# THE CITY OF MORGANTOWN

**Combined Utility System Revenue Bonds, Series 2010 B**
**(West Virginia SRF Program/ARRA); and**
**Combined Utility System Revenue Bonds, Series 2010 C**
**(West Virginia SRF Program)**

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**BOND ORDINANCE**

**THE CITY OF MORGANTOWN**

**COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2009 A**
**(WEST VIRGINIA SRF PROGRAM)**

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**BOND ORDINANCE**

**THE CITY OF MORGANTOWN**

**ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WASTEWATER PORTION OF THE EXISTING PUBLIC COMBINED WATERWORKS, SEWERAGE AND STORMWATER SYSTEM OF THE CITY OF MORGANTOWN AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $22,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA SRF PROGRAM) IN ONE OR MORE SERIES; 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 MORGANTOWN:**

## ARTICLE I

## STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

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

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

A. The City of Morgantown (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Monongalia County of said State.

B. The Issuer presently owns and operates, through the Morgantown Utility Board (the "Board"), a public combined waterworks, sewerage, and stormwater system. It is

deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer, and for the improvement of the water environment of the project area, that there be acquired and constructed certain extensions, additions, betterments and improvements to the wastewater portion of the existing public combined waterworks, sewerage, and stormwater system of the Issuer, consisting of additions and improvements to the City's existing sanitary sewer facilities, including new force mains, transmission lines and pumps, storage tanks, odor control facilities, SCADA system and other electrical improvements, miscellaneous building improvements, other additions and improvements and all necessary appurtenances (collectively, the "Project") (the existing public combined waterworks, sewerage, and stormwater system of the Issuer, the Project and any further extensions, additions, betterments and improvements thereto are herein called the "System"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer.

C. The Issuer intends to permanently finance such costs of acquisition and construction of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority"), in connection with the West Virginia Water Pollution Control Revolving Fund Program (the "SRF Program"), which the Authority administers pursuant to the Act, and from a contribution from the West Virginia Department of Transportation, and an EPA 319 Grant (collectively the "Grants").

D. It is deemed necessary for the Issuer to issue its Combined Utility System Revenue Bonds, Series 2009 A (West Virginia SRF Program), in one or more series in the aggregate principal amount of not more than $22,000,000 (the "Series 2009 A Bonds"), to permanently finance a portion of the costs of acquisition and construction of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor and eligible under the SRF Program; interest upon the Series 2009 A Bonds for a period not exceeding 6 months after completion of construction of the Project; amounts which may be deposited in the Series 2009 A Bonds Reserve Account (as hereinafter defined) or amounts which may be used to purchase a surety bond to fund the Series 2009 A Bonds Reserve Account; 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 SRF Administrative Fee (as hereinafter defined); discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2009 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 or the Board for any amounts expended by them for allowable costs prior to the issuance of the Series 2009 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 30 years.

F. It is in the best interests of the Issuer that its Series 2009 A Bonds be sold to the Authority pursuant to the terms and provisions of a loan agreement by and among the Issuer, the Authority and the West Virginia Department of Environmental Protection (the "DEP"), in form satisfactory to the respective parties (the "Loan Agreement"), approved hereby if not previously approved by resolution of the Issuer.

G. There are outstanding obligations of the Issuer which will rank on a parity with the Series 2009 A Bonds as to liens, pledge, source of and security for payment, being the Issuer's (1) Combined Utility System Revenue Bonds, Series 1992 (West Virginia SRF Program), dated September 8, 1992, issued in the original aggregate principal amount of $11,900,000 (the "Series 1992 Bonds"), (2) Combined Utility System Revenue Bonds, Series 1995 (West Virginia SRF Program), dated April 27, 1995, issued in the original aggregate principal amount of $1,601,477 (the "Series 1995 Bonds"), (3) Combined Utility System Revenue Bonds, Series 2000 A (West Virginia SRF Program), dated February 29, 2000, issued in the original aggregate principal amount of $7,842,000 (the "Series 2000 A Bonds"), (4) Combined Utility System Revenue Bonds, Series 2000 B (West Virginia Infrastructure Fund), dated February 29, 2000, issued in the original aggregate principal amount of $2,488,000 (the "Series 2000 B Bonds"), (5) Combined Utility System Revenue Bonds, Series 2001 A (West Virginia Infrastructure Fund), dated February 8, 2001, issued in the original aggregate principal amount of $3,812,470 (the "Series 2001 A Bonds"), (6) Combined Utility System Revenue Bonds, Series 2006 A (West Virginia SRF Program), dated June 30, 2006, issued in the original aggregate principal amount of $6,410,191 (the "Series 2006 A Bonds"); and (7) Combined Utility System Revenue Bonds, Series 2007 A (West Virginia SRF Program), dated August 14, 2007, issued in the original aggregate principal amount of $8,500,000 (the "Series 2007 A Bonds"), (collectively, the "Prior Bonds").

H. Prior to the issuance of the Series 2009 A Bonds, the Issuer will obtain (i) the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met, and (ii) the written consent of the Holders of the Prior Bonds to the issuance of the Series 2009 A Bonds on a parity with the Prior Bonds. Other than the Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System. The Issuer is in compliance with all the covenants of the Prior Bonds and the Prior Ordinances.

I. 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 and the principal of and interest on the Series 2009 A Bonds and the Prior Bonds and to make payments into all funds and accounts and other payments provided for herein.

J. 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 2009 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 Public Service Commission of West Virginia the West Virginia Infrastructure and Jobs Development Council.

K. 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. Bond Legislation Constitutes Contract**. In consideration of the acceptance of the Series 2009 A Bonds by the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the

Issuer shall be for the equal benefit, protection and security of the Bondholders of any and all of such Series 2009 A Bonds, all of which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds and by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

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

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

"**Authority**" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2009 A 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 DEP under the Act.

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

"**Board**" means the Morgantown Utility Board of the Issuer.

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

"**Bond Legislation,**" "**Ordinance,**" "**Bond Ordinance**" or "**Local Act**" means this Bond Ordinance and all 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 2009 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.

"**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 2009 A Bonds for all or a portion of the proceeds of the Series 2009 A Bonds from the Authority and the DEP.

"**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.

"**Completion Date**" means the completion date of the Project, as defined in the SRF Regulations.

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

"**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.

"**Council**" means the West Virginia Infrastructure and Jobs Development Council.

"**DEP**" means the West Virginia Department of Environmental Protection, or any other agency, board or department of the state that succeeds to the function of the DEP.

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

"**Depreciation Fund**" means the Depreciation Fund created by the Prior Ordinances and continued hereby.

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

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

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

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

"**Gross Revenues**" means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided that, "Gross Revenues" include any gains from the sale or other disposition of capital assets, but does not include any increase in the value of

capital assets (including Qualified Investments, as hereinafter defined) or any Tap Fees (as hereinafter defined).

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

"**Independent Certified Public Accountant**" means any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

"**Investment Property**" means

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

(B) any obligation,

(C) any annuity contract,

(D) any investment-type property, or

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

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

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

"**Loan Agreement**" means the loan agreement heretofore entered, or to be entered, into by and among the Issuer, the Authority and the DEP, providing for the purchase of the Series 2009 A 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.

"**Mayor**" means the Mayor of the Issuer.

"**Net Proceeds**" means the face amount of the Series 2009 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Reserve Accounts. 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 2009 A Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

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

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

"**Operating Expenses**" shall mean the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the Costs, fees and expenses of the Authority, fiscal agents, the Depository Bank, the Registrar and Paying Agent (all as hereinafter defined), other than those capitalized as part of the Costs, the SRF Administrative Fee, 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.

"**Operation and Maintenance Fund**" means the Operation and Maintenance Fund established by the Prior Ordinances and continued hereby.

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

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

"**Paying Agent**" means the Commission or other entity designated as such for the Series 2009 A Bonds in the Supplemental Resolution.

"**Prior Bonds**" means, collectively, the Series 1992 Bonds, Series 1995 Bonds, Series 2000 A Bonds, Series 2000 B Bonds, Series 2001 A Bonds, Series 2006 A Bonds, and Series 2007 A Bonds.

"**Prior Ordinances**" means, collectively, the ordinances 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.

"**Qualified Investments**" means and includes any of the following:

(a) Government Obligations;

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

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

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

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

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

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

of such collateral; and such collateral must be free of all claims by third parties;

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

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

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

"**Registrar**" means the Bond Registrar.

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

"**Reserve Accounts**" means, collectively, the respective Reserve Accounts established for the Series 2009 A Bonds and the Prior Bonds.

"**Reserve Requirement**" means, collectively, the respective amounts required to be on deposit in any Reserve Account for the Prior Bonds and the Series 2009 A Bonds.

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

"**Series 1992 Bonds**" means the Combined Utility System Revenue Bonds, Series 1992 (West Virginia SRF Program), of the Issuer, dated September 8, 1992, issued in the original aggregate principal amount of $11,900,000.

