, pursuant to the Bond Ordinance, of the entire principal amount of the Series 1998 Bonds then outstanding, and all interest accrued thereon (collectively, the “Series 1998 Redemption Price”);

**WHEREAS**, the Series 1999 Prepayment Deposit Amount is in such amount as to insure the payment on the Redemption Date, pursuant to the Bond Ordinance, of a portion of the principal amount of the Series 1999 Bonds then outstanding, and the prorated interest accrued thereon (collectively, the “Series 1999 Prepayment Price”);

**WHEREAS**, on or before one business day prior to the Redemption Date, the Prepayment Agent shall transfer to The Bank of New York Mellon, as paying agent for the Series 1997 Bonds, the Series 1997 Redemption Price in order that the payment can be effected to the registered owner(s) of the Series 1997 Bonds upon presentation of such Series 1997 Bonds for payment in accordance with the Bond Ordinance;

**WHEREAS**, on or before one business day prior to the Redemption Date, the Prepayment Agent shall transfer the Series 1998 Redemption Price in order that the payment can be effected to the registered owner(s) of the Series 1998 Bonds upon presentation of such Series 1998 Bonds for payment in accordance with the Bond Ordinance;

**WHEREAS**, on or before one business day prior to the Redemption Date, the Prepayment Agent shall transfer the Series 1999 Prepayment Price in order that the payment can be effected to the registered owner(s) of the Series 1999 Bonds upon presentation of such Series 1999 Bonds for payment in accordance with the Bond Ordinance;

**NOW, THEREFORE**, in consideration of the mutual agreements contained herein, and in order further to secure payment of the Series 1997 Bonds, Series 1998 Bonds, and partial payment of the Series 1999 Bonds, as heretofore provided, the parties hereto mutually undertake, promise and agree for themselves, their respective representatives, successors and assigns, as follows:

1. The Prepayment Agent shall create the Series 1997 Bonds Prepayment Fund separate and apart from all other funds or accounts of the Prepayment Agent.
2. The Prepayment Agent shall create the Series 1998 Bonds Prepayment Fund separate and apart from all other funds or accounts of the Prepayment Agent.
3. The Prepayment Agent shall create the Series 1999 Bonds Prepayment Fund separate and apart from all other funds or accounts of the Prepayment Agent.
4. The Issuer shall deposit an amount of \$650,018.60 from proceeds of the Series 2012 D Bonds with the Prepayment Agent on the Closing Date and such amount shall constitute an irrevocable deposit of such moneys in trust for, and such moneys shall be deposited by the Prepayment Agent in the Series 1997 Bonds Prepayment Fund.
5. The Issuer shall deposit an amount of \$7,012,993.57 from proceeds of the Series 2012 D Bonds with the Prepayment Agent on the Closing Date and such amount shall constitute an irrevocable deposit of such moneys in trust for, and such moneys shall be deposited by the Prepayment Agent in the Series 1998 Bonds Prepayment Fund.
6. The Issuer shall deposit an amount of \$15,089,230.39 from proceeds of the Series 2012 D Bonds with the Prepayment Agent on the Closing Date and such amount shall constitute an irrevocable deposit of such moneys in trust for, and such moneys shall be deposited by the Prepayment Agent in the Series 1999 Bonds Prepayment Fund.
7. The Prepayment Agent shall transfer an amount of \$344,225 from the Series 1997 Bonds Revenue Fund to the Series 1997 Bonds Prepayment Fund.
8. The Prepayment Agent shall transfer an amount of \$178,125.92 from the Series 1998 Bonds Revenue Fund to the Series 1998 Bonds Prepayment Fund.
9. The Prepayment Agent shall transfer an amount of \$281,454.16 from the Series 1999 Bonds Revenue Fund to the Series 1999 Bonds Prepayment Fund.
10. The Prepayment Agent shall transfer an amount of \$2,436.82 from the Series 1997 Bonds Reserve Account to the Series 1997 Bonds Prepayment Fund.
11. The Prepayment Agent shall transfer an amount of \$1,204,542.55 from the Series 1998 Bonds Reserve Account to the Series 1998 Bonds Prepayment Fund.

12. The Prepayment Agent shall transfer an amount of \$1,841,696.91 from the Series 1999 Bonds Reserve Account to the Series 1999 Bonds Prepayment Fund.
13. Surplus amounts remaining in the Series 1997 Bonds Revenue Fund and/or Series 1997 Bonds Reserve Account shall be applied to fees due and owing the Prepayment Agent with respect to the Series 1997 Bonds.
14. Surplus amounts remaining in the Series 1998 Bonds Revenue Fund and/or Series 1998 Bonds Reserve Account shall be applied to fees due and owing the Prepayment Agent with respect to the Series 1998 Bonds.
15. The Series 1999 Bonds Revenue Fund will have a remaining balance of \$52,500 for future payments on the Outstanding Series 1999 Bonds. The Series 1999 Bonds Reserve Account will have a remaining balance of \$300,000. Upon partial payment of the Series 1999 Bonds, the Series 1999 Bonds Reserve Account Requirement will be \$300,000.
16. The cumulative amounts deposited from the Series 2012 D Bonds; the Series 1997 Bonds Revenue Fund and the Series 1997 Bonds Reserve Account into the Series 1997 Bonds Prepayment Fund (cumulative total of \$996,680.42) shall collectively be known as the "Series 1997 Redemption Deposit Amount".
17. The cumulative amounts deposited from the Series 2012 D Bonds; the Series 1998 Bonds Revenue Fund and the Series 1998 Bonds Reserve Account into the Series 1998 Bonds Prepayment Fund (cumulative total of \$8,395,662.04) shall collectively be known as the "Series 1998 Redemption Deposit Amount".
18. The cumulative amounts deposited from the Series 2012 D Bonds; the Series 1999 Bonds Revenue Fund and the Series 1999 Bonds Reserve Account into the Series 1999 Bonds Prepayment Fund (cumulative total of \$17,212,381.46) shall collectively be known as the "Series 1999 Prepayment Deposit Amount".
19. The Series 1997 Redemption Deposit Amount shall be sufficient to pay the Series 1997 Redemption Price in full on the Redemption Date.
20. The Series 1998 Redemption Deposit Amount shall be sufficient to pay the Series 1998 Redemption Price in full on the Redemption Date.
21. The Bank of New York Mellon has provided a notice of redemption by registered or certified mail to the Depository Trust Company as the registered owner of the Series 1997 Bonds, MBIA Insurance Corporation (the bond insurer for the Series 1997 Bonds), with a copy of such redemption notice being provided to Standard & Poor's Called Bond Record and EMMA, not more than 60 days nor less than 30 days prior to the Redemption Date, in accordance with the requirements of the Series 1997 Bonds.

22. WesBanco Bank, Inc., has provided a notice of redemption by registered or certified mail to the Depository Trust Company as the registered owner of the Series 1998 Bonds, Ambac Assurance Corporation (the bond insurer for the Series 1998 Bonds), with a copy of such redemption notice being provided to Standard & Poor's Called Bond Record and EMMA, not more than 60 days nor less than 30 days prior to the Redemption Date, in accordance with the requirements of the Series 1998 Bonds.
23. WesBanco Bank, Inc., has provided a notice of redemption by registered or certified mail to the Depository Trust Company as the registered owner of the Series 1999 Bonds, Ambac Assurance Corporation (the bond insurer for the Series 1999 Bonds), with a copy of such redemption notice being provided to Standard & Poor's Called Bond Record and EMMA, not more than 60 days nor less than 30 days prior to the Redemption Date, in accordance with the requirements of the Series 1999 Bonds.
24. The holders of the Series 1997 Bonds shall have an express lien on all moneys and assets in the Series 1997 Bonds Sinking Fund, including the Series 1997 Bonds Reserve Account therein, until paid out, used and applied in accordance with this Agreement.
25. The holders of the Series 1998 Bonds shall have an express lien on all moneys and assets in the Series 1998 Bonds Sinking Fund, including the Series 1998 Bonds Reserve Account therein, until paid out, used and applied in accordance with this Agreement.
26. The holders of the Outstanding Series 1999 Bonds shall have an express lien on all moneys and assets in the Series 1999 Bonds Sinking Fund, including the Series 1999 Bonds Reserve Account therein, until paid out, used and applied in accordance with this Agreement.
27. At least one business day prior to the Redemption Date, the Prepayment Agent shall transfer the Series 1997 Redemption Price to The Bank of New York Mellon in order that the payment of the Series 1997 Redemption Price can be made to the registered owners of the Series 1997 Bonds upon presentation of such Series 1997 Bonds for payment in accordance with the Bond Ordinance.
28. At least one business day prior to the Redemption Date, the Prepayment Agent shall transfer the Series 1998 Redemption Price in order that the payment of the Series 1998 Redemption Price can be made to the registered owners of the Series 1998 Bonds upon presentation of such Series 1998 Bonds for payment in accordance with the Bond Ordinance.
29. At least one business day prior to the Redemption Date, the Prepayment Agent shall transfer the Series 1999 Prepayment Price in order that the payment of the Series 1999 Prepayment Price can be made to the registered owners of the Series 1999 Bonds upon presentation of such Series 1999 Bonds for payment in accordance with the Bond Ordinance.

30. This Agreement shall terminate on the date on which all the Outstanding Series 1997 Bonds and Series 1998 Bonds have been redeemed, paid in full and discharged. Upon termination of this Agreement, any moneys relating to the Series 1997 Bonds remaining after payment of fees of the Prepayment Agent shall be transferred by the Prepayment Agent for deposit into the Series 2012 D Bonds Sinking Fund and any moneys relating to the Series 1998 Bonds remaining after payment of fees of the Prepayment Agent shall be transferred by the Prepayment Agent for deposit into the Series 2012 D Bonds Sinking Fund.
31. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.
32. This Agreement is made in the State of West Virginia under the Constitution and laws of such State and is to be so construed.

[Remainder of Page Intentionally Blank]

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the day and year first above written.

CITY OF FAIRMONT

By: William H. Budzek  
Its: Mayor

WEST VIRGINIA MUNICIPAL BOND  
COMMISSION

By: \_\_\_\_\_  
Its: Authorized Representative

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

CITY OF FAIRMONT

By: \_\_\_\_\_  
Its: Mayor

WEST VIRGINIA MUNICIPAL BOND  
COMMISSION

By:  \_\_\_\_\_  
Its: Authorized Representative

268460.00017

**CITY OF FAIRMONT**  
**(WEST VIRGINIA)**  
**WATER REVENUE BONDS, SERIES 1998**

**BOND ORDINANCE**

**ORDINANCE NO. 1072**

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CITY OF FAIRMONT  
(WEST VIRGINIA)

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATERWORKS SYSTEM OF THE CITY OF FAIRMONT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$31,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 1998; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ENACTING OTHER PROVISIONS RELATING THERETO.

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

ARTICLE I

STATUTORY AUTHORITY; FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 8, Article 19 of the West Virginia Code of 1931, as amended (the "Act"), and other applicable provisions of law.

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

A. The City of Fairmont (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Marion County of said State.

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

improvements to the existing public waterworks system of the Issuer, consisting of rehabilitation and renovations of the existing storage and distribution system, a new water treatment facility, two new water storage tanks and transmission mains, together with all appurtenant facilities (collectively, the "Project") (the existing public waterworks system of the Issuer, the Project and any further additions, betterments and improvements thereto are herein called the "System"), in accordance with the plans and specifications prepared or to be prepared by the Consulting Engineers.

C. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all Operating Expenses of the System and the principal of and interest on the Series 1998 Bonds and the Prior Bonds (as hereinafter defined) and to make payments into all funds, accounts and other payments provided for herein.

D. It is deemed necessary for the Issuer to issue its Water Revenue Bonds, Series 1998, in the total aggregate principal amount of not more than \$31,000,000 (the "Series 1998 Bonds"), to permanently finance the costs of acquisition and construction of the Project. Such costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest upon the Series 1998 Bonds prior to and during acquisition and construction of the Project and for a period not exceeding 6 months after completion of acquisition and construction of the Project; amounts which may be deposited in the Series 1998 Bonds Reserve Account (as hereinafter defined); engineering and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; premiums for municipal bond insurance; reserve account insurance or reserve account surety bonds, letter of credit fees; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale or issuance of the Series 1998 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 1998 Bonds or the repayment of indebtedness incurred by the Issuer for such purposes.

E. The period of usefulness of the System after completion of the Project is not less than 40 years.

F. It is in the best interests of the Issuer that the Series 1998 Bonds be sold to the Original Purchaser pursuant to the terms and provisions of a bond purchase agreement to be entered into by and between the Issuer and the Authority, as shall be approved by supplemental resolution of the Issuer.

G. There are outstanding obligations of the Issuer which will rank on a parity with the Series 1998 Bonds as to liens, pledge, source of and security for payment, being the Issuer's Waterworks Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of \$10,260,000 (the "Prior Bonds").

The Series 1998 Bonds shall be issued on a parity with the Prior Bonds with respect to liens, pledge and source of and security for payment and in all other respects. Prior to the issuance of the Series 1998 Bonds, the Issuer will obtain a certificate of an Independent Accountant stating that the parity test of the Prior Bonds is met. Other than the Prior Bonds, there are no outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

H. 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 System and issuance of the Series 1998 Bonds, or will have so complied prior to issuance of any thereof, including, among other things, the obtaining of a certificate of convenience and necessity from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which will either have expired prior to the date of issuance of the Series 1998 Bonds or such final order will not be subject to appeal or rehearing.

Section 1.03. Definitions. All capitalized terms used in this Ordinance and not otherwise defined in the recitals hereto shall have the meanings specified below, unless the context expressly requires otherwise:

"Act" means Chapter 8, Article 19 of the West Virginia Code of 1931, as amended and in effect on the date of delivery of the Series 1998 Bonds.

"Authorized Newspaper" means a financial journal or newspaper of general circulation in the City of New York, New York, printed in the English language and customarily published on each business day of the Registrar, whether or not published on Saturdays, Sundays or legal holidays, and so long as so published, shall include The Bond Buyer and Redemption Digest.

"Authorized Officer" means the City Manager of the Issuer or any other officer of the Issuer specifically designated by resolution of the Council of the Issuer.

"Bond Commission" means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia which succeeds to the functions of the Bond Commission.

"Bond Counsel" shall mean any law firm having a national reputation in the field of municipal law whose opinions are generally accepted by purchasers of municipal

Bonds, appointed by the Issuer and shall initially mean Steptoe & Johnson, Clarksburg, West Virginia.

"Bondholder," "Holder," "Owner," "Registered Owner" or any similar term means any person who shall be the registered owner of any outstanding Bond.

"Bond Insurer" means any entity which shall insure all or any portion of the payment of principal of and interest on the Series 1998 Bonds, and in the event the Series 1998 Bonds are insured, shall initially mean the Bond Insurer set forth in the Supplemental Resolution.

"Bond Register" means the books of the Issuer maintained by the Registrar for the registration and transfer of Bonds.

"Bond Year" means with respect to each series of Bonds, the 12-month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year, except that the first Bond Year shall begin on the Closing Date.

"Bonds" means, collectively, the Series 1998 Bonds, the Prior Bonds and any additional parity Bonds hereafter issued within the terms, restrictions and conditions contained herein.

"Business Day" means any day other than a Saturday, Sunday or a day on which national banking associations or West Virginia banking corporations are authorized by law to remain closed.

"Certificate of Authentication and Registration" means the Certificate of Authentication and Registration on the Series 1998 Bonds, in substantially the form set forth in EXHIBIT A - BOND FORM attached hereto and incorporated herein by reference.

"City" or "Issuer" means the City of Fairmont, a municipal corporation and political subdivision of the State of West Virginia, in Marion County thereof, and, unless the context clearly indicates otherwise, includes the Council and any successor thereto.

"City Clerk" means the City Clerk of the Issuer.

"City Manager" means the City Manager of the Issuer.

"Closing Date" means the date upon which there is an exchange of the Series 1998 Bonds for the proceeds representing the original purchase price thereof.

"Code" shall mean the Internal Revenue Code of 1986, as amended and supplemented from time to time, and Regulations thereunder.

"Construction Fund" means the Construction Fund created by Section 4.01 hereof.

"Consulting Engineers" means Chapman Technical Group, St. Albans, West Virginia, or any qualified engineer or engineers or firm or firms of engineers, licensed by the State, that shall at any time now or hereafter be retained by the Issuer as Consulting Engineers for the System, or portion thereof, in accordance with Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended.

"Costs" means, collectively, those costs described in Section 1.02D hereof.

"Costs of Issuance Fund" means the Costs of Issuance Fund created by Section 4.01 hereof.

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

"Depository Bank" means the bank or banks to be designated as such in the Supplemental Resolution, and any other bank or national banking association located in the State of West Virginia, eligible under the laws of the State of West Virginia to receive deposits of state and municipal funds and insured by the FDIC that may hereafter be appointed by the Issuer as Depository Bank.

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

"DTC" means The Depository Trust Company, New York, New York, or its successor thereof.

"DTC-eligible" means, with respect to the Series 1998 Bonds, meeting the qualifications prescribed by DTC.

"Event of Default" means any occurrence or event specified in Section 7.01.

"FDIC" means the Federal Deposit Insurance Corporation or any successor to the functions of the FDIC.

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

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

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, 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), or any Tap Fees, as hereinafter defined.

"Independent Accountants" means any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any purpose except keeping the accounts of the System in the normal operations of its business and affairs.

"Investment Property" means any security (as said term is defined in Section 165(g)(2)(A) or (B) of the Code), obligation, annuity contract, investment-type property or residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan, excluding, however, obligations the interest on which is excluded from gross income, under Section 103 of the Code, for federal income tax purposes other than specified private activity bonds as defined in Section 57(a)(5)(C) of the Code.

"Mayor" means the Mayor of the Issuer.

"Municipal Bond Insurance Policy" means the municipal bond insurance policy, if any, issued by the Bond Insurer simultaneously with the delivery of the Series 1998 Bonds, insuring the payment of the principal of and interest on all or any of the Series 1998 Bonds in accordance with the terms thereof.

"Net Proceeds" means the face amount of the Series 1998 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds deposited in the Series 1998 Bonds Reserve Account. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 1998 Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

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

"Nonpurpose Investment" means any investment property which is acquired with the gross proceeds of the Series 1998 Bonds and is not acquired in order to carry out the governmental purpose of the Series 1998 Bonds.

"Operating Expenses" means the reasonable, proper and necessary costs of repair, maintenance and operation of the System, and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the costs, fees and expenses of fiscal agents, the Depository Bank, the Registrar and the Paying Agent, 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 any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Ordinance" means this Ordinance and all ordinances, orders and resolutions supplemented hereto or amendatory hereof.

"Original Purchaser" means, collectively Ferris Baker Watts, Inc., Charleston, West Virginia, and Crews & Associates, Inc., Little Rock, Arkansas, as the purchasers of the Series 1998 Bonds directly from the Issuer, or, if the Issuer and such Original Purchaser do not agree to the purchase of the Series 1998 Bonds with interest rates and other terms allowable under the Act, such other person or persons, firm or firms, bank or banks, corporation or corporations or such other entity or entities as shall purchase the Series 1998 Bonds directly from the Issuer, as determined by a resolution supplemental hereto; provided, that the Original Purchaser and the Issuer shall agree to the purchase of the Series 1998 Bonds, as hereinafter defined, including the exact principal amount thereof and interest rate or rates thereon as fixed by said supplemental resolution to be adopted by the Council at the time of approval of such sale of said Series 1998 Bonds.

"Outstanding," when used with reference to the Bonds or Prior Bonds and as of any particular date, describes all Bonds or Prior Bonds theretofore and thereupon being issued and delivered except (a) any Bond or Prior Bond canceled by the registrar for such Bond or Prior Bond at or prior to said date; (b) any Bond or Prior Bond for the payment of which moneys, equal to its principal amount, with interest to the date of maturity, shall be held in trust under this Ordinance and set aside for such payment (whether upon or prior to maturity); (c) any Bond deemed to have been paid as provided by Section 9.01; and (d) with respect to determining the number or percentage of Bondholders or Bonds or Prior Bonds for the purpose of consents, notices and the like, any Bond or Prior Bond registered to the Issuer. Notwithstanding the foregoing, in the event that the Bond Insurer has paid principal of and/or interest on any Bond, such Bond shall be deemed to be Outstanding until such time as the Bond Insurer has been reimbursed in full.

"Paying Agent" means the Registrar or any other Paying Agent designated as such for the Series 1998 Bonds in the Supplemental Resolution; and any successor thereto, appointed in accordance with Section 8.12 hereof.

"Prior Bonds" means the Issuer's Waterworks Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of \$10,260,000.

"Prior Ordinance" means the bond ordinance enacted by the Issuer on April 8, 1997, and a supplemental resolution adopted by the Issuer on June 5, 1997, authorizing the Prior Bonds.

"Private Business Use" means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit; provided that use as a member of the general public shall not be taken into account.

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

"Purchase Price," for the purpose of computation of the Yield of the Bonds, has the same meaning as the term "issue price" in Sections 1273(b) and 1274 of the Code, and, in general, means the initial offering price of the Bonds to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of the Bonds of each maturity is sold or, if the Bonds are privately placed, the price paid by the first buyer of the Bonds or the acquisition cost of the first buyer. "Purchase Price," for purposes of computing Yield of Nonpurpose Investments, means the fair market value of the Nonpurpose Investments on the date of use of Gross Proceeds of the Bonds for acquisition thereof, or if later, on the date that Investment Property constituting a Nonpurpose Investment becomes a Nonpurpose Investment of the Bonds.

"Qualified Investments" means, collectively, the Qualified Investments defined in the Prior Ordinance, with such modifications as set forth in the Supplemental Resolution.

"Rebate Fund" means the Rebate Fund created by Section 4.01 hereof.

"Record Date" means the day of the month which shall be so stated in the Series 1998 Bonds, regardless of whether such day is a Saturday, Sunday or legal holiday.

"Redemption Date" means the date fixed for redemption of the Prior Bonds, the Series 1998 Bonds or any other Bonds of the Issuer called for redemption.

"Redemption Price" means the price at which the Prior Bonds, the Series 1998 Bonds or any other Bonds of the Issuer may be called for redemption and includes the principal amount of such Bonds to be redeemed, plus interest and the premium, if any, required to be paid to effect such redemption.

"Registrar" means the bank to be designated in the Supplemental Resolution as the Registrar for the Series 1998 Bonds, and any successor thereto, appointed in accordance with Section 8.08 hereof.

"Regulations" means temporary and permanent regulations promulgated under the Code, and includes applicable regulations promulgated under the Internal Revenue Code of 1954.

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

"Series 1998 Bonds" means the Water Revenue Bonds, Series 1998, of the Issuer, originally authorized to be issued pursuant to this Ordinance and the Supplemental Resolution.

"Series 1998 Bonds Redemption Account" means the Series 1998 Bonds Redemption Account created by Section 4.02 hereof.

"Series 1998 Bonds Reserve Account" means the Series 1998 Bonds Reserve Account created by Section 4.02 hereof.

"Series 1998 Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 1998 Bonds in any year.

"Series 1998 Bonds Sinking Fund" means the Series 1998 Bonds Sinking Fund created by Section 4.02 hereof.

"State" means the State of West Virginia.

"Supplemental Resolution" means any ordinance or resolution amendatory hereof or supplemental hereto and, when preceded by the article "the," refers specifically to the Supplemental Resolution or Resolutions to be adopted by the Issuer following enactment of this Ordinance, setting forth the final amounts, maturities, interest rates and other terms of the Series 1998 Bonds, authorizing the sale of the Series 1998 Bonds to the Original Purchaser and setting forth provisions specific to the Bond Insurer, if any; provided, that any provision intended to be included in the Supplemental Resolution and not so included may be contained in any other Supplemental Resolution.

"System" means, collectively, the complete existing municipal waterworks system of the Issuer, and shall include any additions, betterments and improvements thereto hereafter acquired or constructed for System from any sources whatsoever, both within and without the Issuer.

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

"Term Bonds" means Bonds subject to mandatory sinking fund redemption, as described by Section 3.06 hereof.

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations and vice versa; and words importing the masculine gender shall include the feminine and neuter genders and vice versa.

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

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

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

Section 1.04. Ordinance Constitutes Contract. In consideration of the acceptance of the Series 1998 Bonds by those who shall own or hold the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of such Bondholders of any and all of such Bonds, all of which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bond, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

ARTICLE II

AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT

Section 2.01. Authorization of Acquisition and Construction of the Project.  
There is hereby authorized and ordered the acquisition and construction of the Project at an estimated cost of not to exceed \$31,000,000, in accordance with the plans and specifications prepared or to be prepared by the Consulting Engineers.

## ARTICLE III

### THE SERIES 1998 BONDS

Section 3.01. Form and Payment of Bonds. No Series 1998 Bond shall be issued pursuant to this Ordinance except as provided in this Article III. Any Series 1998 Bonds issued pursuant to this Ordinance, may be issued only as fully registered Bonds without coupons, in the denomination of \$5,000 or any integral multiple thereof for any year of maturity. All Series 1998 Bonds shall be dated as of the date provided in a Supplemental Resolution applicable to such series. All Series 1998 Bonds shall bear interest from the interest payment date next preceding the date of authentication or, if authenticated after the Record Date but prior to the applicable interest payment date or on such interest payment date, from such interest payment date or, if no interest on such Bonds has been paid, from the date thereof; provided however, that, if, as shown by the records of the Registrar, interest on such Bonds shall be in default, Bonds issued in exchange for Bonds surrendered for transfer or exchange shall bear interest from the date to which interest has been paid in full on the initial Bonds surrendered, all as shall be set forth in the Bonds.

The principal of and the premium, if any, on the Series 1998 Bonds shall be payable in any coin or currency which, on the respective date of such payment, is legal tender for the payment of public and private debts under the laws of the United States of America upon surrender at the principal office of the Paying Agent. Interest on the Series 1998 Bonds shall be paid by check or draft made payable and mailed to the Holder thereof at his address as it appears in the Bond Register at the close of business on the Record Date, or, if requested, in the case of a Registered Owner of \$500,000 or more of the Bonds, by wire transfer to a domestic bank account specified in writing at least 5 days prior to the Record Date by such Registered Owner.

In the event any Bond is redeemed in part, such bond shall be surrendered to and canceled by the Registrar, and the Issuer shall execute, and the Registrar shall authenticate and deliver to the Holder thereof, another Bond in the principal amount of said Bond then Outstanding.

Section 3.02. Execution of Bonds. The Series 1998 Bonds shall be executed in the name of the Issuer by the Mayor and City Manager, by their manual or facsimile signatures, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the City Clerk by his or her manual or facsimile signature; provided, that, all such signatures and the seal may be by facsimile. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the Issuer before the Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any 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 3.03. Authentication and Registration. No Series 1998 Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in EXHIBIT A - BOND FORM attached hereto and incorporated herein by reference with respect to the Series 1998 Bonds, shall have been duly manually executed by the Registrar. Any such manually 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 Ordinance. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Registrar if signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.04. Negotiability and Registration. Subject to the requirements for transfer set forth below, the Series 1998 Bonds shall be, and have all of the qualities and incidents of, negotiable instruments under the Uniform Commercial Code of the State, and each successive Holder, in accepting any of said Bonds, shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as any of the Series 1998 Bonds remains Outstanding, the Registrar shall keep and maintain books for the registration and transfer of the Bonds. Bonds shall be transferable only by transfer of registration upon the Bond Register by the registered owner thereof in person or by his attorney or legal representative duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or such duly authorized attorney or legal representative. Upon transfer of a Bond, there shall be issued at the option of the Holder or the transferee another Bond or Bonds of the aggregate principal amount equal to the unpaid amount of the transferred Bond and of the same series, interest rate and maturity of said transferred Bond.

Upon surrender thereof at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar and duly executed by the registered owner or his attorney or legal representative duly authorized in writing, Bonds may at the option of the Holder thereof be exchanged for an equal aggregate principal amount of Bonds of the same series, maturity and interest rate, in any authorized denominations.

In all cases in which the privilege of transferring or exchanging a Bond is exercised, Bonds shall be delivered in accordance with the provisions of this Ordinance. All Bonds surrendered in any such transfer or exchange shall forthwith be canceled by the Registrar. Transfers of Bonds, the initial exchange of Bonds and exchanges of Bonds in the event of partial redemption of fully registered Bonds shall be made by the Registrar without charge to the Holder or the transferee thereof, except as provided below. For other exchanges of Bonds, the Registrar may impose a service charge. For every such transfer or exchange of bonds, the Registrar may make a charge sufficient to reimburse its office for any tax or other governmental charge required to be paid with respect to such transfer or exchange, and such tax or governmental charge, and such service charge for exchange other than the initial exchange or in the event of partial redemption, shall be paid by the person requesting such transfer or exchange as a condition precedent to the exercise of the privilege of making such transfer or exchange. The Registrar shall not be obliged to make any such transfer or exchange of Bonds that have been called for redemption.

Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 1998 Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may execute, in its discretion, and the Registrar shall authenticate, register and deliver any new Bond of like series, maturity and principal amount as the Bond, so mutilated, destroyed, stolen or lost, in exchange and upon surrender and cancellation of, such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing the Issuer and the Registrar proof of his ownership thereof and that said Bond has been destroyed, stolen or lost and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer or the Registrar may prescribe and paying such expenses as the Issuer or the Registrar may incur. The name of the Bondholder listed in the Bond Register shall constitute proof of ownership. All Bonds so surrendered shall be submitted to and canceled by the Registrar, and evidence of such cancellation shall be given to the Issuer. If such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer, by and through the Registrar, may pay the same, upon being indemnified as aforesaid, and, if such Bond be lost, stolen or destroyed, without surrender therefor.

Any such duplicate Bonds issued pursuant to this section shall constitute original, additional contractual obligations on the part of the Issuer, whether or not the lost, stolen or destroyed Bonds be at any time found by any one, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien and source of and security for payment from the Gross Revenues pledged herein with all other Bonds issued hereunder.

Section 3.06. Term Bonds. In the event Term Bonds are issued pursuant to this Ordinance, the following provisions shall apply:

A. The amounts to be deposited, apportioned and set apart by the Issuer from the Revenue Fund and into the Series 1998 Bonds Redemption Account in accordance

with Subsection 4.03.A(1) shall include (after credit as provided below) on the first of each month, beginning on the first day of that month which is 12 months prior to the first mandatory Redemption Date of said Term Bonds, a sum equal to 1/12th of the amount required to redeem the principal amount of such Term Bonds which are to be redeemed as of the next ensuing mandatory Redemption Date, which amounts and dates, if any, with respect to a series of Bonds shall be set forth in the Supplemental Resolution relating thereto.

B. At its option, to be exercised on or before the 60th day next preceding any such mandatory Redemption Date, the Issuer may (a) deliver to the Registrar for cancellation such Term Bonds in any aggregate principal amount desired or (b) receive a credit in respect of its mandatory redemption obligation for any such Term Bonds which prior to said date have been redeemed (otherwise than pursuant to this section) and canceled by the Registrar and not theretofore applied as a credit against any such mandatory redemption obligation. Each Term Bond so delivered or previously redeemed shall be credited by the Registrar at 100% of the principal amount thereof against the obligation of the Issuer on such mandatory Redemption Date, and Term Bonds delivered in excess of such mandatory redemption obligation shall be credited against future mandatory redemption obligations in the order directed by the Issuer, and the principal amount of such Term Bonds to be redeemed pursuant to mandatory sinking fund redemption shall be accordingly reduced.

C. The Issuer shall on or before the 60th day next preceding each mandatory Redemption Date furnish the Registrar and the Bond Commission with its certificate indicating whether and to what extent the provisions of (a) and (b) of the preceding paragraph are to be utilized with respect to such mandatory redemption payment and stating, in the case of the credit provided for in (b) of the preceding paragraph, that such credit has not theretofore been applied against any mandatory redemption obligation.

D. After said 60th day but prior to the date on which the Registrar selects the Term Bonds to be redeemed, the Bond Commission may use the moneys in the Series 1998 Bonds Redemption Account to purchase Term Bonds at a price less than the par value thereof and accrued interest thereon. The Bond Commission shall advise the Issuer and the Registrar of any Term Bonds so purchased, and they shall be credited by the Registrar at 100% of the principal amount thereof against the obligation of the Issuer on such mandatory Redemption Date, and any excess shall be credited against future mandatory redemption obligations in the order directed by the Issuer, and the principal amount of such Term Bonds to be redeemed pursuant to mandatory sinking fund redemption shall be accordingly reduced.

E. The Registrar shall call for redemption, in the manner provided herein, an aggregate principal amount of such Term Bonds, at the principal amount thereof plus interest accrued to the Redemption Date (interest to be paid from the Series 1998 Bonds Sinking Fund), as will exhaust as nearly as practicable the Series 1998 Bonds Redemption Account payment designated to be made in accordance with paragraph (A) of this section.

Such redemption shall be by random selection made on the 45th day preceding the mandatory Redemption Date, in such manner as may be determined by the Registrar. For purposes of this section, "Term Bonds" shall include any portion of a fully registered Term Bond, in integrals of \$5,000.

Section 3.07. Notice of Redemption. Unless waived by any Holder of the Series 1998 Bonds to be redeemed, official notice of any redemption shall be given by the Registrar on behalf of the Issuer by mailing a copy of an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Bond Insurer, the Original Purchaser and the registered owner of the Series 1998 Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such registered owner to the Registrar.

So long as DTC (as CEDE & CO.) is the registered Owner of the Series 1998 Bonds, the Registrar shall send all notices of redemption to DTC and shall verify that DTC has received notice. Copies of all redemption notices relating to optional redemption of the Series 1998 Bonds shall also be sent to registered securities depositories, nationally recognized municipal securities information repositories and to *Standard & Poor's Called Bond Record*.

All official notices of redemption shall be dated and shall state:

- (1) The Redemption Date,
- (2) The Redemption Price,
- (3) If less than all outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed,
- (4) That on the Redemption Date the Redemption Price and interest accrued will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date,
- (5) The place where such Bonds are to be surrendered for payment of the Redemption Price, which place of payment shall be the principal office of the Registrar, and
- (6) Such other information, if any, as shall be required for DTC-eligible Bonds.

If funds sufficient to redeem all Bonds called for optional redemption have not been deposited with the Paying Agent at the time of mailing any notice of optional redemption, such notice shall also state that such optional redemption is subject to the deposit of such moneys with the Paying Agent on or before the Redemption Date. If such moneys are not so deposited, the Registrar shall notify all holders of Bonds called for redemption of such fact.

Official notice of redemption having been given as aforesaid, the Series 1998 Bonds or portions of Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Issuer shall default in the payment of the Redemption Price) such Bonds or portions of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Registrar at the Redemption Price. Installments of interest due on or prior to the Redemption Date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the registered owner a new Bond or Bonds of the same maturity in the amount of the unredeemed principal of such Bond. All Bonds which have been redeemed shall be canceled and destroyed by the Registrar and shall not be reissued.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of Bonds, and failure to mail or otherwise send such notice shall not affect the validity of proceedings for the redemption of any portion of Bonds for which there was no such failure.

Section 3.08.      Persons Treated as Owners. The Issuer, the Registrar and any agent of the Issuer or the Registrar may treat the person in whose name any Bond is registered as the owner of such Bond for the purpose of receiving payment of the principal of, and interest on, such Bond and for all other purposes, whether or not such Bond is overdue.

Section 3.09.      Temporary Bonds. Until Bonds of any series in definitive form are ready for delivery, the Issuer may execute and the Registrar shall authenticate, register, if applicable, and deliver, subject to the same provisions, limitations and conditions set forth in this Article III, one or more printed, lithographed or typewritten Bonds in temporary form, substantially in the form of the definitive Bonds of such series, with appropriate omissions, variations and insertions, and in authorized denominations. Until exchanged for Bonds in definitive form, such Bonds in temporary form shall be entitled to the lien and benefit created under this Ordinance. Upon the presentation and surrender of any Bond or Bonds in temporary form, the Issuer shall, without unreasonable delay, prepare, execute and deliver to the Registrar, and the Registrar shall authenticate, register, if applicable, and deliver, in exchange therefor, a Bond or Bonds in definitive form. Such exchange shall be made by the Registrar without making any charge therefor to the Holder of such Bond in temporary form.

Section 3.10. Authorization of Bonds. For the purposes of paying Costs of the Project not otherwise provided for, capitalizing interest on the Series 1998 Bonds, funding the Series 1998 Bonds Reserve Account and paying costs of issuance and related costs, there shall be and hereby are authorized to be issued the Series 1998 Bonds of the Issuer, in an aggregate principal amount of not more than \$31,000,000. The Series 1998 Bonds may be issued from time to time in one or more series as shall be determined by the Issuer. The Series 1998 Bonds shall be designated "City of Fairmont (West Virginia) Water Revenue Bonds, Series 1998". In the event a portion of the Series 1998 Bonds are issued in a subsequent year, they shall bear an appropriate series designation relating to such year. The Series 1998 Bonds shall be issued in fully registered form, in the denomination of \$5,000 or any integral multiple thereof for any year of maturity, not exceeding the aggregate principal amount of Series 1998 Bonds maturing in the year of maturity for which the denomination is to be specified. The Series 1998 Bonds shall be numbered from R-1 consecutively upward (with appropriate series designation). The Series 1998 Bonds shall be designated; shall be dated; shall be in such aggregate principal amount; shall bear interest at such rate or rates, not exceeding the then legally permissible rate, payable semiannually on such dates; shall mature on such dates and in such amounts; shall be subject to such mandatory and optional redemption provisions; and shall have such other terms, all as the Issuer shall prescribe herein and in the Supplemental Resolution.

Section 3.11. Book Entry System for Bonds. A. The Series 1998 Bonds shall initially be issued in the form of one fully-registered bond for the aggregate principal amount of the Series 1998 Bonds of each maturity, registered in the name of CEDE & CO., as nominee of DTC. Except as provided in paragraph E below, all of the Series 1998 Bonds shall be registered in the registration books kept by the Registrar in the name of CEDE & CO., as nominee of DTC; provided that if DTC shall request that the Series 1998 Bonds be registered in the name of a different nominee, the Registrar shall exchange all or any portion of the Series 1998 Bonds registered in the name of such nominee or nominees. No person other than DTC or its nominee shall be entitled to receive from the Issuer or the Registrar either a Series 1998 Bond or any other evidence of ownership of the Series 1998 Bonds, or any right to receive any payment in respect thereof unless DTC or its nominee shall transfer record ownership of all or any portion of the Series 1998 Bonds on the registration books maintained by the Registrar, in connection with discontinuing the book entry system as provided in paragraph E below.

B. At or prior to settlement for the Series 1998 Bonds, the Issuer and the Registrar shall execute or signify their approval of a representation letter addressed to DTC in a form satisfactory to DTC (the "Representation Letter"). Any successor Registrar shall, in its written acceptance of its duties under this Ordinance, agree to take any actions necessary from time to time to comply with the requirements of the Representation Letter.

C. So long as the Series 1998 Bonds or any portion thereof are registered in the name of DTC or any nominee thereof, all payments of the principal or Redemption

Price of or interest on such Series 1998 Bonds shall be made to DTC or its nominee at the addresses set forth in the Representation Letter in New York Clearing House or equivalent next day funds on the dates provided for such payments to be made to any Bondholder under this Ordinance. Each such payment to DTC or its nominee shall be valid and effective to fully discharge all liability of the Issuer and the Registrar with respect to the principal or Redemption Price of or interest on the Series 1998 Bonds to the extent of the sum or sums so paid. In the event of the redemption of less than all of the Series 1998 Bonds Outstanding of any maturity, the Registrar shall not require surrender by DTC of the Series 1998 Bonds so redeemed, but DTC may return such Series 1998 Bonds and make an appropriate notation on the Series 1998 Bond certificate as to the amount of such partial redemption; provided that DTC shall deliver to the Registrar, upon request, a written confirmation of such partial redemption. The records maintained by the Registrar shall be conclusive as to the amount of the Series 1998 Bonds of such maturity which have been redeemed.

D. The Issuer, the Paying Agent and the Registrar may treat DTC as the sole and exclusive owner of the Series 1998 Bonds registered in its name or the name of its nominee for the purposes of payment of the principal or Redemption Price of or interest on the Series 1998 Bonds, selecting the Series 1998 Bonds or portions thereof to be redeemed, giving any notice permitted or required to be given to Bondholders under this Ordinance, registering the transfer of Series 1998 Bonds, obtaining any consent or other action to be taken by Bondholders and for all other purposes whatsoever; and neither the Issuer nor the Registrar shall be affected by any notice to the contrary. Neither the Issuer nor the Registrar shall have any responsibility or obligation to any direct or indirect participant in DTC, any person claiming a beneficial ownership interest in the Series 1998 Bonds under or through DTC or any such participant, or any other person which is not shown on the registration books of the Registrar as being a Bondholder with respect to (i) the Series 1998 Bonds, (ii) the accuracy of any records maintained by DTC or any such participant, (iii) the payment by DTC or any such participant of any amount in respect of the principal or Redemption Price of or interest on the Series 1998 Bonds, (iv) any notice which is permitted or required to be given to Bondholders under this Ordinance, (v) the selection by DTC or any such participant of any person to receive payment in the event of a partial redemption of the Series 1998 Bonds or (vi) any consent given or other action taken by DTC as Bondholder.