"**Series 1995 Bonds**" means the Combined Utility System Revenue Bonds, Series 1995 (West Virginia SRF Program), of the Issuer, dated April 27, 1995, issued in the original aggregate principal amount of $1,601,477.

"**Series 2000 A Bonds**" means the Combined Utility System Revenue Bonds, Series 2000 A (West Virginia SRF Program), of the Issuer, dated February 29, 2000, issued in the original aggregate principal amount of $7,842,000.

"**Series 2000 B Bonds**" means the Combined Utility System Revenue Bonds, Series 2000 B (West Virginia Infrastructure Fund), of the Issuer, dated February 29, 2000, issued in the original aggregate principal amount of $2,488,000.

"**Series 2001 A Bonds**" means the Combined Utility System Revenue Bonds, Series 2001 A (West Virginia Infrastructure Fund), of the Issuer, dated February 8, 2001, issued in the original aggregate principal amount of $3,812,470.

**"Series 2006 A Bonds"** means the Combined Utility System Revenue Bonds, Series 2006 A (West Virginia SRF Program), of the Issuer, dated June 30, 2006, issued in the original aggregate principal amount of $6,410,191.

**"Series 2007 A Bonds"** means the Combined Utility System Revenue Bonds, Series 2007 A (West Virginia SRF Program), of the Issuer, dated August 14, 2007, issued in the original aggregate principal amount of $8,500,000.

**"Series 2009 A Bonds"** means the Combined Utility System Revenue Bonds, Series 2009 A (West Virginia SRF Program), of the Issuer, authorized by this Bond Legislation.

**"Series 2009 A Bonds Construction Trust Fund"** means the Series 2009 A Bonds Construction Trust Fund established by Section 5.01 hereof.

**"Series 2009 A Bonds Reserve Account"** means the Series 2009 A Bonds Reserve Account established by Section 5.02 hereof.

**"Series 2009 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 2009 A Bonds in the then current or any succeeding year.

**"Series 2009 A Bonds Sinking Fund"** means the Series 2009 A Bonds Sinking Fund established by Section 5.02 hereof.

**"Sinking Funds"** means, collectively, the respective Sinking Funds established for the Series 2009 A Bonds and the Prior Bonds.

**"SRF Administrative Fee"** means any administrative fee required to be paid pursuant to the Loan Agreement.

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

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

**"State"** means the State of West Virginia.

**"Supplemental Resolution"** means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article "the," refers specifically to the supplemental resolution authorizing the sale of the Series 2009 A Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2009 A Bonds, and not so included may be included in another Supplemental Resolution.

"**Surplus Revenues**" means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Series 2009 A Bonds, the Prior Bonds or any other obligations of the Issuer, including, without limitation, the Depreciation Fund, the Sinking Funds and the Reserve Accounts.

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

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

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

## ARTICLE II

## AUTHORIZATION OF ACQUISITION 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 $22,000,000, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2009 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, compatible with the financing plan submitted to the DEP and the Authority.

The cost of the Project is estimated not to exceed $22,000,000, of which will be obtained from proceeds of the Series 2009 A Bonds.

## 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 capitalizing interest on the Series 2009 A Bonds, if any, funding a reserve account or purchasing a surety bond to fund a reserve account for the Series 2009 A Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance of the Series 2009 A Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be issued the negotiable Series 2009 A Bonds of the Issuer. The Series 2009 A Bonds shall be

issued in one or more series, designated as "Combined Utility System Revenue Bonds, Series 2009 A (West Virginia SRF Program)," in the principal amount of not more than $22,000,000, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2009 A Bonds remaining after purchasing a surety bond to fund the Series 2009 A Bonds Reserve Account or cash funding the Series 2009 A Bonds Reserve Account (if funded from Bond proceeds) and capitalization of interest, if any, shall be deposited in or credited to the Series 2009 A Bonds Construction Trust Fund established by Section 5.01 hereof, and applied as set forth in Article VI hereof.

**Section 3.02. Terms of Bonds**. The Series 2009 A Bonds shall be issued in such principal amount; shall bear interest at such rate or rates, not exceeding the then legal maximum, payable quarterly on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the Loan Agreement. The Series 2009 A Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Series 2009 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.

As provided by the Supplemental Resolution, the Series 2009 A Bonds shall initially be issued in one or more 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 2009 A Bonds. The Series 2009 A Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

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

**Section 3.03. Execution of Bonds**. The Series 2009 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 2009 A Bonds shall cease to be such officer of the Issuer before the Series 2009 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 2009 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 2009 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 2009 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 2009 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 2009 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 2009 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 2009 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 2009 A Bonds or transferring the registered Series 2009 A Bonds are exercised, all Series 2009 A Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 2009 A Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Bond Registrar. For every such exchange or transfer of Series 2009 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 2009 A Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 2009 A Bonds or, in the case of any proposed redemption of Series 2009 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 2009 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 canceled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be

about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

**Section 3.07. Bonds not to be Indebtedness of the Issuer**. The Series 2009 A Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Gross Revenues derived from the System as herein provided. No Holder or Holders of the Series 2009 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2009 A Bonds or the interest thereon.

**Section 3.08. Bonds Secured by Pledge of Gross Revenues; Lien Position with respect to Prior Bonds**. The payment of debt service of the Series 2009 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. Such Gross Revenues in an amount sufficient to pay the principal of and interest on the Series 2009 A Bonds and the Prior Bonds and to make all other payments provided for in the Bond Legislation are hereby irrevocably pledged to such payments as they become due.

**Section 3.09. Delivery of Bonds**. The Issuer shall execute and deliver the Series 2009 A Bonds to the Registrar, and the Registrar shall authenticate, register and deliver the Series 2009 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 2009 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 2009 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 2009 A Bonds.

**Section 3.10. Form of Bonds**. The text of the Series 2009 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 2009 A BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF MORGANTOWN
COMBINED UTILITY
SYSTEM REVENUE BOND, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)

No. AR-1 $_____

KNOW ALL MEN BY THESE PRESENTS: That on this the _____ day of _____, 2009, THE CITY OF MORGANTOWN, a municipal corporation and political subdivision of the State of West Virginia in Monongalia County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of _____ DOLLARS ($_____), 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, with interest on each installment at the rate per annum set forth on said EXHIBIT B. The interest and SRF administrative fee (as defined in the hereinafter described Bond Legislation) on this Bond shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing _____ 1, 200_, 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"). The interest and SRF administrative fee 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 Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and among the Issuer, the Authority and the DEP, dated _____, 2009.

This Bond is issued (i) to pay the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the wastewater portion of the existing public combined waterworks, sewerage, and stormwater system of the Issuer (the "Project"); (ii)

to pay the cost of a surety bond to fund the reserve account for the Bonds of this Series (the "Bonds"); and (iii) to pay certain costs of issuance of the Bonds and related costs. The existing public combined waterworks, sewerage, and stormwater 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 20 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on _____, 2009, and a Supplemental Resolution duly adopted by the Issuer on _____, 2009 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

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) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 1992 (WEST VIRGINIA SRF PROGRAM), DATED SEPTEMBER 8, 1992, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $11,900,000 (THE "SERIES 1992 BONDS"); (2) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 1995 (WEST VIRGINIA SRF PROGRAM), DATED APRIL 27, 1995, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $1,601,477 (THE "SERIES 1995 BONDS"); (3) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2000 A (WEST VIRGINIA SRF PROGRAM), DATED FEBRUARY 29, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $7,842,000 (THE "SERIES 2000 A BONDS"); (4) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2000 B (WEST VIRGINIA INFRASTRUCTURE FUND), DATED FEBRUARY 29, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $2,488,000 (THE "SERIES 2000 B BONDS"); (5) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2001 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED FEBRUARY 8, 2001, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $3,812,470 (THE "SERIES 2001 A BONDS"); (6) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2006 A (WEST VIRGINIA SRF PROGRAM), DATED JUNE 30, 2006, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $6,410,191 (THE "SERIES 2006 A BONDS"); AND (7) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2007 A (WEST VIRGINIA SRF PROGRAM), DATED AUGUST 14, 2007, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $8,500,000 (THE "SERIES 2007 A BONDS") (COLLECTIVELY, THE "PRIOR BONDS").

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Prior Bonds, and from moneys in the reserve account created under the Bond Legislation for the Bonds (the "Series 2009 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 an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Gross Revenues, the moneys in the Series 2009 A Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the

Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Prior Bonds; provided, however, that so long as there exists in the Series 2009 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, including the Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

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

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

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the 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 MORGANTOWN has caused this Bond to be signed by its Mayor and City Manager, and its corporate seal to be hereunto affixed

and attested by its City Clerk, and has caused this Bond to be dated the day and year first written above.

[SEAL]

By: _____
Mayor

By: _____
City Manager

ATTEST:

By: _____
City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2009 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: _____, 2009.

THE HUNTINGTON NATIONAL BANK,
as Registrar

By: _____
Its: Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

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

TOTAL $_____

EXHIBIT B

DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

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

Dated: _____, 20____.

_____

In the presence of:

_____

**Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Loan Agreement**. The Series 2009 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 the 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, including all schedules and exhibits attached thereto, are hereby approved an incorporated into this Bond Legislation.

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

## ARTICLE IV

## [RESERVED]

## ARTICLE V

## FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

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

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

(2) Depreciation Fund (established by the Prior Ordinances);

(3) Operation and Maintenance Fund (established by the Prior Ordinances); and

(4) Series 2009 A Bonds Construction Trust Fund.

**Section 5.02. Establishment of Funds and Accounts with Commission**. The following special funds or accounts are hereby created with and shall be held by the Commission, separate and apart from all other funds or accounts of the Commission or the Issuer and from each other:

(1) Series 1992 Bonds Sinking Fund (established by Prior Ordinances);

(2) Series 1992 Bonds Reserve Account established by Prior Ordinances);

(3) Series 1995 Bonds Sinking Fund (established by Prior Ordinances);

(4) Series 1995 Bonds Reserve Account established by Prior Ordinances);

(5) Series 2000 A Bonds Sinking Fund (established by Prior Ordinances);

(6) Series 2000 A Bonds Reserve Account established by Prior Ordinances);

(7) Series 2000 B Bonds Sinking Fund (established by Prior Ordinances);

(8) Series 2000 B Bonds Reserve Account established by Prior Ordinances);

(9) Series 2001 A Bonds Sinking Fund (established by Prior Ordinances);

(10) Series 2001 A Bonds Reserve Account established by Prior Ordinances);

(11) Series 2006 A Bonds Sinking Fund (established by Prior Ordinances);

(12) Series 2006 A Bonds Reserve Account established by Prior Ordinances);

(13) Series 2007 A Bonds Sinking Fund (established by Prior Ordinances);

(14) Series 2007 A Bonds Reserve Account established by Prior Ordinances);

(15) Series 2009 A Bonds Sinking Fund; and

(16) Series 2009 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 by the Issuer in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in the Prior Ordinances and this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner provided in the Prior Ordinances and this Bond Legislation. All moneys at any time on deposit in the Revenue Fund shall be disposed of only in the following manner and order of priority:

(1) The Issuer shall first, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the respective Sinking Funds for the Prior Bonds, the amounts required by the respective Prior Ordinances to pay interest on the Prior Bonds; and (ii) commencing 4 months prior to the first date of payment of interest on the Series 2009 A Bonds for which interest has not been capitalized or as required in the Loan Agreement, for deposit in the Series 2009 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of interest which will become due on the Series 2009 A Bonds on the next ensuing quarterly interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2009 A Bonds Sinking Fund and the next quarterly interest payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly interest payment date, the required amount of interest coming due on such date.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the respective Sinking Funds for the Prior Bonds, the amounts required by the respective Prior Ordinances to pay the principal of the Prior Bonds; and (ii) commencing 4 months prior to the first date of payment of principal of the Series 2009 A Bonds, for deposit in the Series 2009 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2009 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 2009 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 remit to the Commission (i) for deposit in the respective Reserve Accounts for the Prior Bonds, the amounts required by the respective Prior Ordinances to be deposited therein; and (ii) commencing 4 months prior to the first date of payment of principal of the Series 2009 A Bonds, if not fully funded upon issuance of the Series 2009 A Bonds or otherwise provided for pursuant to a surety bond, for deposit in the Series 2009 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2009 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2009 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 2009 A Bonds Reserve Requirement.

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

(5) The Issuer shall next, from the moneys remaining in the Revenue Fund, on the first day of each month transfer to the Depreciation Fund, an amount equal to 2 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, emergency repairs, improvements or extensions to the System; provided, that any deficiencies in the Reserve Accounts (except to the extent such deficiency exists because the required payments into such accounts have not, as of the date of determination of a deficiency, funded such accounts to the maximum extent required hereof) shall be promptly eliminated with moneys from the Depreciation Fund.

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

Moneys in the Series 2009 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2009 A Bonds, as the same shall become due. Moneys in the Series 2009 A Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 2009 A Bonds, as the same shall come due, when other moneys in the Series 2009 A Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the Series 2009 A Bonds Sinking Fund and the Series 2009 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 2009 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 due on the Series 2009 A Bonds, and then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 2009 A Bonds Reserve Account which results in a reduction in the balance therein to below the Series 2009 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 2009 A Bonds are issued, provision shall be made for additional payments into the respective sinking fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective reserve account in an amount equal to the requirement thereof.

The Issuer shall not be required to make any further payments into the Series 2009 A Bonds Sinking Fund or the Series 2009 A Bonds Reserve Account, when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2009 A

Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

Interest, principal or reserve payments, whether made for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Prior Bonds and the Series 2009 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 2009 A Bonds Sinking Fund and the Series 2009 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. If required by the Authority at anytime, the Issuer shall make the necessary arrangements whereby required payments into said accounts shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Moneys in the Series 2009 A Bonds Sinking Fund and the Series 2009 A Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2009 A Bonds Sinking Fund and the Series 2009 A Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2009 A Bonds under the conditions and restrictions set forth herein.

B. The Issuer shall on the first day of each month (if such day is not a business day, then the next succeeding business day), deposit with the Commission the required interest, principal and reserve payments with respect to the Series 2009 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, 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 SRF Administrative Fee as set forth in the Schedule Y attached to the Loan Agreement.

C. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the Loan Agreement and submit a copy of said form along with a copy of its payment check to the Authority by the 5th day of such calendar month.

D. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinabove provided, are current and there remains in the Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into such funds during the following month or such other period as required by the Act, such excess shall be considered as surplus revenues (the "Surplus Revenues"). Surplus Revenues may be used for any lawful purpose of the System.

E. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay their respective charges and fees then due. In the case of payments to the Commission under this paragraph, the Issuer shall, 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 moneys in excess of the maximum amounts insured by FDIC in any of the funds and accounts shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

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

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

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

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

**Section 5.04. Reserve Account Letter of Credit or Surety Bond**. With the advance written consent of the Authority, the Issuer may, in lieu of funding the Series 2009 A Bonds Reserve Account with cash or Qualified Investments, satisfy the Series 2009 A Bonds Reserve Requirement by obtaining a reserve account letter of credit, a surety bond, or other credit facility satisfactory to the Authority in an amount equal to the Series 2009 A 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 Authority, all as set forth in a Supplemental Resolution, and the execution and delivery of any applicable reimbursement agreement or note in such forms as shall be described in a Supplemental Resolution.

## ARTICLE VI

## BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

**Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds**. From the moneys received from the sale of the Series 2009 A Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2009 A Bonds, there shall first be deposited with the Commission in the Series 2009 A Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest.

B. Next, from the proceeds of the Series 2009 A Bonds, the Issuer may purchase a surety bond to fund the Series 2009 A Bonds Reserve Account as set forth in the Supplemental Resolution, or there shall be deposited with the Commission in the Series 2009 A

Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Series 2009 A Bonds Reserve Account.

C. As the Issuer receives advances of the remaining moneys derived from the sale of the Series 2009 A Bonds, such moneys shall be deposited with the Depository Bank in the Series 2009 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 2009 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 2009 A Bonds shall be expended as approved by the DEP.

**Section 6.02. Disbursements From the Series 2009 A Bond Construction Trust Fund**. On or before the closing date, the Board shall have delivered to the Authority and the DEP a report listing the specific purposes for which the proceeds of the Series 2009 A Bonds will be expended and the disbursement procedures of such proceeds, including an estimated monthly draw schedule. Payments for Costs of the Project shall be made monthly.

The Issuer hereby appoints and designates the Board, and the Authorized Officers thereof, as its agent (i) for the review and approval of all invoices for the Project to be paid from the proceeds of the Series 2009 A Bonds; (ii) to take any and all actions necessary to apply for and obtain a commitment from the DEP, specifically including, but not limited to, any administrative loan documents required by DEP; and (iii) to act on and execute documents on behalf of the Issuer for any and all federal and state actions as they relate to the planning, design and/or construction of the Project.

Except as provided in Section 6.01 hereof, disbursements from the Series 2009 A Bonds Construction Trust Fund shall be made only after submission to, and approval from, the Authority and the DEP of a completed and signed "Payment Requisition Form," a form of which is attached to the Loan Agreement, in compliance with the construction schedule.

Pending such application, moneys in the Series 2009 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 2009 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 2009 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 2009 A Bonds or the interest thereon is Outstanding and unpaid.

**Section 7.02. Bonds not to be Indebtedness of the Issuer**. The Series 2009 A Bonds shall not be nor constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of the Series 2009 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2009 A Bonds or the interest thereon.

**Section 7.03. Bonds Secured by Pledge of Gross Revenues; Lien Position with respect to Prior Bonds**. The payment of debt service of the Series 2009 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. Such Gross Revenues in an amount sufficient to pay the principal of and interest on the Series 2009 A Bonds and the Prior Bonds and to make all other payments provided for in the Bond Legislation are hereby irrevocably pledged to such payments as they become due.