E. The book entry system for registration of the ownership of the Series 1998 Bonds may be discontinued at any time if either: (i) DTC determines to resign as securities depository for the Series 1998 Bonds; or (ii) the Issuer determines that continuation of the system of book entry transfers through DTC (or through a successor securities depository) is not in the best interest of the beneficial owners of the Series 1998 Bonds. In either of such events (unless in the case described in clause (ii) above, the Issuer appoints a successor securities depository), the Series 1998 Bonds shall be delivered in registered certificate form to such persons, and in such maturities and principal amounts, as may be designated by DTC, but without any liability on the part of the Issuer or the Registrar for the accuracy of such designation. Whenever DTC requests the Issuer and the

Registrar to do so, the Issuer and the Registrar shall cooperate with DTC in taking appropriate action after reasonable notice to arrange for another securities depository to maintain custody of certificates evidencing the Series 1998 Bonds.

Section 3.12. Delivery of Bonds. The Issuer shall execute and deliver the Series 1998 Bonds to the Registrar, and the Registrar shall authenticate, register and deliver the Series 1998 Bonds to the Original Purchaser upon receipt of the documents set forth below:

(A) If not registered in the name of DTC or its nominee, a list of the names in which the Series 1998 Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Registrar may reasonably require;

(B) A request and authorization to the Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 1998 Bonds to DTC for the benefit of the Original Purchaser;

(C) Copies of this Ordinance and the Supplemental Resolution certified by the Clerk;

(D) The unqualified approving opinion of Bond Counsel regarding the Series 1998 Bonds; and

(E) A copy of such other documents and certificates as the Original Purchaser may reasonably require.

Section 3.13. Form of Bonds. The definitive Series 1998 Bonds shall be in substantially the form set forth in EXHIBIT A - BOND FORM attached hereto and incorporated herein by reference, with such necessary and appropriate omissions, insertions and variations as are approved by those officers executing such Series 1998 Bonds on behalf of the Issuer and execution thereof by such officers shall constitute conclusive evidence of such approval, and the definitive Series 1998 Bonds shall have the form of the opinion of Steptoe & Johnson, as Bond Counsel, attached thereto or printed on the reverse thereof.

Section 3.14. Disposition of Proceeds of Bonds. Upon the issuance and delivery of the Series 1998 Bonds, the Issuer shall forthwith deposit the proceeds thereof as follows:

A. All interest accrued on the Series 1998 Bonds from the date thereof to the date of delivery thereof shall be deposited in the Series 1998 Bonds Sinking Fund and applied to payment of interest on the Series 1998 Bonds at the first interest payment date.

B. An amount of the proceeds of the Series 1998 Bonds equal to the Series 1998 Bonds Reserve Requirement shall be remitted to the Bond Commission for deposit in the Series 1998 Bonds Reserve Account, provided that, to the extent the Series 1998 Bonds Reserve Requirement is satisfied in whole or in part from a reserve account letter of credit, surety bond or other credit facility, proceeds of the Series 1998 Bonds shall be deposited in the Series 1998 Bonds Reserve Account only to the extent needed to satisfy the balance of the Series 1998 Bonds Reserve Requirement.

C. An amount of the proceeds of the Series 1998 Bonds necessary to pay costs of issuance shall be deposited with the Depository Bank in the Costs of Issuance Fund and shall be drawn out, used and applied by the Issuer solely to pay costs of issuance of the Series 1998 Bonds at the written direction of the Issuer. All such costs of issuance shall be paid within 60 days of the Closing Date. Moneys not to be applied immediately to pay such costs of issuance may be invested in accordance with this Ordinance, subject however, to applicable yield restrictions as may be in effect under the Code. If for any reason such proceeds, or any part thereof, are not necessary for, or are not applied to such purpose within 6 months after the Closing Date, such unapplied proceeds shall be transferred by the Issuer to the Series 1998 Bonds Redemption Account. All such proceeds shall constitute a trust fund for such purposes, and there is hereby created a lien upon such moneys until so applied in favor of the Holders of the Series 1998 Bonds.

D. The balance of the proceeds of the Series 1998 Bonds shall be deposited with the Depository Bank in the Construction Fund and shall be drawn out, used and applied by the Issuer solely to pay Costs of the Project at the written direction of the Issuer. Moneys not to be applied immediately to pay such Costs of the Project may be invested in accordance with this Ordinance, subject however, to applicable yield restrictions as may be in effect under the Code. All such proceeds shall constitute a trust fund for such purposes, and there is hereby created a lien upon such moneys until so applied in favor of the Holders of the Series 1998 Bonds.

## ARTICLE IV

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

Section 4.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created (or continued if previously established by the Prior Ordinance) with and shall be held by the Depository Bank separate and apart from all other funds or accounts of the Depository Bank and from each other:

- (1) Revenue Fund (established by Prior Ordinance);
- (2) Depreciation Fund (established by Prior Ordinance);
- (3) Construction Fund;
- (4) Costs of Issuance Fund; and
- (5) Rebate Fund.

Section 4.02. Establishment of Funds and Accounts with Bond Commission. The following special funds or accounts are hereby created with (or continued if previously established by the Prior Ordinance) and shall be held by the Bond Commission separate and apart from all other fund or accounts of the Bond Commission and from each other:

- (1) Series 1997 Bonds Sinking Fund (established by Prior Ordinance);
- (2) Within the Series 1997 Bonds Sinking Fund, the Series 1997 Bonds Reserve Account (established by Prior Ordinance);
- (3) Within the Series 1997 Bonds Sinking Fund, the Series 1997 Bonds Redemption Account (established by Prior Ordinance);
- (4) Series 1998 Bonds Sinking Fund;
- (5) Within the Series 1998 Bonds Sinking Fund, the Series 1998 Bonds Reserve Account; and
- (6) Within the Series 1998 Bonds Sinking Fund, the Series 1998 Bonds Redemption Account.

Section 4.03.      System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Ordinance 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, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission (i) for deposit in the Series 1997 A Bonds Sinking Fund, the amount required by the Prior Ordinance to pay the interest on and principal of the Prior Bonds; (ii) commencing 6 months prior to the first interest payment date of the Series 1998 Bonds, for deposit in the Series 1998 Bonds Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on the Series 1998 Bonds on the next ensuing semiannual interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1998 Bonds Sinking Fund and the next ensuing semiannual interest payment date is more or less than 6 months, then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date; provided further that, the initial amount required to be transferred from the Revenue Fund and deposited in the Series 1998 Bonds Sinking Fund shall be reduced by the amount of accrued interest on the Series 1998 Bonds deposited therein; and (iii) commencing 12 months prior to the first principal payment date or mandatory Redemption Date of the Series 1998 Bonds, for deposit in the Series 1998 Bonds Sinking Fund and in the Series 1998 Bonds Redemption Account therein in the case of the Term Bonds which are to be redeemed, a sum equal to 1/12th of the amount of principal which will mature or be redeemed and become due on the Series 1998 Bonds on the next ensuing annual principal payment date or mandatory Redemption Date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1998 Bonds Sinking Fund and the next ensuing annual principal payment date or mandatory Redemption Date is more or less than 12 months, then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next ensuing annual principal payment date or mandatory Redemption Date, the required amount of principal coming due on such date.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission (i) for deposit in the Series 1997 Bonds Reserve Account, the amount required by the Prior Ordinance; and (ii) for deposit in the Series 1998 Bonds Reserve Account, an amount sufficient to remedy any decrease in value of the

Series 1998 Bonds Reserve Account below the Series 1998 Bonds Reserve Requirement or any withdrawal from the Series 1998 Bonds Reserve Account, beginning with the first full calendar month following the date on which (i) the valuation of investments in the Series 1998 Bonds Reserve Account results in a determination that the amount of moneys and the value of the Qualified Investments deposited to the credit of the Series 1998 Bonds Reserve Account is less than the Series 1998 Bonds Reserve Requirement, or (ii) any amount is withdrawn from the Series 1998 Bonds Reserve Account for deposit into the Series 1998 Bonds Sinking Fund. To the extent Gross Revenues and any other legally available funds are available therefor, the amount so deposited shall be used to restore the amount of moneys on deposit in the Series 1998 Bonds Reserve Account to an amount equal to the Series 1998 Bonds Reserve Requirement to the full extent that such Gross Revenues are available; provided however, that if the shortfall in the Series 1998 Bonds Reserve Account is due to a decrease in value of investments therein, such shortfall shall be replenished by not less than 6 equal monthly payments, and if such shortfall is due to a withdrawal from the Series 1998 Bonds Reserve Account, such shortfall shall be replenished by not less than 12 equal monthly payments, and provided further, that no payments shall be required to be made into the Series 1998 Bonds Reserve Account whenever and as long as the amount on deposit therein shall be equal to the Series 1998 Bonds Reserve Requirement.

Amounts in the Series 1998 Bonds Reserve Account shall be used only for the purpose of making payments of principal of and interest on the Series 1998 Bonds when due, when amounts in the Series 1998 Bonds Sinking Fund are insufficient therefor and for no other purpose.

(3) The Issuer shall next, each month, pay from the Revenue Fund the Operating Expenses of the System.

(4) The Issuer shall next, each month, from the moneys remaining in the Revenue Fund, transfer to the Depreciation Fund (as previously set forth in the Prior Ordinance and not in addition thereto), a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of any reserve account. All funds in the Depreciation Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Depreciation Fund for replacements, emergency repairs, improvements or extensions to the System; provided, that any deficiencies in any reserve account (except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof) shall be promptly eliminated with moneys from the Depreciation Fund.

Moneys in the Series 1998 Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 1998 Bonds as the same shall become due. Moneys in the Series 1998 Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 1998 Bonds, as the same shall come due, when other moneys in the Series 1998 Bonds Sinking Fund are insufficient therefor, and for no other purpose except for permitted transfers to the Rebate Fund.

Except to the extent transferred to the Rebate Fund at the request of the Issuer, all investment earnings on moneys in the Series 1998 Bonds Sinking Fund and the Series 1998 Bonds Reserve Account shall be returned, not less than once each year, by the Bond Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Construction Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Bonds, and then to the next ensuing principal payment due thereon.

Except with respect to transfers to the Rebate Fund, any withdrawals from the Series 1998 Bonds Reserve Account which result in a reduction in the balance of the Series 1998 Bonds Reserve Account to below the Series 1998 Bonds Reserve Requirement shall be subsequently restored from the first Gross Revenues available after all required payments have been made in full in the order set forth above.

As and when additional Bonds ranking on a parity with the Bonds are issued, provision shall be made for additional payments into the respective sinking fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the appropriate reserve account in an amount equal to the maximum amount of principal and interest which will become due in any year for account of the Bonds of such series, including such additional parity Bonds.

The Issuer shall not be required to make any further payments into the Series 1998 Bonds Sinking Fund or the Series 1998 Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

Principal, interest or reserve payments, whether for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Prior Bonds and the Series 1998 Bonds, in accordance with the respective principal amounts then Outstanding.

The Bond Commission is hereby designated as the fiscal agent for the administration of the Series 1998 Bonds Sinking Fund, the Series 1998 Bonds Reserve Account and the Series 1998 Bonds Redemption Account created hereunder, and all amounts required for said accounts shall be remitted to the Bond Commission from the Revenue Fund by the Issuer at the times provided herein.

The Issuer shall, on the first day of each month (if such day is not a business day, then the next succeeding business day), deposit with the Bond Commission the required principal, interest and reserve payments with respect to the Series 1998 Bonds, and all such payments shall be remitted to the Bond Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation.

Moneys in the Series 1998 Bonds Sinking Fund, the Series 1998 Bonds Reserve Account and the Series 1998 Bonds Redemption Account shall be invested and reinvested by the Bond Commission in accordance with Section 8.01 hereof.

Except with respect to transfers to the Rebate Fund, the Series 1998 Bonds Sinking Fund, including the Series 1998 Bonds Reserve Account therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 1998 Bonds Outstanding under the conditions and restrictions hereinafter set forth.

B. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in the Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into such funds during the following month or such other period as required by law, such excess shall be considered Surplus Revenues. Surplus Revenues may be used for any lawful purpose of the System.

C. The Issuer shall remit from the Revenue Fund to the Bond Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Bond 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 any charges and fees then due.

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

E. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 4.03, and the Gross Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

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

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

Section 4.04. Reserve Account Letter of Credit or Surety Bond. In lieu of funding the Series 1998 Bonds Reserve Account with cash or Qualified Investments, the Series 1998 Bonds Reserve Requirement may be satisfied by the deposit by the Issuer into the Series 1998 Bonds Reserve Account of a reserve account letter of credit, a surety bond, or other credit facility satisfactory to the Bond Insurer in an amount at least equal to the Series 1998 Bonds Reserve Requirement. The Issuer hereby authorizes the purchase of a reserve account letter of credit, a surety bond, or other credit facility satisfactory to the Bond Insurer and the execution and delivery of any applicable reimbursement agreement or note in such forms as shall be described in the Supplemental Resolution; provided that, if there is no Bond Insurer, then a reserve account letter of credit, a surety bond, or other credit facility satisfactory to the Original Purchaser.

ARTICLE V

INVESTMENTS; NON-ARBITRAGE;  
REBATES OF EXCESS INVESTMENT EARNINGS

Section 5.01.      Investments. The Issuer shall invest and reinvest, and shall instruct the Bond Commission and the Depository Bank to invest and reinvest, any moneys held as a part of the funds and accounts created by this Ordinance in Qualified Investments to the fullest extent possible under applicable laws, this Ordinance, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this section.

Except as provided below, any investment shall be held in and at all times deemed a part of the fund or account in which such 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 Issuer shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Issuer may make any and all investments permitted by this section through the bond department of the Depository Bank. The Depository Bank shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The following specific provisions shall apply with respect to any investments made under this section (unless otherwise required by the Bond Insurer and as set forth in the Supplemental Resolution):

(A) Qualified Investments acquired for the Series 1998 Bonds Reserve Account shall mature or be subject to retirement at the option of the holder within not more than 5 years from the date of such investment.

(B) The Issuer shall, or shall cause the Bond Commission to semiannually transfer from the Series 1998 Bonds Reserve Account to the Series 1998 Bonds Sinking Fund, any earnings on the moneys deposited therein and any other funds in excess of the Series 1998 Bonds Reserve Requirement; provided, however, that there shall at all times remain on deposit in the Series 1998 Bonds Reserve Account an amount at least equal to the Series 1998 Bonds Reserve Requirement.

(C) In computing the amount in any fund or account, Qualified Investments shall be valued at the lower of the cost or the market price, exclusive of accrued interest. Valuation of all funds and accounts shall occur annually, except in the event of a withdrawal from the Series 1998 Bonds Reserve Account, whereupon it shall be valued immediately after such withdrawal. If amounts on deposit in the Series 1998 Bonds Reserve Account shall, at any time, be less than the Series 1998 Bonds Reserve Requirement, the Bond Insurer shall be notified immediately of such deficiency and such deficiency shall be made up from the first available Gross Revenues after required deposits to the Series 1998 Bonds Sinking Fund and otherwise in accordance with Section 4.03 hereof.

(D) All amounts representing accrued and capitalized interest shall be held by the Bond Commission, pledged solely to the payment of interest on the Series 1998 Bonds and invested only in Government Obligations maturing at such times and in such amounts as are necessary to match the interest payments to which they are pledged.

(E) Notwithstanding the foregoing, all moneys deposited in the Series 1998 Bonds Sinking Fund may be invested by the Bond Commission in the West Virginia "consolidated fund" managed by the West Virginia Investment Management Board pursuant to Chapter 12, Article 6 of the West Virginia Code of 1931, as amended.

Section 5.02. Arbitrage. The Issuer covenants that (i) it will restrict the use of the proceeds of the Series 1998 Bonds in such manner and to such extent as may be necessary, so that the Series 1998 Bonds will not constitute "arbitrage bonds" under Section 148 of the Code and Regulations prescribed thereunder, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Series 1998 Bonds) so that the interest on the Series 1998 Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 5.03. Tax Certificate and Rebate. The Issuer shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of the Series 1998 Bonds. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Series 1998 Bonds as may be necessary in order to fully comply with Section 148(f) of the

Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of this Ordinance.

The Issuer shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, the Issuer shall deposit, or cause to be deposited, in the Rebate Fund such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder and used only for payment of rebatable arbitrage to the United States. The Issuer shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States at the time and the address prescribed by the Regulations as the same may be in effect from time to time with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefor. The Issuer at its expense, may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer may deem appropriate in order to assure compliance with this Section 5.03. The Issuer shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 5.03 in accordance with the requirements of Section 148(f) of the Code and such Regulations. In the event the Issuer fails to make such rebates as required, the Issuer shall pay the required rebate amounts and any and all penalties and interest from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, in order to maintain the exclusion of interest on the Series 1998 Bonds from gross income for federal income tax purposes.

Section 5.04. Continuing Disclosure Agreement. The Issuer shall deliver a continuing disclosure agreement or certificate in form acceptable to the Original Purchaser sufficient to ensure compliance with SEC Rule 15c2-12, as it may be amended from time to time.

## ARTICLE VI

### ADDITIONAL COVENANTS OF THE ISSUER

Section 6.01.      Covenants Binding and Irrevocable. All the covenants, agreements and provisions of this Ordinance shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 1998 Bonds, as prescribed by Article VII. In addition to the other covenants, agreements and provisions of this Ordinance, the Issuer hereby covenants and agrees with the Holders of the Series 1998 Bonds, as hereinafter provided in this Article VI. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 1998 Bonds or the interest thereon, are Outstanding and unpaid.

Section 6.02.      Bonds not to be Indebtedness of the Issuer. The Series 1998 Bonds shall not be or constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness but shall be payable solely from the Gross Revenues of the System, the moneys in the Series 1998 Bonds Sinking Fund and the Series 1998 Bonds Reserve Account therein and the unexpended proceeds of the Series 1998 Bonds, all as herein provided. No Holder or Holders of the Series 1998 Bonds issued hereunder shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 1998 Bonds or the interest thereon.

Section 6.03.      Bonds Secured by Pledge of Gross Revenues; Lien Position with Respect to Prior Bonds. The payment of the debt service of all of the Series 1998 Bonds issued hereunder shall be secured forthwith equally and ratably with each other by a first lien on the Gross Revenues derived from the System, on a parity with the lien on the Gross Revenues in favor of the Holders of the Prior Bonds and all moneys in the Series 1998 Bonds Sinking Fund, including the Series 1998 Bonds Reserve Account therein. The Gross Revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Prior Bonds and the Series 1998 Bonds and to make the payments into all funds and accounts and all other payments provided for in this Ordinance, are hereby irrevocably pledged in the manner provided in this Ordinance to the payment of the principal of and interest on the Prior Bonds and the Series 1998 Bonds as the same become due and for the other purposes provided in this Ordinance.

Section 6.04.      Rates. Prior to the issuance of the Series 1998 Bonds, rates or charges for the use of the services and facilities of the System will be fixed and established, all in the manner and form required by law, and a copy of such rates and charges so fixed and established shall at all times be kept on file in the office of the City Clerk of the Issuer, which copy will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from the System

sufficient to make the prescribed payments into the funds and accounts created hereunder. Such schedule of rates and charges shall be revised from time to time, whenever necessary, so that the aggregate of the rates and charges will be sufficient for such purposes; In order to assure full and continuous performance of this covenant with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient (i) to pay all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 120% of the maximum amount required in any year for payment of principal of and interest on the Series 1998 Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Series 1998 Bonds, including the Prior Bonds. All such rates and charges, if not paid when due, shall constitute a lien upon the premises served by the System. For purposes of this test, the terms "Gross Revenues" and "Net Revenues" shall not include proceeds from the sale of capital assets.

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

Section 6.05. Completion of Project; Operation and Maintenance. The Issuer will complete the Project as promptly as possible and operate and maintain the System in good condition and in compliance with all federal and state requirements and standards.

The Issuer will obtain all permits required by state and federal laws for the acquisition and construction of the Project and all orders and approvals from the Public Service Commission of West Virginia necessary for the acquisition and construction of the Project and the operation of the System.

Section 6.06. Sale of the System. So long as the Prior Bonds are Outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of the System, except as provided by the Prior Ordinance. Additionally, so long as the Series 1998 Bonds are Outstanding, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding, or to defease the pledge created by this Ordinance and the Prior Ordinance. The proceeds from such sale, mortgage, lease or other disposition of the System shall be immediately remitted to the Bond Commission for deposit in the Series 1998 Bonds Sinking Fund and the Series 1997 Bonds Sinking Fund, and otherwise as prescribed by Section 9.01. Any balance remaining after such defeasance shall be remitted to the Issuer by the Bond Commission unless necessary for the payment of other obligations of the Issuer payable out of the Gross Revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor is not in excess of \$50,000, the Issuer shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Issuer may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Depreciation Fund. If the amount to be received from such sale, lease or other disposition of said property shall be in excess of \$50,000 but not in excess of \$200,000, the Issuer shall first, determine upon consultation with the Consulting Engineers, that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and may then, if it be so advised, by resolution duly adopted, approve and authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds of any such sale shall be deposited in the Depreciation Fund. Payment of such proceeds into the Depreciation Fund shall not reduce the amounts required to be paid into said fund by other provisions of this Ordinance.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom shall be in excess of \$200,000 and insufficient to defease the pledge created by this Ordinance, as provided by Section 9.01, without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of 60% in amount of Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 6.07. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. The Issuer shall not issue any other obligations whatsoever, except additional parity Bonds provided for in Section 6.08 hereof, payable from the Revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from the Gross Revenues with the Bonds; and all obligations hereafter issued by the Issuer payable from the Revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate as to lien on, pledge and source of and security for payment from such Revenues and in all other respects to the Bonds; provided that, no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts set forth herein have been made and are current at the time of issuance of such subordinate obligations.

The Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or, except with respect to such additional parity Bonds, being on a parity with the lien of the Bonds, and the

interest thereon, upon any of the income and Gross Revenues of the System pledged for payment of the Bonds and the interest thereon in this Ordinance or upon the System or any part thereof.

Section 6.08.      Additional Parity Bonds. So long as the Prior Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Prior Ordinance shall be applicable. In addition, no additional parity Bonds, as in this section defined, payable out of the Revenues of the System shall be issued after the issuance of any Bonds pursuant to this Ordinance, except under the conditions and in the manner herein provided.

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

No such additional parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the City Clerk of the Issuer a written statement by Independent Accountants, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided, from the System during the Fiscal Year preceding the date of the actual issuance of such additional parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the three succeeding years after the date of issuance of such parity Bonds, shall not be less than 120% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest on the following:

- (1) The Series 1998 Bonds and the Prior Bonds then Outstanding;
- (2) Any additional parity Bonds theretofore issued pursuant to the provisions contained in this Ordinance then Outstanding; and
- (3) The additional parity Bonds then proposed to be issued.

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

for appeal of which shall have expired (without successful appeal) prior to the issuance of such additional parity Bonds is, by the terms of the ordinance providing for such increase in rates, deferred pending completion of the acquisition and construction of any additions, betterments or improvements for the System, and further provided, that the debt service on such additional parity Bonds during such construction period is payable from proceeds of such additional parity Bonds deposited in the Sinking Fund held by the Bond Commission, the "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years" as that term is used in the computation provided in the above paragraph, may be assumed to mean "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years commencing on the date of completion of such acquisition and construction."

The Net Revenues actually derived from the System during the preceding Fiscal Year hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Accountants, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to issuance of such additional parity Bonds. For purposes of this test, the terms "Gross Revenues" and "Net Revenues" shall not include proceeds from the sale of capital assets.

The term "additional parity Bonds," as used in this section, shall be deemed to mean additional Bonds issued under the provisions and within the limitations of this section, payable from the Gross Revenues of the System on a parity with the Series 1998 Bonds and the Prior Bonds, and all the covenants and other provisions of this Ordinance (except as to details of such additional parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Series 1998 Bonds and the Prior Bonds and the Holders of any additional parity Bonds theretofore or subsequently issued from time to time within the limitations of and in compliance with this section. All the Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Gross Revenues of the System, and their source of and security for payment from the Gross Revenues, without preference of any Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Ordinance required for and on account of such additional parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Ordinance.

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

No additional parity Bonds shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in this Ordinance with respect to the Bonds then Outstanding, and any other payments provided for in this Ordinance, shall have been made in full as required to the date of issuance of the additional parity Bonds.

Section 6.09.      Insurance and Bonds. The Issuer hereby covenants and agrees, that so long as the Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance and bonds and worker's compensation coverage with a reputable insurance carrier or carriers or bonding company or companies covering the following risks and in the following amounts:

A.    FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the actual cost thereof. In the event of any damage to or destruction of any portion of the System, the Issuer will promptly arrange for the application of the insurance proceeds for the repair or reconstruction of such damages or destroyed portion. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance to protect the interests of the Issuer during acquisition and construction of any additions, betterments and improvements to the System in the full insurable value thereof.

B.    PUBLIC LIABILITY INSURANCE, with limits of not less than \$1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than \$500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

C.    WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT OR COMPLETION BONDS, such bonds to be in the amounts of not less than 100% of the amount of any construction contract and to be required of each contractor dealing directly with the Issuer and such payment bonds will be filed with the Clerk of the County Commission of the County in which such work is to be performed prior to commencement of construction of any additions, betterments or improvements to the System in compliance with West Virginia Code Section 38-2-39.

D.    FLOOD INSURANCE, to extent available at reasonable cost to the Issuer.

E.    BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

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

Section 6.10. Services Rendered to the Issuer. The Issuer will not render or cause to be rendered any free services of any nature by the System; and, in the event the Issuer or any department, agency, instrumentality, officer or employee thereof shall avail themselves of the facilities or services provided by the System or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. Such charges shall be paid as they accrue, and the Issuer shall transfer from its general funds sufficient sums to pay such charges for service to any of its departments or properties. The revenues so received shall be deemed to be Gross Revenues derived from the operation of the System and shall be deposited and accounted for in the same manner as other Gross Revenues derived from such operation of the System.

Section 6.11. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 30 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid and to the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, all delinquent rates, rentals and other charges, if not paid, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services and facilities of the System to all delinquent users of services and facilities of the System and will not restore such services of the System until all bills for charges for the services and facilities of the System, plus reasonable interest penalty charges for the restoration of service, have been fully paid.

Section 6.12. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of any franchise or permit to any person, firm, corporation or body, or agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 6.13. Books and Records. The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds shall have the right at all reasonable times to inspect the System, and all parts thereof, and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles, to the extent allowable under and in accordance with the rules and regulations of the Public Service Commission of West Virginia and the Act. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner, on the forms, in the books and along with other bookkeeping records as prescribed by the Issuer. The Issuer shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Issuer shall be reported to such agent of the Issuer as it shall direct.

The Issuer shall file with the Original Purchaser and the Bond Insurer, within 120 days following the end of each Fiscal Year, and shall mail to any Bondholder requesting the same, an annual report containing the following:

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

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

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be completely audited by Independent Accountants, shall mail upon request, and make available generally, the report of said Independent Accountants, or a summary thereof, to any Holder or Holders of Bonds issued pursuant to this Ordinance and shall file said report with the Original Purchaser.

Section 6.14. Operating Budget. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, or at such earlier date required by the charter of the Issuer, prepare and adopt by resolution a detailed budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by a registered professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10%

of the amount of such budget shall be made except upon the further certificate of such a registered professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Original Purchaser and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Original Purchaser, the Bond Insurer and to any Bondholder or anyone acting for and in behalf of such Bondholder who requests the same.

Section 6.15. Statutory Mortgage Lien. For the further protection of the Holders of the Series 1998 Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon the issuance of the Series 1998 Bonds and shall be on a parity with the statutory mortgage lien in favor of the Holders of the Prior Bonds.

Section 6.16. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 1998 Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 1998 Bonds during the term thereof is, under the terms of the Series 1998 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) in the event that both (A) in excess of 5% of the Net Proceeds of the Series 1998 Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 1998 Bonds during the term thereof is, under the terms of the Series 1998 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the System, or if the Series 1998 Bonds are for the purpose of financing more than one project, a portion of the System, and shall not exceed the proceeds used for the governmental use of that portion of the System to which such Private Business Use is related.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of the lesser of 5% of the Net Proceeds of the Series 1998 Bonds or \$5,000,000 are

used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. **FEDERAL GUARANTEE PROHIBITION.** The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 1998 Bonds to be directly or indirectly "federally guaranteed" within the meaning of Section 149(b) of the Code and Regulations promulgated thereunder.

D. **INFORMATION RETURN.** The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 1998 Bonds and the interest thereon, including without limitation, the information return required under Section 149(e) of the Code.

E. **FURTHER ACTIONS.** The Issuer will take all actions that may be required of it so that the interest on the Series 1998 Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 6.17. Covenants Regarding the Municipal Bond Insurance Policy.  
The Issuer may apply for a Municipal Bond Insurance Policy for the Series 1998 Bonds. In the event such a Municipal Bond Insurance Policy is obtained, certain additional covenants of the Issuer may be required by the Bond Insurer as a condition to insuring the Series 1998 Bonds. These additional covenants shall be set forth in full in the Supplemental Resolution, shall apply to the Series 1998 Bonds and any other Bonds which may be insured by such Bond Insurer, and shall be controlling in the event any other provisions of this Ordinance may be in conflict therewith.

## ARTICLE VII

### DEFAULTS AND REMEDIES

Section 7.01.      Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 1998 Bonds:

(A) If default occurs in the due and punctual payment of the principal of or interest on the Series 1998 Bonds; or

(B) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part in this Ordinance or any Supplemental Resolution or in the Series 1998 Bonds contained, and such default shall have continued for a period of 30 days after written notice specifying such default and requiring the same to be remedied shall have been given to the Issuer by any Bondholder; or

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

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

Section 7.02.      Enforcement. Upon the happening and continuance of any Event of Default, any Bondholder may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his 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 the Bondholders, including the right to require the Issuer to perform its duties under the Act and this Ordinance; (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 Bondholders; and (v) by action or bill in equity enjoin any acts in violation of this Ordinance or the rights of the Bondholders; provided that, all rights and remedies of the Holders of the Series 1998 Bonds shall be on a parity with the Holders of the Prior Bonds.

No remedy by the terms of this Ordinance conferred upon or reserved to the Bondholders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Bondholders hereunder or now or hereafter existing at law or by statute.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or Event of Default hereunder by the Bondholders shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereto.

Section 7.03. Appointment of Receiver. If there be any Event of Default existing and continuing, any Bondholder (or any Bond Insurer if the defaulted Bonds are insured) shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the principal of and interest on the Bonds, the deposits into the funds and accounts hereby established as herein provided and the payment of Operating Expenses of the System and to apply such rates, rentals, fees, charges or other Revenues in conformity with the provisions of this Ordinance and the Act.

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

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

Such receiver, in the performance of the powers hereinabove conferred upon him, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby and a successor receiver appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and the Holders of the Bonds issued pursuant to this Ordinance. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System, for the sole purpose of the protection of both the Issuer and the Bondholders, and the curing and making good of any default under the provisions of this Ordinance, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, mortgage or otherwise dispose of any assets of the System.

Section 7.04. Restoration of Issuer and Bondholder. In case any Bondholder shall have proceeded to enforce any right under this Ordinance by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer and such Bondholder shall be restored to their former positions and rights hereunder, and all rights and remedies of such Bondholder shall continue as if no such proceedings had been taken.

## ARTICLE VIII

### REGISTRAR AND PAYING AGENT

Section 8.01.      Appointment of Registrar.      The Registrar for the Series 1998 Bonds shall be appointed pursuant to the Supplemental Resolution. The Issuer is hereby authorized and directed to enter into an agreement with the Registrar, the substantial form of which agreement is to be approved by Supplemental Resolution.

Section 8.02.      Responsibilities of Registrar.      The recitals of fact in the Series 1998 Bonds shall be taken as statements of the Issuer, and the Registrar shall not be responsible for their accuracy. The Registrar shall not be deemed to make any representation as to, and shall not incur any liability on account of, the validity of the execution of any Series 1998 Bonds by the Issuer. Notwithstanding the foregoing, the Registrar shall be responsible for any representation in its Certificate of Authentication and Registration on the Series 1998 Bonds. The Registrar and any successor thereto shall agree to perform all the duties and responsibilities spelled out in this Ordinance and any other duties and responsibilities incident thereto, all as provided by said agreement described in Section 8.01.

Section 8.03.      Evidence on Which Registrar May Act.      Except as otherwise provided by Section 10.02, the Registrar shall be protected in acting upon any notice, resolution, request, consent, order, certificate, opinion or other document believed by it to be genuine and to have been signed or presented by the proper party or parties. Whenever the Registrar shall deem it necessary or desirable that a fact or matter be proved or established prior to taking or suffering any action, such fact or matter, unless other evidence is specifically prescribed, may be deemed to be conclusively proved and established by a certificate of an Authorized Officer of the Issuer, but in its discretion the Registrar may instead accept other evidence of such fact or matter.

Section 8.04.      Compensation and Expenses.      The Issuer shall pay to the Registrar from time to time reasonable compensation for all services, including the transfer of registration of Bonds, the first exchange of Bonds and the exchange of Bonds in the event of partial redemption, incurred in the performance of its duties hereunder.

Section 8.05.      Certain Permitted Acts.      The Registrar may become the owner of or may deal in Bonds as fully and with the same rights it would have if it were not Registrar. To the extent permitted by law, the Registrar may act as depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bondholders or effect or aid in any reorganization growing out of the enforcement of the Series 1998 Bonds or this Ordinance, whether or not any such committee shall represent the Holders of a majority in principal amount of the Series 1998 Bonds Outstanding.

Section 8.06. Resignation of Registrar. The Registrar may at any time resign and be discharged of its duties and obligations under this Ordinance by giving not less than 60 days written notice to the Issuer and publishing in an Authorized Newspaper notice (or mailing such notice to each Bondholder in the event all Bonds are fully registered), specifying the date when such resignation shall take effect, within 20 days after the giving of such written notice. A copy of such notice shall also be mailed to each owner of a fully registered Bond or a coupon Bond registered as to principal (other than to bearer). Such resignation shall take effect upon the day specified in such notice unless a successor shall have been previously appointed by the Issuer or Bondholders, in which event such resignation shall take effect immediately; provided that, in no event shall such resignation take effect until a successor has been appointed and has accepted its duties as Registrar.

Section 8.07. Removal. The Registrar may be removed at any time by the Issuer, the Bond Insurer or by the Holders of a majority in principal amount of the Series 1998 Bonds then Outstanding by an instrument or concurrent instruments in writing signed and duly acknowledged by the Issuer, the Bond Insurer or by such Bondholders or their attorneys duly authorized in writing and delivered to the Issuer, as the case may be. Copies of each such instrument shall be delivered by the Issuer to the Registrar. Such removal shall take effect upon the date stated in such instrument; provided that, in no event shall such removal take effect until a successor has been appointed and has accepted its duties as Registrar.

Section 8.08. Appointment of Successor. In case at any time the Registrar shall resign or shall be removed or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or if a receiver, liquidator or conservator of the Registrar or of its property shall be appointed, or if any public officer or court shall take charge or control of the Registrar or of its property or affairs, a successor may be appointed by the Holders of a majority in principal amount of the Series 1998 Bonds then Outstanding by an instrument or concurrent instruments in writing signed by such Bondholders or their attorneys duly authorized in writing and delivered to the Issuer and such successor Registrar, notification thereof being given to the predecessor Registrar. Pending such appointment, the Issuer shall forthwith appoint a Registrar to fill such vacancy until a successor Registrar shall be appointed by such Bondholders. The Issuer shall publish in an Authorized Newspaper (or mail to each Bondholder in the event all Bonds are fully registered) notice of any such appointment within 20 days after the effective date of such appointment. A copy of such notice shall also be mailed to each owner of a fully registered Bond or a coupon Bond registered as to principal (other than to bearer). Any successor Registrar appointed by the Issuer shall, immediately and without further act, be superseded by a Registrar appointed by such Bondholders. If in a proper case no appointment of a successor Registrar shall be made within 45 days after the Registrar shall have given to the Issuer written notice of resignation or after the occurrence of any other event requiring such appointment, the Registrar or any Bondholder may apply to any court of competent jurisdiction to appoint a successor. Any Registrar appointed under the provisions of this section shall be a bank, trust company or

national banking association authorized to perform the duties imposed upon it by this Ordinance.

Section 8.09. Transfer of Rights and Property to Successor. Any predecessor Registrar or Paying Agent shall pay over, assign and deliver any moneys, books and records held by it to its successor.

Section 8.10. Merger or Consolidation. Any company into which the Registrar may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party, or any company to which the Registrar or any public officer or court may sell or transfer all or substantially all of its corporate trust business, shall be the successor to such Registrar without the execution or filing of any paper or the performance of any further act; provided, however, that such company shall be a bank, trust company or national banking association meeting the requirements set forth in Section 8.08.

Section 8.11. Adoption of Authentication. In case any of the Series 1998 Bonds shall have been authenticated but not delivered, any successor Registrar may adopt a Certificate of Authentication and Registration executed by any predecessor Registrar and deliver such Bonds so authenticated, and, in case any Bonds shall have been prepared but not authenticated, any successor Registrar may authenticate such Bonds in the name of the predecessor Registrar or in its own name.

Section 8.12. Paying Agent. The Registrar may also serve as the Paying Agent. The Registrar's acceptance of the duties and responsibilities of the Registrar expressed in Section 8.02 shall also include the trusts and the duties of Paying Agent if so appointed. Any alternate Paying Agent must be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this Ordinance. Such alternate Paying Agent shall signify its acceptance of the duties and obligations imposed upon it pursuant hereto by executing and delivering to the Issuer a written acceptance thereof. Any successor Paying Agent shall take such actions as may be necessary to ensure that the Bonds shall be and remain DTC-eligible.

Each Paying Agent shall be entitled to payment and reimbursement for reasonable fees for its services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by such Paying Agent in connection with such services solely from moneys available therefor.

Any bank, trust company or national banking association with or into which any Paying Agent may be merged or consolidated, or to which the assets and business of such Paying Agent may be sold, shall be deemed the successor of such Paying Agent for the purposes of this Ordinance. If the position of Paying Agent shall become vacant for any reason, the Issuer shall, within 30 days thereafter, appoint a bank, trust company or national

banking association located in the same city as such Paying Agent to fill such vacancy; provided, however, that, if the Issuer shall fail to appoint such Paying Agent within said period, the Bond Commission, a court of competent jurisdiction or a majority of the Bondholders may make such appointment.

The Paying Agents shall enjoy the same protective provisions in the performance of their duties hereunder as are specified in this Article VIII with respect to the Registrar, insofar as such provisions may be applicable.

Notice of the appointment of successor or additional Paying Agents or fiscal agents shall be given in the same manner as provided by Section 8.08 hereof with respect to the appointment of a successor Registrar.

All moneys received by the Paying Agents shall, until used or applied as provided in this Ordinance, be held in trust for the purposes for which they were received.

## ARTICLE IX

### DEFEASANCE; DISCHARGE OF PLEDGE OF ORDINANCE

Section 9.01. Defeasance; Discharge of Pledge of Ordinance. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Holders of all Series 1998 Bonds the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Ordinance, then this Ordinance and the pledges of the Gross Revenues and other moneys and securities pledged hereunder, and all covenants, agreements and other obligations of the Issuer on behalf of the Holders of the Series 1998 Bonds made hereunder, shall thereupon cease, terminate and become void and be discharged and satisfied, except as may be necessary to assure the exclusion of interest on the Series 1998 Bonds from gross income for federal income tax purposes.

Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due the respective principal of and interest on such Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Bond Commission or an escrow trustee either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Bond Commission or said escrow trustee at the same or earlier time shall be sufficient, to pay when due the principal of, any redemption premium on and interest due and to become due on said Bonds on and prior to the maturity date thereof, or if the Issuer irrevocably determines to redeem any of said Bonds prior to the maturity thereof, on and prior to said redemption date. Neither securities nor moneys deposited with the Bond Commission or an escrow trustee pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and interest on said Bonds; provided, that any cash received from such principal, redemption premium, if any, and interest payments on such securities deposited with the Bond Commission or said escrow trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal of and redemption premium, if any, and interest to become due on said Bonds on and prior to such maturity or redemption dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Bond Commission or said escrow trustee, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations, as such term is limited by the provisions in Section 1.01 hereof or such additional securities as shall be set forth in the Supplemental Resolution.

## ARTICLE X

### MISCELLANEOUS

Section 10.01. Amendment of Ordinance. Prior to issuance of the Series 1998 Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. All provisions required by the Bond Insurer, if any, shall be set forth in the Supplemental Resolution and to the extent they constitute an amendment or modification of this Ordinance, shall be controlling. Following issuance of the Series 1998 Bonds, this Ordinance and any Supplemental Resolution may be amended or modified without the consent of any Bondholder or other person, solely for the purpose of maintaining the tax-exempt status of the Series 1998 Bonds, provided that, in the event any of the Series 1998 Bonds are insured, no such amendment or modification which adversely affects the security for such Bonds or the rights of the applicable Bond Insurer for such Bonds may be effected without the written consent of such Bond Insurer. Otherwise, no materially adverse amendment or modification to this Ordinance, or of any Supplemental Resolution, may be made without the written consent of the Holders of 60% in aggregate principal amount of the Bonds then Outstanding and affected thereby and the Bond Insurer, which must be filed with the City Clerk of the Issuer before any such modification or amendment may be made. No such modification or amendment shall extend the maturity of or reduce the interest rate on, or otherwise alter the terms of payment of the principal of or interest on, any Bond without the express written consent of the Holder of such Bond, nor reduce the percentage of Bonds required for consent to any such modification or amendment.