**Section 7.04. Rates and Charges**. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal and the Issuer shall supply an opinion of counsel to such effect. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreement and the Issuer shall supply a certificate of certified public accountant to such effect. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the water rate ordinance of the Issuer enacted July 21, 2009, the sewer rate ordinance of the Issuer enacted July 21, 2009, and the stormwater rate ordinance of the Issuer enacted April 17, 2008, which rates are incorporated herein by reference as a part hereof.

So long as the Series 2009 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 2009 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. Additionally, so long as the Series 2009 A Bonds are outstanding and except as otherwise required by law or with the written consent of the DEP and the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding, in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 2009 A Bonds, immediately be remitted to the Commission for deposit in the Series 2009 A Bonds Sinking Fund, and, with the written permission of the DEP and the Authority, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and interest on the

Series 2009 A Bonds. Any balance remaining after the payment of the Series 2009 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 Board shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of $50,000, the Board shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Revenue Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of $50,000 but not in excess of $200,000, the Board shall first, determine, upon consultation with a professional engineer, 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 upon public bidding. The proceeds of any such sale shall be deposited in the Depreciation Fund. The payment of such proceeds into the Depreciation Fund shall not reduce the amount required to be paid into such account by other provisions of this Bond Legislation.

No sale, lease or other disposition of the properties of the System shall be made by the Board if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of $200,000 and insufficient to pay all Bonds then Outstanding, without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of the 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.

Notwithstanding any of the foregoing provisions of this Section 7.05 to the contrary, the Issuer hereby reserves the right to sell a tract of about 200 acres on Mayfield Road heretofore acquired for the System, which property is not being used nor is it useful for the System, such sale to be at such time and in such manner and for such price as the Issuer, with prior written approval of the Board, shall determine and without any other restrictions upon such sale insofar as this Bond Legislation is concerned. Moneys received upon any such sale under this paragraph, after deduction of all costs of such sale, shall be deposited in the Revenue Fund.

**Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances**. Except as provided for in Section 7.06 and Section 7.07 hereof, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2009 A Bonds and the Prior Bonds. All obligations issued by the Issuer after the issuance of the Series 2009 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 2009 A Bonds;

provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts established by this Bond Legislation have been made and are current at the time of the issuance of such subordinate obligations.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2009 A Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Series 2009 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 DEP prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the 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 Ordinances shall be applicable. In addition, no Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2009 A Bonds pursuant to this Bond Legislation, without the prior written consent of the Authority and the DEP and without complying with the conditions and requirements herein provided (unless less restrictive than the provisions of the Prior Ordinances).

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2009 A Bonds.

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

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

(1) The Bonds then Outstanding;

(2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Bond Legislation then Outstanding; and

(3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues expected to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from the

improvements to be financed by such Parity Bonds and any increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the issuance of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, which shall be filed in the office of the City Clerk prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12 consecutive month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to issuance of such Parity Bonds. For purposes of this test, the terms "Gross Revenues" and "Net Revenues" shall not include proceeds from the sale of capital assets.

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

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior lien of the Series 2009 A Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2009 A Bonds.

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

**Section 7.08. Books; Records and Audit**. The Board shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The Board shall permit the Authority and the DEP, or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Board shall submit to the Authority and the DEP such documents and information as they may reasonably require in connection with the 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 Board shall permit the Authority and the DEP, or their agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times 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 Board will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds issued pursuant to this Bond Legislation shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

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

The Board shall file with the Authority and the DEP, or any other original purchaser of the Series 2009 A Bonds, and shall mail in each year to any Holder or Holders of the Series 2009 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 payable from the revenues of the System outstanding.

The Board shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountant (and to the extent legally required, in compliance with the applicable OMB Circular, or any successor thereof, and the Single Audit Act, or any successor thereof), and shall mail upon request, and make available generally, the report of the Independent Certified Public Accountant, or a summary thereof, to any Holder or Holders of the Series 2009 A Bonds and shall submit said report to the Authority and the DEP, or any other original purchaser of the Series 2009 A Bonds. Such audit report submitted to the Authority and the DEP shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if there are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

Subject to the terms, conditions and provisions of the Loan Agreement 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 provide the DEP with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as set forth in Exhibit E of the Loan Agreement or as promulgated from time to time.

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

**Section 7.09. Rates**. Prior to the issuance of the Series 2009 A Bonds, equitable rates or charges for the use of and service rendered by the System shall be established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the City Clerk, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on the Series 2009 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2009 A Bonds, including the Prior Bonds; provided that, in the event that amounts equal to or in excess of the reserve requirements are on deposit in the Series 2009 A Bonds Reserve Account and any reserve accounts for obligations on a parity with the Series 2009 A 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 on the Series 2009 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2009 A Bonds, including the Prior Bonds. In any event, the Issuer shall not reduce the rates or charges for services set forth in the rate ordinances described in Section 7.04.

**Section 7.10. Operating Budget and Monthly Financial Report**. The Board shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority and the DEP within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and

recommendation by a professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Board shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of a professional engineer that such increased expenditures are necessary for the continued operation of the System. The Board shall within 30 days of adoption thereof mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority and the DEP and to any Holder of any Bonds who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Authority, the DEP and any Holder of any Bonds or anyone acting for and on behalf of such Holder of any Bonds.

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 Board 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 DEP by the 10th day of each month.

**Section 7.11. Engineering Services and Operating Personnel**. The Board shall 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 DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the DEP is sufficient to pay the costs of acquisition and construction of the Project, and all permits required by federal and state laws for construction of the Project have been obtained.

The Board shall provide and maintain competent and adequate engineering services satisfactory to the Authority and the DEP covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority and the DEP and the Issuer at the completion of construction that construction of the Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

The Issuer shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Issuer shall notify the DEP in writing of such receipt. The Issuer shall submit a "Performance Certificate," a form of which is attached to the Loan Agreement as Exhibit A, to the DEP within 60 days of the end of the first year after the Project is completed.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to the DEP when the Project is 90% completed. The Issuer shall at all times provide operation and maintenance of the System in compliance with all state and federal standards.

The Issuer shall employ qualified operating personnel properly certified by the State before the Project is 50% complete and shall retain such a certified operator to operate the System during the entire term of the Loan Agreement. The Issuer shall notify the DEP in writing of the certified operator employed at the 50% completion stage.

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

**Section 7.13. Enforcement of Collections**. The Board will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 20 days after the same shall become due and payable, the user of the services and facilities shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid, when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the stormwater portion of the System and any services and facilities of the waterworks portion of the System, to all users of the services of the stormwater system delinquent in payment of charges for the services of the stormwater system and will not restore such services of either the waterworks system or the stormwater system until all delinquent charges for the services of the stormwater system, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law. If the waterworks facilities are not owned by the Issuer, the Issuer shall use diligent efforts to enter into a termination agreement with the provider of such water services, subject to any required approval of such agreements by the Public Service Commission of West Virginia.

**Section 7.14. No Free Services**. The Board will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer or the Board, or any department, agency, instrumentality, officer or employee of either shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer, the Board and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

**Section 7.15. Insurance and Construction Bonds**.

A. The Board hereby covenants and agrees that so long as the Series 2009 A Bonds remain Outstanding, the Board will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the Board will also carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Depreciation Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Depreciation Fund. The Board 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 Board, 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 Board, 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 Board from claims for bodily injury and/or death and not less than $500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer and the Board from claims arising out of operation or ownership of motor vehicles of or for the System.

(3) 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 Board and such payment bonds will be filed with the Clerk of the County Commission of the County in which such work is to be performed prior to commencement of construction of any additions, extensions or improvements for the System in compliance with West Virginia Code, Section 38-2-39.

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

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

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

B. The Board 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 Board shall verify such bonds prior to commencement of construction.

The Board shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project; provided that the amounts and terms of such coverage are satisfactory to the Authority and the DEP. The Board shall verify such insurance prior to commencement of construction. In the event the Loan Agreement so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the Board, the prime contractor and all subcontractors, as their interests may appear.

**Section 7.16. Mandatory Use**. The mandatory use of the stormwater facilities of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer. Accordingly, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, every owner, tenant or occupant of any real property located near the stormwater portion of the System, and where stormwater from real property affects or drains into the stormwater portion of the System, shall be deemed to be a user served by the stormwater portion of the System and it is declared that the mandatory use of the stormwater portion of the System by such real property owner is necessary and essential for the health and welfare of the inhabitants and residents of the Issuer and the State. To the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, every such owner, tenant or occupant shall, after a 30-day notice of the availability of the stormwater portion of the System, pay the rates and charges established therefor.

**Section 7.17. Completion of Project; Permits and Orders**. The Board shall complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

The Board has obtained all permits required by state and federal laws for the acquisition and construction of the Project, all orders and approvals from the Council and the DEP necessary for the acquisition and construction of the Project and the operation of the System and all approvals for issuance of the Series 2009 A Bonds required by state law, with all requisite appeal periods having expired without successful appeal and the Issuer shall supple an opinion of counsel to such effect.

**Section 7.18. Compliance with Loan Agreement and Law**. The Issuer and the Board 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 and the Board shall provide the DEP with copies of all documents submitted to the Authority.

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

**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 2009 A Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 2009 A Bonds during the term thereof is, under the terms of the Series 2009 A Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) and that, in the event that both (A) in excess of 5% of the Net Proceeds of the Series 2009 A Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 2009 A Bonds during the term thereof is, under the terms of the Series 2009 A Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Series 2009 A Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project, or if the Series 2009 A Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of that portion of the Project to which such Private Business Use is related, all of the foregoing to be determined in accordance with the Code.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of the lesser of 5% or $5,000,000 of the Net Proceeds of the Series 2009 A Bonds are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 2009 A Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

D. INFORMATION RETURN. If required, the Issuer shall file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 2009 A Bonds and the interest thereon, including, without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The Issuer shall 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 2009 A Bonds will be and remain excludable from gross income for federal income tax purposes, and shall 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 Laws Compliance.** The Issuer shall provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

**Section 7.21. Contracts; Change Orders; Public Releases.** A. The Issuer shall, simultaneously with the delivery of the Series 2009 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 DEP for written approval. The Issuer shall obtain the written approval of the DEP before expending any proceeds of the Series 2009 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 DEP before expending any proceeds of the Series 2009 A Bonds made available due to bid or construction or project underruns.

C. The Issuer shall list the funding as being provided by the Authority and the DEP 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 2009 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 2009 A Bonds, and shall be on a parity with the statutory mortgage lien in favor of the Holders of the Prior Bonds.

## ARTICLE VIII

## INVESTMENT OF FUNDS; NON ARBITRAGE

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

Any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank may make any and all investments permitted by this section through its own investment or trust department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year (or more often if reasonably requested by the Issuer), a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2009 A Bonds are Outstanding and as long thereafter as necessary to comply with the Code and assure the exclusion of interest on the Series 2009 A Bonds from gross income for federal income tax purposes.

**Section 8.02. Arbitrage and Tax Exemption**. The Issuer covenants that (i) it shall not take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Series 2009 A Bonds which would cause the Series 2009 A Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Series 2009 A Bonds) so that the interest on the Series 2009 A Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

**Section 8.03. 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 2009 A Bonds. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Series 2009 A 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 covenants to calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, unless otherwise agreed by the 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. The Issuer may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer may deem appropriate in order to assure compliance with this Section 8.03. The Issuer shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 8.03 in accordance with the requirements of Section 148(f) of the Code and such Regulations. In the event the Issuer fails to make such rebates as required, the Issuer shall pay the required rebate amount, any and all penalties and other amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, and take any other actions necessary, in order to maintain the exclusion of interest on the Series 2009 A Bonds from gross income for federal income tax purposes.

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

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 2009 A 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 2009 A 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 2009 A Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest on any Series 2009 A Bonds; or

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 2009 A Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2009 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 or Board files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America; or

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

**Section 9.02. Remedies**. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners; provided however, that all rights and remedies of the Holders of the Series 2009 A Bonds shall be on a parity with those of the Holders of the Prior Bonds.

**Section 9.03. Appointment of Receiver**. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, the completion of the Project and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds, any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer, 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 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 2009 A Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Gross Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2009 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest on the Series 2009 A Bonds from gross income for federal income tax purposes.

## ARTICLE XI

## MISCELLANEOUS

**Section 11.01. Amendment or Modification of Bond Legislation**. Prior to the issuance of the Series 2009 A Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2009 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 2009 A Bonds shall be made without the consent in writing of the Registered Owners of the Series 2009 A Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest 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 2009 A Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the excludability of interest on the Series 2009 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 2009 A Bonds.

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

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

**Section 11.06. Covenant of Due Procedure, Etc.** The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto;

and that the Mayor, the City Manager, the City Clerk and members of the Governing Body and the Board were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

**Section 11.07.** **Appointment**. The Issuer does hereby appoint, designate and approve the hiring of Steptoe & Johnson PLLC, Morgantown, West Virginia, as bond counsel to the Issuer and the Board in connection with the issuance by the Issuer of the Series 2009 A Bonds.

**Section 11.08.** **Statutory Notice and Public Hearing**. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in the *Dominion Post*, a newspaper published and of general circulation in The City of Morgantown, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2009 A Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

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

| | |
|---|---|
| Passed on First Reading: | August 4, 2009 |
| Passed on Second Reading: | August 18, 2009 |
| Passed on Final Reading Following Public Hearing: | September 1, 2009 |

By: _____
Mayor

ATTEST:

By: _____
City Clerk

APPROVED AND CORRECT AS TO FORM:

By: _____
City Solicitor

627490.00019



5216001.1

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of THE CITY OF MORGANTOWN on the 1st day of September, 2009.

Dated: January 28, 2010.

[SEAL]

Linda L. Lu

City Clerk

**EXHIBIT A**

Loan Agreement is included in bond transcript as Document 3.

THE CITY OF MORGANTOWN

Combined Utility System Revenue Bonds, Series 2010 B
(West Virginia SRF Program/ARRA); and
Combined Utility System Revenue Bonds, Series 2010 C
(West Virginia SRF Program)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNTS, DATES, MATURITY DATES, REDEMPTION PROVISIONS, INTEREST RATES, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICES AND OTHER TERMS OF THE COMBINED UTILITY REVENUE BONDS, SERIES 2010 B (WEST VIRGINIA SRF PROGRAM) OF THE CITY OF MORGANTOWN; APPROVING AND RATIFYING THE ARRA ASSISTANCE 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 City council (the "Governing Body") of The City of Morgantown (the "Issuer" or "Governmental Agency") has duly and officially adopted and enacted a bond ordinance, effective September 1, 2009 (the "Bond Ordinance"), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WASTEWATER PORTION OF THE EXISTING PUBLIC COMBINED WATERWORKS, SEWERAGE AND STORMWATER SYSTEM OF THE CITY OF MORGANTOWN AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $22,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA SRF PROGRAM) IN ONE OR MORE SERIES; 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, the Issuer desires to amend the Bond Ordinance through this Supplemental Resolution (collectively, the "Bond Legislation");

WHEREAS, the Bond Ordinance provides for the issuance of the Combined Utility Revenue Bonds, Series 2009 A (West Virginia SRF Program) in one or more series in an aggregate principal amount not to exceed $22,000,000 (the "Bonds") and has authorized the execution and delivery of a Loan Agreement relating to the Series 2010 B Bonds, including all schedules and exhibits attached thereto, by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection (the "DEP") (the "Loan Agreement"), all in accordance with Chapter 8, Article 20 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"); and that other matters relating to the Series 2010 B Bonds be herein provided for;

WHEREAS, the Combined Utility System Revenue Bonds, Series 2009 A were not issued in 2009, but will be issued in 2010;

WHEREAS, the Governing Body desires to redesignate the Combined Utility System Revenue Bonds, Series 2009 A as Combined Utility System Revenue Bonds, Series 2010 B and Combined Utility System Revenue Bonds, Series 2010 C;

WHEREAS, the Loan Agreement shall be known as the ARRA Assistance Agreement and the ARRA Assistance Agreement has been presented to the Issuer at this meeting;

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

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

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

Section 1. The Issuer hereby redesignates the Combined Utility System Revenue Bonds, Series 2009 A as Combined Utility System Revenue Bonds, Series 2010 B and Combined Utility System Revenue Bonds, Series 2010 C 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 Combined Utility

Revenue Bonds, Series 2010 B (West Virginia SRF Program/ARRA), of the Issuer, originally represented by a single Bond, numbered BR-1, in the principal amount of $81,600. The Series 2010 B Bonds shall be dated the date of delivery thereof, shall finally mature September 1, 2022, 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 December 1, 2012, to and including September 1, 2022, 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 DEP, and upon payment of the redemption premium, if any, and otherwise in compliance with the ARRA Assistance Agreement, so long as the Authority shall be the registered owner of the Series 2010 B Bonds. The Series 2010 B Bonds are not subject to the SRF 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 Combined Utility Revenue Bonds, Series 2010 C (West Virginia SRF Program), of the Issuer, originally represented by a single bond, numbered CR-1, in the original aggregate principal amount of $15,380,227. The Series 2010 C Bonds shall be dated the date of delivery thereof, shall finally mature September 1, 2032 and shall bear interest at the rate of 2% per annum.. The principal of the Series 2010 C Bonds shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2012 to and including September 1, 2032 and in the amounts as set forth in the "Schedule Y" attached to the ARRA Assistance Agreement for the Series 2010 C Bonds and incorporated in and made a part of the Series 2010 C Bonds. The interest of the Series 2010 C Bonds shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2012 to and including September 1, 2032 and in the amounts as set forth in the "Schedule Y" attached to the ARRA Assistance Agreement for the Series 2010 C Bonds 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 the DEP, and upon payment of the interest and 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 C Bonds. The Issuer does hereby approve and shall pay the SRF Administrative Fee equal to 1% of the principal amount of the Series 2010 C Bonds set forth in "Schedule Y" attached to the ARRA Assistance Agreement.

Section 4. The Issuer does hereby adopt the Conformed Ordinance attached hereto as Exhibit A.