Section 10.02. Evidence of Signatures of Bondholders and Ownership of Bonds. Any request, consent, revocation of consent or other instrument which this Ordinance may require or permit to be signed and executed by Bondholders may be in one or more instruments of similar tenor, and shall be signed or executed by such Bondholders in person or by their attorneys duly authorized in writing. Proof of the execution of any such instrument, or of an instrument appointing or authorizing any such attorney, shall be sufficient for any purpose of this Ordinance if made in the following manner, or in any other manner satisfactory to the Issuer or the Registrar, as the case may be, which may nevertheless in its discretion require further or other proof in cases where it deems the same desirable:

A. The fact and date of the execution by any Bondholder or his attorney of any such instrument may be proved (i) by the certificate of a notary public or other officer authorized to take acknowledgements of deeds to be recorded in the jurisdiction in which he purports to act that the person signing such instrument acknowledged to him the execution thereof, or by the affidavit of a witness of such execution, duly sworn to before such a notary public or other officer or (ii) by the certificate, which need not be acknowledged or verified, of an officer of a bank, a trust company or a financial firm or corporation satisfactory to the

Issuer or the Registrar, as the case may be, that the person signing such instrument acknowledged to such bank, trust company, firm or corporation the execution thereof.

B. The authority of a person or persons to execute any such instrument on behalf of a corporate Bondholder may be established without further proof if such instrument is signed by a person purporting to be the president or treasurer or a vice-president or an assistant treasurer of such corporation with a corporate seal affixed, and is attested by a person purporting to be its secretary or assistant secretary.

C. The amount of fully registered Bonds held by a person executing any instrument as a Bondholder, the date of his holding such Bonds and the numbers and other identification thereof, shall be confirmed by the Bond Register.

Any request, consent or other instrument executed by the Holder of any Bond shall bind all future Holders and owners of such Bond in respect of anything done or suffered to be done hereunder by the Issuer or the Registrar in accordance therewith.

Section 10.03. Preservation and Inspection of Documents. To the extent allowable under law, all reports, certificates, statements and other documents received by the Registrar under the provisions of this Ordinance shall be retained in its possession and shall be available at all reasonable times for the inspection of the Issuer or any Bondholder, and their agents and their representatives, but any such reports, certificates, statements or other documents may, at the election of the Registrar, be destroyed or otherwise disposed of at any time after such date as the pledge created by this Ordinance shall be discharged as provided in Section 9.01.

Section 10.04. Cancellation of Bonds. All Bonds purchased or paid shall, if surrendered to the Issuer, be canceled and delivered to the Registrar, or, if surrendered to the Registrar, be canceled by it. No such Bonds shall be deemed Outstanding under this Ordinance and no Bonds shall be issued in lieu thereof. All such Bonds shall be canceled and upon order of the Issuer shall be destroyed, and a certificate evidencing such destruction shall be delivered to the Issuer.

Section 10.05. Failure to Present Bonds. Anything in this Ordinance to the contrary notwithstanding, any moneys held by the Bond Commission or a Paying Agent in trust for the payment and discharge of any of the Bonds which remain unclaimed for 1 year after the date on which such Bonds have become due and payable, whether by maturity or upon call for redemption, shall at the written request of the Issuer be paid by the Bond Commission or said Paying Agent to the Issuer as its absolute property and free from trust, and the Bond Commission or said Paying Agent shall thereupon be released and discharged with respect thereto, and the Holders of such Bonds shall look only to the Issuer for the payment of such Bonds; provided, however, that, before making any such payment to the Issuer, the Registrar, if so advised by the Bond Commission, or said Paying Agent

shall send to the Holder, at the address listed on the Bond Register, by certified mail, a notice that such moneys remain unclaimed and that, after a date named in said notice, which date shall be not less than 30 days after the date of such notice is mailed, the balance of such moneys then unclaimed will be returned to the Issuer. If any of said Bonds is a coupon Bond, the Registrar or said Paying Agent shall also publish such notice, not less than 30 days prior to the date such moneys will be returned to the Issuer, in an Authorized Newspaper.

Section 10.06. Notices, Demands and Requests. Unless otherwise expressly provided, all notices, demands and requests to be given or made hereunder to or by the Issuer, the Registrar, the Paying Agent, the Depository Bank or the Original Purchaser shall be in writing and shall be properly made if sent by United States mail, postage prepaid, and addressed as follows or if hand-delivered to the individual to whom such notice, demand or request is required to be directed as indicated below:

ISSUER

City of Fairmont  
City Hall  
200 Jackson Street  
Fairmont, West Virginia 26555

REGISTRAR AND PAYING AGENT

[Name(s) and address(es) to be set forth in  
Supplemental Resolution]

DEPOSITORY BANK

[Name(s) and address(es) to be set forth in  
Supplemental Resolution]

ORIGINAL PURCHASER

Ferris Baker Watts, Inc.  
170 Laidley Tower  
500 Lee Street, East  
Charleston, West Virginia 25301

and

Crews & Associates, Inc.  
2000 Union National Plaza  
124 West Capitol  
Little Rock, Arkansas 72201

BOND INSURER

[Name(s) and address(es) to be set forth in  
Supplemental Resolution]

Any party listed above may change such address listed for it at any time upon written notice of change sent by United States mail, postage prepaid, to the other parties.

Section 10.07. No Personal Liability. No member of the Council or officer or employee of the Issuer shall be individually or personally liable for the payment of the principal of or the interest on any Bond, but nothing herein contained shall relieve any such member, official or employee from the performance of any official duty provided by law or this Ordinance.

Section 10.08. Law Applicable. The laws of the State shall govern the construction of this Ordinance and of all Bonds issued hereunder.

Section 10.09. Parties Interested Herein. Nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon, or give to, any person or corporation, other than the Issuer, the Registrar, the Paying Agent, the Holders of the Bonds and the Original Purchaser, any right, remedy or claim under or by reason of this Ordinance. All the covenants, stipulations, promises and agreements contained in this Ordinance by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the Registrar, the Paying Agent, the Holders of the Bonds and the Original Purchaser.

Section 10.10. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Ordinance.

Section 10.11. Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 10.12. Conflicting Provisions Repealed. All ordinances, orders, resolutions or parts thereof in conflict with the provisions of this Ordinance, are, to the extent of such conflict, hereby repealed; provided that, in the event of any conflict between this Ordinance and the Prior Ordinance, the Prior Ordinance shall control (unless less restrictive), so long as the Prior Bonds are Outstanding.

Section 10.13. 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, City Manager, City Clerk and members of the Council 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 10.14. Effective Date. This Ordinance shall take effect immediately following public hearing and final reading hereon.

Section 10.15. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance determined by the Council to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in The Times-West Virginian, a qualified newspaper published and of general circulation in the City of Fairmont, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Bonds, and that any person interested may appear before the Council upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Council for review by interested persons during office hours of the Council. At such hearing, all objections and suggestions shall be heard and the Council shall take such action as it shall deem proper in the premises.

Passed on First Reading:            October 20, 1998

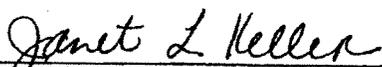
Passed on Second Reading:        October 27, 1998

Passed on Third Reading  
Following Public Hearing:        November 10, 1998

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
City Manager

ATTEST:

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

CERTIFICATION

Certified a true, correct and complete copy of an Ordinance duly enacted by the Council of the CITY OF FAIRMONT on November 10, 1998.

Dated this 30th day of December, 1998.

[SEAL]

Janet L. Keller  
City Clerk

CERTIFICATION

Certified a true, correct and complete copy of an Ordinance duly enacted by the Council of the CITY OF FAIRMONT on November 10, 1998.

Dated this 14th day of January, 1999.

[SEAL]

Janet L. Keller  
City Clerk

EXHIBIT A - BOND FORM

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. R- \_\_\_\_\_

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

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT  
(WEST VIRGINIA)  
WATER REVENUE BOND,  
SERIES 1998

INTEREST RATE

MATURITY DATE

BOND DATE

CUSIP NO.

REGISTERED OWNER: \_\_\_\_\_

PRINCIPAL AMOUNT: \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, West Virginia, a municipal corporation organized and existing under the laws of the State of West Virginia (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date specified above, or, if and to the extent that the Issuer shall default in the payment of interest

on any Interest Payment Date, then this Bond shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Bond surrendered for transfer or exchange shall be dated as of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per annum specified above, semiannually, on \_\_\_\_\_ 1 and \_\_\_\_\_ 1, in each year, beginning \_\_\_\_\_ 1, 199\_\_ (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the same meanings set forth in the hereinafter described Ordinance.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by \_\_\_\_\_, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each \_\_\_\_\_ 15 and \_\_\_\_\_ 15) or, in the event of a default in the payment of Bonds, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by \_\_\_\_\_, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least \$500,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal corporate trust office of the Paying Agent, in \_\_\_\_\_, West Virginia.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of \$ \_\_\_\_\_ designated "City of Fairmont (West Virginia) Water Revenue Bonds, Series 1998" (the "Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated \_\_\_\_\_, 199\_\_, the proceeds of which are to be used to (i) finance the costs of acquisition and construction of certain additions, betterments and improvements to the waterworks system of the Issuer; (ii) fund a reserve account for the Bonds; and (iii) pay costs of issuance hereof and related costs. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and an ordinance duly enacted by the council of the Issuer on \_\_\_\_\_, 199\_\_, as supplemented by a supplemental resolution duly adopted by the council on \_\_\_\_\_, 199\_\_ (collectively, the "Ordinance"), and is subject to all the terms and conditions of the Ordinance. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights,

obligations, duties and immunities of the Issuer, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the City Clerk in the City of Fairmont, West Virginia.

This Bond is additionally secured, but only to the extent described in the Statement of Insurance printed on the Bonds, by a policy of municipal bond insurance issued by \_\_\_\_\_.

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Ordinance and as set forth in the following lettered paragraphs:

(A) Optional Redemption. The Bonds maturing on or after \_\_\_\_\_, \_\_\_\_\_ are subject to redemption prior to maturity at the option of the Issuer on and after \_\_\_\_\_, \_\_\_\_\_, in whole or in part at any time, in such order of maturity as shall be designated to the Registrar by the Issuer and by lot within a maturity, at the following redemption prices (expressed as percentages of the principal amount of Bonds to be redeemed), plus interest accrued thereon to the date fixed for redemption:

<u>Period During Which Redeemed</u> <u>(Dates Inclusive)</u>	<u>Redemption</u> <u>Price</u>
---	-----------------------------------

(B) Mandatory Sinking Fund Redemption. The Bonds maturing \_\_\_\_\_, are subject to annual mandatory redemption prior to maturity by random selection on \_\_\_\_\_ of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

<u>Bonds Maturing</u>	
<u>Year ( )</u>	<u>Principal Amount</u>

Bonds Maturing

Year ( )

Principal Amount

\* Final Maturity

If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and Maturity Dates.

Notice of any redemption of this Bond, unless waived, shall be given by the Registrar on behalf of the Issuer by mailing an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Registrar. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the redemption price therein specified, and from and after such date (unless the Issuer shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of this Bond.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997, DATED JUNE 1, 1997, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$10,260,000 (THE "PRIOR BONDS").

The Bonds and the interest thereon are payable only from and are secured by the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Prior Bonds, and from moneys in the Series 1998 Bonds Sinking Fund and the Series 1998 Bonds

Reserve Account established under the Ordinance, and the unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose and to make the other payments required by the Ordinance. This Bond does not constitute an indebtedness of the Issuer within any constitutional or statutory provision or limitation, nor shall the Issuer be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 1998 Bonds Sinking Fund and the Series 1998 Bonds Reserve Account and unexpended proceeds of the Bonds. Under the Ordinance, the Issuer has covenanted and agreed to fix, establish and collect just and equitable rates or charges for the use of the services and facilities of the System and to revise the same from time to time as will always be sufficient to pay all operating expenses of the System and to leave a balance each year equal to at least 120% of the maximum amount payable in any year for principal of and interest on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds, including the Prior 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 Ordinance. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds except for accrued interest thereon shall be applied solely to pay all costs of the Project, fund a reserve account for the Bonds and pay all costs of issuance of the Bonds, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the Registered Owners of the Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by said Issuer for the prompt payment of the principal of and interest on the Bonds of which this Bond is one.

This Bond, under the provisions of the Act is and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the Ordinance.

This Bond is, under the Act, exempt from all taxation by the State of West Virginia or any county, municipality or county commission, political subdivision or agency thereof.

This Bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

All provisions of the Ordinance, and the 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 FAIRMONT (WEST VIRGINIA) has caused this Bond to be signed by its Mayor and City Manager, and its corporate seal to be imprinted hereon and attested by its City Clerk, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

(Manual or Facsimile Signature)  
Mayor

(Manual or Facsimile Signature)  
City Manager

ATTEST:

(Manual or Facsimile Signature)  
City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the fully registered Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto is the complete text of the opinion of Steptoe & Johnson, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Bonds.

Dated: \_\_\_\_\_.

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

By \_\_\_\_\_  
Its Authorized Officer

ASSIGNMENT

Social Security or Other Identifying Number of Assignee

---

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers  
unto \_\_\_\_\_

\_\_\_\_\_

the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_

\_\_\_\_\_

to transfer the said Bond on the books kept for registration thereof with full power of  
substitution in the premises.

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

\_\_\_\_\_  
SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with  
the name as it appears upon the face of the within Bond in every particular, without alteration  
or any change whatever.

STATEMENT OF INSURANCE

10/19/98  
268460/98001

CITY OF FAIRMONT  
(WEST VIRGINIA)

WATER REVENUE BONDS, SERIES 1998  
and  
WATER REVENUE BONDS, SERIES 1999

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO AMOUNT, MATURITIES, INTEREST RATES, REDEMPTION PROVISIONS, PURCHASE PRICE AND OTHER DETAILS AS TO THE WATER REVENUE BONDS, SERIES 1998 AND SERIES 1999 OF THE CITY; AMENDING THE ORDINANCE TO REFLECT THE ISSUANCE OF THE BONDS IN TWO SERIES; AMENDING THE PARITY BOND PROVISIONS OF THE ORDINANCE FOR THE SERIES 1997 BONDS; AUTHORIZING AND APPROVING A BOND PURCHASE AGREEMENT, COMMITMENTS FOR BOND INSURANCE, AN OFFICIAL STATEMENT, CONTINUING DISCLOSURE AGREEMENTS AND OTHER INSTRUMENTS RELATING TO THE BONDS; IMPLEMENTING PROVISIONS REQUIRED AS A CONDITION TO OBTAINING MUNICIPAL BOND INSURANCE POLICIES INSURING THE BONDS FROM AMBAC ASSURANCE CORPORATION; APPOINTING A REGISTRAR, A PAYING AGENT, AND A DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the City of Fairmont (the "Issuer"), in the County of Marion, State of West Virginia, is a municipal corporation of said State, the governing body of which is this Council;

WHEREAS, this Council duly enacted on November 10, 1998, an ordinance (the "Ordinance") entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC

WATERWORKS SYSTEM OF THE CITY OF FAIRMONT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$31,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 1998; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ENACTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Ordinance;

WHEREAS, the Ordinance provided generally for the issuance of the Issuer's Water Revenue Bonds, Series 1998, (the "Series 1998 Bonds") in an aggregate principal amount not to exceed \$31,000,000 for the purposes of paying a portion of the costs of acquisition and construction of additions, betterments and improvements (the "Project") for the Issuer's water treatment and distribution system (the "System"); funding a reserve account for the Series 1998 Bonds; and paying costs of issuance thereof, all in accordance with Chapter 8, Article 19, of the West Virginia Code of 1931, as amended (the "Act");

WHEREAS, the Ordinance further provided, at Sections 3.10 and 6.17 thereof and elsewhere, that the exact principal amount of the Series 1998 Bonds to be sold and the dates, maturities, interest rates, redemption provisions, price and other terms of the Series 1998 Bonds should be established, that splitting of the issue into two or more series be provided for if desired, that investment securities constituting "Qualified Investments" be designated, that a Bond Insurer, a Registrar and Paying Agent be designated, that a Registrar Agreement be approved, that additional covenants and provisions relating to the Series 1998 Bonds be provided herein as may be required by any Bond Insurer as a condition to insuring such Series 1998 Bonds and that other matters pertaining to the Series 1998 Bonds be provided for by resolution of this Council upon receipt of a Bond Purchase Agreement acceptable to this Council;

WHEREAS, the Council has determined, as provided under the Ordinance, to issue the Bonds approved by the Ordinance in two series, being the City of Fairmont Water Revenue Bonds, Series 1998, in the aggregate principal amount of \$9,600,000 (hereinafter the "Series 1998 Bonds"), and the City of Fairmont Water Revenue Bonds, Series 1999, in the aggregate principal amount of \$19,945,000 (hereinafter the "Series 1999 Bonds", and collectively with the Series 1998 Bonds, the "Bonds").

WHEREAS, the Bonds are proposed to be purchased by Ferris, Baker Watts, Incorporated and Crews & Associates, Inc. (collectively, the "Original Purchaser"), pursuant to a Bond Purchase Agreement dated the date of adoption hereof (the "Bond Purchase Agreement");

WHEREAS, the Issuer has obtained commitments for Municipal Bond Insurance for the Bonds from Ambac Assurance Corporation (the "Bond Insurer") and has determined that it is advantageous for the Issuer to obtain such Municipal Bond Insurance Policies and provide herein for certain matters required by the Bond Insurer as a condition to issuing such Municipal Bond Insurance Policies;

WHEREAS, this Council deems it essential and desirable that this Resolution be adopted and that the Bond Purchase Agreement, the Continuing Disclosure Agreements and the Registrar Agreements hereinafter provided for be entered into by the Issuer, that the Official Statement relating to the Bonds, hereinafter described, be approved, that the date and price of the Bonds, the maturity dates and amounts, the redemption provisions, the interest rates, and the exact principal amounts of the Bonds be fixed hereby in the manner stated herein, that Qualified Investments be herein designated, that provisions required by the Bond Insurer as a condition to issuing its Municipal Bond Insurance Policies be provided herein, that certain provisions of the Ordinance be hereby amended and modified to reflect the issuance of the Bonds in two series and that other matters relating to the Bonds be herein provided for, all in accordance with said Ordinance;

NOW, THEREFORE, THE COUNCIL OF THE CITY OF FAIRMONT HEREBY RESOLVES:

Section 1. Pursuant to the Ordinance and the Act, this Resolution is adopted and there are hereby authorized and ordered to be issued the Bonds. The 1998 Bonds shall be dated December 15, 1998, upon original issuance, and the Series 1999 Bonds shall be dated January 1, 1999, upon original issuance. The Bonds shall be issued in the aggregate principal amount, bear interest payable semiannually on January 1 and July 1 of each year, commencing July 1, 1999, shall mature on July 1 in such years and shall have

such redemption provisions as are set forth in EXHIBIT A - SERIES 1998 BOND TERMS and EXHIBIT B - SERIES 1999 BOND TERMS, attached hereto and incorporated by reference herein. Except as otherwise set forth herein, all other provisions relating to the Bonds shall be as provided in the Ordinance, and the Bonds shall be in substantially the form provided in the Ordinance.

Section 2. The Bond Purchase Agreement between the Original Purchaser and the Issuer, dated the date of adoption of this resolution, substantially in the form submitted to this meeting, and the execution and delivery (in multiple counterparts) by the City Manager and the Mayor on this day of the Bond Purchase Agreement on behalf of the Issuer are hereby authorized, approved, and directed. The City Manager and the Mayor shall execute and deliver the Bond Purchase Agreement with such changes, insertions and omissions as may be approved by the City Manager and the Mayor. Execution of the Bond Purchase Agreement by the City Manager and the Mayor shall be conclusive evidence of any approval required by this Section, and authorization of any action required by the Bond Purchase Agreement relating to the issuance and sale of the Bonds, including the payment of all necessary fees and expenses in connection therewith. The price of the Series 1998 Bonds, pursuant to the Bond Purchase Agreement, shall be \$9,403,415.60 (\$9,600,000 par amount, less \$134,079.40 Original Issue Discount and less \$62,505.00 Underwriters' Discount), plus interest accrued from the date of the Series 1998 Bonds to the date of delivery thereof, expected to be on or about December 30, 1998. The price of the Series 1999 Bonds, pursuant to the Bond Purchase Agreement, shall be \$19,803,753.55 (\$19,945,000 par amount, less \$12,798.95 net Original Issue Discount and less \$128,447.50 Underwriters' Discount), plus interest accrued from the date of the Series 1999 Bonds to the date of delivery thereof, expected to be on or about January 14, 1999.

Section 3. The Continuing Disclosure Agreements of the Issuer, one for each series of Bonds, each to be dated the closing date of its applicable series, substantially in the form submitted to this meeting, and the execution and delivery (in multiple counterparts) by the City Manager thereof shall be and the same are hereby authorized, approved and directed. The City Manager shall execute and deliver the Continuing Disclosure Agreements with such changes, insertions and omissions as may be approved by the City Manager.

Section 4. The Official Statement dated the date of adoption of this resolution, to be substantially in the form of the Preliminary Official Statement described below (with such changes, insertions and omissions as may be necessary or advisable in the opinion of the City Manager and the Mayor), and the distribution of counterparts or copies thereof by the Original Purchaser are hereby approved. The City Manager and the Mayor shall execute and deliver the Official Statement with such changes, insertions and omissions as may be approved by the City Manager and the Mayor. The execution of the Official Statement by the City Manager and the Mayor shall be conclusive evidence of any approval required by this Section. The distribution by the Original Purchaser of the Preliminary

Official Statement dated December 8, 1998 (which is a "deemed final" official statement in accordance with SEC Rule 15c2-12), substantially in the form submitted to this meeting is hereby ratified and approved. The certificate of the Issuer relating to compliance with SEC Rule 15c2-12 and the execution and delivery thereof by the City Manager is hereby ratified and approved.

Section 5. The Registrar Agreements, one for each series of Bonds, each to be dated the closing date of its applicable series, by and between the Issuer and the Registrar designated herein, substantially in the forms submitted to this meeting, shall be and the same are hereby approved. The City Manager shall execute and deliver the Registrar Agreements with such changes, insertions and omissions as may be approved by the City Manager. The execution of the Registrar Agreements by the City Manager shall be conclusive evidence of any approval required by this Section.

Section 6. The Issuer does hereby determine that the Municipal Bond Insurance Policies offered by the Bond Insurer for each series of Bonds will result in an interest cost savings for the Issuer in excess of the premium to be paid by the Issuer for such Municipal Bond Insurance Policies, and accordingly hereby ratifies acceptance of the Commitments for Municipal Bond Insurance (the "Commitments"), dated December 7, 1998. The City Manager is hereby authorized and directed to execute the approval of the Commitments and deliver the same to the Bond Insurer. Execution of the Commitments shall be conclusive evidence of any approval required by this Section.

Section 7. Pursuant to the Commitments, and, as permitted by Section 6.17 of the Ordinance, the following covenants and provisions which are required by the Bond Insurer as a condition precedent to issuance of its Municipal Bond Insurance Policies are hereby set forth, such covenants and provisions to be supplemental and amendatory of, and controlling with respect to, the Ordinance and applicable to the Bonds:

Additional Definitions.

"Ambac Assurance" shall mean Ambac Assurance Corporation, a Wisconsin-domiciled stock insurance corporation.

"Municipal Bond Insurance Policies" shall mean, collectively, the municipal bond insurance policies issued by Ambac Assurance insuring the payment when due of the principal of and interest on the Bonds as provided therein.

"Defeasance Securities" means:

- (a) Cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in paragraph (b) below); or

(b) Direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America.

"Permitted Investments" means any of the following obligations or securities to the extent permitted by law, on which neither the Authority nor the Issuer is the obligor:

(a) Defeasance Securities;

(b) Obligations of any of the following federal agencies which obligations represent the full faith and credit of the United States of America, including:

- Export-Import Bank
- Farm Credit System Financial Assistance Corporation
- Rural Economic Community Development Administration (formerly the Farmers Home Administration)
- General Services Administration
- U.S. Maritime Administration
- Small Business Administration
- Government National Mortgage Association (GNMA)
- U.S. Department of Housing & Urban Development (PHA's)
- Federal Housing Administration
- Federal Financing Bank;

(c) Direct obligations of any of the following federal agencies which obligations are not fully guaranteed by the full faith and credit of the United States of America:

- Senior debt obligations rated "Aaa" by Moody's and "AAA" by S&P issued by the Federal National Mortgage Association (FNMA) or Federal Home Loan Mortgage Corporation (FHLMC)
- Obligations of the Resolution Funding Corporation (REFCORP)
- Senior debt obligations of the Federal Home Loan Bank System
- Senior debt obligations of other Government Sponsored Agencies approved by Ambac;

(d) U.S. dollar denominated deposit accounts, federal funds and banker's acceptances with domestic commercial banks which have a rating on their short term certificates of deposit on the date of purchase of "A-1" or "A-1+" by S&P and "P-1" by Moody's and maturing no more than 360 days after the date of purchase. (Ratings on holding companies are not considered as the rating of the bank.);

(e) Commercial paper which is rated at the time of purchase in the single highest classification, "A-1+" by S&P and "P-1" by Moody's and which matures not more than 270 days after the date of purchase;

(f) Investments in a money market fund rated "AAAm" or "Aam-G" or better by S&P;

(g) Pre-refunded Municipal Obligations defined as follows: Any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and

(i) which are rated, based on an irrevocable escrow account or fund (the "escrow"), in the highest rating category of S&P and Moody's or any successors thereto; or

(ii) (A) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or Defeasance Securities, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (B) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the

maturity date or dates specified in the irrevocable instructions referred to above, as appropriate;

(h) General obligations of States with a rating of at least "A2/A" or higher by both Moody's and S&P;

(i) Investment agreements approved in writing by Ambac Assurance Corporation [supported by appropriate opinions of counsel] with notice to S&P;

(j) Other forms of investments (including repurchase agreements) approved in writing by Ambac with notice to S&P; and

(k) As long as the Municipal Bond Insurance Policies are in effect, any other investments which are approved in advance by the Bond Insurer.

The value of the Permitted Investments, which shall be determined as of the end of each month, shall be calculated as follows:

- (1) As to investments the bid and asked prices of which are published on a regular basis in The Wall Street Journal (or, if not there, then in The New York Times): the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination;
- (2) As to investments the bid and asked prices of which are not published on a regular basis in The Wall Street Journal or The New York Times: the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the Trustee in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service;

- (3) As to certificates of deposit and bankers acceptances: the face amount thereof, plus accrued interest; and
- (4) As to any investment not specified above: the value thereof established by prior agreement between the Issuer, the Trustee and Bond Insurer.

Definition of "Outstanding".

The definition of "Outstanding" shall include the following:

Notwithstanding anything herein to the contrary, in the event that the principal and/or interest due on the Bonds shall be paid by Ambac Assurance Corporation pursuant to the Municipal Bond Insurance Policies, the Bonds shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Issuer, and the assignment and pledge of security under this Ordinance and all covenants, agreements and other obligations of the Issuer to the registered owners shall continue to exist and shall run to the benefit of Ambac Assurance, and Ambac Assurance shall be subrogated to the rights of such registered owners.

Bond Insurer Consent Provisions.

(A) Consent of Bond Insurer. Any provision of this Ordinance expressly recognizing or granting rights in or to Bond Insurer may not be amended in any manner which affects the rights of Bond Insurer hereunder without the prior written consent of Bond Insurer.

(B) Consent of Bond Insurer in Addition to Bondholder Consent. Unless otherwise provided in this Section, Bond Insurer's consent shall be required in addition to Bondholder consent, when required, for the following purposes: (i) execution and delivery of any supplemental Ordinance, or any amendment, supplement or change to or modification of the Loan Agreement; (ii) removal of the Paying Agent and selection and appointment of any successor paying agent; and (iii) initiation or approval of any action not described in (i) or (ii) above which requires Bondholder consent.

(C) Consent of Bond Insurer in the Event of Insolvency. Any reorganization or liquidation plan with respect to the Issuer must be acceptable to Bond Insurer. In the event of any reorganization or liquidation, Bond Insurer shall have the right to vote on behalf of all bondholders who hold bonds insured by Bond Insurer absent a default by Bond Insurer under the applicable Municipal Bond Insurance Policies insuring such Bonds.

(D) Consent of Bond Insurer Upon Default. Anything in this Ordinance to the contrary notwithstanding, upon the occurrence and continuance of an Event of Default as defined herein, Bond Insurer shall be entitled to control and direct the enforcement of all rights and remedies granted to the Bondholders or the Trustee for the benefit of the Bondholders under this Ordinance, including, without limitation: (i) the right to accelerate the principal of the Bonds as described in this Ordinance, and (ii) the right to annul any declaration of acceleration, and Bond Insurer shall also be entitled to approve all waivers of events of default.

Information to be Provided to Bond Insurer.

(A) While the Municipal Bond Insurance Policies are in effect, the Issuer shall furnish to Bond Insurer (to the attention of the SURVEILLANCE DEPARTMENT, unless otherwise indicated):

- (i) as soon as practicable after the filing thereof, a copy of any financial statement of the Issuer and a copy of any audit and annual report of the Issuer;
- (ii) a copy of any notice to be given to the registered owners of the Bonds, including, without limitation, notice of any redemption of or defeasance of Bonds, and any certificate rendered pursuant to this Ordinance relating to the security for the Bonds; and
- (iii) such additional information it may reasonably request.

(B) While the Municipal Bond Insurance Policies are in effect, the Issuer shall furnish to Bond Insurer (to the attention of the GENERAL COUNSEL OFFICE, unless otherwise indicated):

- (i) The Issuer shall notify Bond Insurer of any failure of the Issuer to provide relevant notices, certificates, etc; and
- (ii) Notwithstanding any other provision of this Ordinance, the Issuer shall immediately notify Bond Insurer if at any time there are insufficient moneys to make any payments

of principal and/or interest as required and immediately upon the occurrence of (i) any Event of Default hereunder.

(C) While the Municipal Bond Insurance Policies are in effect, the Issuer will permit Bond Insurer to discuss the affairs, finances and accounts of the Issuer or any information Bond Insurer may reasonably request regarding the security for the Bonds with appropriate officers of the Issuer. The Issuer will permit Bond Insurer to have access to the Project and have access to and to make copies of all books and records relating to the Bonds at any reasonable time.

(D) While the Municipal Bond Insurance Policies are in effect, the Bond Insurer shall have the right to direct an accounting at the Issuer's expense, and the Issuer's failure to comply with such direction within thirty (30) days after receipt of written notice of the direction from Bond Insurer shall be deemed a default hereunder, provided, however, that if compliance cannot occur within such period, then such period will be extended so long as compliance is begun within such period and diligently pursued, but only if such extension would not materially adversely affect the interests of any registered owner of the Bonds.

(E) To the extent that the Issuer has entered into a continuing disclosure agreement with respect to the Bonds, Bond Insurer shall be included as party to be notified.

Payment Procedure Pursuant to the Municipal Bond Insurance Policies.

As long as the Municipal Bond Insurance Policies shall be in full force and effect, the Issuer and the Paying Agent agree to comply with the following provisions:

(A) At least one (1) day prior to all Interest Payment Dates, the Paying Agent will determine whether there will be sufficient funds in the Funds and Accounts to pay the principal of or interest on the Bonds on such Interest Payment Date. If the Paying Agent determines that there will be insufficient funds in such Funds or Accounts, the Paying Agent shall so notify Bond Insurer. Such notice shall specify the amount of the anticipated deficiency, the Bonds to which such deficiency is applicable and whether such Bonds will be deficient as to principal or interest, or both. If the Paying Agent has not so notified Bond Insurer at least one (1) day prior to an Interest Payment Date, Bond Insurer will make payments of principal or interest due on the Bonds on or before the first (1st) day next following the date on which Bond Insurer shall have received notice of nonpayment from the Paying Agent.

(B) The Paying Agent shall, after giving notice to Bond Insurer as provided in (a) above, make available to Bond Insurer and, at Bond Insurer's direction, to the United States Trust Company of New York, as insurance trustee for Bond Insurer or any successor insurance trustee (the "Insurance Trustee"), the registration books of the Issuer

maintained by the Paying Agent and all records relating to the Funds and Accounts maintained under this Ordinance.

(C) The Paying Agent shall provide Bond Insurer and the Insurance Trustee with a list of registered owners of Bonds entitled to receive principal or interest payments from Bond Insurer under the terms of the Municipal Bond Insurance Policies, and shall make arrangements with the Insurance Trustee (i) to mail checks or drafts to the registered owners of Bonds entitled to receive full or partial interest payments from Bond Insurer and (ii) to pay principal upon Bonds surrendered to the Insurance Trustee by the registered owners of Bonds entitled to receive full or partial principal payments from Bond Insurer.

(D) The Paying Agent shall, at the time it provides notice to Bond Insurer pursuant to (a) above, notify registered owners of Bonds entitled to receive the payment of principal or interest thereon from Bond Insurer (i) as to the fact of such entitlement, (ii) that Bond Insurer will remit to them all or a part of the interest payments next coming due upon proof of Bondholder entitlement to interest payments and delivery to the Insurance Trustee, in form satisfactory to the Insurance Trustee, of an appropriate assignment of the registered owner's right to payment, (iii) that should they be entitled to receive full payment of principal from Bond Insurer, they must surrender their Bonds (along with an appropriate instrument of assignment in form satisfactory to the Insurance Trustee to permit ownership of such Bonds to be registered in the name of Bond Insurer) for payment to the Insurance Trustee, and not the Paying Agent, and (iv) that should they be entitled to receive partial payment of principal from Bond Insurer, they must surrender their Bonds for payment thereon first to the Paying Agent, who shall note on such Bonds the portion of the principal paid by the Paying Agent, and then, along with an appropriate instrument of assignment in form satisfactory to the Insurance Trustee, to the Insurance Trustee, which will then pay the unpaid portion of principal.

(E) In the event that the Paying Agent has notice that any payment of principal of or interest on a Bond which has become Due for Payment and which is made to a Bondholder by or on behalf of the Issuer has been deemed a preferential transfer and theretofore recovered from its registered owner pursuant to the United States Bankruptcy Code by a trustee in bankruptcy in accordance with the final, nonappealable order of a court having competent jurisdiction, the Paying Agent shall, at the time Bond Insurer is notified pursuant to (a) above, notify all registered owners that in the event that any registered owner's payment is so recovered, such registered owner will be entitled to payment from Bond Insurer to the extent of such recovery if sufficient funds are not otherwise available, and the Paying Agent shall furnish to Bond Insurer its records evidencing the payments of principal of and interest on the Bonds which have been made by the Paying Agent and subsequently recovered from registered owners and the dates on which such payments were made.

(F) In addition to those rights granted Bond Insurer under this Ordinance, Bond Insurer shall, to the extent it makes payment of principal of or interest on Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Municipal Bond Insurance Policies, and to evidence such subrogation (i) in the case of subrogation as to claims for past due interest, the Paying Agent shall note Bond Insurer's rights as subrogee on the registration books of the Issuer maintained by the Paying Agent upon receipt from Bond Insurer of proof of the payment of interest thereon to the registered owners of the Bonds, and (ii) in the case of subrogation as to claims for past due principal, the Paying Agent shall note Bond Insurer's rights as subrogee on the registration books of the Issuer maintained by the Paying Agent upon surrender of the Bonds by the registered owners thereof together with proof of the payment of principal thereof.

Provisions Related to Paying Agent.

1. The Paying Agent may be removed at any time, at the request of Bond Insurer, for any breach of its duties as set forth herein.
2. Bond Insurer shall receive prior written notice of any Paying Agent resignation.
3. Any successor Paying Agent shall not be appointed unless Bond Insurer approves such successor in writing.
4. Notwithstanding any other provision of this Ordinance, in determining whether the rights of the Bondholders will be adversely affected by any action taken pursuant to the terms and provisions of this Ordinance, the Paying Agent shall consider the effect on the Bondholders as if there were no Municipal Bond Insurance Policies.
5. Notwithstanding any other provision of this Ordinance, no removal, resignation or termination of the Paying Agent shall take effect until a successor, acceptable to Bond Insurer shall be appointed.

Interested Parties.

(A) Bond Insurer As Third Party Beneficiary. To the extent that this Ordinance confers upon or gives or grants to Bond Insurer any right, remedy or claim under or by reason of this Ordinance, Bond Insurer is hereby explicitly recognized as being a third-party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder.

(B) Parties Interested Herein. Nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon, or to give or grant to, any person or entity, other than the Issuer, Bond Insurer, the Paying Agent and the registered owners of the Bonds, any right, remedy or claim under or by reason of this Ordinance, or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Ordinance, contained by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, Bond Insurer, the Paying Agent and the registered owners of the Bonds.

Defeasance Provision.

Notwithstanding anything herein to the contrary, in the event that the principal and/or interest due on the Bonds shall be paid by Bond Insurer pursuant to the Municipal Bond Insurance Policies, the Bonds shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Issuer, and the assignment and pledge of the Trust Estate and all covenants, agreements and other obligations of the Issuer to the registered owners shall continue to exist and shall run to the benefit of Bond Insurer, and Bond Insurer shall be subrogated to the rights of such registered owners.

Section 8. In order to reflect the issuance of the Bonds in two series, the Ordinance is modified and amended as follows:

A. Any references in the Ordinance to the Series 1998 Bonds shall be deemed to include the Series 1999 Bonds, and all covenants and provisions of the Ordinance related to the Series 1998 Bonds and the rights of the Holders of the Series 1998 Bonds shall be equally applicable to the Series 1999 Bonds and the rights of the Holders of the Series 1999 Bonds, where applicable.

B. Section 1.03 of the Ordinance is hereby supplemented and amended by the substitution or addition of the following definitions:

"Bonds" means, collectively, the Series 1998 Bonds, the Series 1999 Bonds, the Prior Bonds and any additional parity Bonds hereafter issued within the terms, restrictions and conditions contained herein.

"Redemption Accounts" means, collectively, the Series 1998 Bonds Redemption Account and the Series 1999 Bonds Redemption Account.

"Reserve Accounts" means, collectively, the Series 1998 Bonds Reserve Account and the Series 1999 Bonds Reserve Account.

"Reserve Requirements" means, collectively, the Series 1998 Bonds Reserve Requirement and the Series 1999 Bonds Reserve Requirement.

"Series 1998 Bonds Reserve Requirement" means, as of any date of calculation, the lesser of (i) 10% of the stated principal amount of the Series 1998 Bonds, (ii) maximum annual principal and interest requirements on the Series 1998 Bonds, or (iii) 125% of the average principal and interest requirements on the Series 1998 Bonds.

"Series 1999 Bonds" means the Water Revenue Bonds, Series 1999, of the Issuer, constituting a series of the bonds originally authorized to be issued pursuant to this Ordinance and the Supplemental Resolution.

"Series 1999 Bonds Redemption Account" means the Series 1999 Bonds Redemption Account created by Section 4.02 hereof.

"Series 1999 Bonds Reserve Account" means the Series 1999 Bonds Reserve Account created by Section 4.02 hereof.

"Series 1999 Bonds Reserve Requirement" means, as of any date of calculation, the lesser of (i) 10% of the stated principal amount of the Series 1999 Bonds, (ii) maximum annual principal and interest requirements on the Series 1999 Bonds, or (iii) 125% of the average principal and interest requirements on the Series 1999 Bonds.

"Series 1999 Bonds Sinking Fund" means the Series 1999 Bonds Sinking Fund created by Section 4.02 hereof.

"Sinking Funds" means, collectively, the Series 1998 Bonds Sinking Fund and the Series 1999 Bonds Sinking Fund.

C. The following Sections of the Ordinance are hereby amended to read as provided below:

Section 3.14. Disposition of Proceeds of Bonds. Upon the issuance and delivery of the Series 1998 Bonds, the Issuer shall forthwith deposit the proceeds thereof as follows:

A. All interest accrued on the Series 1998 Bonds from the date thereof to the date of delivery thereof shall be deposited in the Series 1998 Bonds Sinking Fund and applied to payment of interest on the Series 1998 Bonds at the first interest payment date.

B. An amount of the proceeds of the Series 1998 Bonds equal to the Series 1998 Bonds Reserve Requirement shall be remitted to the Bond Commission for deposit in the Series 1998 Bonds Reserve Account, provided that, to the extent the Series 1998 Bonds Reserve Requirement is satisfied in whole or in part from a reserve account letter of credit, surety bond or other credit facility, proceeds of the Series 1998 Bonds shall be deposited in the Series 1998 Bonds Reserve Account only to the extent needed to satisfy the balance of the Series 1998 Bonds Reserve Requirement.

C. An amount of the proceeds of the Series 1998 Bonds necessary to pay costs of issuance shall be deposited with the Depository Bank in the Costs of Issuance Fund and shall be drawn out, used and applied by the Issuer solely to pay costs of issuance of the Series 1998 Bonds at the written direction of the Issuer. All such costs of issuance shall be paid within 60 days of the Closing Date. Moneys not to be applied immediately to pay such costs of issuance may be invested in accordance with this Ordinance, subject however, to applicable yield restrictions as may be in effect under the Code. If for any reason such proceeds, or any part thereof, are not necessary for, or are not applied to such purpose within 6 months after the Closing Date, such unapplied proceeds shall be transferred by the Issuer to the Series 1998 Bonds Redemption Account. All such proceeds shall constitute a trust fund for such purposes, and there is hereby created a lien upon such moneys until so applied in favor of the Holders of the Series 1998 Bonds.