Section 5. All other provisions relating to the Series 2010 B Bonds and Series 2010 C Bonds and the text of each series of the Series 2010 B Bonds and Series 2010 C Bonds shall be in substantially the forms provided in the Bond Legislation.

Section 6. The Issuer does hereby authorize, approve, ratify and accept the ARRA Assistance Agreement, a copy of which is incorporated herein by reference, and the execution and delivery of the ARRA Assistance Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed, ratified and approved. The Issuer hereby affirms all covenants and representations made in the ARRA Assistance Agreement and in the applications to the DEP and the Authority. The price of the Series 2010 B Bonds and Series 2010 C

Bonds shall be 100% of par value, there being no interest accrued thereon, provided that the proceeds of the Series 2010 B Bonds and Series 2010 C Bonds shall be advanced from time to time as requisitioned by the Issuer.

Section 7. The Issuer does hereby appoint and designate The Huntington National Bank, Charleston, West Virginia, to serve as Registrar (the "Registrar") for the Series 2010 B Bonds and Series 2010 C Bonds under the Bond Ordinance and does approve and accept the Registrar's Agreement to be dated the date of delivery of the Series 2010 B Bonds and Series 2010 C 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 8. The Issuer does hereby appoint and designate the West Virginia Municipal Bond Commission, Charleston, West Virginia, to serve as Paying Agent for the Series 2010 B Bonds and Series 2010 C Bonds under the Bond Legislation.

Section 9. The Issuer does hereby appoint and designate United Bank, Inc., Morgantown, West Virginia, to serve as Depository Bank under the Bond Legislation.

Section 10. Series 2010 B Bonds proceeds in the amount of $-0- shall be deposited in the Series 2010 B Bonds Reserve Account.

Section 11. The balance of the proceeds of the Series 2010 B Bonds shall be deposited in or credited to the Series 2010 B Bonds Construction Trust Funds for payment of the costs of the Project, including, without limitation, costs of issuance of the Series 2010 B Bonds and related costs.

Section 12. Series 2010 C Bonds proceeds in the amount of $934,937 shall be deposited in the Series 2010 C Bonds Reserve Account.

Section 13. The balance of the proceeds of the Series 2010 C Bonds shall be deposited in or credited to the Series 2010 C Bonds Construction Trust Funds for payment of the costs of the Project, including, without limitation, costs of issuance of the Series 2010 C Bonds and related costs.

Section 14. 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 Series 2010 B Bonds and Series 2010 C Bonds hereby and by the Bond Legislation approved and provided for, to the end that the Series 2010 B Bonds and Series 2010 C Bonds may be delivered on or about January 28, 2010, to the Authority pursuant to the ARRA Assistance Agreement.

Section 15. The acquisition and construction of the Project and the financing thereof in part with proceeds of the Series 2010 B Bonds and Series 2010 C 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 16. The Issuer does hereby ratify, approve and accept all contracts relating to the financing, acquisition and construction of the Project.

Section 17. The Issuer hereby determines to invest all monies in the funds and accounts established by the Bond Legislation 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 Sinking Funds and the Reserve Accounts for the Series 2010 B Bonds and Series 2010 C Bonds, shall be invested by the West Virginia Municipal Bond Commission in the West Virginia Consolidated Fund.

Section 18. The Special Conditions of the ARRA Assistance Agreement attached as Exhibit B are hereby accepted and agreed to and incorporated herein.

Section 19. This Supplemental Resolution shall be effective immediately following adoption hereof.

[Remainder of Page Intentionally Blank]

Adopted this 5th day of January, 2010.

Mayor

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of The City of Morgantown on the 5th day of January, 2010.

Dated: January 28, 2010.

[SEAL]

Linda L. Lutz
Clerk

12.27.09
627490.00039

EXHIBIT A
Conformed Bond Ordinance

**CONFORMED BOND ORDINANCE**

**THE CITY OF MORGANTOWN**

**COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 B (WEST VIRGINIA SRF PROGRAM/ARRA); AND COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 C (WEST VIRGINIA SRF PROGRAM)**

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CONFORMED BOND ORDINANCE

THE CITY OF MORGANTOWN

**ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WASTEWATER PORTION OF THE EXISTING PUBLIC COMBINED WATERWORKS, SEWERAGE AND STORMWATER SYSTEM OF THE CITY OF MORGANTOWN AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $81,600 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 B (WEST VIRGINIA SRF PROGRAM/ARRA) AND NOT MORE THAN $15,380,227 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 C (WEST VIRGINIA SRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A ARRA ASSISTANCE 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 MORGANTOWN:**

## ARTICLE I

## STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

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

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

A. The City of Morgantown (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Monongalia County of said State.

B. The Issuer presently owns and operates, through the Morgantown Utility Board (the "Board"), a public combined waterworks, sewerage, and stormwater system. It is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer, and for the improvement of the water environment of the project area, that there be acquired and constructed certain extensions, additions, betterments and improvements to the wastewater portion of the existing public combined waterworks, sewerage, and stormwater system of the Issuer, consisting of additions and improvements to the City's existing sanitary sewer facilities, including new force mains, transmission lines and pumps, storage tanks, odor control facilities, SCADA system and other electrical improvements, miscellaneous building improvements, other additions and improvements and all necessary appurtenances (collectively, the "Project") (the existing public combined waterworks, sewerage, and stormwater system of the Issuer, the Project and any further extensions, additions, betterments and improvements thereto are herein called the "System"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer.

C. The Issuer intends to permanently finance such costs of acquisition and construction of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority"), in connection with the West Virginia Water Pollution Control Revolving Fund Program (the "SRF Program"), which the Authority administers pursuant to the Act, and from a contribution from the West Virginia Department of Transportation, and an EPA 319 Grant (collectively the "Grants").

D. It is deemed necessary for the Issuer to issue its Combined Utility System Revenue Bonds, Series 2010 B (West Virginia SRF Program/ARRA), in the aggregate principal amount of not more than $81,600 (the "Series 2010 B Bonds") and Combined Utility System Revenue Bonds, Series 2010 C (West Virginia SRF Program), in the aggregate principal amount of not more than $15,380,227 (the "Series 2010 C Bonds"), to permanently finance a portion of the costs of acquisition and construction of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor and eligible under the SRF Program; interest upon the Series 2010 B Bonds and Series 2010 C Bonds for a period not exceeding 6 months after completion of construction of the Project; amounts which may be deposited in the Series 2010 C Bonds Reserve Account (as hereinafter defined) or amounts which may be used to purchase a surety bond to fund the Series 2010 C Bonds Reserve Account; 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 SRF Administrative Fee (as hereinafter defined); discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2010 B Bonds and Series 2010 C 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 or the Board for any amounts expended by them for allowable costs prior to the issuance of the Series 2010 B Bonds and Series 2010 C 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 22 years.

F. It is in the best interests of the Issuer that its Series 2010 B Bonds and Series 2010 C Bonds be sold to the Authority pursuant to the terms and provisions of a ARRA Assistance Agreement by and among the Issuer, the Authority and the West Virginia Department of Environmental Protection (the "DEP"), in form satisfactory to the respective parties (the "ARRA Assistance Agreement"), approved hereby if not previously approved by resolution of the Issuer.

G. There are outstanding obligations of the Issuer which will rank on a parity with the Series 2010 B Bonds and Series 2010 C Bonds as to liens, pledge, source of and security for payment, being the Issuer's (1) Combined Utility System Revenue Bonds, Series 1992 (West Virginia SRF Program), dated September 8, 1992, issued in the original aggregate principal amount of $11,900,000 (the "Series 1992 Bonds"), (2) Combined Utility System Revenue Bonds, Series 1995 (West Virginia SRF Program), dated April 27, 1995, issued in the original aggregate principal amount of $1,601,477 (the "Series 1995 Bonds"), (3) Combined Utility System Revenue Bonds, Series 2000 A (West Virginia SRF Program), dated February 29, 2000, issued in the original aggregate principal amount of $7,842,000 (the "Series 2000 A Bonds"), (4) Combined Utility System Revenue Bonds, Series 2000 B (West Virginia Infrastructure Fund), dated February 29, 2000, issued in the original aggregate principal amount of $2,488,000 (the "Series 2000 B Bonds"), (5) Combined Utility System Revenue Bonds, Series 2001 A (West Virginia Infrastructure Fund), dated February 8, 2001, issued in the original aggregate principal amount of $3,812,470 (the "Series 2001 A Bonds"), (6) Combined Utility System Revenue Bonds, Series 2006 A (West Virginia SRF Program), dated June 30, 2006, issued in the original aggregate principal amount of $6,410,191 (the "Series 2006 A Bonds"); and (7) Combined Utility System Revenue Bonds, Series 2007 A (West Virginia SRF Program), dated August 14, 2007, issued in the original aggregate principal amount of $8,500,000 (the "Series 2007 A Bonds"), (collectively, the "Prior Bonds") and (8) Combined Utility System Revenue Bonds, Series 2010 A issued simultaneously herewith (the "Series 2010 A Bonds"); (9) Combined Utility System Revenue Bonds, Series 2010 D (West Virginia DWTRF Program), issued simultaneously herewith in the original aggregate principal amount of $9,317,286 (the "Series 2010 C Bonds"); (10) Combined Utility System Revenue Bonds, Series 2010 E (West Virginia DWTRF Program), issued simultaneously herewith in the original aggregate principal amount of $100,000 (the "Series 2010 E Bonds"); and (11) Combined Utility System Revenue Bonds, Series 2010 F issued simultaneously herewith (the "Series 2010 F Bonds").