D. The balance of the proceeds of the Series 1998 Bonds shall be deposited with the Depository Bank in the Construction Fund and shall be drawn out, used and applied by the Issuer solely to pay Costs of the Project at the written direction of the Issuer. Moneys not to be applied immediately to pay such Costs of the Project may be invested in accordance with this Ordinance, subject however, to applicable yield restrictions as may be in effect under the Code. All such proceeds shall constitute a trust fund for such purposes, and there is hereby created a lien upon such moneys until so applied in favor of the Holders of the Series 1998 Bonds.

Upon the issuance and delivery of the Series 1999 Bonds, the Issuer shall forthwith deposit the proceeds thereof as follows:

E. All interest accrued on the Series 1999 Bonds from the date thereof to the date of delivery thereof shall be deposited in the Series 1999 Bonds Sinking Fund and applied to payment of interest on the Series 1999 Bonds at the first interest payment date.

F. An amount of the proceeds of the Series 1999 Bonds equal to the Series 1999 Bonds Reserve Requirement shall be remitted to the Bond Commission for

deposit in the Series 1999 Bonds Reserve Account, provided that, to the extent the Series 1999 Bonds Reserve Requirement is satisfied in whole or in part from a reserve account letter of credit, surety bond or other credit facility, proceeds of the Series 1999 Bonds shall be deposited in the Series 1999 Bonds Reserve Account only to the extent needed to satisfy the balance of the Series 1999 Bonds Reserve Requirement.

G. An amount of the proceeds of the Series 1999 Bonds necessary to pay costs of issuance shall be deposited with the Depository Bank in the Costs of Issuance Fund and shall be drawn out, used and applied by the Issuer solely to pay costs of issuance of the Series 1999 Bonds at the written direction of the Issuer. All such costs of issuance shall be paid within 60 days of the Closing Date. Moneys not to be applied immediately to pay such costs of issuance may be invested in accordance with this Ordinance, subject however, to applicable yield restrictions as may be in effect under the Code. If for any reason such proceeds, or any part thereof, are not necessary for, or are not applied to such purpose within 6 months after the Closing Date, such unapplied proceeds shall be transferred by the Issuer to the Series 1999 Bonds Redemption Account. All such proceeds shall constitute a trust fund for such purposes, and there is hereby created a lien upon such moneys until so applied in favor of the Holders of the Series 1999 Bonds.

H. The balance of the proceeds of the Series 1999 Bonds shall be deposited with the Depository Bank in the Construction Fund and shall be drawn out, used and applied by the Issuer solely to pay Costs of the Project at the written direction of the Issuer. Moneys not to be applied immediately to pay such Costs of the Project may be invested in accordance with this Ordinance, subject however, to applicable yield restrictions as may be in effect under the Code. All such proceeds shall constitute a trust fund for such purposes, and there is hereby created a lien upon such moneys until so applied in favor of the Holders of the Series 1999 Bonds.

Section 4.02. Establishment of Funds and Accounts with Bond Commission. The following special funds or accounts are hereby created with (or continued if previously established by the Prior Ordinance) and shall be held by the Bond Commission separate and apart from all other funds or accounts of the Bond Commission and from each other:

- (1) Series 1997 Bonds Sinking Fund (established by Prior Ordinance);
- (2) Within the Series 1997 Bonds Sinking Fund, the Series 1997 Bonds Reserve Account (established by Prior Ordinance);

- (3) Within the Series 1997 Bonds Sinking Fund, the Series 1997 Bonds Redemption Account (established by Prior Ordinance);
- (4) Series 1998 Bonds Sinking Fund;
- (5) Within the Series 1998 Bonds Sinking Fund, the Series 1998 Bonds Reserve Account;
- (6) Within the Series 1998 Bonds Sinking Fund, the Series 1998 Bonds Redemption Account;
- (7) Series 1999 Bonds Sinking Fund;
- (8) Within the Series 1999 Bonds Sinking Fund, the Series 1999 Bonds Reserve Account; and
- (9) Within the Series 1999 Bonds Sinking Fund, the Series 1999 Bonds Redemption Account.

**Section 4.03. System Revenues; Flow of Funds.** A. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Ordinance 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, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission (i) for deposit in the Series 1997 A Bonds Sinking Fund, the amount required by the Prior Ordinance to pay the interest on and principal of the Prior Bonds; (ii) commencing 6 months prior to the first interest payment date of the Series 1998 Bonds, for deposit in the Series 1998 Bonds Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on the Series 1998 Bonds on the next ensuing semiannual interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1998 Bonds Sinking Fund and the next ensuing semiannual interest payment date is more or less than 6 months, then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date; provided further that, the initial amount required to be transferred from the Revenue Fund and deposited in the Series 1998 Bonds Sinking Fund shall be reduced by the amount of accrued interest on the Series 1998 Bonds deposited therein; (iii) commencing 6 months prior to the first interest payment date of the Series 1999 Bonds, for deposit in the Series 1999 Bonds Sinking Fund, a sum equal to 1/6th of the

amount of interest which will become due on the Series 1999 Bonds on the next ensuing semiannual interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1999 Bonds Sinking Fund and the next ensuing semiannual interest payment date is more or less than 6 months, then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date; provided further that, the initial amount required to be transferred from the Revenue Fund and deposited in the Series 1999 Bonds Sinking Fund shall be reduced by the amount of accrued interest on the Series 1999 Bonds deposited therein; (iv) commencing 12 months prior to the first principal payment date or mandatory Redemption Date of the Series 1998 Bonds, for deposit in the Series 1998 Bonds Sinking Fund and in the Series 1998 Bonds Redemption Account therein in the case of the Term Bonds which are to be redeemed, a sum equal to 1/12th of the amount of principal which will mature or be redeemed and become due on the Series 1998 Bonds on the next ensuing annual principal payment date or mandatory Redemption Date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1998 Bonds Sinking Fund and the next ensuing annual principal payment date or mandatory Redemption Date is more or less than 12 months, then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next ensuing annual principal payment date or mandatory Redemption Date, the required amount of principal coming due on such date; and (v) commencing 12 months prior to the first principal payment date or mandatory Redemption Date of the Series 1999 Bonds, for deposit in the Series 1999 Bonds Sinking Fund and in the Series 1999 Bonds Redemption Account therein in the case of the Term Bonds which are to be redeemed, a sum equal to 1/12th of the amount of principal which will mature or be redeemed and become due on the Series 1999 Bonds on the next ensuing annual principal payment date or mandatory Redemption Date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1999 Bonds Sinking Fund and the next ensuing annual principal payment date or mandatory Redemption Date is more or less than 12 months, then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next ensuing annual principal payment date or mandatory Redemption Date, the required amount of principal coming due on such date.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission (i) for deposit in the Series 1997 Bonds Reserve Account, the amount required by the Prior Ordinance; (ii) for deposit in the Series 1998 Bonds Reserve Account, an amount sufficient to remedy any decrease in value of the Series 1998 Bonds Reserve Account below the Series 1998 Bonds Reserve Requirement or any withdrawal from the Series 1998 Bonds Reserve Account, beginning with the first full calendar month following the date on which (a) the valuation of investments in the Series 1998 Bonds Reserve Account results in a determination that the amount of moneys and the value of the Qualified Investments deposited to the credit of the Series 1998 Bonds Reserve Account is less than the Series 1998 Bonds Reserve Requirement, or (b) any amount is withdrawn from the Series 1998 Bonds Reserve Account for deposit into

the Series 1998 Bonds Sinking Fund; and (iii) for deposit in the Series 1999 Bonds Reserve Account, an amount sufficient to remedy any decrease in value of the Series 1999 Bonds Reserve Account below the Series 1999 Bonds Reserve Requirement or any withdrawal from the Series 1999 Bonds Reserve Account, beginning with the first full calendar month following the date on which (a) the valuation of investments in the Series 1999 Bonds Reserve Account results in a determination that the amount of moneys and the value of the Qualified Investments deposited to the credit of the Series 1999 Bonds Reserve Account is less than the Series 1999 Bonds Reserve Requirement, or (b) any amount is withdrawn from the Series 1999 Bonds Reserve Account for deposit into the Series 1999 Bonds Sinking Fund. To the extent Gross Revenues and any other legally available funds are available therefor, the amounts so deposited shall be used to restore the amount of moneys on deposit in the Series 1998 Bonds Reserve Account and the Series 1999 Bonds Reserve Account to an amount equal to the Series 1998 Bonds Reserve Requirement and the Series 1999 Bonds Reserve Requirement, respectively, to the full extent that such Gross Revenues are available; provided however, that if the shortfall in the Series 1998 Bonds Reserve Account or the Series 1999 Bonds Reserve Account is due to a decrease in value of respective investments therein, such shortfall shall be replenished by not less than 6 equal monthly payments, and if such shortfall is due to a withdrawal from the Series 1998 Bonds Reserve Account or the Series 1999 Bonds Reserve Account, such shortfall shall be replenished by not less than 12 equal monthly payments, and provided further, that no payments shall be required to be made into the Series 1998 Bonds Reserve Account or the Series 1999 Bonds Reserve Account whenever and as long as the amounts on deposit therein shall be equal to the Series 1998 Bonds Reserve Requirement and the Series 1999 Bonds Reserve Requirement, respectively.

Amounts in the Series 1998 Bonds Reserve Account shall be used only for the purpose of making payments of principal of and interest on the Series 1998 Bonds when due, when amounts in the Series 1998 Bonds Sinking Fund are insufficient therefor and for no other purpose. Amounts in the Series 1999 Bonds Reserve Account shall be used only for the purpose of making payments of principal of and interest on the Series 1999 Bonds when due, when amounts in the Series 1999 Bonds Sinking Fund are insufficient therefor and for no other purpose.

(3) The Issuer shall next, each month, pay from the Revenue Fund the Operating Expenses of the System.

(4) The Issuer shall next, each month, from the moneys remaining in the Revenue Fund, transfer to the Depreciation Fund (as previously set forth in the Prior Ordinance and not in addition thereto), a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of any reserve account. All funds in the Depreciation Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Depreciation Fund for replacements, emergency repairs, improvements or extensions to the System; provided, that any

deficiencies in any reserve account (except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof) shall be promptly eliminated with moneys from the Depreciation Fund.

Moneys in the Series 1998 Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 1998 Bonds as the same shall become due. Moneys in the Series 1998 Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 1998 Bonds, as the same shall come due, when other moneys in the Series 1998 Bonds Sinking Fund are insufficient therefor, and for no other purpose except for permitted transfers to the Rebate Fund.

Moneys in the Series 1999 Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 1999 Bonds as the same shall become due. Moneys in the Series 1999 Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 1999 Bonds, as the same shall come due, when other moneys in the Series 1999 Bonds Sinking Fund are insufficient therefor, and for no other purpose except for permitted transfers to the Rebate Fund.

Except to the extent transferred to the Rebate Fund at the request of the Issuer, all investment earnings on moneys in the Series 1998 Bonds Sinking Fund and the Series 1998 Bonds Reserve Account shall be returned, not less than once each year, by the Bond Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Construction Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Series 1998 Bonds, and then to the next ensuing principal payment due thereon.

Except to the extent transferred to the Rebate Fund at the request of the Issuer, all investment earnings on moneys in the Series 1999 Bonds Sinking Fund and the Series 1999 Bonds Reserve Account shall be returned, not less than once each year, by the Bond Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Construction Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Series 1999 Bonds, and then to the next ensuing principal payment due thereon.

Except with respect to transfers to the Rebate Fund, any withdrawals from the Series 1998 Bonds Reserve Account which result in a reduction in the balance of the Series 1998 Bonds Reserve Account to below the Series 1998 Bonds Reserve Requirement and any withdrawals from the Series 1999 Bonds Reserve Account which result in a reduction in the balance of the Series 1999 Bonds Reserve Account to below the Series 1999

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

As and when additional Bonds ranking on a parity with the Bonds are issued, provision shall be made for additional payments into the respective sinking fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the appropriate reserve account in an amount equal to the maximum amount of principal and interest which will become due in any year for account of the Bonds of such series, including such additional parity Bonds.

The Issuer shall not be required to make any further payments into the Series 1998 Bonds Sinking Fund or the Series 1998 Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

The Issuer shall not be required to make any further payments into the Series 1999 Bonds Sinking Fund or the Series 1999 Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

Principal, interest or reserve payments, whether for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Prior Bonds, the Series 1998 Bonds and the Series 1999 Bonds, in accordance with the respective principal amounts then Outstanding.

The Bond Commission is hereby designated as the fiscal agent for the administration of the Series 1998 Bonds Sinking Fund, the Series 1998 Bonds Reserve Account, the Series 1998 Bonds Redemption Account, the Series 1999 Bonds Sinking Fund, the Series 1999 Bonds Reserve Account, and the Series 1999 Bonds Redemption Account created hereunder and all amounts required for said accounts shall be remitted to the Bond Commission from the Revenue Fund by the Issuer at the times provided herein.

The Issuer shall, on the first day of each month (if such day is not a business day, then the next succeeding business day), deposit with the Bond Commission the required principal, interest and reserve payments with respect to the Series 1998 Bonds and the Series 1999 Bonds, and all such payments shall be remitted to the Bond Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation.

Moneys in the Series 1998 Bonds Sinking Fund, the Series 1998 Bonds Reserve Account, the Series 1998 Bonds Redemption Account, the Series 1999 Bonds

Sinking Fund, the Series 1999 Bonds Reserve Account, and the Series 1999 Bonds Redemption Account shall be invested and reinvested by the Bond Commission in accordance with Section 8.01 hereof.

Except with respect to transfers to the Rebate Fund, the Series 1998 Bonds Sinking Fund, including the Series 1998 Bonds Reserve Account therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 1998 Bonds Outstanding under the conditions and restrictions hereinafter set forth.

Except with respect to transfers to the Rebate Fund, the Series 1999 Bonds Sinking Fund, including the Series 1999 Bonds Reserve Account therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 1999 Bonds Outstanding under the conditions and restrictions hereinafter set forth.

B. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in the Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into such funds during the following month or such other period as required by law, such excess shall be considered Surplus Revenues. Surplus Revenues may be used for any lawful purpose of the System.

C. The Issuer shall remit from the Revenue Fund to the Bond Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Bond 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 any charges and fees then due.

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

E. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 4.03; and the Gross Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

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

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

Section 6.03. Bonds Secured by Pledge of Gross Revenues; Lien Position with Respect to Prior Bonds. The payment of the debt service of all of the Series 1998 Bonds issued hereunder shall be secured forthwith equally and ratably with each other by a first lien on the Gross Revenues derived from the System, on a parity with the lien on the Gross Revenues in favor of the Holders of the Prior Bonds and the Series 1999 Bonds and all moneys in the Series 1998 Bonds Sinking Fund, including the Series 1998 Bonds Reserve Account therein. The payment of the debt service of all of the Series 1999 Bonds issued hereunder shall be secured forthwith equally and ratably with each other by a first lien on the Gross Revenues derived from the System, on a parity with the lien on the Gross Revenues in favor of the Holders of the Prior Bonds and the Series 1998 Bonds and all moneys in the Series 1999 Bonds Sinking Fund, including the Series 1999 Bonds Reserve Account therein. The Gross Revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Prior Bonds, the Series 1998 Bonds and the Series 1999 Bonds and to make the payments into all funds and accounts and all other payments provided for in this Ordinance, are hereby irrevocably pledged in the manner provided in this Ordinance to the payment of the principal of and interest on the Prior Bonds, the Series 1998 Bonds and the Series 1999 Bonds as the same become due and for the other purposes provided in this Ordinance.

Section 6.15. Statutory Mortgage Lien. For the further protection of the Holders of the Series 1998 Bonds and the Holders of the Series 1999 Bonds, a statutory mortgage lien upon the System for each series of Bonds is granted and created by the Act, which statutory mortgage liens are hereby recognized and declared to be valid and binding, shall take effect immediately upon the issuance of the Series 1998 Bonds and upon the issuance of the Series 1999 Bonds, respectively, and shall be on a parity with one another and with the statutory mortgage lien in favor of the Holders of the Prior Bonds.

D. The following language is hereby added to the Ordinance as a new Section 3.15:

Section 3.15. Disbursements From the Construction Fund. Payments for Costs of the Project shall be made monthly.

Disbursements from the Construction Fund, except for payment of costs of issuance of the Bonds in excess of the moneys available in the Costs of Issuance Fund which shall be made upon request of the Issuer, shall be made only after submission to the Depository Bank of a certificate, signed by an Authorized Officer, stating:

(A) That none of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made (except reimbursement to the Issuer for items previously paid by the Issuer);

(B) That each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;

(C) That each of such costs has been otherwise properly incurred; and

(D) That payment for each of the items proposed is then due and owing.

In case any contract provides for the retention of a portion of the contract price, the Depository Bank shall disburse from the Construction Fund only the net amount remaining after deduction of any such portion. All payments made from the Construction 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 Construction Fund.

Pending such application, moneys in the Construction Fund, including any accounts therein, shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

After completion of the Project, as certified by the Consulting Engineers, the Depository Bank shall transfer any moneys remaining in the Construction Fund to the Series 1998 Bonds Redemption Account and the Series 1999 Bonds Redemption Account, to be applied to redemption of the Series 1998 Bonds and the Series 1999 Bonds at the earliest redemption date thereof, to the extent feasible.

E. The Ordinance is hereby amended to add the form of the Series 1999 Bond attached hereto as EXHIBIT C - FORM OF SERIES 1999 BOND as Exhibit B to the Ordinance.

Section 9. The Issuer does hereby appoint and designate WesBanco Bank Wheeling, Wheeling, West Virginia, for the purpose of serving in the capacity of Registrar.

Section 10. The Issuer does hereby appoint and designate One Valley Bank, Inc., Fairmont, West Virginia, for the purpose of serving in the capacity of Depository Bank.

Section 11. The firm of Steptoe & Johnson, Clarksburg, West Virginia, is hereby appointed bond counsel to the Issuer in connection with the issuance of the Series 1998 Bonds and the Series 1999 Bonds.

Section 12. The Issuer does hereby appoint and designate the West Virginia Municipal Bond Commission, Charleston, West Virginia, for the purpose of serving in the capacity of Paying Agent.

Section 13. The notice addresses for the Registrar, Paying Agent, Depository Bank, Original Purchaser and Bond Insurer shall be as follows, except as otherwise specifically provided herein:

REGISTRAR

WesBanco Bank Wheeling  
One Bank Plaza  
Wheeling, West Virginia 26003  
Attention: Corporate Trust Department

DEPOSITORY BANK

One Valley Bank, Inc.  
120 Fairmont Avenue  
Fairmont, West Virginia 26554  
Attention: Corporate Trust Department

PAYING AGENT

West Virginia Municipal Bond Commission  
812 Quarrier Street, Suite 300  
Charleston, West Virginia 25301  
Attention: Executive Director

ORIGINAL PURCHASER

Ferris, Baker Watts, Incorporated  
170 Laidley Tower  
Charleston, West Virginia 25301  
Attention: Public Finance  
and  
Crews & Associates  
930 One Valley Square  
Charleston, West Virginia 25301  
Attention: Public Finance

BOND INSURER

AMBAC Assurance Corporation  
One State Street Plaza  
New York, New York 10004  
Attention: General Counsel Office

Section 14. The City Manager, Mayor and City Clerk are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Series 1998 Bond issue and the Series 1999 Bond issue to the end that the Series 1998 Bonds and the Series 1999 Bonds may be delivered on a timely basis to the Original Purchaser pursuant to the Bond Purchase Agreement.

Section 15. Under the provisions of the Act, and as provided in the Ordinance and the Series 1998 Bonds, the Series 1998 Bonds and the interest thereon do not constitute indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, but shall be payable solely from the revenues derived from the operation of the System of the Issuer, the Series 1998 Bonds Reserve Account and the Depreciation Fund established by the Ordinance, and neither the credit nor the taxing power of the Issuer is pledged for, and no tax shall ever be levied for, payment of the Series 1998 Bonds and the interest thereon.

Section 16. Under the provisions of the Act, and as provided in the Ordinance and the Series 1999 Bonds, the Series 1999 Bonds and the interest thereon do not constitute indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, but shall be payable solely from the revenues derived from the operation of the System of the Issuer, the Series 1999 Bonds Reserve Account and the Depreciation Fund established by the Ordinance, and neither the credit nor the taxing power of the Issuer is pledged for, and no tax shall ever be levied for, payment of the Series 1999 Bonds and the interest thereon.

Section 17. The Ordinance of the City adopted on April 8, 1997, authorizing the issuance of the City's Waterworks Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of \$10,260,000 (the "Prior Bonds"), is, with the prior written consent of the municipal bond insurer for the Prior Bonds which has been heretofore been obtained, hereby amended by the complete substitution and replacement of Section 6.08 Additional Parity Bonds with the following language:

Additional Parity Bonds. No additional parity Bonds, as in this section defined, payable out of the Revenues of the System shall be issued after the issuance of any Bonds pursuant to this Ordinance, except under the conditions and in the manner herein provided.

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

No such additional parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the City Clerk of the Issuer a written statement by Independent Accountants, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided, from the System during the Fiscal Year preceding the date of the actual issuance of such additional parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the three succeeding years after the date of issuance of such parity Bonds, shall not be less than 120% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest on the following:

- (1) The Series 1997 Bonds then Outstanding;
- (2) Any additional parity Bonds theretofore issued pursuant to the provisions contained in this Ordinance then Outstanding; and
- (3) The additional parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from any increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the issuance of such additional parity Bonds, provided that, in the event the implementation of such increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the issuance of such additional parity Bonds is, by the terms of the ordinance providing for such increase in rates, deferred pending completion of the acquisition and construction of any additions, betterments or improvements for the System, and further provided, that the debt service on such additional parity Bonds during such construction period is payable from proceeds of such additional parity Bonds deposited in the Sinking Fund held by the Bond Commission, the "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years" as that term is used in the computation provided in the above paragraph, may be assumed to mean "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years commencing on the date of completion of such acquisition and construction".

The Net Revenues actually derived from the System during the preceding Fiscal Year hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Accountants, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to issuance of such additional parity Bonds. For purposes of this test, the terms "Gross Revenues" and "Net Revenues" shall not include proceeds from the sale of capital assets.

The term "additional parity Bonds," as used in this section, shall be deemed to mean additional Bonds issued under the provisions and within the limitations of this section, payable from the Gross Revenues of the System on a parity with the Series 1997 Bonds, and all the covenants and other provisions of this Ordinance (except as to details of such additional parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Series 1997 Bonds and the Holders of any additional parity Bonds theretofore or subsequently issued from time to time within the limitations of and in compliance with this section. All the Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Gross Revenues of the System, and their source of and security for payment from the Gross Revenues, without preference of any Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Ordinance required for and on account of such additional parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Ordinance.

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

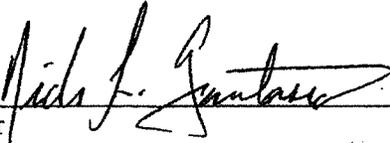
No additional parity Bonds shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in this Ordinance with respect to the Bonds then Outstanding, and any other payments provided for in this Ordinance, shall have been made in full as required to the date of issuance of the additional parity Bonds.

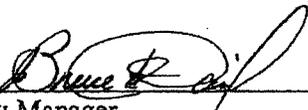
Section 18. The City Manager and other appropriate officers and employees of the Issuer are hereby authorized and directed to take all further actions necessary to cause the Series 1998 Bonds and the Series 1999 Bonds to be insured by the Bond Insurer or such other municipal bond insurance company as is acceptable to the Original Purchaser.

Section 19. This Resolution shall be effective immediately.

Adopted this 17th day of December, 1998.

[SEAL]

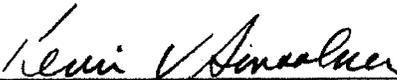
  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
City Manager

ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

CERTIFICATION

Certified a true, correct and complete copy of a Supplemental Resolution duly adopted by the City Council of the CITY OF FAIRMONT at a special meeting of the City Council held at 4:30 p.m., on December 17, 1998, pursuant to proper notice, at which meeting a quorum was present and acting throughout.

Dated this 30th day of December, 1998.

[SEAL]

Janet L. Keller  
City Clerk

CERTIFICATION

Certified a true, correct and complete copy of a Supplemental Resolution duly adopted by the City Council of the CITY OF FAIRMONT at a special meeting of the City Council held at 4:30 p.m., on December 17, 1998, pursuant to proper notice, at which meeting a quorum was present and acting throughout.

Dated this 14th day of January, 1999.

[SEAL]

Janet L. Keller  
City Clerk

12/29/98  
268460/98001

EXHIBIT A - SERIES 1998 BOND TERMS

\$9,600,000  
City of Fairmont (West Virginia)  
Water Revenue Bonds, Series 1998

<u>Maturity (July 1)</u>	<u>Amount</u>	<u>Interest Rate</u>	<u>Price or Yield</u>
2002	\$ 105,000.00	3.600%	3.600%
2003	\$ 100,000.00	3.700%	3.700%
2004	\$ 105,000.00	3.750%	3.750%
2005	\$ 110,000.00	3.850%	3.850%
2006	\$ 115,000.00	3.950%	3.950%
2007	\$ 120,000.00	4.000%	4.000%
2008	\$ 125,000.00	4.050%	4.050%
2009	\$ 130,000.00	4.100%	4.100%
2010	\$ 135,000.00	4.200%	4.200%
2011	\$ 140,000.00	4.250%	4.250%
2012	\$ 145,000.00	4.300%	4.300%
2013	\$ 145,000.00	4.350%	4.350%
2018	\$1,625,000.00	4.750%	4.750%
2023	\$3,055,000.00	4.900%	4.900%
2029	\$3,445,000.00	4.750%	5.000%

OPTIONAL REDEMPTION

The Series 1998 Bonds shall not be subject to optional redemption prior to January 1, 2009. The Series 1998 Bonds maturing on or after July 1, 2009, shall be redeemable prior to their stated dates of maturity at the option of the Issuer on or after January 1, 2009, in whole or in part at any time in such order of maturity as shall be designated to the Registrar by the Issuer and by lot within a maturity, at the redemption prices (expressed as percentages of the principal amount to be redeemed) set forth below, plus interest accrued to the date fixed for redemption:

<u>Period During Which Redeemed</u> <u>(both dates inclusive)</u>	<u>Redemption Price</u>
January 1, 2009 - December 31, 2009	102%
January 1, 2010 - December 31, 2010	101
January 1, 2011 and thereafter	100

If a Series 1998 Bond is called for redemption in part, the Series 1998 Bond shall be renumbered and exchanged for a Series 1998 Bond of the amount then outstanding, without charge to the Bondholder.

MANDATORY SINKING FUND REDEMPTION

The Bonds maturing July 1, 2018, July 1, 2023 and July 1, 2029, are subject to annual mandatory redemption prior to maturity by random selection on July 1 of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

Series 1998 Bonds Maturing July 1, 2018

<u>Year (July 1)</u>	<u>Principal Amount</u>
2014	\$295,000
2015	310,000
2016	325,000
2017	340,000
2018*	355,000

Series 1998 Bonds Maturing July 1, 2023

<u>Year (July 1)</u>	<u>Principal Amount</u>
2019	\$375,000
2020	695,000
2021	675,000
2022	660,000
2023*	650,000

Series 1998 Bonds Maturing July 1, 2029

<u>Year (July 1)</u>	<u>Principal Amount</u>
2024	\$635,000
2025	510,000
2026	535,000
2027	560,000
2028	590,000
2029*	615,000

\* Final Maturity

EXHIBIT B - SERIES 1999 BOND TERMS

\$19,945,000  
City of Fairmont (West Virginia)  
Water Revenue Bonds, Series 1999

<u>Maturity (July 1)</u>	<u>Amount</u>	<u>Interest Rate</u>	<u>Price or Yield</u>
2015	\$1,825,000.00	5.250%	4.750%
2017	\$2,020,000.00	5.250%	4.850%
2019	\$2,235,000.00	5.000%	4.900%
2022	\$3,000,000.00	5.250%	4.920%
2024	\$2,500,000.00	4.500%	5.050%
2029	\$8,365,000.00	5.000%	5.100%

OPTIONAL REDEMPTION

The Series 1999 Bonds shall not be subject to optional redemption prior to January 1, 2009. The Series 1999 Bonds maturing on or after July 1, 2009 (excepting the Series 1999 Bonds maturing July 1, 2022, which are not subject to optional redemption), shall be redeemable prior to their stated dates of maturity at the option of the Issuer on or after January 1, 2009, in whole or in part at any time in such order of maturity as shall be designated to the Registrar by the Issuer and by lot within a maturity, at the redemption prices (expressed as percentages of the principal amount to be redeemed) set forth below, plus interest accrued to the date fixed for redemption:

<u>Period During Which Redeemed</u> <u>(both dates inclusive)</u>	<u>Redemption Price</u>
January 1, 2009 - December 31, 2009	- 102%
January 1, 2010 - December 31, 2010	101
January 1, 2011 and thereafter	100

If a Series 1999 Bond is called for redemption in part, the Series 1999 Bond shall be renumbered and exchanged for a Series 1999 Bond of the amount then outstanding, without charge to the Bondholder.

MANDATORY SINKING FUND REDEMPTION

The Bonds maturing July 1, 2015, July 1, 2017, July 1, 2019, July 1, 2022, July 1, 2024 and July 1, 2029, are subject to annual mandatory redemption prior to maturity by random selection on July 1 of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

Series 1999 Bonds Maturing July 1, 2015

<u>Year (July 1)</u>	<u>Principal Amount</u>
2014	\$ 890,000
2015*	935,000

Series 1999 Bonds Maturing July 1, 2017

<u>Year (July 1)</u>	<u>Principal Amount</u>
2016	\$ 985,000
2017*	1,035,000

Series 1999 Bonds Maturing July 1, 2019

<u>Year (July 1)</u>	<u>Principal Amount</u>
2018	\$1,090,000
2019*	1,145,000

Series 1999 Bonds Maturing July 1, 2022

<u>Year (July 1)</u>	<u>Principal Amount</u>
2020	\$ 900,000
2021	1,000,000
2022*	1,100,000

Series 1999 Bonds Maturing July 1, 2024

<u>Year (July 1)</u>	<u>Principal Amount</u>
2023	\$1,200,000
2024*	1,300,000

Series 1999 Bonds Maturing July 1, 2029

<u>Year (July 1)</u>	<u>Principal Amount</u>
2025	\$1,515,000
2026	1,590,000
2027	1,670,000
2028	1,750,000
2029*	1,840,000

\* Final Maturity

EXHIBIT C - FORM OF SERIES 1999 BOND

STATEMENT OF INSURANCE

No. R- \_\_\_\_\_

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

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT  
(WEST VIRGINIA)  
WATER REVENUE BOND,  
SERIES 1999

INTEREST RATE      MATURITY DATE      BOND DATE      CUSIP NO.

REGISTERED OWNER: \_\_\_\_\_

PRINCIPAL AMOUNT: \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, West Virginia, a municipal corporation organized and existing under the laws of the State of West Virginia (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the

Bond Date specified above, or, if and to the extent that the Issuer shall default in the payment of interest on any Interest Payment Date, then this Bond shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Bond surrendered for transfer or exchange shall be dated as of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per annum specified above, semiannually, on \_\_\_\_\_ 1 and \_\_\_\_\_ 1, in each year, beginning \_\_\_\_\_ 1, 199\_\_ (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the same meanings set forth in the hereinafter described Ordinance.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by \_\_\_\_\_, \_\_\_\_\_, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each \_\_\_\_\_ 15 and \_\_\_\_\_ 15) or, in the event of a default in the payment of Bonds, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by \_\_\_\_\_, \_\_\_\_\_, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least \$500,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal corporate trust office of the Paying Agent, in \_\_\_\_\_, West Virginia.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of \$ \_\_\_\_\_ designated "City of Fairmont (West Virginia) Water Revenue Bonds, Series 1999" (the "Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated \_\_\_\_\_, 199\_\_, the proceeds of which are to be used to (i) finance the costs of acquisition and construction of certain additions, betterments and improvements to the waterworks system of the Issuer; (ii) fund a reserve account for the Bonds; and (iii) pay costs of issuance hereof and related costs. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and an ordinance duly enacted by the council of the Issuer on \_\_\_\_\_, 199\_\_, as supplemented by a supplemental resolution duly adopted by the council on \_\_\_\_\_, 199\_\_ (collectively, the "Ordinance"), and is subject to all the terms and conditions of the Ordinance. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the

Ordinance. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the Issuer, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the City Clerk in the City of Fairmont, West Virginia.

This Bond is additionally secured, but only to the extent described in the Statement of Insurance printed on the Bonds, by a policy of municipal bond insurance issued by \_\_\_\_\_.

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Ordinance and as set forth in the following lettered paragraphs:

(A) Optional Redemption. The Bonds maturing on or after \_\_\_\_\_, \_\_\_\_\_ are subject to redemption prior to maturity at the option of the Issuer on and after \_\_\_\_\_, \_\_\_\_\_, in whole or in part at any time, in such order of maturity as shall be designated to the Registrar by the Issuer and by lot within a maturity, at the following redemption prices (expressed as percentages of the principal amount of Bonds to be redeemed), plus interest accrued thereon to the date fixed for redemption:

Period During Which Redeemed _____ (Dates Inclusive)	Redemption _____ Price
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(B) Mandatory Sinking Fund Redemption. The Bonds maturing \_\_\_\_\_, are subject to annual mandatory redemption prior to maturity by random selection on \_\_\_\_\_ of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

_____ Bonds Maturing	
Year ( )	Principal Amount

Bonds Maturing

Year ( )

Principal Amount

\* Final Maturity

If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and Maturity Dates.

Notice of any redemption of this Bond, unless waived, shall be given by the Registrar on behalf of the Issuer by mailing an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Registrar. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the redemption price therein specified, and from and after such date (unless the Issuer shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of this Bond.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997, DATED JUNE 1, 1997, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$10,260,000 (THE "PRIOR BONDS") AND THE ISSUER'S WATER REVENUE BONDS, SERIES 1998, DATED DECEMBER 15, 1998, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$9,560,000 (THE "SERIES 1998 BONDS").

The Bonds and the interest thereon are payable only from and are secured by the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Series 1998 Bonds and the Prior Bonds, and from moneys in the Series 1999 Bonds Sinking Fund and the Series 1999 Bonds Reserve Account established under the Ordinance, and the unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose and to make the other payments required by the Ordinance. This Bond does not constitute an indebtedness of the Issuer within any constitutional or statutory provision or limitation, nor shall the Issuer be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 1999 Bonds Sinking Fund and the Series 1999 Bonds Reserve Account and unexpended proceeds of the Bonds. Under the Ordinance, the Issuer has covenanted and agreed to fix, establish and collect just and equitable rates or charges for the use of the services and facilities of the System and to revise the same from time to time as will always be sufficient to pay all operating expenses of the System and to leave a balance each year equal to at least 120% of the maximum amount payable in any year for principal of and interest on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds, including the Series 1998 Bonds and the Prior 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 Ordinance. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds except for accrued interest thereon shall be applied solely to pay all costs of the Project, fund a reserve account for the Bonds and pay all costs of issuance of the Bonds, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the Registered Owners of the Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by said Issuer for the prompt payment of the principal of and interest on the Bonds of which this Bond is one.

This Bond, under the provisions of the Act is and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of

West Virginia, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the Ordinance.

This Bond is, under the Act, exempt from all taxation by the State of West Virginia or any county, municipality or county commission, political subdivision or agency thereof.

This Bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

All provisions of the Ordinance, and the 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 FAIRMONT (WEST VIRGINIA) has caused this Bond to be signed by its Mayor and City Manager, and its corporate seal to be imprinted hereon and attested by its City Clerk, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

(Manual or Facsimile Signature)  
Mayor

(Manual or Facsimile Signature)  
City Manager

ATTEST:

(Manual or Facsimile Signature)  
City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the fully registered Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto is the complete text of the opinion of Steptoe & Johnson, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Bonds.

Dated: \_\_\_\_\_

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

By \_\_\_\_\_  
Its Authorized Officer

ASSIGNMENT

Social Security or Other Identifying Number of Assignee

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_

\_\_\_\_\_ the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_

\_\_\_\_\_ to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

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

\_\_\_\_\_  
SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

CITY OF FAIRMONT

WATER REVENUE BONDS, SERIES 2008 A  
(WEST VIRGINIA DWTRF PROGRAM)

~~ORDINANCE NO. \_\_\_\_\_~~

BOND ORDINANCE

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CITY OF FAIRMONT

BOND ORDINANCE

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATER SYSTEM OF THE CITY OF FAIRMONT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$3,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2008 A (WEST VIRGINIA DWTRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

ARTICLE I

**STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS**

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation"), is enacted pursuant to the provisions of Chapter 8, Article 19 and Chapter 16, Article 13C of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

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

A. The City of Fairmont (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Marion County of said State.

B. The Issuer presently owns and operates a public water system (the "System"). However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed certain extensions, additions, betterments and improvements to the System of the Issuer, consisting of providing the City of Mannington with a potable water supply through the construction of waterline along Route 250 from the City of Fairmont's existing Cleveland Avenue main to the City of Mannington's water storage tank, including a booster pump station, a master meter system and a SCADA system, together with all appurtenant facilities (collectively, the "Project"), in accordance with the plans

and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer.

C. The Issuer intends to permanently finance a portion of the costs of acquisition and construction of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority"), which administers the West Virginia Drinking Water Treatment Revolving Fund (the "West Virginia DWTRF Program") pursuant to the Act.

D. It is deemed necessary for the Issuer to issue its Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), in the total aggregate principal amount of not more than \$3,500,000 (the "Series 2008 A Bonds"), to be initially represented by a single bond, to permanently finance a portion of the costs of acquisition and construction of the Project. The remaining costs of the Project shall be funded from the sources set forth in Section 2.01 hereof. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest, if any, upon the Series 2008 A Bonds prior to and during acquisition and construction of the Project and for a period not exceeding 6 months after completion of acquisition and construction of the Project; amounts which may be deposited in the Series 2008 A 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 Authority, discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2008 A Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the acquisition or construction of the Project and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof, provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2008 A Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

E. The period of usefulness of the System after completion of the Project is not less than 40 years.

F. It is in the best interests of the Issuer that its Series 2008 A Bonds be sold to the Authority pursuant to the terms and provisions of a loan agreement by and between the Issuer and the Authority, on behalf of the West Virginia Bureau for Public Health (the "BPH"), in form satisfactory to the Issuer, the Authority and the BPH (the "Loan Agreement"), as shall be approved by a resolution supplemental hereto.

G. There are outstanding obligations of the Issuer which will rank on a parity with the Series 2008 A Bonds as to liens, pledge, source of and security for payment, being the Issuer's (1) Waterworks Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of \$10,260,000 (the "Series 1997 Bonds"); (2) Water Revenue Bonds, Series 1998, dated December 15, 1998, issued in the original aggregate principal amount of \$9,600,000 (the "Series 1998 Bonds"); and (3) Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the "Series 1999 Bonds"). The Series 1997 Bonds, the Series 1998 Bonds and the Series 1999 Bonds are hereinafter collectively called the "Prior Bonds."

The Series 2008 A Bonds shall be issued on a parity with the Prior Bonds with respect to liens, pledge and source of and security for payment and in all other respects. Prior to the issuance of the Series 2008 A Bonds, the Issuer will obtain a certificate of an

Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds have been met. Other than the Prior Bonds, there are no outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

H. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay the principal of and interest on the Bonds (as hereinafter defined) and payments into all funds and accounts and other payments provided for herein and in the Prior Ordinances (as hereinafter defined) and all costs of operation and maintenance of the System.

I. The Issuer has complied with all requirements of West Virginia law and the Loan Agreement relating to authorization of the acquisition, construction and operation of the Project and the System and issuance of the Series 2008 A Bonds, or will have so complied prior to issuance of any thereof, including, among other things, the approval of the Project and the financing thereof by the West Virginia Infrastructure and Jobs Development Council and the obtaining of a certificate of convenience and necessity from the Public Service Commission of West Virginia by final order.

J. The Project has been reviewed and determined to be technically and financially feasible by the West Virginia Infrastructure and Jobs Development Council pursuant to Chapter 31, Article 15A of the West Virginia Code of 1931, as amended.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2008 A Bonds by the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Bondholders of any and all of such Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds and by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

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

"Act" means, collectively, Chapter 8, Article 19 and Chapter 16, Article 13C the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

"Administrative Fee" means any administrative fee required to be paid pursuant to the Loan Agreement for the Series 2008 A Bonds.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2008 A Bonds, or any other agency, board or department of the State that succeeds to the functions of the Authority.

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

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

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

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

"Bonds" means, collectively, the Series 2008 A Bonds, the Prior Bonds and, where appropriate, any bonds on a parity therewith subsequently authorized to be issued hereunder or by another ordinance of the Issuer.

"Bond 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.

"BPH" means the West Virginia Bureau for Public Health, a division of the West Virginia Department of Health and Human Resources, or any successor thereto.

"City Clerk" means the City Clerk of the Issuer.

"City Manager" means the City Manager of the Issuer.

"Closing Date" means the date upon which there is an exchange of the Series 2008 A Bonds for all or a portion of the proceeds of the Series 2008 A Bonds from the Authority.

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

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

"Consulting Engineers" means Greenhorne & O'Mara, Inc., Fairmont, West Virginia, or any qualified engineer or firm of engineers, licensed by the State, that shall at any time hereafter be procured by the Issuer as Consulting Engineers for the System, or portion thereof, in accordance with Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended; provided however, that the Consulting Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions, or political subdivisions.

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

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

"Depreciation Fund" means the Depreciation Fund established by Prior Ordinances and continued hereby.

"DWTRF Regulations" means the DWTRF regulations set forth in the West Virginia Code of State Regulations, as amended from time to time.

"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.

"Grant" means any grants committed for the Project.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that "Gross Revenue" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualifies Investments, as hereinafter defined, purchased pursuant to Article 8.01 hereof) or any Tap Fees as hereinafter defined.

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

"Independent Certified Public Accountants" means any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

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

"Loan Agreement" means the loan agreement heretofore entered, or to be entered, into by and between the Issuer and the Authority on behalf of the BPH, providing for the purchase of the Series 2008 A Bonds, the form of which shall be approved, and the execution and delivery by the Issuer authorized and directed or ratified by the Supplemental Resolution.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 2008 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 2008 A Bonds Reserve Account.

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

"Operating Expenses" means the reasonable, proper and necessary costs of repair, operation and maintenance of the System, and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses (other than those capitalized as part of the Costs, the Administrative Fee, fees and expenses of the Authority, fiscal agents, the Depository Bank, Registrar and Paying Agent or Paying Agents,

payments to the pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principals; provided, that "Operating Expenses" does not include payments on account of principal of or redemption, if any, or interest on the Bonds, charges for depreciation, losses from the sale or other disposition of or any decrease in the value of the capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

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

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

"Paying Agent" means the Commission or such other entity or authority as may be designated as a Paying Agent for the Series 2008 A Bonds by the Issuer in the Supplemental Resolution with the written consent of the Authority and the BPH.

"Prior Bonds" means, collectively, the Series 1997 Bonds, the Series 1998 Bonds and the Series 1999 Bonds.

"Prior Ordinances" means, collectively, the ordinance of the Issuer authorizing the Prior Bonds.

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

"Qualified Investments" means and includes any of the following:

- (a) Government Obligations;
- (b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;
- (c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;

- (d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;
- (e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;
- (f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;
- (g) Repurchase agreements, or similar banking arrangements, fully secured by investments of the types described in paragraphs (a) through (e) above, or fully insured by FDIC with member banks of the Federal Reserve System or or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the holder of such repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;
- (h) The West Virginia "consolidated fund" managed by the West Virginia Board of

Treasury Investments pursuant to Chapter 12, Article 6C of the West Virginia Code of 1931, as amended including, without limitation, authorized pools of investments operated by such State Board of Investments; and

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

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

"Registrar" means the Bond Registrar.

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

"Reserve Accounts" means, collectively, the respective Reserve Accounts established for the Series 2008 A Bonds and the Prior Bonds.

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

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

"Series 1997 Bonds" means the Issuer's Waterworks Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of \$10,260,000.

"Series 1998 Bonds" means the Issuer's Water Revenue Bonds, Series 1998, dated December 15, 1998, issued in the original aggregate principal amount of \$9,600,000.

"Series 1999 Bonds" means the Issuer's Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000.

"Series 2008 A Bonds" means the Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), of the Issuer, authorized by this Ordinance.

"Series 2008 A Bonds Construction Trust Fund" means the Series 2008 A Bonds Construction Trust Fund established by Section 5.01 hereof.

"Series 2008 A Bonds Reserve Account" means the Series 2008 A Bonds Reserve Account established in the Series 2008 A Bonds Sinking Fund pursuant to Section 5.02 hereof.

"Series 2008 A Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2008 A Bonds in the then current or any succeeding year.

"Series 2008 A Bonds Sinking Fund" means the Series 2008 A Bonds Sinking Fund established by Section 5.02 hereof.

"Sinking Funds" means, collectively, the respective Sinking Funds established for the Series 2008 A Bonds and the Prior Bonds.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article "the," refers specifically to the supplemental resolution authorizing the sale of the Series 2008 A Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2008 A Bonds, and not so included may be included in another Supplemental Resolution.

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

"System" means the existing water system of the Issuer, as expanded and improved by the Project, and includes the complete waterworks system of the Issuer and all waterworks facilities owned by the Issuer and all facilities and other property of every nature, real or personal, now or hereafter owned, held or used in connection with the waterworks system; and shall also include any and all additions, extensions, improvements, properties or other facilities at any time acquired or constructed for the waterworks system after the completion of the Project.

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

"West Virginia DWTRF Program" means the West Virginia DWTRF Program established by the State, administered by BPH and funded by capitalization grants awarded to the State pursuant to the federal Safe Drinking Water Act, as amended, for the purpose of establishing and maintaining a permanent perpetual fund for the acquisition, construction and improvement of drinking water projects.

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

## ARTICLE II

### AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT

Section 2.01. Authorization of the Acquisition and Construction of the Project. There is hereby authorized and ordered the acquisition and construction of the Project at an estimated cost of not to exceed \$4,970,000 in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2008 A Bonds hereby authorized shall be applied as provided in Article VI hereof. The Issuer has received bids and will enter into contracts for the acquisition and construction of the Project in an amount compatible with the financing plan submitted to the BPH and the Authority.

The cost of the Project is estimated not to exceed \$4,970,000 of which not more than \$3,500,000 will be obtained from the proceeds of the 2008 A Bonds; \$1,025,000 will be obtained from a Small Cities Block Grant; and approximately \$1,195,000 will be obtained from a grant from the West Virginia Infrastructure Fund.

### ARTICLE III

#### **AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT**

Section 3.01. Authorization of Bonds. For the purposes of paying Costs of the Project not otherwise provided for and paying certain costs of issuance and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued the negotiable Series 2008 A Bonds of the Issuer. The Series 2008 A Bonds shall be issued as a single bond, designated "Water Revenue Bond, Series 2008 A (West Virginia DWTRF Program)", in the principal amount of not more than \$3,500,000, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2008 A Bonds remaining after funding of the Series 2008 A Bonds Reserve Account (if funded from Bond proceeds) and capitalizing interest on the Series 2008 A Bonds, if any, shall be deposited in or credited to the Series 2008 A Bonds Construction Trust Fund established by Section 5.01 hereof.

Section 3.02. Terms of Bonds. The Series 2008 A 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 on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the Loan Agreement. The Series 2008 A Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest, if any, on the Series 2008 A Bonds shall be paid by check or draft of the Paying Agent or its agent, mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2008 A Bonds shall initially be issued in the form of a single bond, fully registered to the Authority, with a debt service schedule attached, representing the aggregate principal amount of the Series 2008 A Bonds, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 2008 A Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. Such Bonds shall be dated and shall have such terms as specified in a Supplemental Resolution.

Section 3.03. Execution of Bonds. The Series 2008 A Bonds shall be executed in the name of the Issuer by the Mayor and the City Manager, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the City Clerk. In case any one or more of the officers who shall have signed or sealed the Series 2008 A Bonds shall cease to be such officer of the Issuer before the Series 2008 A Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Series 2008 A Bonds may be signed and sealed on behalf of the Issuer

by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No Series 2008 A Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 hereof, shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 2008 A Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2008 A Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting the Series 2008 A Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 2008 A Bonds remain outstanding, the Issuer, through the Bond Registrar or its agent, shall keep and maintain books for the registration and transfer of such Bonds.

The registered Series 2008 A Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney.

In all cases in which the privilege of exchanging Series 2008 A Bonds or transferring the registered Series 2008 A Bonds are exercised, all Series 2008 A Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 2008 A Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Series 2008 A Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of Series 2008 A Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 2008 A Bonds or, in the case of any proposed redemption of Series 2008 A Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2008 A Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and

deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 2008 A Bonds shall not, in any event, be or constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Gross Revenues derived from the operation of the System as herein provided. No holder or holders of the Series 2008 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2008 A Bonds or the interest thereon.

Section 3.08. Bonds Secured by Pledge of Gross Revenues; Lien Positions with respect to Prior Bonds. The payment of the debt service of all Series 2008 A Bonds shall be secured by a first lien on the Gross Revenues derived from the System, on a parity with the Prior Bonds. The Gross Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2008 A Bonds and the Prior Bonds and to make all other payments hereinafter set forth, are hereby irrevocably pledged to such payments as they become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 2008 A Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2008 A Bonds to the original purchasers upon receipt of the documents set forth below:

- A. If other than the Authority, a list of the names in which the Series 2008 A Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;
- B. A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2008 A Bonds to the original purchasers;
- C. An executed and certified copy of the Bond Legislation;
- D. An executed copy of the Loan Agreement; and
- E. The unqualified approving opinion of bond counsel on the Series 2008 A Bonds.

Section 3.10. Form of Series 2008 A Bonds. The text of the Series 2008 A Bonds shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

(FORM OF SERIES 2008 A BOND)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT  
WATER REVENUE BONDS, SERIES 2008 A  
(WEST VIRGINIA DWTRF PROGRAM)

No. AR- \_\_\_\_\_

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

KNOW ALL MEN BY THESE PRESENTS: That on this \_\_\_\_ day of \_\_\_\_\_, 2008, the CITY OF FAIRMONT, a municipal corporation and political subdivision of the State of West Virginia in Marion County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, 200\_\_, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference.

This bond shall not bear interest. The Administrative Fee (as defined in the hereinafter described Bond Legislation) shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year commencing \_\_\_\_\_ 1, 20 \_\_, as set forth on EXHIBIT B attached hereto

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

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 Bureau for Public Health (the "BPH"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority on behalf of the BPH, dated \_\_\_\_\_, 2008.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the waterworks system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. The existing public waterworks system of the Issuer, the Project, and any further extensions, additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 and Chapter 16, Article 13C of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Ordinance duly enacted by the Issuer on \_\_\_\_\_, 2008, and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 2008 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond

Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S (1) WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997, DATED JUNE 1, 1997, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$10,260,000 (THE "SERIES 1997 BONDS"); (2) WATER REVENUE BONDS, SERIES 1998, DATED DECEMBER 15, 1998, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$9,600,000 (THE "SERIES 1998 BONDS"); AND (3) WATER REVENUE BONDS, SERIES 1999, DATED JANUARY 1, 1999, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$19,945,000 (THE "SERIES 1999 BONDS"). THE SERIES 1997 BONDS, THE SERIES 1998 BONDS AND THE SERIES 1999 BONDS ARE HEREINAFTER COLLECTIVELY CALLED THE "PRIOR BONDS."

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the Holders of the Prior Bonds, and from monies in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2008 A Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest, if any, hereon, except from said special fund provided from the Gross Revenues, the monies in the Series 2008 A Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with, or subordinate to, the Bonds, including the Prior Bonds and to provide for the reasonable expenses of operation, repair and maintenance of the System, and; provided however, that so long as there exists in the Series 2008 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with, or subordinate to, the Bonds, including the Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

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

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

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of this Bond.

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

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the CITY OF FAIRMONT has caused this Bond to be signed by its Mayor and City Manager, and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated as of the date first written above.

[SEAL]

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Manager

ATTEST:

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

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2008 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: \_\_\_\_\_, 2008.

THE HUNTINGTON NATIONAL BANK,  
as Registrar

\_\_\_\_\_  
Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

EXHIBIT B

DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

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

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

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Loan Agreement. The Series 2008 A Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous ordinance or resolution, the Mayor and City Manager are specifically authorized and directed to execute the Loan Agreement in the form attached hereto as "Exhibit A" and made a part hereof, and the City Clerk is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed. The Loan Agreement and all schedules and exhibits attached thereto are hereby approved and ratified and incorporated into this Bond Legislation.

Section 3.12. Filing of Amended Schedule. Upon completion of the acquisition and construction of the Project, the Issuer will file with the BPH and the Authority a schedule for the Series 2008 A Bonds, the form of which will be provided by the Authority and the BPH, setting forth the actual costs of the Project and sources of funds therefor.

ARTICLE IV

[RESERVED]

ARTICLE V

FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

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

- (1) Revenue Fund (established by the Prior Ordinances);
- (2) Depreciation Fund (established by the Prior Ordinances);
- (3) Rebate Fund (established by the Prior Ordinances); and
- (4) Series 2008 A Bonds Construction Trust Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created with (or continued if previously established by the Prior Ordinances) and shall be held by the Commission separate and apart from all other funds or accounts of the Commission and the Issuer and from each other:

- (1) Series 1997 Sinking Fund (established by Prior Ordinance);
- (2) Series 1997 Bonds Reserve Account (established by Prior Ordinance);
- (3) Series 1997 Bonds Redemption Account (established by Prior Ordinance);
- (4) Series 1998 Bonds Sinking Fund (established by Prior Ordinance);
- (5) Series 1998 Bonds Reserve Account (established by Prior Ordinance);
- (6) Series 1998 Bonds Redemption Account (established by Prior Ordinance);
- (7) Series 1999 Bonds Sinking Fund (established by Prior Ordinance);
- (8) Series 1999 Reserve Account (established by Prior Ordinance);
- (9) Series 1999 Bonds Redemption Account (established by Prior Ordinance);
- (10) Series 2008 A Bonds Sinking Fund; and
- (11) Series 2008 A Bonds Reserve Account.

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

(1) The Issuer shall on the first day of each month, transfer from the Revenue Fund and remit to the Commission the interest payments on the respective Prior Bonds, as required by the Prior Ordinances.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously (i) remit to the Commission the principal payments, as required by the Prior Ordinances on the respective Prior Bonds; and (ii) remit to the Commission, commencing 3 months prior to the first date of payment of principal of the Series 2008 A Bonds, for deposit in the Series 2008 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2008 A Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2008 A Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously (i) remit to the Commission for deposit in the respective reserve accounts for the Prior Bonds, the amounts required by the Prior Ordinances to be deposited therein; and (ii) remit to the Commission, commencing 3 months prior to the first date of payment of principal of the Series 2008 A Bonds, if not fully funded upon issuance of the Series 2008 A Bonds, for deposit in the Series 2008 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2008 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2008 A Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2008 A Bonds Reserve Requirement.

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

(5) The Issuer shall next, on the first day of each month, from the monies remaining in the Revenue Fund, transfer to the Depreciation Fund, a sum equal to 2 1/2% of the Gross Revenues

each month (as previously set forth in the Prior Ordinances and not in addition thereto), exclusive of any payments for account of any Reserve Account. All funds in the Depreciation Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Depreciation Fund for replacements, repairs, improvements or extensions to the System; provided, that any deficiencies in any Reserve Account (except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof) shall be promptly eliminated with monies from the Depreciation Fund.

Monies in the Series 2008 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the Series 2008 A Bonds as the same shall become due. Monies in the Series 2008 A Bonds Reserve Account shall be used only for the purpose of paying principal of and interest, if any, on the Series 2008 A Bonds as the same shall come due, when other monies in the Series 2008 A Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on monies in the Series 2008 A Bonds Sinking Fund and the Series 2008 A Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Series 2008 A Bonds Construction Trust Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment, if any, due on the Series 2008 A Bonds and then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 2008 A Bonds Reserve Account which result in a reduction in the balance of the Series 2008 A Bonds Reserve Account to below the Series 2008 A Bonds Reserve Requirement shall be subsequently restored from the first Gross Revenues available after all required payments have been made in full in the order set forth above.

As and when additional Bonds ranking on a parity with the Series 2008 A Bonds are issued, provision shall be made for additional payments into the respective sinking funds sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective reserve accounts in an amount equal to the requirement therefor.

The Issuer shall not be required to make any further payments into the Series 2008 A Bonds Sinking Fund, or the Series 2008 A Bonds Reserve Account therein when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2008 A Bonds issued pursuant to this Bond Legislation then Outstanding and all interest, if any, to accrue until the maturity thereof.

Principal, interest or reserve payments, whether for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Prior Bonds and Series 2008 A Bonds in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2008 A Bonds Sinking Fund and the Series 2008 A Bonds Reserve Account created

hereunder, and all amounts required for said accounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited. If required by the Authority at anytime, the Issuer shall make the necessary arrangements whereby required payments into the Series 2008 A Bonds Sinking Fund and the Series 2008 A Bonds Reserve Account shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Monies in the Series 2008 A Bonds Sinking Fund and the Series 2008 A Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

B. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the Loan Agreement as Exhibit F, and submit a copy of said form along with a copy of its payment check to the Authority by the 5th day of such calendar month.

C. The Issuer shall on the first day of each month (if such day is not a business day, then the next succeeding business day) deposit with the Commission the required principal, interest and reserve payments with respect to the Series 2008 A Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation. The Issuer shall also 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 Administrative Fee as set forth in the Schedule Y attached to the Loan Agreement.

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, fees and expenses then due. In the case of payments to the Commission under this paragraph, the Issuer shall, if required by the Authority at anytime, make the necessary arrangements whereby such required payments shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required.

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

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 Gross Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

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

ARTICLE VI

APPLICATION OF BOND PROCEEDS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the monies received from the sale of the Series 2008 A Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2008 A Bonds, there shall first be deposited with the Commission in the Series 2008 A Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the Series 2008 A Bonds for the period commencing on the date of issuance of the Series 2008 A Bonds and ending 6 months after the estimated date of completion of construction of the Project.

B. Next, from the proceeds of the Series 2008 A Bonds, there shall be deposited with the Commission in the Series 2008 A Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Series 2008 A Bonds Reserve Account.

C. As the Issuer receives advances of the remaining monies derived from the sale of the Series 2008 A Bonds, such monies shall be deposited with the Depository Bank in the Series 2008 A Bonds Construction Trust Fund and applied solely to payment of the Costs of the Project in the manner set forth in Section 6.02 hereof and until so expended, are hereby pledged as additional security for the Series 2008 A Bonds.

D. After completion of construction of the Project, as certified by the Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 2008 A Bonds shall be expended as directed by the BPH.

Section 6.02. Disbursements of Bond Proceeds. On or before the Closing Date, the Issuer shall have delivered to the Authority and the BPH a report listing the specific purposes for which the proceeds of the Series 2008 A Bonds will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. Payments for the costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements of the proceeds of the Series 2008 A Bonds from the Series 2008 A Bonds Construction Trust Fund shall be made only after submission to, and approval from, the BPH of a certificate, signed by an Authorized Officer, stating that:

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

Pending such application, monies in the Series 2008 A Bonds Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

## ARTICLE VII

### ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 2008 A Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 2008 A Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2008 A Bonds or the interest thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2008 A Bonds shall not be nor constitute a corporate indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of any Series 2008 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2008 A Bonds or the interest, if any, thereon.

Section 7.03. Bonds Secured by Pledge of Gross Revenues; Lien Position with respect to Prior Bonds. The payment of the debt service of the Series 2008 A Bonds shall be secured by a first lien on the Gross Revenues derived from the System, on a parity with the lien on the Gross Revenues in favor of the Holders of the Prior Bonds. The Gross Revenues in an amount sufficient to pay the principal of and interest on the Prior Bonds and the Series 2008 A Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation are hereby irrevocably pledged, in the manner provided herein, to such payments as they become due, and for the other purposes provided in the Bond Legislation.

Section 7.04. Rates and Charges. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreement. The initial schedule of rates and charges for the services of the facilities of the System shall be as set forth in the water rate ordinance duly enacted on August 24, 2007, which rates are incorporated herein by reference as a part hereof.

So long as the Series 2008 A Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and in compliance with the Loan Agreement. In the event the schedule of rates, fees and charges initially established for the System in connection with the Series 2008 A Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement.

Section 7.05. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of or encumber the System or any part thereof, except as provided in the Prior Ordinances.

So long as the Series 2008 A Bonds are outstanding and except as otherwise required by law or with the written consent of the Authority and the BPH, the System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 2008 A Bonds, immediately be remitted to the Commission for deposit in the Series 2008 A Bonds Sinking Fund, and, with the written permission of the Authority, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to immediately apply such proceeds to the payment of principal of and interest on the Series 2008 A Bonds. Any balance remaining after the payment of all the Series 2008 A Bonds and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of \$10,000, the Issuer shall, in writing, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Revenue Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$10,000 but not in excess of \$50,000, the Issuer shall first, in writing, determine upon consultation with the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and the Governing Body may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding in accordance with the laws of the State. The proceeds derived from any such sale, lease or other disposition of such property, aggregating during such Fiscal Year in excess of \$10,000 and not in excess of \$50,000, shall be deposited in the Depreciation Fund.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, shall be in excess of \$50,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided for in Section 7.07 hereof, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2008 A Bonds and the Prior Bonds. All obligations issued by the Issuer after the issuance of the Series 2008 A Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Series 2008 A Bonds; provided, that no

such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts set forth herein have been made and are current at the time of the issuance of such subordinate obligations.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2008 A Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Series 2008 A Bonds and the interest thereon in this Bond Legislation, or upon the System or any part thereof.

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

Section 7.07. Parity Bonds. So long as the Prior Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Prior Ordinances shall be applicable. In addition, no additional Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2008 A Bonds pursuant to this Ordinance, without the prior written consent of the Authority and the BPH and without complying with the conditions and requirements herein provided (unless less restrictive than the provisions of the Prior Ordinances).

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

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

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

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from the improvements to be financed by such Parity Bonds and any increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the date of issuance of such Parity Bonds, and shall not exceed the amount to be stated in a

certificate of the Independent Certified Public Accountants, which shall be filed in the office of the City Clerk prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12 consecutive month period herein above referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Certified Public Accountants, as stated in a certificate, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which has expired (without successful appeal) prior to the issuance of such Parity Bonds.

All covenants and other provisions of this Ordinance (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Series 2008 A Bonds and the Holders of any Parity Bonds theretofore or subsequently issued from time to time within the limitations of and in compliance with this section. Bonds issued on a parity, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the revenues of the System and their source of and security for payment from said revenues; without preference of any bond of one series over any other bond of the same series. The Issuer shall comply fully with all the increased payments into the various funds and account created in this Ordinance required for and on account of such Parity Bonds, in addition to the payments required for the Bonds theretofore issued pursuant to this Ordinance.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior liens of the Series 2008 A Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to the lien on and source of and security for payment from such revenues, with the Series 2008 A Bonds.

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

Section 7.08. Books; Records and Audit. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the Authority and the BPH or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority and the BPH such documents and information as they may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

The Issuer shall permit the Authority and the BPH or their agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times following completion of construction of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time following commencement of construction.

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

The accounting system for the System shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by the Public Service Commission of West Virginia. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by the Issuer. The Issuer shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Issuer shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall file with the BPH and the Authority, or any other original purchaser of the Series 2008 A Bonds, and shall mail in each year to any Holder or Holders of the Series 2008 A Bonds, requesting the same, an annual report containing the following:

- (A) A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.
- (B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation and the status of all said funds and accounts.
- (C) The amount of any Bonds, notes or other obligations.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants (and, to the extent legally required, in compliance with the applicable OMB Circular, or any successor thereto, and the Single Audit Act, or any successor thereto), and shall mail upon request, and make available generally, the report of the Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of the Series 2008 A Bonds and shall submit said report to the Authority and the BPH, or any other original purchaser of the Series 2008 A Bonds. Such audit report submitted to the Authority and the BPH shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service requirements.

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

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

The Issuer shall provide the BPH with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as set forth in Exhibit E of the Loan Agreement for the Series 2008 A Bonds or as promulgated from time to time.

Section 7.09. Rates. So long as the Prior Bonds are outstanding, the Issuer will maintain rates as required in the Prior Ordinances. Prior to the issuance of the Series 2008 A Bonds, rates or charges for the use of the services and facilities of the System will be fixed and established, all in the manner and form required by law, and a copy of such rates and charges so fixed and established shall at all times be kept on file in the office of the City Clerk of the Issuer, which copy will be open to inspection by all interested parties. The schedule or schedules of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds and accounts created hereunder. Such schedule or schedules of rates and charges shall be revised from time to time, whenever necessary, so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule or schedules of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System, (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on the Series 2008 A Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with, or subordinate to, the Series 2008 A Bonds including the Prior Bonds; provided that, in the event that, an amount equal to or in excess of the Reserve Requirement is on deposit in the Series 2008 A Bonds Reserve Account and any reserve accounts for obligations on a parity with, or subordinate to, including the Prior Bonds are funded at least at the requirement therefor, such sum need only equal 110% of the maximum amount required in any year for payment of principal of and interest on the Series 2008 A Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with, or subordinate to, the Series 2008 A Bonds. In any event, the Issuer shall not reduce the rates or charges for services set forth in the rate ordinance described in Section 7.04.

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

Section 7.10. Operating Budget and Monthly Financial Report. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority and the BPH within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and

recommendation by a registered professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of a registered professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority, the BPH or to any Holder of any Bonds, who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her within 30 days of adoption thereof and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Holder of any Bonds or anyone acting for and on behalf of such Holder of any Bonds.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for 2 years following the completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the Loan Agreement, and forward a copy of such report to the Authority and the BPH by the 10th day of each month.

Section 7.11. Engineering Services and Operating Personnel. The Issuer will obtain a certificate of the Consulting Engineers in the form attached to the Loan Agreement, stating, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the Authority and the BPH, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the BPH 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 BPH 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 BPH, the Authority and the Issuer at the completion of construction that construction of the Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

The Issuer shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the DWTRF Regulations, to it within 60 days of the completion of the Project. The Issuer shall notify the BPH in writing of such receipt.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the DWTRF Regulations, to the BPH when the Project is 90% completed. The Issuer shall at all times provide operation and maintenance of the System in compliance with all State and federal standards.

The Issuer shall employ qualified operating personnel properly certified by the State before the Project is 50% complete and shall retain such a certified operator to operate the System during the entire term of the Loan Agreement. The Issuer shall notify the BPH in writing of the certified operator employed at the 50% completion stage.

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

Section 7.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 30 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid, when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services of the System until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law.

Section 7.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of either shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.15. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as the Series 2008 A Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Depreciation Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Depreciation Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the Authority, the prime contractor and all subcontractors as their respective interests may appear, in accordance with the Loan Agreement, during construction of the Project on a 100% basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Issuer, the contractors and subcontractors, as their interests may appear.

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than \$1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than \$500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

(3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT OR COMPLETION BONDS, such bonds to be in the amounts of 100% of the construction contract and to be required of each contractor contracting directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of construction of the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

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

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

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

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

for the faithful performance of such contract. The Issuer shall verify such bonds prior to commencement of construction.

The Issuer shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project; provided that the amounts and terms of such coverage are satisfactory to the Authority and the BPH. In the event the Loan Agreement so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the prime contractor and all subcontractors, as their interests may appear.

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

Section 7.17. Completion of Project; Permits and Orders. The Issuer will complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards. The Issuer shall take all steps to properly operate and maintain the System and make the necessary replacements due to normal wear and tear so long as the Series 2008 A Bonds are outstanding.

The Issuer will obtain all permits required by state and federal laws for the acquisition and construction of the Project and all orders and approvals from the West Virginia Public Service Commission and the West Virginia Infrastructure and Jobs Development Council necessary for the acquisition and construction of the Project and the operation of the System and all approvals for the issuance of the Series 2008 A Bonds required by State law, with all appeal periods having expired without successful appeal.

Section 7.18. Compliance with Loan Agreement and Law. The Issuer shall perform, satisfy and comply with all the terms and conditions of the Loan Agreement and the Act. Notwithstanding anything herein to the contrary, the Issuer will provide the BPH with copies of all documents submitted to the Authority. The Issuer agrees to comply with all applicable laws, rules and regulations issued by the Authority, the BPH or other state, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

Section 7.19. Statutory Mortgage Lien. For the further protection of the Holders of the Series 2008 A Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon delivery of the Series 2008 A Bonds and shall be on a parity with the statutory mortgage lien in favor of the Holders of the Prior Bonds.

Section 7.20. 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 7.21. Contracts; Change Orders; Public Releases. A. The Issuer shall, simultaneously with the delivery of the Series 2008 A Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

B. The Issuer shall submit all proposed change orders to the BPH for written approval. The Issuer shall obtain the written approval of the BPH before expending any proceeds of the Series 2008 A Bonds held in "contingency" as set forth in the schedule attached to the certificate of the Consulting Engineer. The Issuer shall also obtain the written approval of the BPH before expending any proceeds of the Series 2008 A Bonds made available due to bid or construction or project underruns.

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

## ARTICLE VIII

### INVESTMENT OF FUNDS

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

Any investment shall be held in and at all times deemed a part of the fund or account in which such monies were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank may make any and all investments permitted by this section through its own investment or trust department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

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

Section 8.02. Certificate as to Use of Proceeds. The Issuer shall deliver a certificate as to use of proceeds or other similar certificate to be prepared by nationally recognized bond counsel relating to restrictions on the use of proceeds of the Series 2008 A Bonds as a condition to issuance of the Series 2008 A Bonds. In addition, the Issuer covenants (i) to comply with the Code and all Regulations from time to time in effect and applicable to the Series 2008 A Bonds as may be necessary in order to maintain the status of the Series 2008 A Bonds as governmental bonds; (ii) that it shall not take, or permit or suffer to be taken, any action with respect to the Issuer's use of the proceeds of the Series 2008 A Bonds which would cause any bonds, the interest, if any, on which is exempt from federal income taxation under Section 103(a) of the Code, issued by the Authority or the BPH, as the case may be, from which the proceeds of the Series 2008 A Bonds are derived, to lose their status as tax-exempt bonds; and (iii) to take such action, or refrain from taking such action, as shall be deemed necessary by the Issuer, or requested by the Authority or the BPH, to ensure compliance with the covenants and agreements set forth in this Section, regardless of whether such actions may be contrary to any of the provisions of this Bond Legislation.

The Issuer shall annually furnish to the Authority information with respect to the Issuer's use of the proceeds of the Series 2008 A Bonds and any additional information requested by the Authority.

## ARTICLE IX

### DEFAULT AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 2008 A Bonds:

- (1) If default occurs in the due and punctual payment of the principal of or interest, if any, on the Series 2008 A Bonds; or
- (2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its respective part relating to the Series 2008 A Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2008 A Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Holder of a Bond; or
- (3) If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America; or
- (4) If default occurs with respect to the Prior Bonds or the Prior Ordinances.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of the Series 2008 A Bonds may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Series 2008 A Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Series 2008 A Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Series 2008 A Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Holders of the Series 2008 A Bonds shall be on a parity with the Holders of the Prior Bonds.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, the completion of the Project and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds, any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition

and construction of the Project on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

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

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

Such receiver, in the performance of the powers hereinabove conferred upon him or her or it, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver may be appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the completion of the Project and the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of the System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

ARTICLE X

PAYMENT OF BONDS

Section 10.01. Payment of Bonds. If the Issuer shall pay or there shall otherwise be paid, to the Holders of the Series 2008 A Bonds, the principal of and interest due or to become due thereon, if any, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Gross Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2008 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

ARTICLE XI  
MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2008 A Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2008 A Bonds, no material modification or amendment of this Ordinance, or of any ordinance, resolution or order amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2008 A Bonds, shall be made without the consent in writing of the Registered Owners of the Series 2008 A Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of the Series 2008 A Bonds or the rate of interest, if any, thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein pledged therefor without the consent of the Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Series 2008 A Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the excludability of interest, if any, on the Series 2008 A Bonds from gross income of the holders thereof.

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

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Series 2008 A Bonds.

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

Section 11.05. Notices. All notices to be sent to the Issuer, the Authority or the BPH shall be in writing and shall be deemed to have been given when delivered in person or mailed by first class mail, postage prepaid, addressed as follows:

ISSUER:

City of Fairmont  
Post Office Box 1428  
Fairmont, West Virginia 26555  
Attention: Mayor

AUTHORITY:

West Virginia Water Development Authority  
180 Association Drive  
Charleston, West Virginia 25311-1571  
Attention: Director

BPH:

West Virginia Bureau for Public Health  
815 Quarrier Street, Suite 418  
Charleston, West Virginia 25301  
Attention: Infrastructure and Capacity Development

All notices to be sent to the BPH hereunder, shall also be sent to the Authority.

Section 11.06. 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; provided that, in the event of any conflict between this Ordinance and the Prior Ordinances, the Prior Ordinances shall control (unless less restrictive), so long as the Prior Bonds are Outstanding.

Section 11.07. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the City Clerk and members of the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

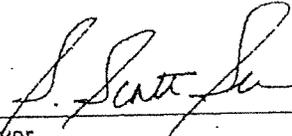
Section 11.08. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in the *Times West Virginian*, a newspaper published and of general circulation in the City of Fairmont, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2008 A Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Section 11.09. Effective Date. This Ordinance shall take effect at the expiration of 30 days after public hearing and final reading hereof.

Passed on First Reading: March 11, 2008

Passed on Second Reading: March 25, 2008

Passed on Final Reading  
Following Public  
Hearing: April 22, 2008

  
\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of the CITY OF FAIRMONT on the 22nd day of April, 2008.

Dated: June 26, 2008.

[SEAL]

Janet L. Keller  
City Clerk

02.12.08  
268460.00009

CITY OF FAIRMONT

Water Revenue Bonds, Series 2008 A  
(West Virginia DWTRF Program)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE, REDEMPTION PROVISION, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICE AND OTHER TERMS OF THE WATER REVENUE BONDS, SERIES 2008 A (WEST VIRGINIA DWTRF PROGRAM), OF THE CITY OF FAIRMONT; APPROVING AND RATIFYING THE LOAN AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the Council (the "Governing Body") of the City of Fairmont (the "Issuer") has duly and officially enacted a bond ordinance on April 22, 2008 (the "Bond Ordinance" or the "Ordinance"), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATER SYSTEM OF THE CITY OF FAIRMONT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$3,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2008 A (WEST VIRGINIA DWTRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

WHEREAS, the Bond Ordinance provides for the issuance of Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), of the Issuer (the "Series 2008 A Bonds" or the "Bonds"), in the aggregate principal amount not to exceed \$3,500,000 and has authorized the execution and delivery of the loan agreement relating to the Series 2008 A Bonds, by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Bureau for Public Health (the "BPH") (the "Loan Agreement"), all in accordance with Chapter 8, Article 19 and Chapter 16, Article 13C of the West Virginia Code of 1931, as amended (collectively, the "Act"); and in the Bond Ordinance it is provided that the form of the Loan Agreement and the exact principal amount, date, maturity date, redemption provision, interest rate, interest and principal payment dates, sale price and other terms of the Bonds should be established by a supplemental resolution pertaining to the Bonds; and that other matters relating to the Bonds be herein provided for;

WHEREAS, the Loan Agreement has been presented to the Issuer at this meeting;

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

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

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

Section 1. Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), of the Issuer, originally represented by a single Bond, numbered AR-1, in the principal amount of \$2,750,000. The Series 2008 A Bonds shall be dated the date of delivery thereof, shall finally mature September 1, 2039 and shall bear no interest. The principal of the Series 2008 A Bonds shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2009 to and including September 1, 2039 and in the amounts as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Series 2008 A Bonds. The Series 2008 A Bonds shall be subject to redemption upon the written consent of the Authority and the BPH, and upon payment of the redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the registered owner of the Series 2008 A Bonds. The

Issuer does hereby approve and shall pay the Administrative Fee equal to 1% of the principal amount of the Series 2008 A Bonds set forth in the "Schedule Y" attached to the Loan Agreement.

Section 2. All other provisions relating to the Bonds and the text of the Bonds shall be in substantially the form provided in the Bond Ordinance.

Section 3. The Issuer does hereby authorize, approve, ratify and accept the Loan Agreement, a copy of which is incorporated herein by reference, and the execution and delivery of the Loan Agreement by the Mayor and the City Manager, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed, ratified and approved. The Issuer hereby affirms all covenants and representations made in the Loan Agreement and in the applications to the BPH and the Authority. The price of the Bonds shall be 100% of par value, there being no interest accrued thereon, provided that, the proceeds of the Bonds shall be advanced from time to time as requisitioned by the Issuer.

Section 4. The Issuer does hereby appoint and designate The Huntington National Bank, Charleston, West Virginia, to serve as Registrar (the "Registrar") for the Bonds under the Bond Ordinance and does approve and accept the Registrar's Agreement to be dated the date of delivery of the Bonds, by and between the Issuer and the Registrar, and the execution and delivery of the Registrar's Agreement by the Mayor and the City Manager, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, approved and directed.

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

Section 6. The Issuer does hereby appoint and designate The Huntington National Bank, Fairmont, West Virginia, to serve as Depository Bank under the Bond Ordinance.

Section 7. Series 2008 A Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2008 A Bonds Sinking Fund, as capitalized interest.

Section 8. Series 2008 A Bonds proceeds in the amount of \$91,668 shall be deposited in the Series 2008 A Bonds Reserve Account.

Section 9. The balance of the proceeds of the Series 2008 A Bonds shall be deposited in or credited to the Series 2008 A Bonds Construction Trust Fund for payment of the costs of the Project, including, without limitation, costs of issuance of the Bonds and related costs.

Section 10. The Mayor, the City Manager and City Clerk are hereby authorized and directed to execute and deliver such other documents, agreements, instruments and certificates required or desirable in connection with the Bonds to be issued hereby and by the Bond Ordinance approved and provided for, to the end that the Bonds may be delivered on or about June 26, 2008, to the Authority pursuant to the Loan Agreement.

Section 11. The acquisition and construction of the Project and the financing thereof in part with proceeds of the Bonds 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 Issuer hereby determines that it is in the best interest of the Issuer to invest all moneys in the funds and accounts established by the Bond Ordinance held by the Depository Bank until expended, in repurchase agreements or time accounts, secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to take such actions as may be necessary to cause such moneys to be invested in such repurchase agreements or time accounts, until further directed in writing by the Issuer. Monies in the Series 2008 A Bonds Sinking Fund, including the Series 2008 A Bonds Reserve Account therein, shall be invested by the West Virginia Municipal Bond Commission in the West Virginia Board of Treasury Investments.

Section 13. The Issuer shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Internal Revenue Code of 1986, as amended, and the temporary and permanent regulations promulgated thereunder or under any predecessor thereto (the "Code"), by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code and Treasury Regulations promulgated or to be promulgated thereunder.

Section 14. The Issuer hereby approves and accepts all contracts relating to the financing, acquisition and construction of the Project.

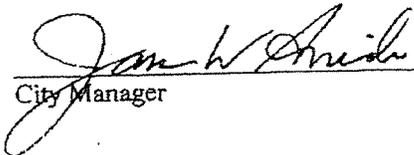
Section 15. This Supplemental Resolution shall be effective immediately following adoption hereof.

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Adopted this 24th day of June, 2008.

CITY OF FAIRMONT

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
City Manager

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the City of Fairmont on the 24th day of June, 2008.

Dated: June 26, 2008.

[SEAL]

Janet L. Keller  
City Clerk

06.10.08  
268460.00009

**SPECIMEN**

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT  
WATER REVENUE BONDS, SERIES 2008 A  
(WEST VIRGINIA DWTRF PROGRAM)

No. AR-1

\$2,750,000

KNOW ALL MEN BY THESE PRESENTS: That on this 26th day of June, 2008, the CITY OF FAIRMONT, a municipal corporation and political subdivision of the State of West Virginia in Marion County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of TWO MILLION SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS (\$2,750,000), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2009, to and including September 1, 2039, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference.

This bond shall not bear interest. The Administrative Fee (as defined in the hereinafter described Bond Legislation) shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year commencing December 1, 2009, as set forth on EXHIBIT B attached hereto.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

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 Bureau for Public Health (the "BPH"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority on behalf of the BPH, dated June 26, 2008.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the waterworks system of the Issuer (the "Project"); (ii) to fully fund the Series 2008 A Bonds Reserve Account; and (iii) to pay certain costs of issuance hereof and related costs. The existing public waterworks system of the Issuer, the Project, and any further extensions, additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of

West Virginia, including particularly Chapter 8, Article 19 and Chapter 16, Article 13C of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Ordinance duly enacted by the Issuer on April 22, 2008, and a Supplemental Resolution duly adopted by the Issuer on June 24, 2008 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S (1) WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997, DATED JUNE 1, 1997, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$10,260,000 (THE "SERIES 1997 BONDS"); (2) WATER REVENUE BONDS, SERIES 1998, DATED DECEMBER 15, 1998, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$9,600,000 (THE "SERIES 1998 BONDS"); AND (3) WATER REVENUE BONDS, SERIES 1999, DATED JANUARY 1, 1999, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$19,945,000 (THE "SERIES 1999 BONDS"). THE SERIES 1997 BONDS, THE SERIES 1998 BONDS AND THE SERIES 1999 BONDS ARE HEREINAFTER COLLECTIVELY CALLED THE "PRIOR BONDS."

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the Holders of the Prior Bonds, and from monies in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2008 A Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest, if any, hereon, except from said special fund provided from the Gross Revenues, the monies in the Series 2008 A Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with, or subordinate to, the Bonds, including the Prior Bonds and to provide for the reasonable expenses of operation, repair and maintenance of the System, and; provided however, that so long as there exists in the Series 2008 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with, or subordinate to, the Bonds, including the Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to

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

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

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

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

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of this Bond.

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

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the CITY OF FAIRMONT has caused this Bond to be signed by its Mayor and City Manager, and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated as of the date first written above.

[SEAL]

J. Scott  
Mayor

John W. Orvil  
City Manager

**SPECIMEN**

ATTEST:

Janet L. Keenan  
City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2008 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: June 26, 2008.