H. Prior to the issuance of the Series 2010 B Bonds and Series 2010 C Bonds, the Issuer will obtain (i) the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met, and (ii) the written consent of the Holders of the Prior Bonds to the issuance of the Series 2010 B Bonds and Series 2010 C Bonds on a parity with the Prior Bonds. Other than the Series 2010 A Bonds, Series 2010 D Bonds, Series 2010 E Bonds, Series 2010 F Bonds and the Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System. The Issuer is in compliance with all the covenants of the Prior Bonds and the Prior Ordinances.

I. 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 and 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.

J. The Issuer has complied with all requirements of West Virginia law and the ARRA Assistance Agreement relating to authorization of the acquisition, construction and operation of the Project and the System and issuance of the Series 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 Public Service Commission of West Virginia the West Virginia Infrastructure and Jobs Development Council.

K. 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. Bond Legislation Constitutes Contract**. In consideration of the acceptance of the Series 2010 B Bonds and Series 2010 C 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 B Bonds and Series 2010 C Bonds, all of which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds and by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

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

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

"**ARRA Assistance Agreement**" means the ARRA Assistance Agreement heretofore entered, or to be entered, into by and among the Issuer, the Authority and the DEP, providing for the purchase of the Series 2010 B Bonds and 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.

"**Authority**" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2010 B Bonds and Series 2010 C 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 DEP under the Act.

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

"**Board**" means the Morgantown Utility Board of the Issuer.

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

"**Bond Legislation**," "**Ordinance**," "**Bond Ordinance**" or "**Local Act**" means this Bond Ordinance and all 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, 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.

"**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 2010 Bonds for all or a portion of the proceeds of the Series 2010 Bonds from the Authority and the DEP.

"**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.

"**Completion Date**" means the completion date of the Project, as defined in the SRF Regulations.

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

"**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.

"**Council**" means the West Virginia Infrastructure and Jobs Development Council.

"**DEP**" means the West Virginia Department of Environmental Protection, or any other agency, board or department of the state that succeeds to the function of the DEP.

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

"**Depreciation Fund**" means the Depreciation Fund created by the Prior Ordinances and continued hereby.

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

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

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

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

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

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

"**Independent Certified Public Accountant**" means any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

"**Investment Property**" means

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

(B) any obligation,

(C) any annuity contract,

(D) any investment-type property, or

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

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

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

"**Mayor**" means the Mayor of the Issuer.

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

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

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

"**Operating Expenses**" shall mean the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the Costs, fees and expenses of the Authority, fiscal agents, the Depository Bank, the Registrar and Paying Agent (all as hereinafter defined), other than those capitalized as part of the Costs, the SRF Administrative Fee, 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.

"**Operation and Maintenance Fund**" means the Operation and Maintenance Fund established by the Prior Ordinances and continued hereby.

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

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

"**Paying Agent**" means the Commission or other entity designated as such for the Series 2010 B Bonds and Series 2010 C Bonds in the Supplemental Resolution.

"**Prior Bonds**" means, collectively, the Series 1992 Bonds, Series 1995 Bonds, Series 2000 A Bonds, Series 2000 B Bonds, Series 2001 A Bonds, Series 2006 A Bonds, and Series 2007 A Bonds.

"**Prior Ordinances**" means, collectively, the ordinances 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.

"**Qualified Investments**" means and includes any of the following:

(a) Government Obligations;

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

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

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

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be

replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

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

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

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

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

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

"**Registrar**" means the Bond Registrar.

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

"**Reserve Accounts**" means, collectively, the respective Reserve Accounts established for the Series 2010 Bonds and the Prior Bonds.

"**Reserve Requirement**" means, collectively, the respective amounts required to be on deposit in any Reserve Account for the Prior Bonds and the Series 2010 Bonds.

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

"**Series 1992 Bonds**" means the Combined Utility System Revenue Bonds, Series 1992 (West Virginia SRF Program), of the Issuer, dated September 8, 1992, issued in the original aggregate principal amount of $11,900,000.

"**Series 1995 Bonds**" means the Combined Utility System Revenue Bonds, Series 1995 (West Virginia SRF Program), of the Issuer, dated April 27, 1995, issued in the original aggregate principal amount of $1,601,477.

"**Series 2000 A Bonds**" means the Combined Utility System Revenue Bonds, Series 2000 A (West Virginia SRF Program), of the Issuer, dated February 29, 2000, issued in the original aggregate principal amount of $7,842,000.

"**Series 2000 B Bonds**" means the Combined Utility System Revenue Bonds, Series 2000 B (West Virginia Infrastructure Fund), of the Issuer, dated February 29, 2000, issued in the original aggregate principal amount of $2,488,000.

"**Series 2001 A Bonds**" means the Combined Utility System Revenue Bonds, Series 2001 A (West Virginia Infrastructure Fund), of the Issuer, dated February 8, 2001, issued in the original aggregate principal amount of $3,812,470.

"**Series 2006 A Bonds**" means the Combined Utility System Revenue Bonds, Series 2006 A (West Virginia SRF Program), of the Issuer, dated June 30, 2006, issued in the original aggregate principal amount of $6,410,191.

"**Series 2007 A Bonds**" means the Combined Utility System Revenue Bonds, Series 2007 A (West Virginia SRF Program), of the Issuer, dated August 14, 2007, issued in the original aggregate principal amount of $8,500,000.

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

"**Series 2010 Bonds**" means collectively, the Series 2010 A Bonds, Series 2010 B Bonds, Series 2010 C Bonds, Series 2010 D Bonds, Series 2010 E Bonds and Series 2010 F Bonds.

"**Series 2010 A Bonds**" means the Issuer's Combined Utility System Revenue Bonds, Series 2010 A to be issued concurrently herewith.

"**Series 2010 A Bonds Ordinance**" means the Ordinance authorizing the Series 2010 A Bonds.

"**Series 2010 D Bonds**" means the Issuer's Combined Utility System Revenue Bonds, Series 2010 D (West Virginia DWTRF Program), to be issued concurrently herewith in the original aggregate principal amount of $9,317,286.

"**Series 2010 D Bonds Ordinance**" means the Ordinance authorizing the Series 2010 D Bonds.

"**Series 2010 E Bonds**" means the Issuer's Combined Utility System Revenue Bonds, Series 2010 E (West Virginia DWTRF Program), to be issued concurrently herewith in the original aggregate principal amount of $100,000.

"**Series 2010 E Bonds Ordinance**" means the Ordinance authorizing the Series 2010 E Bonds.

"**Series 2010 F Bonds**" means the Issuer's Combined Utility System Revenue Bonds, Series 2010 F to be issued concurrently herewith.

"**Series 2010 F Bonds Ordinance**" means the Ordinance authorizing the Series 2010 F Bonds.

"**Series 2010 B Bonds**" means the Combined Utility System Revenue Bonds, Series 2010 B (West Virginia SRF 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 by 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 Combined Utility System Revenue Bonds, Series 2010 C (West Virginia SRF Program), of the Issuer, authorized by this Bond Legislation.

"**Series 2010 C Bonds Reserve Account**" means the Series 2010 C Bonds Reserve Account established by 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.

"**Sinking Funds**" means, collectively, the respective Sinking Funds established for the Series 2010 Bonds and the Prior Bonds.

"**SRF Administrative Fee**" means any administrative fee required to be paid pursuant to the ARRA Assistance Agreement.

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

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

"**State**" means the State of West Virginia.

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

"**Surplus Revenues**" means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Series 2010 Bonds, the Prior Bonds or any other obligations of the Issuer, including, without limitation, the Depreciation Fund, the Sinking Funds and the Reserve Accounts.

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

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

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

## ARTICLE II

## AUTHORIZATION OF ACQUISITION 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 $15,366,868, 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 B Bonds and Series 2010 C 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, compatible with the financing plan submitted to the DEP and the Authority.

The cost of the Project is estimated not to exceed $15,366,868, of which approximately $81,600 will be obtained from proceeds of the Series 2010 B Bonds and approximately $15,380,227 will be obtained from proceeds of the Series 2010 C Bonds.

## ARTICLE III

## AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF ARRA ASSISTANCE AGREEMENT

**Section 3.01. Authorization of Bonds**. For the purposes of capitalizing interest on the Series 2010 B Bonds, if any, funding a reserve account or purchasing a surety bond to fund a reserve account for the Series 2010 B Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance of the Series 2010 B Bonds and Series 2010 C Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be issued the negotiable Series 2010 B Bonds of the Issuer. The Series 2010 B Bonds and Series 2010 C Bonds shall be issued in one or more series, designated as "Combined Utility System Revenue Bonds, Series 2010 B (West Virginia SRF Program/ARRA)," in the principal amount of not more than $81,600, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2010 B Bonds remaining after purchasing a surety bond to fund the Series 2010 B Bonds Reserve Account or cash funding the Series 2010 B Bonds Reserve Account (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, and applied as set forth in Article VI hereof.