THE HUNTINGTON NATIONAL BANK,  
as Registrar

  
Authorized Officer

**SPECIMEN**

EXHIBIT A

RECORD OF ADVANCES

<u>Amount</u>	<u>Date</u>	<u>Amount</u>	<u>Date</u>
(1) \$91,668	June 26, 2008	(11) _____	_____
(2) _____	_____	(12) _____	_____
(3) _____	_____	(13) _____	_____
(4) _____	_____	(14) _____	_____
(5) _____	_____	(15) _____	_____
(6) _____	_____	(16) _____	_____
(7) _____	_____	(17) _____	_____
(8) _____	_____	(18) _____	_____
(9) _____	_____	(19) _____	_____
(10) _____	_____	(20) _____	_____
TOTAL: \$ _____			

EXHIBIT B

DEBT SERVICE SCHEDULE

\$2,750,000

City of Fairmont

30 Years, 0% Interest Rate, 1% Administrative Fee

Closing Date: June 26, 2008

### Debt Service Schedule

Date	Principal	Coupon	Total P+I
09/01/2008	-	-	-
12/01/2008	-	-	-
03/01/2009	-	-	-
06/01/2009	-	-	-
09/01/2009	-	-	-
12/01/2009	22,917.00	-	22,917.00
03/01/2010	22,917.00	-	22,917.00
06/01/2010	22,917.00	-	22,917.00
09/01/2010	22,917.00	-	22,917.00
12/01/2010	22,917.00	-	22,917.00
03/01/2011	22,917.00	-	22,917.00
06/01/2011	22,917.00	-	22,917.00
09/01/2011	22,917.00	-	22,917.00
12/01/2011	22,917.00	-	22,917.00
03/01/2012	22,917.00	-	22,917.00
06/01/2012	22,917.00	-	22,917.00
09/01/2012	22,917.00	-	22,917.00
12/01/2012	22,917.00	-	22,917.00
03/01/2013	22,917.00	-	22,917.00
06/01/2013	22,917.00	-	22,917.00
09/01/2013	22,917.00	-	22,917.00
12/01/2013	22,917.00	-	22,917.00
03/01/2014	22,917.00	-	22,917.00
06/01/2014	22,917.00	-	22,917.00
09/01/2014	22,917.00	-	22,917.00
12/01/2014	22,917.00	-	22,917.00
03/01/2015	22,917.00	-	22,917.00
06/01/2015	22,917.00	-	22,917.00
09/01/2015	22,917.00	-	22,917.00
12/01/2015	22,917.00	-	22,917.00
03/01/2016	22,917.00	-	22,917.00
06/01/2016	22,917.00	-	22,917.00
09/01/2016	22,917.00	-	22,917.00
12/01/2016	22,917.00	-	22,917.00
03/01/2017	22,917.00	-	22,917.00
06/01/2017	22,917.00	-	22,917.00
09/01/2017	22,917.00	-	22,917.00
12/01/2017	22,917.00	-	22,917.00
03/01/2018	22,917.00	-	22,917.00
06/01/2018	22,917.00	-	22,917.00
09/01/2018	22,917.00	-	22,917.00
12/01/2018	22,917.00	-	22,917.00
03/01/2019	22,917.00	-	22,917.00
06/01/2019	22,917.00	-	22,917.00

\$2,750,000

City of Fairmont

30 Years, 0% Interest Rate, 1% Administrative Fee

Closing Date: June 26, 2008

## Debt Service Schedule

Date	Principal	Coupon	Total P+I
09/01/2019	22,917.00	-	22,917.00
12/01/2019	22,917.00	-	22,917.00
03/01/2020	22,917.00	-	22,917.00
06/01/2020	22,917.00	-	22,917.00
09/01/2020	22,917.00	-	22,917.00
12/01/2020	22,917.00	-	22,917.00
03/01/2021	22,917.00	-	22,917.00
06/01/2021	22,917.00	-	22,917.00
09/01/2021	22,917.00	-	22,917.00
12/01/2021	22,917.00	-	22,917.00
03/01/2022	22,917.00	-	22,917.00
06/01/2022	22,917.00	-	22,917.00
09/01/2022	22,917.00	-	22,917.00
12/01/2022	22,917.00	-	22,917.00
03/01/2023	22,917.00	-	22,917.00
06/01/2023	22,917.00	-	22,917.00
09/01/2023	22,917.00	-	22,917.00
12/01/2023	22,917.00	-	22,917.00
03/01/2024	22,917.00	-	22,917.00
06/01/2024	22,917.00	-	22,917.00
09/01/2024	22,917.00	-	22,917.00
12/01/2024	22,917.00	-	22,917.00
03/01/2025	22,917.00	-	22,917.00
06/01/2025	22,917.00	-	22,917.00
09/01/2025	22,917.00	-	22,917.00
12/01/2025	22,917.00	-	22,917.00
03/01/2026	22,917.00	-	22,917.00
06/01/2026	22,917.00	-	22,917.00
09/01/2026	22,917.00	-	22,917.00
12/01/2026	22,917.00	-	22,917.00
03/01/2027	22,917.00	-	22,917.00
06/01/2027	22,917.00	-	22,917.00
09/01/2027	22,917.00	-	22,917.00
12/01/2027	22,917.00	-	22,917.00
03/01/2028	22,917.00	-	22,917.00
06/01/2028	22,917.00	-	22,917.00
09/01/2028	22,917.00	-	22,917.00
12/01/2028	22,917.00	-	22,917.00
03/01/2029	22,917.00	-	22,917.00
06/01/2029	22,917.00	-	22,917.00
09/01/2029	22,917.00	-	22,917.00
12/01/2029	22,916.00	-	22,916.00
03/01/2030	22,916.00	-	22,916.00
06/01/2030	22,916.00	-	22,916.00

\$2,750,000

City of Fairmont

30 Years, 0% Interest Rate, 1% Administrative Fee

Closing Date: June 26, 2008

## Debt Service Schedule

Date	Principal	Coupon	Total P+I
09/01/2030	22,916.00	-	22,916.00
12/01/2030	22,916.00	-	22,916.00
03/01/2031	22,916.00	-	22,916.00
06/01/2031	22,916.00	-	22,916.00
09/01/2031	22,916.00	-	22,916.00
12/01/2031	22,916.00	-	22,916.00
03/01/2032	22,916.00	-	22,916.00
06/01/2032	22,916.00	-	22,916.00
09/01/2032	22,916.00	-	22,916.00
12/01/2032	22,916.00	-	22,916.00
03/01/2033	22,916.00	-	22,916.00
06/01/2033	22,916.00	-	22,916.00
09/01/2033	22,916.00	-	22,916.00
12/01/2033	22,916.00	-	22,916.00
03/01/2034	22,916.00	-	22,916.00
06/01/2034	22,916.00	-	22,916.00
09/01/2034	22,916.00	-	22,916.00
12/01/2034	22,916.00	-	22,916.00
03/01/2035	22,916.00	-	22,916.00
06/01/2035	22,916.00	-	22,916.00
09/01/2035	22,916.00	-	22,916.00
12/01/2035	22,916.00	-	22,916.00
03/01/2036	22,916.00	-	22,916.00
06/01/2036	22,916.00	-	22,916.00
09/01/2036	22,916.00	-	22,916.00
12/01/2036	22,916.00	-	22,916.00
03/01/2037	22,916.00	-	22,916.00
06/01/2037	22,916.00	-	22,916.00
09/01/2037	22,916.00	-	22,916.00
12/01/2037	22,916.00	-	22,916.00
03/01/2038	22,916.00	-	22,916.00
06/01/2038	22,916.00	-	22,916.00
09/01/2038	22,916.00	-	22,916.00
12/01/2038	22,916.00	-	22,916.00
03/01/2039	22,916.00	-	22,916.00
06/01/2039	22,916.00	-	22,916.00
09/01/2039	22,916.00	-	22,916.00
<b>Total</b>	<b>\$2,750,000.00</b>	<b>-</b>	<b>\$2,750,000.00</b>

\*Plus \$3,466.12 one-percent Administrative Fee paid quarterly. Total fee paid over life of loan is \$415,934.40.

(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:

\_\_\_\_\_

**CITY OF FAIRMONT**

**WATER REVENUE BONDS, SERIES 2010 A;  
(WEST VIRGINIA DWTRF PROGRAM);  
WATER REVENUE BONDS, SERIES 2010 B  
(WEST VIRGINIA DWTRF PROGRAM/ARRA);  
WATER REVENUE BONDS, SERIES 2010 C  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY); AND  
WATER REVENUE BONDS, SERIES 2010 D  
(WEST VIRGINIA INFRASTRUCTURE FUND)**

**BOND ORDINANCE**

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Ordinance No. \_\_\_\_\_

CITY OF FAIRMONT

ORDINANCE AUTHORIZING THE REPEAL OF ORDINANCE 1460, AUTHORIZING PAYMENT OF THE WATERWORKS SYSTEM DESIGN BOND ANTICIPATION NOTES, SERIES 2009 A AND THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATERWORKS SYSTEM OF THE CITY OF FAIRMONT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF FAIRMONT OF NOT MORE THAN \$6,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2010 A (WEST VIRGINIA DWTRF PROGRAM); NOT MORE THAN \$6,000,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2010 B (WEST VIRGINIA DWTRF PROGRAM/ARRA); NOT MORE THAN \$4,300,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2010 C (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY); AND NOT MORE THAN \$4,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2010 D (WEST VIRGINIA INFRASTRUCTURE FUND) PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING LOAN AGREEMENTS RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

ARTICLE I

**STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS**

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 8, Article 19, Chapter 16, Article 13C, Chapter 31, Article 15A; and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

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

- A. The City of Fairmont (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Marion County of said State.
- B. The Issuer presently owns and operates a public waterworks system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed certain additions, betterments and improvements for the existing public waterworks system of the Issuer, consisting of construction of a water filtration plant corrective action program, Marion County, together with all necessary appurtenances (collectively, the "Project") (the existing public waterworks system of the Issuer, the Project and any further additions, betterments and improvements thereto are herein called the "System"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer.
- C. The Issuer has heretofore passed Ordinance No. 1460 on October 13, 2009, among other things authorizing Series 2009 Bonds to finance the Project and due to cost overruns incurred on October 15, 2009, bid opening, desire to repeal Ordinance No. 1460.
- D. The Issuer has heretofore temporarily financed the design and other preliminary costs of the Project by the issuance of the Waterworks System Design Bond Anticipation Notes, Series 2009 A, dated March 26, 2009, issued in the original aggregate principal amount of \$519,400 (the "Prior Notes").
- E. The Prior Notes were issued pursuant to an ordinance of the Issuer previously enacted for such purpose (such ordinance, as so amended and supplemented, is here called the "Prior Notes Ordinance").
- F. It is deemed necessary and desirable for the Issuer to pay in full the Prior Notes.
- G. The Issuer intends to pay in full the Prior Notes and permanently finance the costs of acquisition and construction of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority"), which administers the Authority's program, the West Virginia Drinking Water Treatment Revolving Fund for the Bureau for Public Health (the "BPH") and the West Virginia Infrastructure and Jobs Development Council (the "Council").
- H. It is deemed necessary for the Issuer to issue its Water Revenue Bonds, in the total aggregate principal amount of not more than \$16,700,000 in four or more series (collectively, the "Series 2010 Bonds") initially planned to be the (i) Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program) in the aggregate principal amount of not more than \$6,000,000 (the "Series 2010 A Bonds"); (ii) Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA) in the aggregate principal amount of not more than \$4,200,00, (the "Series 2010 B Bonds"); (iii) Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority) in the aggregate principal amount of not more than \$4,300,000 (the "Series 2010 C Bonds"); and Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund) in the

aggregate principal amount of not more than \$4,000,000 (the "Series 2010 D Bonds") (collectively, the "Series 2010 Bonds") to permanently finance the costs of acquisition and construction of the Project, pay the Prior Notes, and pay the costs of issuance thereof. Such costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest, if any, upon the Series 2010 Bonds prior to and during acquisition or construction and for a period not exceeding 6 months after completion of acquisition and construction of the Project; amounts which may be deposited in the Reserve Accounts (as hereinafter defined); the costs of paying the Prior Note in full; engineering and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, fees and expenses of the Authority including the Administrative Fee (as hereinafter defined) for the Series 2010 Bonds; discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2010 Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the acquisition or construction of the Project and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof, provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2010 Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

I. The period of usefulness of the System after completion of the Project is not less than 40 years.

J. It is in the best interests of the Issuer that its Series 2010 A Bonds and Series 2010 B Bonds be sold to the Authority pursuant to the terms and provisions of an ARRA Assistance Agreement (the "ARRA Assistance Agreement") by and between the Issuer and the Authority, on behalf of the West Virginia Bureau for Public Health (the "BPH"), that the Series 2010 C Bonds be sold to the Authority pursuant to the terms of a loan agreement by and between the Issuer and the Authority (the "WDA Loan Agreement"); and that the Series 2010 D Bonds be sold to the Authority pursuant to the terms of a loan agreement by and between the Issuer and the Authority on behalf of the West Virginia Infrastructure and Jobs Development Council (the "IJDC Loan Agreement") all in the form satisfactory to the respective parties (collectively, the WDA Loan Agreement, the IJDC Loan Agreement and ARRA Assistance Agreement are known as the "Loan Agreements") approved hereby if not previously approved by resolution of the Issuer.

K. Upon the payment of the Prior Notes, there are outstanding obligations of the Issuer which will rank on a parity with the Series 2010 Bonds as to liens, pledge, source of and security for payment, being the Issuer's (1) Waterworks Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of \$10,260,000 (the "Series 1997 Bonds"); (2) Water Revenue Bonds, Series 1998, dated December 15, 1998, issued in the original aggregate principal amount of \$9,600,000 (the "Series 1998 Bonds"); (3) Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000 (the "Series 1999 Bonds"); and (4) Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000 (the "Series 2008 A Bonds"). The Series 1997 Bonds, Series 1998 Bonds, Series 1999 Bonds and Series 2008 A Bonds are hereinafter collectively called the "Prior Bonds."

The Series 2010 Bonds shall be issued on a parity with the Prior Bonds with respect to

liens, pledge and source of and security for payment and in all other respects. Prior to the issuance of the Series 2010 Bonds, the Issuer will obtain a certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds have been met. Other than the Prior Bonds, there are no outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

L. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all costs of operation and maintenance of the System, the principal of and interest on the Series 2010 Bonds and the Prior Bonds and to make payments into all funds and accounts and other payments provided for herein.

M. The Issuer has complied with all requirements of West Virginia law and the Loan Agreements relating to authorization of the acquisition, construction and operation of the Project and the System and issuance of the Series 2010 Bonds, or will have so complied prior to issuance of any thereof, including, among other things, the approval of the Project and the financing thereof by the West Virginia Infrastructure and Jobs Development Council and the obtaining of a Certificate of Public Convenience and Necessity from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which will either have expired prior to the issuance of the Series 2010 Bonds or such final order will not be subject to appeal.

N. The Project has been reviewed and determined to be technically and financially feasible by the Council as required under Chapter 31, Article 15A of the West Virginia Code of 1931, as amended.

Section 1.03. Repeal Ordinance No. 1460: The Issuer hereby repeals in its entirety Ordinance No. 1460 adopted on October 13, 2009.

Section 1.04 Bond Legislation Constitutes Contract In consideration of the acceptance of the Series 2010 Bonds by the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Bondholders of any and all of such Series 2010 Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds and by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.05. Definitions. The following terms shall have the following meanings herein unless the context expressly requires otherwise:

“Act” means, collectively, Chapter 8, Article 19, Chapter 16, Article 13C, Chapter 31, Article 15A and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

“Administrative Fee” means the Administrative Fee required to be paid pursuant to the Loan Agreements for the 2010 Bonds.

"ARRA Assistance Agreement" means, the ARRA Assistance Agreement heretofore entered, or to be entered, into by and between the Issuer and the Authority, on behalf of the BPH, providing for the purchase of the Series 2010 A Bonds and Series 2010 B Bonds from the Issuer by the Authority, the form of which shall be approved, and the execution and delivery by the Issuer authorized and directed or ratified, by the Supplemental Resolution.

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

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

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

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

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

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

"Bond Year" means the 12-month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year, except that the first Bond Year shall begin on the Closing Date.

"BPH" means the West Virginia Bureau for Public Health, a division of the West Virginia Department of Health and Human Resources, or any successor thereto.

"Clerk" means the Clerk of the Issuer.

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

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

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

"Consulting Engineers" means Strand Associates, Inc., Madison, Wisconsin or any qualified engineer or firm of engineers, licensed by the State, that shall at any time hereafter be procured by the Issuer as Consulting Engineers for the System, or portion thereof, in accordance

with Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended; provided however, that the Consulting Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions, or political subdivisions.

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

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

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

"DWTRF Regulations" means the DWTRF regulations set forth in the West Virginia Code of State Regulations, as amended from time to time.

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

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

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

"Grants" means any grants committed to the Project.

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

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined, purchased pursuant to Article 8.01 hereof), or any Tap Fees, as hereinafter defined.

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

"Independent Certified Public Accountants" means any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

"Investment Property" means (A) any security (within the meaning of Section 165(g)(2)(A) or (B) of the Code), (B) any obligation, (C) any annuity contract, (D) any investment-

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

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

"IJDC Loan Agreement" means, the loan agreement heretofore entered, or to be entered into by and between the Issuer and the Authority on behalf of the Council, providing for the purchase of the Series 2010 D Bonds from the Issuer by the Authority, the form of which shall be approved, and the execution and delivery by the Issuer authorized and directed or ratified by the Supplemental Resolution.

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

"Loan Agreements" means collectively, the WDA Loan Agreement, the IJDC Loan Agreement and the ARRA Assistance Agreement.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 2010 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the respective Series 2010 Bonds Reserve Account.

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

"Nonpurpose Investment" means any Investment Property which is acquired with the gross proceeds or any other proceeds of the Series 2010 Bonds and is not acquired in order to carry out the governmental purpose of the Series 2010 Bonds.

"Operating Expenses" means the reasonable, proper and necessary costs of repair, operation and maintenance of the System, and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the Costs, the Administrative Fee, fees and expenses of the Authority, fiscal agents, the Depository Bank, the Registrar and Paying Agent (all as herein defined), 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 or Prior Bonds and as of any particular date, describes all Bonds or Prior Bonds theretofore and thereupon being authenticated and delivered except (i) any Bond or Prior Bond cancelled by the Bond Registrar or Registrar for the Prior Bonds, at or prior to said date; (ii) any Bond or Prior Bond, for the payment of which monies, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder, and set aside for such payment (whether upon or prior to maturity); (iii) any Bond deemed to have been paid as provided in Article X hereof; (iv) any Prior Bond deemed to have been paid; and (v) for purposes of consents or other action by a specified percentage of Bondholders, or holders of any Bonds or Prior Bonds registered to the Issuer.

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

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

“Prior Bonds” means the Series 1997 Bonds, Series 1998 Bonds, Series 1999 Bonds, and the Series 2008 A Bonds.

“Prior Notes” mean the Issuer’s Waterworks System Design Bond Anticipation Notes, Series 2009 A, dated March 26, 2009, issued in the original aggregate principal amount of \$519,400.

“Prior Notes Ordinance” means the ordinance of the Issuer, as supplemented, authorizing the Prior Notes.

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

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

“Project” means the Project as described in Section 1.02B hereof.

“Qualified Investments” means and includes any of the following, unless otherwise set forth in the Supplemental Resolution:

- (a) Government Obligations;
- (b) Government Obligations which have been stripped of their unmatured

interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;

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

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

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

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

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

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

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

“Registrar” means the Bond Registrar.

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

“Renewal and Replacement Fund” means the Depreciation Account created by the Prior Ordinance.

“Reserve Accounts” means, collectively, the reserve accounts established for the Prior Bonds and the Series 2010 Bonds.

“Reserve Requirement” means, collectively, the respective amounts required to be on deposit in any Reserve Account for the Prior Bonds, and the Series 2010 Bonds.

“Revenue Fund” means the Revenue Fund established by the Prior Ordinance.

“Series 1997 Bonds” means the Issuer’s Waterworks Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of \$10,260,000.

“Series 1998 Bonds” means the Issuer’s Water Revenue Bonds, Series 1998, dated December 15, 1998, issued in the original aggregate principal amount of \$9,600,000.

“Series 1999 Bonds” means the Issuer’s Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of \$19,945,000.

“Series 2008 A Bonds” means the Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the original aggregate principal amount of \$2,750,000.

“Series 2010 Bonds” means collectively the Series 2010 A Bonds, Series 2010 B Bonds, Series 2010 C Bonds, and Series 2010 D Bonds.

“Series 2010 A Bonds” means the Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), of the Issuer, authorized by this Bond Legislation.

“Series 2010 A Bonds Reserve Account” means the Series 2010 A Bonds Reserve Account established in Section 5.02 hereof.

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

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

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

“Series 2010 B Bonds” means the Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), of the Issuer, authorized by this Bond Legislation.

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

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

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

“Series 2010 C Bonds” means the Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), of the Issuer, authorized by this Bond Legislation.

“Series 2010 C Bonds Reserve Account” means the Series 2010 C Bonds Reserve Account established in Section 5.02 hereof.

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

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

“Series 2010 D Bonds” means the Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), of the Issuer, authorized by this Bond Legislation.

“Series 2010 D Bonds Reserve Account” means the Series 2010 D Bonds Reserve Account established in Section 5.02 hereof.

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

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

“Sinking Funds” means, collectively, the respective reserve accounts established for the Prior Bonds and the Series 2010 Bonds.

“State” means the State of West Virginia.

“Supplemental Resolution” means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article “the,” refers specifically to the supplemental resolution authorizing the sale of the Series 2010 Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with

respect to the Series 2010 Bonds, and not so included may be included in another Supplemental Resolution.

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

“System” means the existing waterworks system of the Issuer, as expanded and improved by the Project, and includes the complete waterworks system of the Issuer and all waterworks facilities owned by the Issuer and all facilities and other property of every nature, real or personal, now or hereafter owned, held or used in connection with the waterworks system; and shall also include any and all additions, extensions, improvements, properties or other facilities at any time acquired or constructed for the waterworks system after the completion of the Project.

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

“West Virginia DWTRF Program” means the West Virginia Drinking Water Treatment Revolving Fund Program established by the State, administered by BPH and funded by capitalized grants awarded to the State pursuant to the Federal Safe Drinking Water Act, as amended, for the purpose of establishing and maintaining a permanent perpetual fund for the acquisition, construction and improvement of drinking water projects.

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

“WDA Loan Agreement” means, the loan agreement heretofore entered, or to be entered into by and between the Issuer and the Authority, providing for the purchase of the Series 2010 C Bonds from the Issuer by the Authority, the form of which shall be approved, and the execution and delivery by the Issuer authorized and directed or ratified by the Supplemental Resolution.

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

## **ARTICLE II**

### **AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT AND AUTHORIZATION OF PAYMENT OF PRIOR NOTES**

Section 2.01. Authorization of Acquisition and Construction of the Project. There is hereby authorized and ordered the acquisition and construction of the Project, at an estimated cost

not to exceed \$16,700,000, and ordered in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2010 Bonds hereby authorized, shall be applied as provided in Article VI hereof.

The cost of the Project is estimated not to exceed \$20,300,000 of which not more than \$6,000,000 will be obtained from proceeds of the Series 2010 A Bonds, not more than \$6,000,000 will be obtained from the proceeds of the Series 2010 B Bonds, not more than \$4,300,000 will be obtained from proceeds of a the Series 2010 C Bonds, and not more than \$4,000,000 will be obtained from the proceeds of the Series 2010 D Bonds.

Section 2.02. Authorization of Payment of the Prior Notes. There is hereby authorized and ordered the payment in full of the entire outstanding principal of and the interest on the Prior Notes on the Closing Date. Upon payment in full of the Prior Notes, any funds pledged in favor of the holders of the Prior Notes imposed by the Prior Notes Ordinance are hereby ordered terminated, discharged and released.

### **ARTICLE III**

#### **AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENTS**

Section 3.01. Authorization of Bonds. For the purposes of paying the Prior Notes, paying Costs of the Project not otherwise provided for and paying certain costs of issuance of the Series 2010 Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued the negotiable Series 2010 Bonds of the Issuer. The Series 2010 Bonds shall be issued in four series, each as a single bond, designated respectively as "Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program)", in the principal amount of not more than \$6,000,000; "Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA)", in the principal amount of not more than \$6,000,000; "Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority)", in the principal amount of not more than \$4,300,000; and "Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund)", in the principal amount of not more than \$4,000,000 and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2010 Bonds remaining after funding of the Reserve Accounts (if funded from Bond proceeds) and capitalization of interest, if any, shall be deposited in or credited to the Series 2010 Bonds Construction Trust Fund established by Section 5.01 hereof.

Section 3.02. Terms of Bonds. The Series 2010 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 or as specifically provided in the Loan Agreements. The Series 2010 Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the

laws of the United States of America. Interest on the Series 2010 Bonds, if any, shall be paid by check or draft of the Paying Agent or its agent, mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2010 Bonds shall be issued in the form of a single bond for each series, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 2010 Bonds. The Series 2010 Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

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

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

Section 3.04. Authentication and Registration. No Series 2010 Bonds shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 hereof shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 2010 Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2010 Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting the Series 2010 Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of

West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

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

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

In all cases in which the privilege of exchanging Series 2010 Bonds or transferring the registered Bonds are exercised, Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Bonds or, in the case of any proposed redemption of Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2010 Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

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

Section 3.08. Bonds Secured by Pledge of Gross Revenues; Lien Position with Respect to Prior Bonds. The payment of the debt service on the Series 2010 Bonds shall be secured by a first lien on the Gross Revenues derived from the System, on a parity with the lien on the Gross Revenues in favor of the Holders of the Prior Bonds. The Gross Revenues in an amount

sufficient to pay the principal of and interest, if any, on and other payments for the Series 2010 Bonds and the Prior Bonds and to make all other payments hereinafter set forth, are hereby irrevocably pledged to such payments as they become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 2010 Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2010 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 2010 Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;
- B. A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2010 Bonds to the original purchasers;
- C. An executed and certified copy of the Bond Legislation;
- D. Executed copies of the Loan Agreements; and
- E. The unqualified approving opinion of bond counsel on the Series 2010 Bonds.

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

[Remainder of Page Intentionally Blank]

(FORM OF SERIES 2010 A BOND)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT  
WATER REVENUE BONDS, SERIES 2010 A  
(WEST VIRGINIA DWTRF PROGRAM)

No. AR-1

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

KNOW ALL MEN BY THESE PRESENTS: That on this the \_\_\_\_ day of \_\_\_\_\_, 2010, the CITY OF FAIRMONT, a municipal corporation and political subdivision of the State of West Virginia in Marion 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, the principal of, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, 20\_\_ , to and including \_\_\_\_\_ 1, 20\_\_ as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference with interest payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, 20\_\_ , to and including \_\_\_\_\_ 1, 20\_\_ , at the rate per annum as set forth on said EXHIBIT B. The Series 2010 A Bonds are not subject to the Administrative Fee.

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

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Bureau for Public Health (the "BPH), and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement by and between the Issuer and the Authority, on behalf of the BPH, dated \_\_\_\_\_, 2010.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public waterworks system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of the Bonds and related costs. The existing public waterworks system of the Issuer, the Project, and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 and Chapter 16, Article 13C of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on December 8, 2009, and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 2010 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S (1) WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997, DATED JUNE 1, 1997, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$10,260,000 (THE "SERIES 1997 BONDS"); (2) WATER REVENUE BONDS, SERIES 1998, DATED DECEMBER 15, 1998, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$9,600,000 (THE "SERIES 1998 BONDS"); (3) WATER REVENUE BONDS, SERIES 1999, DATED JANUARY 1, 1999, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$19,945,000 (THE "SERIES 1999 BONDS"); (4) WATER REVENUE BONDS, SERIES 2008 A (WEST VIRGINIA DWTRF PROGRAM), DATED JUNE 26, 2008, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,750,000 (THE "SERIES 2008 A BONDS") (COLLECTIVELY, THE "PRIOR BONDS"); (5) WATER REVENUE BONDS, SERIES 2010 B (WEST VIRGINIA DWTRF PROGRAM/ARRA) DATED \_\_\_\_\_, 2010 ISSUED IN THE ORIGINAL AGGREGATE AMOUNT OF \$\_\_\_\_\_ (THE "SERIES 2010 B BONDS") ISSUED SIMULTANEOUSLY HEREWITH; (6) WATER REVENUE BONDS, SERIES 2010 C (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY) DATED \_\_\_\_\_, 2010 ISSUED IN THE ORIGINAL AGGREGATE AMOUNT OF \$\_\_\_\_\_ (THE "SERIES 2010 C BONDS") ISSUED SIMULTANEOUSLY HEREWITH; AND (7) WATER REVENUE BONDS, SERIES 2010 D (WEST VIRGINIA INFRASTRUCTURE FUND) DATED \_\_\_\_\_, 2010 ISSUED IN THE ORIGINAL AGGREGATE AMOUNT OF \$\_\_\_\_\_ (THE "SERIES 2010 D BONDS") ISSUED SIMULTANEOUSLY HEREWITH.

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Gross Revenue in favor of the Holders of the Prior Bonds, the Series 2010 B Bonds, the Series 2010 C Bonds, and the Series 2010 D Bonds and from monies in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2010 A Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all Bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest, if any, hereon, except from said special fund provided from the Gross Revenues, the monies in the

Series 2010 A Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Prior Bonds, Series 2010 B Bonds, Series 2010 C Bonds and Series 2010 D Bonds; provided however, that so long as there exists in the Series 2010 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on the Bonds in the then current or succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, including the Prior Bonds, the Series 2010 B Bonds, Series 2010 C Bonds and Series 2010 D Bonds an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

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

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

**IT IS HEREBY CERTIFIED, RECITED AND DECLARED** that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

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

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

[SEAL]

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Manager

ATTEST:

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

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2010 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: \_\_\_\_\_, 2010.

THE HUNTINGTON NATIONAL BANK,  
as Registrar

\_\_\_\_\_  
Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

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

TOTAL \$ \_\_\_\_\_

EXHIBIT B

DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

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

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

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

(FORM OF SERIES 2010 B BOND)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT  
WATER REVENUE BONDS, SERIES 2010 B  
(WEST VIRGINIA DWTRF PROGRAM/ARRA)

No. BR-1

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

KNOW ALL MEN BY THESE PRESENTS: That on this the \_\_\_\_ day of \_\_\_\_\_, 2010, the CITY OF FAIRMONT, a municipal corporation and political subdivision of the State of West Virginia in Marion County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, 20\_\_ to and including \_\_\_\_\_ 1, 20\_\_, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. This Bond shall not be subject to the Administrative fee (as defined in the hereinafter describe Bond Legislation).

This Bond shall bear no interest. Principal installments of this Bond are forgivable quarterly as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference.

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

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Bureau for Public Health (the "BPH), and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement by and between the Issuer and the Authority, on behalf of the BPH, dated \_\_\_\_\_, 2010.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public waterworks system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of the Bonds and related costs. The existing public waterworks system of the Issuer, the Project, and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 and Chapter 16, Article 13C of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on December 8, 2009, and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 2010 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S (1) WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997, DATED JUNE 1, 1997, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$10,260,000 (THE "SERIES 1997 BONDS"); (2) WATER REVENUE BONDS, SERIES 1998, DATED DECEMBER 15, 1998, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$9,600,000 (THE "SERIES 1998 BONDS"); (3) WATER REVENUE BONDS, SERIES 1999, DATED JANUARY 1, 1999, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$19,945,000 (THE "SERIES 1999 BONDS"); (4) WATER REVENUE BONDS, SERIES 2008 A (WEST VIRGINIA DWTRF PROGRAM), DATED JUNE 26, 2008, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,750,000 (THE "SERIES 2008 A BONDS") (COLLECTIVELY, THE "PRIOR BONDS"); (5) WATER REVENUE BONDS, SERIES 2010 A (WEST VIRGINIA DWTRF PROGRAM) DATED \_\_\_\_\_, 2010 ISSUED IN THE ORIGINAL AGGREGATE AMOUNT OF \$ \_\_\_\_\_ (THE "SERIES 2010 A BONDS") ISSUED SIMULTANEOUSLY HEREWITH; (6) WATER REVENUE BONDS, SERIES 2010 C (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY) DATED \_\_\_\_\_, 2010 ISSUED IN THE ORIGINAL AGGREGATE AMOUNT OF \$ \_\_\_\_\_ (THE "SERIES 2010 C BONDS") ISSUED SIMULTANEOUSLY HEREWITH; AND (7) WATER REVENUE BONDS, SERIES 2010 D (WEST VIRGINIA INFRASTRUCTURE FUND) DATED \_\_\_\_\_, 2010 ISSUED IN THE ORIGINAL AGGREGATE AMOUNT OF \$ \_\_\_\_\_ (THE "SERIES 2010 D BONDS") ISSUED SIMULTANEOUSLY HEREWITH.

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Gross Revenue in favor of the Holders of the Prior Bonds, the Series 2010 A Bonds, Series 2010 C Bonds and Series 2010 D Bonds, and unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all Bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest, if any, hereon, except from said special fund provided from the Gross Revenues, the monies in the Series 2010 B Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered

thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Prior Bonds, the Series 2010 A Bonds, Series 2010 C Bonds and Series 2010 D Bonds; provided however, that so long as there exists in the Series 2010 B Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on the Bonds in the then current or succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, including the Prior Bonds, the Series 2010 A Bonds, Series 2010 C Bonds and Series 2010 D Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

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

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

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest, if any on this Bond.

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

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

[SEAL]

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Manager

ATTEST:

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

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2010 B Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: \_\_\_\_\_, 2010.

THE HUNTINGTON NATIONAL BANK,  
as Registrar

\_\_\_\_\_  
Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

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

TOTAL \$ \_\_\_\_\_

EXHIBIT B

DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

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

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

(FORM OF SERIES 2010 C BOND)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT  
WATER REVENUE BONDS, SERIES 2010 C  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

No. CR-1

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

KNOW ALL MEN BY THESE PRESENTS: That on this \_\_\_ day of \_\_\_\_\_, 2010, the CITY OF FAIRMONT, a municipal corporation and political subdivision of the State of West Virginia in Marion County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), in annual installments on October 1 of each year, commencing \_\_\_\_\_ 1, 20 \_\_, to and including \_\_\_\_\_ 1, 20 \_\_, as set forth on the "Debt Service Schedule" attached as EXHIBIT A hereto and incorporated herein by reference.

The interest on each installment shall run from the original date of delivery of this Bond to the Authority and payment therefor, and until payment of such installment, such interest shall be payable semiannually on April 1 and October 1 in each year, beginning \_\_\_\_\_ 1, 20 \_\_. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of The Huntington National Bank, Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement between the Issuer and the Authority, dated \_\_\_\_\_, 2010.

This Bond is issued to provide funds, along with other available monies of the Issuer (i) to pay the Prior Notes; (ii) to pay the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the existing public waterworks system of the Issuer (the "Project"); (iii) to pay interest on the Series 2010 C Bonds during the construction of the project and for not more than 6 months thereafter; (iv) to fund a reserve account for the Series 2010 C Bonds; and (v) to pay certain costs of issuance hereof and related costs. The existing public waterworks system of the Issuer, the Project, and any further extensions, additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the

authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Ordinance duly enacted by the Issuer on December 8, 2009, and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 2010 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S (1) WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997, DATED JUNE 1, 1997, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$10,260,000 (THE "SERIES 1997 BONDS"); (2) WATER REVENUE BONDS, SERIES 1998, DATED DECEMBER 15, 1998, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$9,600,000 (THE "SERIES 1998 BONDS"); (3) WATER REVENUE BONDS, SERIES 1999, DATED JANUARY 1, 1999, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$19,945,000 (THE "SERIES 1999 BONDS"); (4) WATER REVENUE BONDS, SERIES 2008 A (WEST VIRGINIA DWTRF PROGRAM), DATED JUNE 26, 2008, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,750,000 (THE "SERIES 2008 A BONDS") (COLLECTIVELY, THE "PRIOR BONDS"); (5) WATER REVENUE BONDS, SERIES 2010 A (WEST VIRGINIA DWTRF PROGRAM) DATED \_\_\_\_\_, 2010, ISSUED IN THE ORIGINAL AGGREGATE AMOUNT OF \$\_\_\_\_\_ (THE "SERIES 2010 A BONDS") ISSUED SIMULTANEOUSLY HEREWITH; (6) WATER REVENUE BONDS, SERIES 2010 B (WEST VIRGINIA DWTRF PROGRAM/ARRA) DATED \_\_\_\_\_, 2010, ISSUED IN THE ORIGINAL AGGREGATE AMOUNT OF \$\_\_\_\_\_ (THE "SERIES 2010 B BONDS"); AND (7) WATER REVENUE BONDS, SERIES 2010 D (WEST VIRGINIA INFRASTRUCTURE FUND) DATED \_\_\_\_\_, 2010, ISSUED IN THE ORIGINAL AGGREGATE AMOUNT OF \$\_\_\_\_\_ (THE "SERIES 2010 D BONDS") ISSUED SIMULTANEOUSLY HEREWITH.

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the Holders of the Prior Bonds, the Series 2010 A Bonds, Series 2010 B Bonds and Series 2010 D Bonds and from monies in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2010 C Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest, if any, hereon, except from said special fund provided from the Gross Revenues, the monies in the Series 2010 C Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on the Bonds, and all

other obligations secured by a lien on or payable from such revenues on a parity with, or subordinate to, the Bonds, including the Prior Bonds, the Series 2010 A Bonds, Series 2010 B Bonds and Series 2010 D Bonds; provided however, that so long as there exists in the Series 2010 C Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with, or subordinate to, the Bonds, including the Prior Bonds, the Series 2010 A Bonds, Series 2010 B Bonds and Series 2010 D Bonds an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

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

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

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

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

[Remainder of Page Intentionally Blank]

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

[SEAL]

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Manager

ATTEST:

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

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2010 C Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: \_\_\_\_\_, 2010.

THE HUNTINGTON NATIONAL BANK,  
as Registrar

\_\_\_\_\_  
Authorized Officer

EXHIBIT A  
RECORD OF ADVANCES

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

TOTAL \$ \_\_\_\_\_

EXHIBIT A  
SCHEDULE OF ANNUAL DEBT SERVICE

(Form of)

ASSIGNMENT

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

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

In the presence of:

\_\_\_\_\_

\_\_\_\_\_

(FORM OF SERIES 2010 D BOND)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT  
WATER REVENUE BONDS, SERIES 2010 D  
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. DR-1

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

KNOW ALL MEN BY THESE PRESENTS: That on this the \_\_\_\_ day of \_\_\_\_\_, 2010, the CITY OF FAIRMONT, a municipal corporation and political subdivision of the State of West Virginia in Marion County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, 20\_\_ to and including \_\_\_\_\_ 1, 20\_\_, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference.

This Bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The principal on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of The Huntington National Bank, Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Infrastructure and Jobs Development Council (the "Council"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority, on behalf of the Council, dated \_\_\_\_\_, 2010.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the public waterworks system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. The

existing public waterworks system of the Issuer, the Project, and any further extensions, additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Ordinance duly enacted by the Issuer on December 8, 2009, and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 2010 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S (1) WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997, DATED JUNE 1, 1997, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$10,260,000 (THE "SERIES 1997 BONDS"); (2) WATER REVENUE BONDS, SERIES 1998, DATED DECEMBER 15, 1998, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$9,600,000 (THE "SERIES 1998 BONDS"); (3) WATER REVENUE BONDS, SERIES 1999, DATED JANUARY 1, 1999, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$19,945,000 (THE "SERIES 1999 BONDS"); (4) WATER REVENUE BONDS, SERIES 2008 A (WEST VIRGINIA DWTRF PROGRAM), DATED JUNE 26, 2008, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,750,000 (THE "SERIES 2008 A BONDS") (COLLECTIVELY, THE "PRIOR BONDS"); (5) WATER REVENUE BONDS, SERIES 2010 A (WEST VIRGINIA DWTRF PROGRAM) DATED \_\_\_\_\_, 2010, ISSUED IN THE ORIGINAL AGGREGATE AMOUNT OF \$ \_\_\_\_\_ (THE "SERIES 2010 A BONDS") ISSUED SIMULTANEOUSLY HEREWITH ; (6) WATER REVENUE BONDS, SERIES 2010 B (WEST VIRGINIA DWTRF PROGRAM/ARRA) DATED \_\_\_\_\_, 2010, ISSUED IN THE ORIGINAL AGGREGATE AMOUNT OF \$ \_\_\_\_\_ (THE "SERIES 2010 B BONDS") ISSUED SIMULTANEOUSLY HEREWITH; AND (7) WATER REVENUE BONDS, SERIES 2010 C (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY) DATED \_\_\_\_\_, 2010, ISSUED IN THE ORIGINAL AGGREGATE AMOUNT OF \$ \_\_\_\_\_ (THE "SERIES 2010 C BONDS") ISSUED SIMULTANEOUSLY HEREWITH.

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the Holders of the Prior Bonds, Series 2010 A Bonds, Series 2010 B Bonds and Series 2010 C Bonds, and from monies in the reserve account created under the Bond Legislation for the Bonds (the "Series 2010 D Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Gross Revenues, the monies in the Series 2010 D Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the

Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Prior Bonds, the Series 2010 A Bonds, Series 2010 B Bonds and Series 2010 C Bonds; provided however, that, so long as there exists in the Series 2010 D Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, including the Prior Bonds, the series 2010 A Bonds, Series 2010 B Bonds and Series 2010 C Bonds an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

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

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

**IT IS HEREBY CERTIFIED, RECITED AND DECLARED** that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

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

[Remainder of Page Intentionally Blank]

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

[SEAL]

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2010 D Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: \_\_\_\_\_, 2010.

THE HUNTINGTON NATIONAL BANK,  
as Registrar

By: \_\_\_\_\_  
Its: Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

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

TOTAL \$ \_\_\_\_\_

EXHIBIT B

DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

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

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

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Loan Agreements. The Series 2010 Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreements. If not so authorized by previous ordinance or resolution, the Mayor is specifically authorized and directed to execute the Loan Agreements in the form attached hereto as "Exhibit A" and made a part hereof, and the Clerk is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreements to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed. The Loan Agreements, including all schedules and exhibits attached thereto, is hereby approved and incorporated in this Bond Legislation.

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

#### **ARTICLE IV**

**[RESERVED]**

#### **ARTICLE V**

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

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

- (1) Revenue Fund (established by the Prior Ordinances);
- (2) Renewal and Replacement Fund (established as Depreciation Fund by the Prior Ordinances and renamed and continued hereby);
- (3) Rebate Fund (established by the Prior Ordinances); and
- (4) Series 2010 Bonds Construction Trust Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created (or continued if previously established by Prior

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

- (1) Series 1997 Bonds Sinking Fund (established by Prior Ordinance);
- (2) Series 1997 Bonds Reserve Account (established by Prior Ordinance);
- (3) Series 1997 Bonds Redemption Account (established by Prior Ordinance);
- (4) Series 1998 Bonds Sinking Fund (established by Prior Ordinance);
- (5) Series 1998 Bonds Reserve Account (established by Prior Ordinance);
- (6) Series 1998 Bonds Redemption Account (established by Prior Ordinance);
- (7) Series 1999 Bonds Sinking Fund (established by Prior Ordinance);
- (8) Series 1999 Reserve Account (established by Prior Ordinance);
- (9) Series 1999 Bonds Redemption Account (established by Prior Ordinance);
- (10) Series 2008 A Bonds Sinking Fund (established by Prior Ordinance);
- (11) Series 2008 A Bonds Reserve Account (established by Prior Ordinance)
- (12) Series 2010 A Bonds Sinking Fund;
- (13) Series 2010 A Bonds Reserve Account;
- (14) Series 2010 B Bonds Sinking Fund;
- (15) Series 2010 B Bonds Reserve Account;
- (16) Series 2010 C Bonds Sinking Fund;
- (17) Series 2010 C Bonds Reserve Account;
- (18) Series 2010 D Bonds Sinking Fund; and
- (19) Series 2010 D Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited upon receipt by the Issuer in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes

provided in this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner provided in this Bond Legislation. All monies in the Revenue Fund shall be disposed of only in the following manner and order of priority:

(1) The Issuer shall on the first day of each month, transfer from the Revenue Fund and remit to the Commission (i) the interest payments on the Series 1997 Bonds, Series 1998 Bonds and Series 1999 Bonds, as required by the Prior Ordinances and (ii) commencing 7 months prior to the first date of payment of interest on the Series 2010 C Bonds for which interest has not been capitalized or as required in the Loan Agreement, for deposit in the Series 2010 C Bonds Sinking Fund, an amount equal to 1/6th of the amount of interest which will become due on the Series 2010 C Bonds on the next ensuing semiannual interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2010 C Bonds Sinking Fund and the next semiannual interest payment date is less than 7 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next semiannual interest payment date, the required amount of interest coming due on such date.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) the principal payments, as required by the Prior Ordinances on the respective Prior Bonds; (ii) commencing 4 months prior to the first date of payment of principal of the Series 2010 A Bonds, for deposit in the Series 2010 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2010 A Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2010 A Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date; (iii) commencing 4 months prior to the first date of payment of principal of the Series 2010 B Bonds, for deposit in the Series 2010 B Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2010 B Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2010 B Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date; (iv) commencing 13 months prior

to the first date of payment of principal of the Series 2010 C Bonds, for deposit in the Series 2010 C Bonds Sinking Fund, an amount equal to 1/12th of the amount of principal which will mature and become due on the Series 2010 C Bonds on the next ensuing annual principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2010 C Bonds Sinking Fund and the next annual principal payment date is less than 13 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next annual principal payment date, the required amount of principal coming due on such date; and (v) commencing 4 months prior to the first date of payment of principal of the Series 2010 D Bonds, for deposit in the Series 2010 D Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2010 D Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2010 D Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the respective reserve accounts for the Prior Bonds, the amounts required by the Prior Ordinances to be deposited therein; (ii) commencing 4 months prior to the first date of payment of principal of the Series 2010 A Bonds, if not fully funded upon issuance of the Series 2010 A Bonds, for deposit in the Series 2010 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2010 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2010 A Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2010 A Bonds Reserve Requirement; (iii) commencing 4 months prior to the first date of payment of principal of the Series 2010 B Bonds, if not fully funded upon issuance of the Series 2010 B Bonds, for deposit in the Series 2010 B Bonds Reserve Account, an amount equal to 1/120th of the Series 2010 B Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2010 B Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2010 B Bonds Reserve Requirement; (iv) commencing 13 months prior to the first date of payment of principal of the Series 2010 C Bonds, if not fully funded upon issuance of the Series 2010 C Bonds, for deposit in the Series 2010 C Bonds Reserve Account, an amount equal to 1/120th

of the Series 2010 C Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2010 C Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2010 C Bonds Reserve Requirement; and (v) commencing 4 months prior to the first date of payment of principal of the Series 2010 D Bonds, if not fully funded upon issuance of the Series 2010 D Bonds, for deposit in the Series 2010 D Bonds Reserve Account, an amount equal to 1/120th of the Series 2010 D Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2010 D Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2010 D Bonds Reserve Requirement

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

(5) The Issuer shall next, on the first day of each month, from the monies remaining in the Revenue Fund, transfer to the Depreciation Fund, a sum equal to 2 1/2% of the Gross Revenues each month (as previously set forth in the Prior Ordinances and not in addition thereto), exclusive of any payments for account of any Reserve Account. All funds in the Depreciation Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Depreciation Fund for replacements, repairs, improvements or extensions to the System; provided, that any deficiencies in any Reserve Account (except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof) shall be promptly eliminated with monies from the Depreciation Fund.

Monies in the Series 2010 A Bonds Sinking Fund, the Series 2010 B Bonds Sinking Fund, the Series 2010 C Bonds Sinking Fund and the Series 2010 D Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the Series 2010 Bonds as the same shall become due. Monies in the Series 2010 A Bonds Reserve Account, the Series 2010 B Bonds Reserve Account, Series 2010 C Bonds Reserve Account, and Series 2010 D Bonds Reserve Account shall be used only for the purposes of paying principal of and interest, if any, on the Series 2010 Bonds as the same shall come due, when other monies in the Series 2010 A Bonds Sinking Fund, the Series 2010 B Bonds Sinking Fund, Series 2010 C Bonds Sinking Fund and Series 2010 D Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on monies in the Series 2010 A Bonds Sinking Fund, the Series 2010 B Bonds Sinking Fund, the Series 2010 C Bonds Sinking Fund, the Series 2010 D Bonds Sinking Fund, the Series 2010 A Bonds Reserve Account, the Series 2010 B Bonds Reserve

Account, the Series 2010 C Bonds Reserve Account and the Series 2010 D Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Series 2010 Bonds Construction Trust Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment, if any, due on the Series 2010 Bonds and then to the next ensuing principal payment due thereon, all on a pro rata basis.

Any withdrawals from the Series 2010 A Bonds Reserve Account, the Series 2010 B Bonds Reserve Account, the Series 2010 C Bonds Reserve Account, or the Series 2010 D Bonds Reserve Account which result in a reduction in the balance of such accounts to below the respective Reserve Requirements, shall be subsequently restored from the first Gross Revenues available after all required payments have been made in full in the priority as set forth above, all on a pro rata basis.

As and when additional Bonds ranking on a parity with the Series 2010 Bonds are issued, provision shall be made for additional payments into the respective sinking fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective reserve account in an amount equal to the requirement therefor.

The Issuer shall not be required to make any further payments into the Series 2010 A Bonds Sinking Fund, the Series 2010 B Bonds Sinking Fund, the Series 2010 C Bonds Sinking Fund, the Series 2010 D Bonds Sinking Fund, the Series 2010 A Bonds Reserve Account, the Series 2010 B Bonds Reserve Account, the Series 2010 C Bonds Reserve Account, or the Series 2010 D Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2010 Bonds issued pursuant to this Bond Legislation then Outstanding and all interest, if any, to accrue until the maturity thereof.

Principal, interest or reserve payments, whether made for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Prior Bonds, the Series 2010 A Bonds, the Series 2010 B Bonds, the Series 2010 C Bonds and the Series 2010 D Bonds in accordance with the principal amounts then outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2010 A Bonds Sinking Fund, the Series 2010 B Bonds Sinking Fund, the Series 2010 C Bonds Sinking Fund, the Series 2010 D Bonds Sinking Fund, the Series 2010 A Bonds Reserve Account, the Series 2010 B Bonds Reserve Account, the Series 2010 C Bonds Reserve Account, and the Series 2010 D Bonds Reserve Account created hereunder, and all amounts required for said accounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited. The Issuer shall make the necessary arrangements whereby required payments into said accounts shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Monies in the Series 2010 A Bonds Sinking Fund, the Series 2010 B Bonds Sinking Fund, the Series 2010 C Bonds Sinking Fund, the Series 2010 D Bonds Sinking Fund, the Series 2010 A Bonds Reserve Account, the Series 2010 B Bonds Reserve Account, the Series 2010

C Bonds Reserve Account, and the Series 2010 D Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

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

B. The Issuer shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required principal, interest, if any, and reserve payments with respect to the Series 2010 Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation. The Issuer shall also 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 Administrative Fee, if any, as set forth in the Schedule Y attached to the Loan Agreements for the Series 2010 Bonds.

C. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as herein above provided, are current and there remains in the Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into such funds during the following month or such other period as required by law, such excess shall be considered as surplus revenues (the "Surplus Revenues"). Surplus Revenues may be used for any lawful purpose of the System.

D. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the Loan Agreements, and submit a copy of said form along with a copy of its payment check to the Authority by the 5th day of such calendar month.

E. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay their respective charges and fees then due. In the case of payments to the Commission under this Section, 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.

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

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

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

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

## ARTICLE VI

### **BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS**

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

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

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

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

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

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

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

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

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

I. Next, from the proceeds of the Series 2009 C Bonds, there shall be deposited with the Commission an amount necessary to pay in full the Prior Notes.

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

K. 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 2010 Bonds shall be expended as directed by the BPH, Council and the Authority.

Section 6.02. Disbursement from the Bond Construction Trust Fund. On or before the Closing Date, the Issuer shall have delivered to the Authority, Council and the BPH a report listing the specific purposes for which the net proceeds of the Series 2010 Bonds will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. Payments for the costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Series 2010 Bonds Construction Trust Fund shall be made only after submission to, and approved from, the Authority the Council and the BPH of the following:

- (1) a completed and signed "Payment Requisition Form," a form of which is attached to the Loan Agreements, in compliance with the construction schedule; and
- (2) a certificate, signed by an Authorized Officer stating that:
  - (A) None of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;
  - (B) Each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;
  - (C) Each of such costs has been otherwise properly incurred; and

(D) Payment for each of the items proposed is then due and owing.

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

## ARTICLE VII

### ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 2010 Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 2010 Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2010 Bonds or the interest, if any, thereon is outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2010 Bonds shall not be nor constitute a corporate indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of the Series 2010 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2010 Bonds, or the interest, if any, thereon.

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

Section 7.04. Initial Schedule of Rates and Charges. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal and the Issuer shall provide an opinion of counsel to such effect. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreements and the Issuer shall provide a certificate of certified public accountant to such effect. The initial schedule of rates and charges for the services of the facilities of the System shall be as set forth in the water rate ordinance of the Issuer enacted February 10, 2009 which rates are incorporated herein by reference as a part hereof.

So long as the Series 2010 Bonds are outstanding, the Issuer covenants and agrees to fix

and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and in compliance with the Loan Agreements. In the event the schedule of rates, fees and charges initially established for the System in connection with the Series 2010 Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreements, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreements.

Section 7.05. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, lease, mortgage or in any manner dispose of or encumber the System, or any part thereof, except as provided in the Prior Ordinance and as provided herein and with the written consent of the Authority, Council and the BPH. So long as the Series 2010 Bonds are outstanding and except as otherwise required by law or with the written consent of the Authority, Council and the BPH, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding, in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 2010 Bonds, immediately be remitted to the Commission for deposit in the Series 2010 A Bonds Sinking Fund, the Series 2010 B Bonds Sinking Fund, the Series 2010 C Bonds Sinking Fund and the Series 2010 D Bonds Sinking Fund respectively and pro rata with respect to the principal amount of each of the Bonds then outstanding and, with the written permission of the Authority, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and interest, if any, on the Series 2010 A Bonds, the Series 2010 B Bonds, the Series 2010 C Bonds, and the Series 2010 D Bonds in accordance with Article X hereof. Any balance remaining after the payment of the Bonds and interest, if any, thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor is not in excess of \$10,000, the Issuer shall, by resolution duly adopted, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property shall be in excess of \$10,000 but not in excess of \$50,000, the Issuer shall first, in writing, determine upon consultation with the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds derived from any such sale, lease or other disposition of such property, in excess of \$10,000 and not in excess of \$50,000, shall be deposited in the Renewal and Replacement Fund. The payment of such proceeds into the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Bond Legislation.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom shall be in excess of \$50,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Holders of the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided for in Section 7.07 hereof, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2010 Bonds. All obligations issued by the Issuer after the issuance of the Series 2010 Bonds and payable from the revenues of the System, except such additional Parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Series 2010 Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts set forth herein have been made and are current at the time of the issuance of such subordinate obligations.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2010 Bonds, and the interest, if any, thereon, upon any of the income and revenues of the System pledged for payment of the Series 2010 Bonds and the interest, if any, thereon in this Bond Legislation, or upon the System or any part thereof.

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

Section 7.07. Parity Bonds. So long as the Prior Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Prior Ordinance shall be applicable. In addition, no additional Parity Bonds payable out of the revenues of the System, shall be issued after the issuance of the Series 2010 Bonds pursuant to this Ordinance, without the prior written consent of the Authority, Council and the BPH and without complying with the conditions and requirements herein provided (unless less restrictive than the provisions of the Prior Ordinance).

All Parity Bonds issued hereafter shall be on a parity in all respects with the Series 2010 Bonds.

No Parity Bonds shall be issued except for the purposes of financing the costs of design, acquisition and construction of additions, betterments or improvements to the System or refunding the Bonds issued pursuant hereto, or both such purposes.

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

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

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from (a) the improvements to be financed by such Parity Bonds and (b) any increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the date of issuance of such Parity Bonds and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, which shall be filed in the office of the Clerk of the Issuer prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12-consecutive-month period herein above referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Certified Public Accountants, as stated in a certificate filed with the Clerk, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to issuance of such Parity Bonds.

All the covenants and other provisions of this Bond Legislation (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Series 2010 Bonds and the Holders of any Parity Bonds theretofore or subsequently issued from time to time within the limitations of and in compliance with this section. All the Bonds issued on a parity, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Net Revenues of the System, and their source of and security for payment from said Net Revenues, without preference of any Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Bond Legislation required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Bond Legislation.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien on the revenues of the System of which is subject to the prior and superior lien of the Series 2010 Bonds on such revenues. Any such subordinate bonds, notes, certificates or other obligations shall be payable from the Net Revenues remaining after all

payments required to be made in accordance with this Bond Legislation have first been paid. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or equally, as to lien and source of and security for payment from such revenues, with the Series 2010 Bonds except in the manner and under the conditions provided in this section.

No Parity Bonds shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in this Bond Legislation on account of the Bonds then Outstanding, and any other payments provided for in this Bond Legislation, shall have been made in full as required to the date of issuance of the Parity Bonds and the Issuer is then in full compliance with all the covenants, agreements and terms of this Bond Legislation and every ordinance supplemental thereto, or shall have fully corrected any delinquency or deficiency in such payments.

Section 7.08. Books; Records and Audit. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the Authority, Council and the BPH, or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority, Council and the BPH such documents and information as they may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

The Issuer shall permit the Authority, Council and the BPH, or their agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times following completion of construction of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time following commencement of construction.

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

The accounting system for the System shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by the Public Service Commission of West Virginia. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by the Issuer. The Issuer shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Issuer shall be reported to such agent of the Issuer as the Issuer shall direct.

The Issuer shall file with the Authority, Council and the BPH, or any other original purchaser of the Series 2010 Bonds, and shall mail in each year to any Holder or Holders of the Series 2010 Bonds, requesting the same, an annual report containing the following:

- (A) A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.
- (B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation and the status of all said funds and accounts.
- (C) The amount of any bonds, notes or other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants (and to the extent legally required in compliance with the applicable OMB Circular, or any successor thereof, and the Single Audit Act, or any successor thereof), and shall mail upon request, and make available generally, the report of the Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of the Series 2010 Bonds and shall submit the report to the Authority, Council and the BPH, or any other original purchaser of the Series 2010 Bonds. Such audit report submitted to the Authority, Council and the BPH shall include a statement that the Issuer is in compliance with the terms and provisions of the Act, the Loan Agreements and this Bond Legislation and that the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

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

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

Section 7.09. Rates. Prior to the issuance of the Series 2010 Bonds, rates or charges for the use of the services and facilities of the System will be fixed and established, all in the manner and form required by law, and a copy of such rates and charges so fixed and established shall at all times be kept on file in the office of the Clerk of the Issuer, which copy will be open to inspection by all interested parties. The schedule or schedules of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds and accounts created hereunder. Such schedule or schedules of rates and charges shall be revised from time to time, whenever necessary, so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and

agrees that the schedule or schedules of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System, (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2010 Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2010 Bonds, including the Prior Bonds; provided that, in the event that amounts equal to or in excess of the reserve requirement are on deposit respectively in the Series 2010 A Bonds Reserve Account, Series 2010 B Bonds Reserve Account, Series 2010 C Bonds Reserve Account and Series 2009 D Bonds Reserve Account and reserve accounts for obligations on a parity with the Series 2010 Bonds, including the Prior Bonds, are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2010 Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2010 Bonds, including the Prior Bonds. In any event, the Issuer shall not reduce the rates or charges for services set forth in the rate ordinance currently in effect.

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

Section 7.10. Operating Budget and Monthly Financial Report. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority, Council and the BPH within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by a registered professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of a registered professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority, the Council, the BPH and to any Holder of any Bonds who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Authority, the Council, the BPH and any Holder of any Bonds or anyone acting for and in behalf of such Holder of any Bonds.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for two years following the completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the Loan Agreements, and forward a copy of such report to the Authority, Council and the BPH by the 10th day of each month.

Section 7.11. Engineering Services and Operating Personnel. The Issuer will obtain a certificate of the Consulting Engineers in the form attached to the Loan Agreements, 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, Council and the BPH, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority, Council and the BPH 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, Council and the BPH covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority, the Council, the BPH and the Issuer at the completion of construction that construction of the Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

The Issuer shall require the Consulting Engineers to submit As-Built Plans, as defined in the DWTRF Regulations, to the Issuer within 60 days of the completion of the Project. The Issuer shall notify the BPH in writing of such receipt.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the DWTRF Regulations, to the Issuer when the Project is 90% completed. The Issuer shall at all times provide operation and maintenance of the System in compliance with all State and Federal standards. The Issuer shall employ qualified operating personnel properly certified by the State before the Project is 50% complete and shall retain such a certified operator to operate the System during the entire term of the Loan Agreements. The Issuer shall notify the BPH in writing of the certified operator employed at the 50% completion stage.

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

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

Section 7.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 30 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid, when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law.

Section 7.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of either shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer, and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.15. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as the Series 2010 Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the greater of the fair appraised value or the actual cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. In the event of any damage to or destruction of any portion of the System, the proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repair or reconstruction of such damages or destroyed portion or for the other purposes provided herein for the Renewal and Replacement Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the Authority, the prime contractor and all subcontractors as their respective interests may appear, in accordance with the Loan Agreements, during construction of the Project on a 100% basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Issuer, the prime contractor and subcontractors, as their interests may appear.

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than \$1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than \$500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

(3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of not less than 100% of the amount of any construction contract and to be required of each contractor dealing directly with the Issuer and such payment bonds will be filed with the Clerk of the County Commission of the County in which such work is to be performed prior to commencement of construction of any additions, extensions or improvements for the System in compliance with West Virginia Code, Section 38-2-39.

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

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

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

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

The Issuer shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project; provided that the amounts and terms of such coverage are satisfactory to the Authority, Council and the BPH, and the Issuer shall verify such insurance prior to commencement of construction. In the event the Loan Agreements so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the prime contractor and all subcontractors, as their interests may appear.

Section 7.16. Connections. To the extent permitted by the laws of the State and rules and regulations of the Public Service Commission of West Virginia, the Issuer shall require every

owner, tenant or occupant of any house, dwelling, or building intended to be served by the System to connect thereto.

Section 7.17. Completion of Project; Permits and Orders. The Issuer will complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

The Issuer will obtain all permits required by state and federal laws for the acquisition and construction of the Project, all orders and approvals from the Public Service Commission of West Virginia, the Council and the BPH necessary for the acquisition and construction of the Project and the operation of the System and all approvals for the issuance of the Series 2010 Bonds required by State law, with all appeal periods having expired without successful appeal.

Section 7.18. Compliance with Loan Agreements and Law. The Issuer shall perform, satisfy and comply with all the terms and conditions of the Loan Agreements and the Act. Notwithstanding anything herein to the contrary, the Issuer will provide the BPH and the Council with copies of all documents submitted to the Authority. The Issuer also agrees to comply with all applicable laws, rules and regulations issued by the Authority, the BPH, the Council or other state, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

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

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

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 2010 Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 2010 Bonds during the term thereof is, under the terms of the Series 2010 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) and that, in the event that both (A) in excess of 5% of the Net Proceeds of the Series 2010 Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 2010 Bonds during the term thereof is, under the terms of the Series 2010 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money

used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Series 2010 Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project, or if the Series 2010 Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of the portion of the Project to which such Private Business Use is related. All of the foregoing shall be determined in accordance with the Code.

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

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

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

E. **FURTHER ACTIONS.** The Issuer will take any and all actions that may be required of it (including, without limitation, those deemed necessary by the Authority) so that the interest on the Series 2010 Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions or fail to take any actions (including, without limitation, those deemed necessary by the Authority), the result of which would adversely affect such exclusion.

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

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

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

C. The Issuer shall list the funding as being provided by the Council, the BPH 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.

Section 7.22. Statutory Mortgage Lien. For the further protection of the Holders of the Series 2010 Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon delivery of the Series 2010 Bonds and shall be on a parity with the statutory mortgage lien in favor of the Holders of the Prior Bonds.

## ARTICLE VIII

### INVESTMENT OF FUNDS

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

Any investment shall be held in and at all times deemed a part of the fund or account in which such monies were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission, the Depository Bank, or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank or such other bank or national banking association, as the case may be, may make any and all investments permitted by this section through its own investment or trust department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year, or more often as reasonably requested by the Issuer, a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2010 Bonds are Outstanding and as

long thereafter as necessary to assure the exclusion of interest, if any, on the Series 2010 Bonds from gross income for federal income tax purposes.

Section 8.02. Certificate as to Use Proceeds; Covenants as to Use of Proceeds. The Issuer shall deliver a certificate as to use of proceeds or other similar certificate to be prepared by nationally recognized bond counsel relating to restrictions on the use of proceeds of the Series 2010 Bonds as a condition to issuance of the Series 2010 Bonds.

In addition, the Issuer covenants (i) to comply with the Code and all Regulations from time to time in effect and applicable to the Series 2010 Bonds as may be necessary in order to maintain the status of the Series 2010 Bonds as governmental bonds; (ii) that it shall not take, or permit or suffer to be taken, any action with respect to the Issuer's use of the proceeds of the Series 2010 Bonds which would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Code, issued by the Authority, the Council or the BPH, as the case may be, from which the proceeds of the Series 2010 Bonds are derived, to lose their status as tax-exempt bonds; and (iii) to take such action, or refrain from taking such action, as shall be deemed necessary by the Issuer, or requested by the Authority, the Council or the BPH, to ensure compliance with the covenants and agreements set forth in this Section, regardless of whether such actions may be contrary to any of the provisions of this Ordinance.

The Issuer shall annually furnish to the Authority, information with respect to the Issuer's use of the proceeds of the Series 2010 Bonds and any additional information requested by the Authority.

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

Section 8.03. Tax Certificate and Rebate. The Issuer shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of the Series 2010 C Bonds. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Series 2010 C Bonds as may be necessary in order to fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of this Bond Legislation.

The Issuer shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, unless otherwise agreed by the Authority, the Issuer shall deposit, or cause to be deposited, in the Rebate Fund such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything

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

The Issuer shall submit to the Authority within 15 days following the end of each Bond Year a certified copy of its rebate calculation and certificate with respect thereto or, if the Issuer qualifies for the small governmental issue exception to rebate, or any other exception thereto, then the Issuer shall submit to the Authority a certificate stating that it is exempt from such rebate provisions and that no event has occurred to its knowledge during the Bond Year which would make the Series 2010 C Bonds subject to rebate. The Issuer shall also furnish to the Authority, at any time, such additional information relating to rebate as may be reasonably requested by the Authority, including information with respect to earnings on all funds constituting "gross proceeds" of the Series 2010 C Bonds (as such term "gross proceeds" is defined in the Code).

## **ARTICLE IX**

### **DEFAULT AND REMEDIES**

**Section 9.01. Events of Default.** Each of the following events shall constitute an "Event of Default" with respect to the Series 2010 Bonds:

- (1) If default occurs in the due and punctual payment of the principal of or interest, if any, on any Series 2010 Bonds;

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

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

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

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Registered Owners of the Series 2010 Bonds shall be on a parity with those of the Registered Owners of the Prior Bonds.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, the completion of the Project and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds, any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

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

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

Such receiver, in the performance of the powers herein above conferred upon him or her or it, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver may be appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the completion of the Project and the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

## ARTICLE X

### **PAYMENT OF BONDS**

Section 10.01. Payment of Bonds. If the Issuer shall pay or there shall otherwise be paid, to the Holders of the Series 2010 Bonds, the principal of and interest, if any, due or to become due thereon, if any, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Gross Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2010 Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest, if any, on the Series 2010 Bonds from gross income for federal income tax purposes.

**ARTICLE XI**  
**MISCELLANEOUS**

**Section 11.01. Amendment or Modification of Bond Legislation.** Prior to issuance of the Series 2010 Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2010 Bonds, no material modification or amendment of this Ordinance, or of any ordinance, resolution or order amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2010 Bonds shall be made without the consent in writing of the Registered Owners of the Series 2010 Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of the Series 2010 Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein pledged therefor without the consent of the Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Series 2010 Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the excludability of interest on the Series 2010 Bonds from gross income of the holders thereof.

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

**Section 11.03. Severability of Invalid Provisions.** If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Series 2010 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. Notices.** All notices to be sent to the Issuer, the Authority, the Council or the BPH shall be in writing and shall be deemed to have been given when delivered in person or mailed by first class mail, postage prepaid, addressed as follows:

**ISSUER:**

City of Fairmont  
Post Office Box 1428  
Fairmont, West Virginia 26555  
Attention: City Manager

AUTHORITY:

Water Development Authority  
180 Association Drive  
Charleston, West Virginia 25311-1571  
Attention: Executive Director

BPH:

West Virginia Bureau for Public Health  
One Davis Square, Suite 200  
Charleston, West Virginia 25301  
Attention: Environmental Engineering

COUNCIL

West Virginia Infrastructure & Jobs Development Council  
180 Association Drive  
Charleston, West Virginia 25311-1571  
Attention: Executive Director

Section 11.06. 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; provided that, this Section shall not be applicable to the Prior Ordinance. In the event of any conflict between this Ordinance and the Prior Ordinance, the Prior Ordinance shall control (unless less restrictive) so long as the Prior Bonds are outstanding.

Section 11.07. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the Clerk and members of the Governing Body 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 11.08. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in the *Times West Virginian*, a newspaper of general circulation in the City of Fairmont, there being no newspaper published therein, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Section 11.09 Effective Date. This Ordinance shall take effect at the expiration of 30 days after public hearing (January 15, 2010) and final reading hereof.

Passed on First Reading: November 24, 2009

Passed on Second Reading: December 1, 2009

Passed on Final Reading  
Following Public  
Hearing: December 15, 2009

  
\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney



CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of the CITY OF FAIRMONT on the 15th day of December, 2009.

Dated: January 21, 2010.

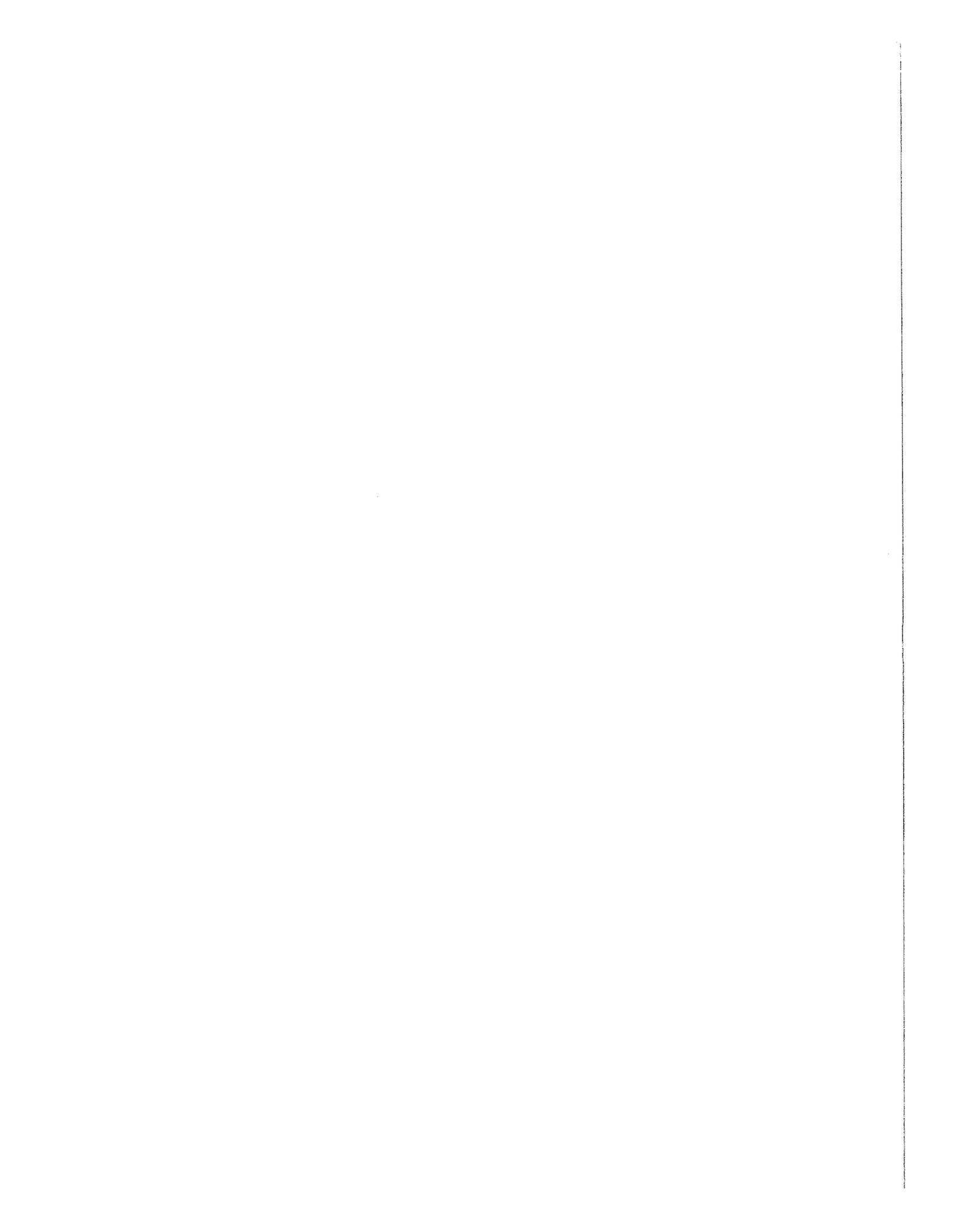
[SEAL]

*Janet L. Keller*  
Clerk



EXHIBIT A

Loan Agreements included in bond transcript as Document 3, Document 4 and Document 5



CITY OF FAIRMONT

Water Revenue Bonds, Series 2010 A  
(West Virginia DWTRF Program);  
Water Revenue Bonds, Series 2010 B  
(West Virginia DWTRF Program/ARRA);  
Water Revenue Bonds, Series 2010 C  
(West Virginia Water Development Authority); and  
Water Revenue Bonds, Series 2010 D  
(West Virginia Infrastructure Fund)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE, REDEMPTION PROVISION, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICE AND OTHER TERMS OF THE WATER REVENUE BONDS SERIES 2010 A (WEST VIRGINIA DWTRF PROGRAM), WATER REVENUE BONDS, SERIES 2010 B (WEST VIRGINIA DWTRF PROGRAM/ARRA), WATER REVENUE BONDS, SERIES 2010 C (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), AND WATER REVENUE BONDS, SERIES 2010 D (WEST VIRGINIA INFRASTRUCTURE FUND) OF THE CITY OF FAIRMONT; APPROVING AND RATIFYING THE LOAN AGREEMENTS RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the council (the "Governing Body") of the City of Fairmont (the "Issuer") has duly and officially adopted and enacted a bond ordinance on December 15, 2009 which became effective January 14, 2010 (the "Bond Ordinance"), entitled:

ORDINANCE AUTHORIZING THE REPEAL OF ORDINANCE 1460, AUTHORIZING PAYMENT OF THE WATERWORKS SYSTEM DESIGN BOND ANTICIPATION NOTES, SERIES 2010 A AND THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATERWORKS SYSTEM OF THE CITY OF FAIRMONT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF FAIRMONT OF NOT MORE THAN \$6,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE

BONDS, SERIES 2010 A (WEST VIRGINIA DWTRF PROGRAM); NOT MORE THAN \$6,000,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2010 B (WEST VIRGINIA DWTRF PROGRAM/ARRA); NOT MORE THAN \$4,300,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2010 C (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY); AND NOT MORE THAN \$4,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2010 D (WEST VIRGINIA INFRASTRUCTURE FUND) PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING LOAN AGREEMENTS RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

WHEREAS, the Bond Ordinance provides for the issuance of Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program) in an aggregate principal amount not to exceed \$6,000,000 (the "Series 2010 A Bonds"), Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA) in an aggregate principal amount not to exceed \$6,000,000 (the "Series 2010 B Bonds"), Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority) in an aggregate principal amount not to exceed \$4,300,000 (the "Series 2010 C Bonds"), and Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund) in an aggregate principal amount not to exceed \$4,000,000 (the "Series 2010 D Bonds") (collectively, the "Series 2010 Bonds"), and has authorized the execution and delivery of the ARRA Assistance Agreement relating to the Series 2010 A Bonds and Series 2010 B Bonds respectively, including all schedules and exhibits attached thereto, by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Bureau for Public Health for the Series 2010 A Bonds and Series 2010 B Bonds (the "ARRA Assistance Agreement"); the loan agreement relating to the Series 2010 C Bonds, including all schedules and exhibits attached thereto, by and between the Issuer and the Authority (the "WDA Loan Agreement") and the loan agreement relating to the Series 2010 D Bonds, including all schedules and exhibits attached thereto, by and between the Issuer and the Authority on behalf of the West Virginia Infrastructure & Jobs Development Council (the "Council") (the "IJDC Loan Agreement"), all in accordance with Chapter 8, Article 19, Chapter 16, Article 13C, Chapter 22C, Article 1, and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"), and in the Bond Ordinance it is provided that the form of the Loan Agreements and the exact principal amount, date, maturity date, redemption provision, interest rate, interest and principal payment dates, sale price and other terms of the Series 2010 Bonds should be established by a supplemental resolution pertaining to the Series 2010 Bonds; and that other matters relating to the Bonds be herein provided for;

WHEREAS, the Loan Agreements have been presented to the Issuer;

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

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the Loan Agreements be approved and ratified by the Issuer, that the exact principal amounts, the dates, the maturity dates, the redemption provisions, the interest rates, the interest and principal payment dates and the sale price of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for;

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

Section 1. Section 2.01 of the Ordinance is hereby revised in its entirety Authorization of Acquisition and Construction of the Project. There is hereby authorized and ordered the acquisition and construction of the Project, at an estimated cost of \$12,145,340, and ordered in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2010 A Bonds, the Series 2010 B Bonds, the Series 2010 C Bonds and the Series 2010 D Bonds, hereby authorized, shall be applied as provided in Article VI hereof.

The cost of the Project is estimated not to exceed \$12,145,340 of which \$4,447,618 will be obtained from proceeds of the Series 2010 A Bonds, \$4,447,618 will be obtained from the proceeds of the Series 2010 B Bonds, \$2,000,000 will be obtained from proceeds of the Series 2010 C Bonds; and \$1,250,104 will be obtained from proceeds of the Series 2010 D Bonds.

Section 2. Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Water Revenue Bonds, Series 2010 A (West Virginia DWTRF Program), of the Issuer, originally represented by a single Bond, numbered AR-1, in the principal amount of \$4,447,618. The Series 2010 A Bonds shall be dated the date of delivery thereof, shall finally mature December 1, 2041, and shall bear no interest. The principal of the Series 2010 A Bonds shall be payable quarterly, on March 1, June 1, September 1 and December 1 of each year, commencing March 1, 2012 to and including December 1, 2041, and in the amounts as set forth in the "Schedule Y" attached to the ARRA Assistance Agreement and incorporated in and made a part of the Series 2010 A Bonds. The Series 2010 A Bonds shall be subject to redemption upon the written consent of the Authority and the BPH, and upon payment of the redemption premium, if any, and otherwise in compliance with the ARRA Assistance Agreement, so long as the Authority shall be the registered owner of the Series 2010 A Bonds. The Series 2010 A Bonds are not subject to the Administrative Fee.

Section 3. Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Water Revenue Bonds, Series 2010 B (West Virginia DWTRF Program/ARRA), of the Issuer, originally

represented by a single Bond, numbered BR-1, in the principal amount of \$4,447,618. The Series 2010 B Bonds shall be dated the date of delivery thereof, shall finally mature December 1, 2021, and shall bear no interest. The principal of the Series 2010 B Bonds shall be forgivable quarterly, on March 1, June 1, September 1 and December 1 of each year, commencing March 1, 2012 to and including December 1, 2021, and in the amounts as set forth in the "Schedule Y" attached to the ARRA Assistance Agreement and incorporated in and made a part of the Series 2010 B Bonds. The Series 2010 B Bonds shall be subject to redemption upon the written consent of the Authority and the BPH, and upon payment of the redemption premium, if any, and otherwise in compliance with the ARRA Assistance Agreement, so long as the Authority shall be the registered owner of the Series 2010 B Bonds. The Series 2010 B Bonds are not subject to the Administrative Fee.

Section 4. Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Water Revenue Bonds, Series 2010 C (West Virginia Water Development Authority), of the Issuer, originally represented by a single Bond, numbered CR-1, in the principal amount of \$2,000,000. The Series 2010 C Bonds shall be dated the date of delivery thereof, shall finally mature October 1, 2031, and shall bear interest at the rate of five percent (5%) per annum. The principal on Series 2010 C Bonds shall be payable annually on October 1 of each year, commencing October 1, 2012, to and including October 1, 2031, and the interest on each installment shall be payable semi-annually on April 1 and October 1 in each year, beginning April 1, 2010, and in the amounts as set forth in the "Schedule Y" attached to the WDA Loan Agreement and incorporated in and made a part of the Series 2010 C Bonds. The Series 2010 C Bonds shall be subject to redemption upon the written consent of the Authority, and upon payment of the redemption premium, if any, and otherwise in compliance with the WDA Loan Agreement, so long as the Authority shall be the registered owner of the Series 2010 C Bonds.

Section 5. Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Water Revenue Bonds, Series 2010 D (West Virginia Infrastructure Fund), of the Issuer, originally represented by a single Bond, numbered DR-1, in the principal amount of \$1,250,104. The Series 2010 D Bonds shall be dated the date of delivery thereof, shall finally mature December 1, 2049, and shall bear no interest. The principal of the Series 2010 D Bonds shall be payable quarterly, on March 1, June 1, September 1 and December 1 of each year, commencing March 1, 2012 to and including December 1, 2049, and in the amounts as set forth in the "Schedule Y" attached to the IJDC Loan Agreement and incorporated in and made a part of the Series 2010 D Bonds. The Series 2010 D Bonds shall be subject to redemption upon the written consent of the Authority and the Council, and upon payment of the redemption premium, if any, and otherwise in compliance with the IJDC Loan Agreement, so long as the Authority shall be the registered owner of the Series 2010 D Bonds.

Section 6. All other provisions relating to the Series 2010 Bonds and the text of each series of the Series 2010 Bonds shall be in substantially the form provided in the Bond Ordinance.

Section 7. The Issuer does hereby authorize, approve, ratify and accept the Loan Agreements, copies of which are incorporated herein by reference, and the execution and delivery of the Loan Agreements by the Mayor, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed, ratified and approved. The Issuer hereby

affirms all covenants and representations made in the Loan Agreements and in the applications to the Authority and the BPH. The price of the Series 2010 Bonds shall be 100% of par value, there being no interest accrued thereon, provided that the proceeds of the Series 2010 Bonds shall be advanced from time to time as requisitioned by the Issuer.

Section 8. The Issuer does hereby appoint and designate The Huntington National Bank, Charleston, West Virginia, to serve as Registrar (the "Registrar") for the Bonds under the Bond Ordinance and does approve and accept the Registrar's Agreement to be dated the date of delivery of the Bonds, by and between the Issuer and the Registrar, and the execution and delivery of the Registrar's Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, approved and directed.

Section 9. The Issuer does hereby appoint and designate the West Virginia Municipal Bond Commission, Charleston, West Virginia, to serve as Paying Agent for the Bonds under the Bond Ordinance.

Section 10. The Issuer does hereby appoint and designate The Huntington National Bank, Fairmont, West Virginia, to serve as Depository Bank under the Bond Ordinance.

Section 11. Series 2010 A Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2010 A Bonds Sinking Fund, as capitalized interest.

Section 12. Series 2010 A Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2010 A Bonds Reserve Account.

Section 13. The balance of the proceeds of the Series 2010 A Bonds shall be deposited in or credited to the Series 2010 Bonds Construction Trust Fund as received from the BPH from time to time for payment of the costs of the Project, including, without limitation, costs of issuance of the Series 2010 A Bonds and related costs.

Section 14. Series 2010 B Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2010 B Bonds Sinking Fund, as capitalized interest.

Section 15. Series 2010 B Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2010 B Bonds Reserve Account.

Section 16. The balance of the proceeds of the Series 2010 B Bonds shall be deposited in or credited to the Series 2010 Bonds Construction Trust Fund as received from the BPH from time to time for payment of the costs of the Project, including, without limitation, costs of issuance of the Series 2010 B Bonds and related costs.

Section 17. Series 2010 C Bonds proceeds in the amount of \$219,444.00 shall be deposited in the Series 2010 C Bonds Sinking Fund, as capitalized interest.

Section 18. Series 2010 C Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2010 C Bonds Reserve Account.

Section 19. Series 2010 C Bonds proceeds in the amount of \$479,253 shall be deposited with the Municipal Bond Commission to pay the outstanding principal balance of and all accrued interest on the Issuer's Waterworks System Design Bond Anticipation Notes, Series 2009 A (the "Series 2009 A Design Notes") at Closing.

Section 20. The balance of the proceeds of the Series 2010 C Bonds shall be deposited in or credited to the Series 2010 Bonds Construction Trust Fund as received from the Authority from time to time for payment of the costs of the Project, including, without limitation, costs of issuance of the Series 2010 C Bonds and related costs.

Section 21. Series 2010 D Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2010 D Bonds Sinking Fund, as capitalized interest.

Section 22. Series 2010 D Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2010 D Bonds Reserve Account.

Section 23. The balance of the proceeds of the Series 2010 D Bonds shall be deposited in or credited to the Series 2010 Bonds Construction Trust Fund as received from the Authority from time to time for payment of the costs of the Project, including, without limitation, costs of issuance of the Series 2010 D Bonds and related costs.

Section 24. The Mayor and the Clerk are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Bond Ordinance approved and provided for, to the end that the Bonds may be delivered on or about January 21, 2010, to the Authority pursuant to the Loan Agreements.

Section 25. The Special Conditions of the ARRA Assistance Agreement attached as Exhibit A and hereby agreed to and incorporated herein.

Section 26. The payment of the Series 2009 A Design Notes and the acquisition and construction of the Project and the financing thereof in part with proceeds of the Series 2010 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.

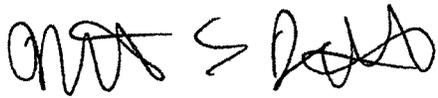
Section 27. The Issuer does hereby approve and authorize all contracts relating to the financing, acquisition and construction of the Project.

Section 28. The Issuer hereby determines to invest all monies in the funds and accounts established by the Bond Ordinance held by the Depository Bank until expended, in repurchase agreements or time accounts, secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to take such actions as may be necessary to cause such monies to be invested in such repurchase agreements or time accounts until further directed in writing by the Issuer. Monies in the Series 2010 A Sinking Fund, the Series 2010 B Sinking Fund, the Series 2010 C Sinking Fund and the Series 2010 D Sinking Fund shall be invested by the West Virginia Municipal Bond Commission in the West Virginia Consolidated Fund.

Section 29. This Supplemental Resolution shall be effective immediately following adoption hereof.

[Remainder of Page Intentionally Blank]

Adopted this 15th day of January, 2010.

By:   
Its: Mayor

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of the City of Fairmont on the 15th of January, 2010.

Dated: January 21, 2010.

[SEAL]

Janet J. Keller  
Clerk

12.29.09  
268460.00013

## EXHIBIT A

### ARRA Special Conditions

A. **PUBLIC RELEASE REQUIREMENT** – The Local Entity 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 Entity 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 Entity.

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

D. **ASSET MANAGEMENT** – The Local Entity shall develop and implement an asset management plan in accordance with guidelines issued by BPH and is approved by BPH.

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

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

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

H. **PURCHASING REQUIREMENTS** – The Local Entity 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 Entity 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 BPH, the

Local Entity shall provide certifications as to compliance.

J. REPORTING – The Local Entity 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 BPH.

K. INSPECTOR GENERAL REVIEWS – The Local Entity 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 Entity.

L. FALSE CLAIMS – The Local Entity 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 Entity 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 Entity 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 Entity 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 Entity 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 Entity agrees to make good faith efforts whenever procuring construction, equipment, services and supplies, and to require that prime contractors also comply. The Local Entity shall provide BPH with MBE/WBE participation reports semi-annually.

Q. CIVIL RIGHTS – The Local Entity 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 Entity 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 Entities, 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 contain “(WVDWTRF Program/ARRA)” in the bond name.

S. USER RATES – The Local Entity shall covenant that it will not reduce its approved customer rates for at least eighteen months after completion of the Project or (a) until such time as a cost of service study has been completed establishing the actual operation and maintenance expenses or (b) new rates have been established by order of the Public Service Commission. The Local Entity shall notify the Authority and the BPH of any action to reduce rates during the eighteen months following completion of construction of the Project.

SPECIMEN

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT  
WATER REVENUE BONDS, SERIES 2010 A  
(WEST VIRGINIA DWTRF PROGRAM)

No. AR-1

\$4,447,618

KNOW ALL MEN BY THESE PRESENTS: That on this the 21st day of January, 2010, the CITY OF FAIRMONT, a municipal corporation and political subdivision of the State of West Virginia in Marion 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 FOUR MILLION FOUR HUNDRED FORTY-SEVEN THOUSAND SIX HUNDRED EIGHTEEN DOLLARS (\$4,447,618), 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, the principal of, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing March 1, 2012, to and including December 1, 2041 as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference and bearing no interest. The Series 2010 A Bonds are not subject to the Administrative Fee.

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

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Bureau for Public Health (the "BPH), and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement by and between the Issuer and the Authority, on behalf of the BPH, dated January 21, 2010.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public waterworks system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of the Bonds and related costs. The existing public waterworks system of the Issuer, the Project, and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 and Chapter 16, Article 13C of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on December 15, 2009, and a Supplemental Resolution duly adopted by the Issuer on January 15, 2010 (collectively, the "Bond Legislation"), and is subject to all the

terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S (1) WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997, DATED JUNE 1, 1997, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$10,260,000 (THE "SERIES 1997 BONDS"); (2) WATER REVENUE BONDS, SERIES 1998, DATED DECEMBER 15, 1998, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$9,600,000 (THE "SERIES 1998 BONDS"); (3) WATER REVENUE BONDS, SERIES 1999, DATED JANUARY 1, 1999, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$19,945,000 (THE "SERIES 1999 BONDS"); (4) WATER REVENUE BONDS, SERIES 2008 A (WEST VIRGINIA DWTRF PROGRAM), DATED JUNE 26, 2008, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,750,000 (THE "SERIES 2008 A BONDS") (COLLECTIVELY, THE "PRIOR BONDS"); (5) WATER REVENUE BONDS, SERIES 2010 B (WEST VIRGINIA DWTRF PROGRAM/ARRA) DATED JANUARY 21, 2010 ISSUED IN THE ORIGINAL AGGREGATE AMOUNT OF \$4,447,618 (THE "SERIES 2010 B BONDS") ISSUED SIMULTANEOUSLY HEREWITH; (6) WATER REVENUE BONDS, SERIES 2010 C (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY) DATED JANUARY 21, 2010 ISSUED IN THE ORIGINAL AGGREGATE AMOUNT OF \$2,000,000 (THE "SERIES 2010 C BONDS") ISSUED SIMULTANEOUSLY HEREWITH; AND (7) WATER REVENUE BONDS, SERIES 2010 D (WEST VIRGINIA INFRASTRUCTURE FUND) DATED JANUARY 21, 2010 ISSUED IN THE ORIGINAL AGGREGATE AMOUNT OF \$1,250,104 (THE "SERIES 2010 D BONDS") ISSUED SIMULTANEOUSLY HEREWITH.

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Gross Revenue in favor of the Holders of the Prior Bonds, the Series 2010 B Bonds, the Series 2010 C Bonds, and the Series 2010 D Bonds and from monies in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2010 A Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all Bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest, if any, hereon, except from said special fund provided from the Gross Revenues, the monies in the Series 2010 A Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Prior Bonds, Series 2010 B Bonds, Series 2010 C Bonds and Series 2010 D Bonds; provided however, that so long as there exists in the Series 2010 A Bonds Reserve Account an amount at least equal to the maximum

amount of principal and interest, if any, which will become due on the Bonds in the then current or succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, including the Prior Bonds, the Series 2010 B Bonds, Series 2010 C Bonds and Series 2010 D Bonds an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

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

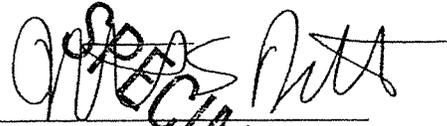
All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance described in the Bond Legislation, and there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

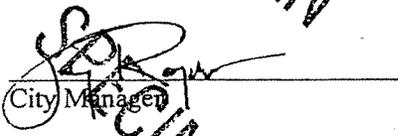
IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

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

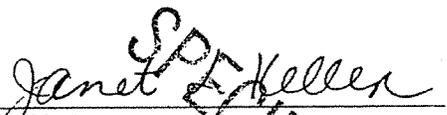
IN WITNESS WHEREOF, the CITY OF FAIRMONT has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Clerk, and has caused this Bond to be dated as of the day and year first written above.

[SEAL]

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
City Manager

ATTEST:

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

SPECIMEN

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2010 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: January 21, 2010.

THE HUNTINGTON NATIONAL BANK,  
as Registrar

  
Authorized Officer

**SPECIMEN**

EXHIBIT A

RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$111,190	January 21, 2010	(19)	
(2)		(20)	
(3)		(21)	
(4)		(22)	
(5)		(23)	
(6)		(24)	
(7)		(25)	
(8)		(26)	
(9)		(27)	
(10)		(28)	
(11)		(29)	
(12)		(30)	
(13)		(31)	
(14)		(32)	
(15)		(33)	
(16)		(34)	
(17)		(35)	
(18)		(36)	

TOTAL \$ \_\_\_\_\_

EXHIBIT B

DEBT SERVICE SCHEDULE

**BOND DEBT SERVICE**  
 City of Fairmont  
 0% Interest Rate  
 30 Years

Dated Date 1/21/2010  
 Delivery  
 Date 1/21/2010

Period Ending	Principal	Interest Debt Service
1/21/2010		
3/1/2012	37,064	37,064
6/1/2012	37,064	37,064
9/1/2012	37,064	37,064
12/1/2012	37,064	37,064
3/1/2013	37,064	37,064
6/1/2013	37,064	37,064
9/1/2013	37,064	37,064
12/1/2013	37,064	37,064
3/1/2014	37,064	37,064
6/1/2014	37,064	37,064
9/1/2014	37,064	37,064
12/1/2014	37,064	37,064
3/1/2015	37,064	37,064
6/1/2015	37,064	37,064
9/1/2015	37,064	37,064
12/1/2015	37,064	37,064
3/1/2016	37,064	37,064
6/1/2016	37,064	37,064
9/1/2016	37,064	37,064
12/1/2016	37,064	37,064
3/1/2017	37,064	37,064
6/1/2017	37,064	37,064
9/1/2017	37,064	37,064
12/1/2017	37,064	37,064
3/1/2018	37,064	37,064
6/1/2018	37,064	37,064
9/1/2018	37,064	37,064
12/1/2018	37,064	37,064
3/1/2019	37,064	37,064
6/1/2019	37,064	37,064
9/1/2019	37,064	37,064
12/1/2019	37,064	37,064
3/1/2020	37,064	37,064
6/1/2020	37,064	37,064
9/1/2020	37,064	37,064
12/1/2020	37,064	37,064
3/1/2021	37,064	37,064
6/1/2021	37,064	37,064
9/1/2021	37,064	37,064
12/1/2021	37,064	37,064
3/1/2022	37,064	37,064
6/1/2022	37,064	37,064
9/1/2022	37,064	37,064
12/1/2022	37,064	37,064

**BOND DEBT SERVICE**  
 City of Fairmont  
 0% Interest Rate  
 30 Years

Period Ending	Principal	Interest	Debt Service
3/1/2023	37,064		37,064
6/1/2023	37,064		37,064
9/1/2023	37,064		37,064
12/1/2023	37,064		37,064
3/1/2024	37,064		37,064
6/1/2024	37,064		37,064
9/1/2024	37,064		37,064
12/1/2024	37,064		37,064
3/1/2025	37,064		37,064
6/1/2025	37,064		37,064
9/1/2025	37,064		37,064
12/1/2025	37,064		37,064
3/1/2026	37,064		37,064
6/1/2026	37,063		37,063
9/1/2026	37,063		37,063
12/1/2026	37,063		37,063
3/1/2027	37,063		37,063
6/1/2027	37,063		37,063
9/1/2027	37,063		37,063
12/1/2027	37,063		37,063
3/1/2028	37,063		37,063
6/1/2028	37,063		37,063
9/1/2028	37,063		37,063
12/1/2028	37,063		37,063
3/1/2029	37,063		37,063
6/1/2029	37,063		37,063
9/1/2029	37,063		37,063
12/1/2029	37,063		37,063
3/1/2030	37,063		37,063
6/1/2030	37,063		37,063
9/1/2030	37,063		37,063
12/1/2030	37,063		37,063
3/1/2031	37,063		37,063
6/1/2031	37,063		37,063
9/1/2031	37,063		37,063
12/1/2031	37,063		37,063
3/1/2032	37,063		37,063
6/1/2032	37,063		37,063
9/1/2032	37,063		37,063
12/1/2032	37,063		37,063
3/1/2033	37,063		37,063
6/1/2033	37,063		37,063
9/1/2033	37,063		37,063
12/1/2033	37,063		37,063
3/1/2034	37,063		37,063
6/1/2034	37,063		37,063
9/1/2034	37,063		37,063
12/1/2034	37,063		37,063
3/1/2035	37,063		37,063

**BOND DEBT SERVICE**  
 City of Fairmont  
 0% Interest Rate  
 30 Years

Period Ending	Principal	Interest	Debt Service
6/1/2035	37,063		37,063
9/1/2035	37,063		37,063
12/1/2035	37,063		37,063
3/1/2036	37,063		37,063
6/1/2036	37,063		37,063
9/1/2036	37,063		37,063
12/1/2036	37,063		37,063
3/1/2037	37,063		37,063
6/1/2037	37,063		37,063
9/1/2037	37,063		37,063
12/1/2037	37,063		37,063
3/1/2038	37,063		37,063
6/1/2038	37,063		37,063
9/1/2038	37,063		37,063
12/1/2038	37,063		37,063
3/1/2039	37,063		37,063
6/1/2039	37,063		37,063
9/1/2039	37,063		37,063
12/1/2039	37,063		37,063
3/1/2040	37,063		37,063
6/1/2040	37,063		37,063
9/1/2040	37,063		37,063
12/1/2040	37,063		37,063
3/1/2041	37,063		37,063
6/1/2041	37,063		37,063
9/1/2041	37,063		37,063
12/1/2041	37,064		37,064
	<b>4,447,618</b>		<b>4,447,618</b>

(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:

\_\_\_\_\_

SPECIMEN

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT  
WATER REVENUE BONDS, SERIES 2010 B  
(WEST VIRGINIA DWTRF PROGRAM/ARRA)

No. BR-1

\$4,447,618

KNOW ALL MEN BY THESE PRESENTS: That on this the 21st day of January, 2010, the CITY OF FAIRMONT, a municipal corporation and political subdivision of the State of West Virginia in Marion 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 FOUR MILLION FOUR HUNDRED FORTY-SEVEN THOUSAND SIX HUNDRED EIGHTEEN DOLLARS (\$4,447,618), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing March 1, 2012 to and including December 1, 2021, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. This Bond shall not be subject to the Administrative fee (as defined in the hereinafter describe Bond Legislation).

This Bond shall bear no interest. Principal installments of this Bond are forgivable quarterly as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference.

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

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Bureau for Public Health (the "BPH"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement by and between the Issuer and the Authority, on behalf of the BPH, dated January 21, 2010.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public waterworks system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of the Bonds and related costs. The existing public waterworks system of the Issuer, the Project, and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article

19 and Chapter 16, Article 13C of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on December 15, 2009, and a Supplemental Resolution duly adopted by the Issuer on January 15, 2010 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S (1) WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997, DATED JUNE 1, 1997, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$10,260,000 (THE "SERIES 1997 BONDS"); (2) WATER REVENUE BONDS, SERIES 1998, DATED DECEMBER 15, 1998, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$9,600,000 (THE "SERIES 1998 BONDS"); (3) WATER REVENUE BONDS, SERIES 1999, DATED JANUARY 1, 1999, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$19,945,000 (THE "SERIES 1999 BONDS"); (4) WATER REVENUE BONDS, SERIES 2008 A (WEST VIRGINIA DWTRF PROGRAM), DATED JUNE 26, 2008, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,750,000 (THE "SERIES 2008 A BONDS") (COLLECTIVELY, THE "PRIOR BONDS"); (5) WATER REVENUE BONDS, SERIES 2010 A (WEST VIRGINIA DWTRF PROGRAM) DATED JANUARY 21, 2010 ISSUED IN THE ORIGINAL AGGREGATE AMOUNT OF \$4,447,618 (THE "SERIES 2010 A BONDS") ISSUED SIMULTANEOUSLY HEREWITH; (6) WATER REVENUE BONDS, SERIES 2010 C (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY) DATED JANUARY 21, 2010 ISSUED IN THE ORIGINAL AGGREGATE AMOUNT OF \$2,000,000 (THE "SERIES 2010 C BONDS") ISSUED SIMULTANEOUSLY HEREWITH; AND (7) WATER REVENUE BONDS, SERIES 2010 D (WEST VIRGINIA INFRASTRUCTURE FUND) DATED JANUARY 21, 2010 ISSUED IN THE ORIGINAL AGGREGATE AMOUNT OF \$1,250,104 (THE "SERIES 2010 D BONDS") ISSUED SIMULTANEOUSLY HEREWITH.

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Gross Revenue in favor of the Holders of the Prior Bonds, the Series 2010 A Bonds, Series 2010 C Bonds and Series 2010 D Bonds, and unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all Bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest, if any, hereon, except from said special fund provided from the Gross Revenues, the monies in the Series 2010 B Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Prior Bonds, the Series 2010 A Bonds, Series 2010 C Bonds and Series 2010 D Bonds; provided however, that so long as there exists in the

Series 2010 B Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on the Bonds in the then current or succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, including the Prior Bonds, the Series 2010 A Bonds, Series 2010 C Bonds and Series 2010 D Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

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

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

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest, if any on this Bond.

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

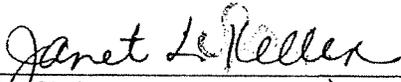
IN WITNESS WHEREOF, the CITY OF FAIRMONT has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Clerk, and has caused this Bond to be dated as of the day and year first written above.

[SEAL]

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
City Manager

ATTEST:

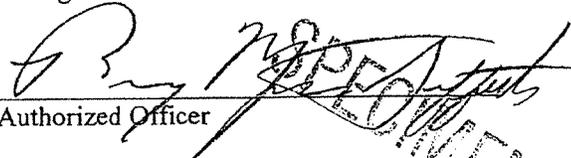
  
\_\_\_\_\_  
City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2010 B Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: January 21, 2010.

THE HUNTINGTON NATIONAL BANK,  
as Registrar

  
Authorized Officer

**SPECIMEN**

EXHIBIT A

RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$111,190	January 21, 2010	(19)	
(2)		(20)	
(3)		(21)	
(4)		(22)	
(5)		(23)	
(6)		(24)	
(7)		(25)	
(8)		(26)	
(9)		(27)	
(10)		(28)	
(11)		(29)	
(12)		(30)	
(13)		(31)	
(14)		(32)	
(15)		(33)	
(16)		(34)	
(17)		(35)	
(18)		(36)	

TOTAL \$ \_\_\_\_\_

EXHIBIT B

DEBT SERVICE SCHEDULE

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BOND DEBT SERVICE

City of Fairmont

10 Years

Dated Date 1/21/2010

Delivery

Date 1/21/2010

Period		Principal
Ending	Debt Service	Forgiveness
1/21/2010		
3/1/2012	-111,191	-111,191
6/1/2012	-111,191	-111,191
9/1/2012	-111,191	-111,191
12/1/2012	-111,191	-111,191
3/1/2013	-111,191	-111,191
6/1/2013	-111,191	-111,191
9/1/2013	-111,191	-111,191
12/1/2013	-111,191	-111,191
3/1/2014	-111,191	-111,191
6/1/2014	-111,191	-111,191
9/1/2014	-111,191	-111,191
12/1/2014	-111,191	-111,191
3/1/2015	-111,191	-111,191
6/1/2015	-111,191	-111,191
9/1/2015	-111,191	-111,191
12/1/2015	-111,191	-111,191
3/1/2016	-111,191	-111,191
6/1/2016	-111,191	-111,191
9/1/2016	-111,191	-111,191
12/1/2016	-111,191	-111,191
3/1/2017	-111,191	-111,191
6/1/2017	-111,191	-111,191
9/1/2017	-111,191	-111,191
12/1/2017	-111,191	-111,191
3/1/2018	-111,191	-111,191
6/1/2018	-111,191	-111,191
9/1/2018	-111,191	-111,191
12/1/2018	-111,191	-111,191
3/1/2019	-111,191	-111,191
6/1/2019	-111,191	-111,191
9/1/2019	-111,191	-111,191
12/1/2019	-111,191	-111,191
3/1/2020	-111,191	-111,191
6/1/2020	-111,191	-111,191
9/1/2020	-111,191	-111,191
12/1/2020	-111,191	-111,191
3/1/2021	-111,191	-111,191
6/1/2021	-111,191	-111,191
9/1/2021	-111,191	-111,191
12/1/2021	-111,191	-111,191
	<b>4,447,618</b>	<b>4,447,618</b>

(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 \_\_\_\_.

**SPECIMEN**

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT  
WATER REVENUE BONDS, SERIES 2010 C  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

No. CR-1

\$2,000,000

KNOW ALL MEN BY THESE PRESENTS: That on this 21st day of January, 2010, the CITY OF FAIRMONT, a municipal corporation and political subdivision of the State of West Virginia in Marion County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of TWO MILLION DOLLARS (\$2,000,000), in annual installments on October 1 of each year, commencing October 1, 2012, to and including October 1, 2031, as set forth on the "Debt Service Schedule" attached as EXHIBIT A hereto and incorporated herein by reference.

The interest on each installment shall run from the original date of delivery of this Bond to the Authority and payment therefor, and until payment of such installment, such interest shall be payable semiannually on April 1 and October 1 in each year, beginning April 1, 2010. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of The Huntington National Bank, Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement between the Issuer and the Authority, dated January 21, 2010.

This Bond is issued to provide funds, along with other available monies of the Issuer (i) to pay the Prior Notes; (ii) to pay a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the existing public waterworks system of the Issuer (the "Project"); (iii) to pay interest on the Series 2010 C Bonds during the construction of the project and for not more than 6 months thereafter; and (iv) to pay certain costs of issuance hereof and related costs. The existing public waterworks system of the Issuer, the Project, and any further extensions, additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 and Chapter 22C, Article 1 of the

West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Ordinance duly enacted by the Issuer on December 15, 2009, and a Supplemental Resolution duly adopted by the Issuer on January 15, 2010 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S (1) WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997, DATED JUNE 1, 1997, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$10,260,000 (THE "SERIES 1997 BONDS"); (2) WATER REVENUE BONDS, SERIES 1998, DATED DECEMBER 15, 1998, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$9,600,000 (THE "SERIES 1998 BONDS"); (3) WATER REVENUE BONDS, SERIES 1999, DATED JANUARY 1, 1999, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$19,945,000 (THE "SERIES 1999 BONDS"); (4) WATER REVENUE BONDS, SERIES 2008 A (WEST VIRGINIA DWTRF PROGRAM), DATED JUNE 26, 2008, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,750,000 (THE "SERIES 2008 A BONDS") (COLLECTIVELY, THE "PRIOR BONDS"); (5) WATER REVENUE BONDS, SERIES 2010 A (WEST VIRGINIA DWTRF PROGRAM) DATED JANUARY 21, 2010, ISSUED IN THE ORIGINAL AGGREGATE AMOUNT OF \$4,447,618 (THE "SERIES 2010 A BONDS") ISSUED SIMULTANEOUSLY HEREWITH; (6) WATER REVENUE BONDS, SERIES 2010 B (WEST VIRGINIA DWTRF PROGRAM/ARRA) DATED JANUARY 21, 2010, ISSUED IN THE ORIGINAL AGGREGATE AMOUNT OF \$4,447,618 (THE "SERIES 2010 B BONDS"); AND (7) WATER REVENUE BONDS, SERIES 2010 D (WEST VIRGINIA INFRASTRUCTURE FUND) DATED JANUARY 21, 2010, ISSUED IN THE ORIGINAL AGGREGATE AMOUNT OF \$1,250,104 (THE "SERIES 2010 D BONDS") ISSUED SIMULTANEOUSLY HEREWITH.

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the Holders of the Prior Bonds, the Series 2010 A Bonds, Series 2010 B Bonds and Series 2010 D Bonds and from monies in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2010 C Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest, if any, hereon, except from said special fund provided from the Gross Revenues, the monies in the Series 2010 C Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with, or subordinate to, the Bonds,

including the Prior Bonds, the Series 2010 A Bonds, Series 2010 B Bonds and Series 2010 D Bonds; provided however, that so long as there exists in the Series 2010 C Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with, or subordinate to, the Bonds, including the Prior Bonds, the Series 2010 A Bonds, Series 2010 B Bonds and Series 2010 D Bonds an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

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

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

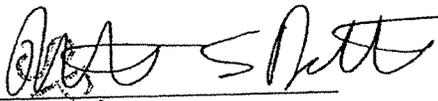
IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

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

[Remainder of Page Intentionally Blank]

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

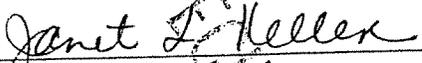
[SEAL]

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
City Manager

**SEAL**

ATTEST:

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

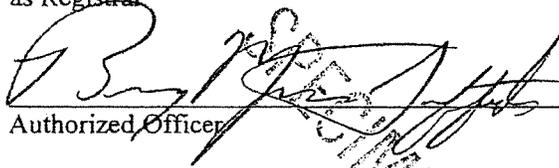
**SEAL**

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2010 C Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: January 21, 2010.

THE HUNTINGTON NATIONAL BANK,  
as Registrar

  
Authorized Officer

RECEIVED

EXHIBIT A

RECORD OF ADVANCES

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

TOTAL \$ \_\_\_\_\_

EXHIBIT A

SCHEDULE OF ANNUAL DEBT SERVICE

**BOND DEBT SERVICE**  
City of Fairmont  
5% Interest Rate  
20 Years

Dated Date 1/21/2010  
Delivery Date 1/21/2010

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
1/21/2010					
4/1/2010			19,444.44	19,444.44	
10/1/2010			50,000.00	50,000.00	69,444.44
4/1/2011			50,000.00	50,000.00	
10/1/2011			50,000.00	50,000.00	100,000.00
4/1/2012			50,000.00	50,000.00	
10/1/2012	60,485	5.000%	50,000.00	110,485.00	160,485.00
4/1/2013			48,487.88	48,487.88	
10/1/2013	63,509	5.000%	48,487.88	111,996.88	160,484.76
4/1/2014			46,900.15	46,900.15	
10/1/2014	66,685	5.000%	46,900.15	113,585.15	160,485.30
4/1/2015			45,233.03	45,233.03	
10/1/2015	70,019	5.000%	45,233.03	115,252.03	160,485.06
4/1/2016			43,482.55	43,482.55	
10/1/2016	73,520	5.000%	43,482.55	117,002.55	160,485.10
4/1/2017			41,644.55	41,644.55	
10/1/2017	77,196	5.000%	41,644.55	118,840.55	160,485.10
4/1/2018			39,714.65	39,714.65	
10/1/2018	81,056	5.000%	39,714.65	120,770.65	160,485.30
4/1/2019			37,688.25	37,688.25	
10/1/2019	85,109	5.000%	37,688.25	122,797.25	160,485.50
4/1/2020			35,560.53	35,560.53	
10/1/2020	89,364	5.000%	35,560.53	124,924.53	160,485.06
4/1/2021			33,326.43	33,326.43	
10/1/2021	93,832	5.000%	33,326.43	127,158.43	160,484.86
4/1/2022			30,980.63	30,980.63	
10/1/2022	98,524	5.000%	30,980.63	129,504.63	160,485.26
4/1/2023			28,517.53	28,517.53	
10/1/2023	103,450	5.000%	28,517.53	131,967.53	160,485.06
4/1/2024			25,931.28	25,931.28	
10/1/2024	108,623	5.000%	25,931.28	134,554.28	160,485.56
4/1/2025			23,215.70	23,215.70	
10/1/2025	114,054	5.000%	23,215.70	137,269.70	160,485.40
4/1/2026			20,364.35	20,364.35	
10/1/2026	119,757	5.000%	20,364.35	140,121.35	160,485.70
4/1/2027			17,370.43	17,370.43	
10/1/2027	125,744	5.000%	17,370.43	143,114.43	160,484.86
4/1/2028			14,226.83	14,226.83	
10/1/2028	132,032	5.000%	14,226.83	146,258.83	160,485.66
4/1/2029			10,926.03	10,926.03	
10/1/2029	138,633	5.000%	10,926.03	149,559.03	160,485.06
4/1/2030			7,460.20	7,460.20	
10/1/2030	145,565	5.000%	7,460.20	153,025.20	160,485.40
4/1/2031			3,821.08	3,821.08	
10/1/2031	152,843	5.000%	3,821.08	156,664.08	160,485.16
	2,000,000		1,379,148.60	3,379,148.60	3,379,148.60

(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:

\_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF FAIRMONT  
WATER REVENUE BONDS, SERIES 2010 D  
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. DR-1

\$1,250,104

KNOW ALL MEN BY THESE PRESENTS: That on this the 21st day of January, 2010, the CITY OF FAIRMONT, a municipal corporation and political subdivision of the State of West Virginia in Marion 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 TWO HUNDRED FIFTY THOUSAND ONE HUNDRED FOUR DOLLARS (\$1,250,104), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing March 1, 2012 to and including December 1, 2049, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference.

This Bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The principal on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of The Huntington National Bank, Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Infrastructure and Jobs Development Council (the "Council"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority, on behalf of the Council, dated January 21, 2010.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the public waterworks system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. The existing public waterworks system of the Issuer, the Project, and any further extensions, additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended

(collectively, the "Act"), and a Bond Ordinance duly enacted by the Issuer on December 15, 2009, and a Supplemental Resolution duly adopted by the Issuer on January 15, 2010 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S (1) WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997, DATED JUNE 1, 1997, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$10,260,000 (THE "SERIES 1997 BONDS"); (2) WATER REVENUE BONDS, SERIES 1998, DATED DECEMBER 15, 1998, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$9,600,000 (THE "SERIES 1998 BONDS"); (3) WATER REVENUE BONDS, SERIES 1999, DATED JANUARY 1, 1999, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$19,945,000 (THE "SERIES 1999 BONDS"); (4) WATER REVENUE BONDS, SERIES 2008 A (WEST VIRGINIA DWTRF PROGRAM), DATED JUNE 26, 2008, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,750,000 (THE "SERIES 2008 A BONDS") (COLLECTIVELY, THE "PRIOR BONDS"); (5) WATER REVENUE BONDS, SERIES 2010 A (WEST VIRGINIA DWTRF PROGRAM) DATED JANUARY 21, 2010, ISSUED IN THE ORIGINAL AGGREGATE AMOUNT OF \$4,447,618 (THE "SERIES 2010 A BONDS") ISSUED SIMULTANEOUSLY HEREWITH; (6) WATER REVENUE BONDS, SERIES 2010 B (WEST VIRGINIA DWTRF PROGRAM/ARRA) DATED JANUARY 21, 2010, ISSUED IN THE ORIGINAL AGGREGATE AMOUNT OF \$4,447,618 (THE "SERIES 2010 B BONDS") ISSUED SIMULTANEOUSLY HEREWITH; AND (7) WATER REVENUE BONDS, SERIES 2010 C (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY) DATED JANUARY 21, 2010, ISSUED IN THE ORIGINAL AGGREGATE AMOUNT OF \$2,000,000 (THE "SERIES 2010 C BONDS") ISSUED SIMULTANEOUSLY HEREWITH.

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the Holders of the Prior Bonds, Series 2010 A Bonds, Series 2010 B Bonds and Series 2010 C Bonds, and from monies in the reserve account created under the Bond Legislation for the Bonds (the "Series 2010 D Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Gross Revenues, the monies in the Series 2010 D Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Prior Bonds, the Series

2010 A Bonds, Series 2010 B Bonds and Series 2010 C Bonds; provided however, that, so long as there exists in the Series 2010 D Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, including the Prior Bonds, the series 2010 A Bonds, Series 2010 B Bonds and Series 2010 C Bonds an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

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

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

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

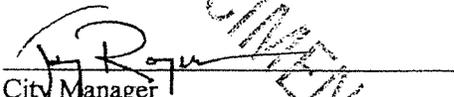
All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

[Remainder of Page Intentionally Blank]

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

[SEAL]

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
City Manager

SPECIMEN

ATTEST:

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

SPECIMEN

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2010 D Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: January 21, 2010.

THE HUNTINGTON NATIONAL BANK,  
as Registrar

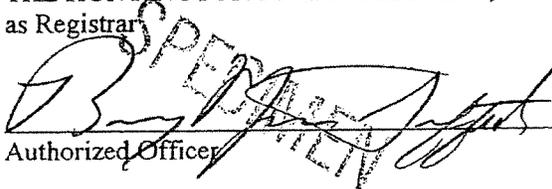
  
Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$-0-	January 21, 2010	(19)	
(2)		(20)	
(3)		(21)	
(4)		(22)	
(5)		(23)	
(6)		(24)	
(7)		(25)	
(8)		(26)	
(9)		(27)	
(10)		(28)	
(11)		(29)	
(12)		(30)	
(13)		(31)	
(14)		(32)	
(15)		(33)	
(16)		(34)	
(17)		(35)	
(18)		(36)	

TOTAL \$ \_\_\_\_\_

EXHIBIT B

DEBT SERVICE SCHEDULE

---

**BOND DEBT SERVICE**  
City of Fairmont  
0% Interest Rate  
40 Years

Dated Date 1/21/2010  
Delivery  
Date 1/21/2010

Period Ending	Principal	Interest	Debt Service
1/21/2010			
3/1/2012	8,225		8,225
6/1/2012	8,225		8,225
9/1/2012	8,225		8,225
12/1/2012	8,225		8,225
3/1/2013	8,225		8,225
6/1/2013	8,225		8,225
9/1/2013	8,225		8,225
12/1/2013	8,225		8,225
3/1/2014	8,225		8,225
6/1/2014	8,225		8,225
9/1/2014	8,225		8,225
12/1/2014	8,225		8,225
3/1/2015	8,225		8,225
6/1/2015	8,225		8,225
9/1/2015	8,225		8,225
12/1/2015	8,225		8,225
3/1/2016	8,225		8,225
6/1/2016	8,225		8,225
9/1/2016	8,225		8,225
12/1/2016	8,225		8,225
3/1/2017	8,225		8,225
6/1/2017	8,225		8,225
9/1/2017	8,225		8,225
12/1/2017	8,225		8,225
3/1/2018	8,225		8,225
6/1/2018	8,225		8,225
9/1/2018	8,225		8,225
12/1/2018	8,225		8,225
3/1/2019	8,225		8,225
6/1/2019	8,225		8,225
9/1/2019	8,225		8,225
12/1/2019	8,225		8,225
3/1/2020	8,225		8,225
6/1/2020	8,225		8,225
9/1/2020	8,225		8,225
12/1/2020	8,225		8,225
3/1/2021	8,225		8,225
6/1/2021	8,225		8,225
9/1/2021	8,225		8,225
12/1/2021	8,225		8,225
3/1/2022	8,225		8,225
6/1/2022	8,225		8,225
9/1/2022	8,225		8,225
12/1/2022	8,225		8,225

**BOND DEBT SERVICE**

City of Fairmont  
0% Interest Rate  
40 Years

Period Ending	Principal	Interest	Debt Service
3/1/2023	8,225		8,225
6/1/2023	8,225		8,225
9/1/2023	8,225		8,225
12/1/2023	8,225		8,225
3/1/2024	8,225		8,225
6/1/2024	8,225		8,225
9/1/2024	8,225		8,225
12/1/2024	8,225		8,225
3/1/2025	8,225		8,225
6/1/2025	8,225		8,225
9/1/2025	8,225		8,225
12/1/2025	8,224		8,224
3/1/2026	8,224		8,224
6/1/2026	8,224		8,224
9/1/2026	8,224		8,224
12/1/2026	8,224		8,224
3/1/2027	8,224		8,224
6/1/2027	8,224		8,224
9/1/2027	8,224		8,224
12/1/2027	8,224		8,224
3/1/2028	8,224		8,224
6/1/2028	8,224		8,224
9/1/2028	8,224		8,224
12/1/2028	8,224		8,224
3/1/2029	8,224		8,224
6/1/2029	8,224		8,224
9/1/2029	8,224		8,224
12/1/2029	8,224		8,224
3/1/2030	8,224		8,224
6/1/2030	8,224		8,224
9/1/2030	8,224		8,224
12/1/2030	8,224		8,224
3/1/2031	8,224		8,224
6/1/2031	8,224		8,224
9/1/2031	8,224		8,224
12/1/2031	8,224		8,224
3/1/2032	8,224		8,224
6/1/2032	8,224		8,224
9/1/2032	8,224		8,224
12/1/2032	8,224		8,224
3/1/2033	8,224		8,224
6/1/2033	8,224		8,224
9/1/2033	8,224		8,224
12/1/2033	8,224		8,224
3/1/2034	8,224		8,224
6/1/2034	8,224		8,224
9/1/2034	8,224		8,224
12/1/2034	8,224		8,224
3/1/2035	8,224		8,224

**BOND DEBT SERVICE**  
City of Fairmont  
0% Interest Rate  
40 Years

Period Ending	Principal	Interest	Debt Service
6/1/2035	8,224		8,224
9/1/2035	8,224		8,224
12/1/2035	8,224		8,224
3/1/2036	8,224		8,224
6/1/2036	8,224		8,224
9/1/2036	8,224		8,224
12/1/2036	8,224		8,224
3/1/2037	8,224		8,224
6/1/2037	8,224		8,224
9/1/2037	8,224		8,224
12/1/2037	8,224		8,224
3/1/2038	8,224		8,224
6/1/2038	8,224		8,224
9/1/2038	8,224		8,224
12/1/2038	8,224		8,224
3/1/2039	8,224		8,224
6/1/2039	8,224		8,224
9/1/2039	8,224		8,224
12/1/2039	8,224		8,224
3/1/2040	8,224		8,224
6/1/2040	8,224		8,224
9/1/2040	8,224		8,224
12/1/2040	8,224		8,224
3/1/2041	8,224		8,224
6/1/2041	8,224		8,224
9/1/2041	8,224		8,224
12/1/2041	8,224		8,224
3/1/2042	8,224		8,224
6/1/2042	8,224		8,224
9/1/2042	8,224		8,224
12/1/2042	8,224		8,224
3/1/2043	8,224		8,224
6/1/2043	8,224		8,224
9/1/2043	8,224		8,224
12/1/2043	8,224		8,224
3/1/2044	8,224		8,224
6/1/2044	8,224		8,224
9/1/2044	8,224		8,224
12/1/2044	8,224		8,224
3/1/2045	8,224		8,224
6/1/2045	8,224		8,224
9/1/2045	8,224		8,224
12/1/2045	8,224		8,224
3/1/2046	8,224		8,224
6/1/2046	8,224		8,224
9/1/2046	8,224		8,224
12/1/2046	8,224		8,224
3/1/2047	8,224		8,224
6/1/2047	8,224		8,224

City of Fairmont  
 0% Interest Rate  
 40 Years

Period Ending	Principal	Interest	Debt Service
9/1/2047	8,224		8,224
12/1/2047	8,224		8,224
3/1/2048	8,224		8,224
6/1/2048	8,224		8,224
9/1/2048	8,224		8,224
12/1/2048	8,224		8,224
3/1/2049	8,224		8,224
6/1/2049	8,224		8,224
9/1/2049	8,224		8,224
12/1/2049	8,225		8,225
	<b>1,250,104</b>		<b>1,250,104</b>

(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:

\_\_\_\_\_