For the purposes of capitalizing interest on the Series 2010 C Bonds, if any, funding a reserve account or purchasing a surety bond to fund a reserve account for the Series 2010 C Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance of the Series 2010 C Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be issued the negotiable Series 2010 C Bonds of the Issuer. The Series 2010 C Bonds shall be issued in one or more series, designated as "Combined Utility System Revenue Bonds, Series 2010 C (West Virginia SRF Program)," in the principal amount of not more than $15,380,227, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2010 C Bonds remaining after purchasing a surety bond to fund the Series 2010 C Bonds Reserve Account or cash funding the Series 2010 C Bonds Reserve Account (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, and applied as set forth in Article VI hereof.

**Section 3.02. Terms of Bonds**. The Series 2010 B Bonds and Series 2010 C Bonds shall be issued in such principal amount; shall bear interest at such rate or rates, not exceeding the then legal maximum, payable quarterly on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the ARRA Assistance Agreement. The Series 2010 B Bonds and Series 2010 C 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 2010 B Bonds and Series 2010 C Bonds shall be paid by check or draft of the Paying Agent or its agent, mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

As provided by the Supplemental Resolution, the Series 2010 B Bonds and Series 2010 C Bonds shall initially be issued in one or more series, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the respective Series 2010 B Bonds and Series 2010 C Bonds. The Series 2010 B Bonds and Series 2010 C Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

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

**Section 3.03. Execution of Bonds**. The Series 2010 B Bonds and Series 2010 C 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 2010 B Bonds and Series 2010 C Bonds shall cease to be such officer of the Issuer before the Series 2010 B Bonds and Series 2010 C Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Series 2010 B Bonds and Series 2010 C 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 B Bonds or Series 2010 C 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 B Bonds or Series 2010 C Bonds shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

**Section 3.05. Negotiability, Transfer and Registration**. Subject to the provisions for transfer of registration set forth below, the Series 2010 B Bonds and Series 2010 C 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 B Bonds and Series 2010 C 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 B Bonds and Series 2010 C 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 B Bonds and Series 2010 C 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 B Bonds and Series 2010 C Bonds or transferring the registered Series 2010 B Bonds and Series 2010 C Bonds are exercised, all Series 2010 B Bonds and Series 2010 C Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 2010 B Bonds and Series 2010 C Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Bond Registrar. For every such exchange or transfer of Series 2010 B Bonds and Series 2010 C Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of Series 2010 B Bonds and Series 2010 C Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 2010 B Bonds and Series 2010 C Bonds or, in the case of any proposed redemption of Series 2010 B Bonds and Series 2010 C 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 B Bonds or Series 2010 C Bonds shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be canceled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

**Section 3.07. Bonds not to be Indebtedness of the Issuer**. The Series 2010 B Bonds and Series 2010 C Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Gross Revenues derived from the System as herein provided. No Holder or Holders of the Series 2010 B Bonds and Series 2010 C Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2010 B Bonds and Series 2010 C Bonds or the interest thereon.

**Section 3.08. Bonds Secured by Pledge of Gross Revenues; Lien Position with respect to Prior Bonds**. The payment of debt service of the Series 2010 B Bonds and Series 2010 C 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 Series 2010 A Bonds, Series 2010 D Bonds, Series 2010 E Bonds, Series 2010 F Bonds and the Prior Bonds. Such Gross Revenues in an amount sufficient to pay the principal of and interest on the Series 2010 B Bonds and Series 2010 C Bonds and the Series 2010 A Bonds, Series 2010 D Bonds, Series 2010 E Bonds, Series 2010 F Bonds and the Prior Bonds and to make all other payments provided for in the Bond Legislation are hereby irrevocably pledged to such payments as they become due.

**Section 3.09. Delivery of Bonds**. The Issuer shall execute and deliver the Series 2010 B Bonds and Series 2010 C Bonds to the Registrar, and the Registrar shall authenticate, register and deliver the Series 2010 B Bonds and Series 2010 C 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 B Bonds and Series 2010 C 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 B Bonds and Series 2010 C Bonds to the original purchasers;

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

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

E. The unqualified approving opinions of bond counsel on the Series 2010 B Bonds and Series 2010 C Bonds.

**Section 3.10. Form of Bonds**. The text of the Series 2010 B Bonds and Series 2010 C 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 2010 B BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF MORGANTOWN
COMBINED UTILITYSYSTEM REVENUE BOND, SERIES 2010 B
(WEST VIRGINIA SRF PROGRAM/ARRA)

No. BR-1 $81,600

KNOW ALL MEN BY THESE PRESENTS: That on this the _____ day of January, 2010, THE CITY OF MORGANTOWN, a municipal corporation and political subdivision of the State of West Virginia in Monongalia County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of EITY-ONE THOUSAND SIX HUNDRED DOLLARS ($81,600), 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 SRF 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.

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

This Bond is issued (i) to pay the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the wastewater portion of the existing public combined waterworks, sewerage, and stormwater system of the Issuer (the "Project"); (ii) and (ii) to pay certain costs of issuance of the Bonds and related costs. The existing public combined waterworks, sewerage, and stormwater 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 20 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on September 1, 2009, and a Supplemental Resolution and Conformed Ordinance duly adopted by the Issuer on January 5, 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) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 1992 (WEST VIRGINIA SRF PROGRAM), DATED SEPTEMBER 8, 1992, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $11,900,000 (THE "SERIES 1992 BONDS"); (2) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 1995 (WEST VIRGINIA SRF PROGRAM), DATED APRIL 27, 1995, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $1,601,477 (THE "SERIES 1995 BONDS"); (3) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2000 A (WEST VIRGINIA SRF PROGRAM), DATED FEBRUARY 29, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $7,842,000 (THE "SERIES 2000 A BONDS"); (4) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2000 B (WEST VIRGINIA INFRASTRUCTURE FUND), DATED FEBRUARY 29, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $2,488,000 (THE "SERIES 2000 B BONDS"); (5) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2001 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED FEBRUARY 8, 2001, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $3,812,470 (THE "SERIES 2001 A BONDS"); (6) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2006 A (WEST VIRGINIA SRF PROGRAM), DATED JUNE 30, 2006, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $6,410,191 (THE "SERIES 2006 A BONDS"); AND (7) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2007 A (WEST VIRGINIA SRF PROGRAM), DATED AUGUST 14, 2007, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $8,500,000 (THE "SERIES 2007 A BONDS") (COLLECTIVELY, THE "PRIOR BONDS"); AND (8) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 A, DATED JANUARY ___, 2010, ISSUED SIMULTANEOUSLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $_____ (THE "SERIES 2010 A BONDS"); (9) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 D (WEST VIRGINIA DWTRF PROGRAM), DATED JANUARY ___, 2010, ISSUED SIMULTANEOUSLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $9,317,286 (THE 'SERIES 2010 D BONDS"); (10) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 E (WEST VIRGINIA DWTRF PROGRAM/ARRA), DATED JANUARY ___, 2010, ISSUED SIMULTANEOUSLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $100,000 (THE "SERIES 2010 E BONDS'); (11) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 C (WEST VIRGINIA SRF PROGRAM), DATED JANUARY ___, 2010, ISSUED SIMULTANEOUSLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $15,380,227 (THE "SERIES 2010 C BONDS"); AND (12) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 F, DATED JANUARY ___, 2010, ISSUED SIMULTANEOUSLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $_____ (THE "SERIES 2010 F BONDS").

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Series 2010 A Bonds, Series 2010 C Bonds, Series 2010 D Bonds, Series 2010 E Bonds, Series 2010 F Bonds and the Prior 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 an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Gross Revenues, the moneys in the Series 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 on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Series 2010 A Bonds, Series 2010 C Bonds, Series 2010 D Bonds, Series 2010 E Bonds, Series 2010 F Bonds and the Prior 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 which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, including the Series 2010 A Bonds, Series 2010 C Bonds, Series 2010 D Bonds, Series 2010 E Bonds, Series 2010 F Bonds Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

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

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

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

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

[Remainder of Page Intentionally Blank]

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

[SEAL]

By: _____
Mayor

By: _____
City Manager

ATTEST:

By: _____
City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 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

By: _____
Its: Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

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

TOTAL $_____

EXHIBIT B

DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

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

Dated: _____, 20____.

_____

In the presence of:

_____

(FORM OF SERIES 2010 C BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF MORGANTOWN
COMBINED UTILITY
SYSTEM REVENUE BOND, SERIES 2010 C
(WEST VIRGINIA SRF PROGRAM)

No. CR-1 $15,380,227

KNOW ALL MEN BY THESE PRESENTS: That on this the _____ day of January, 2010, THE CITY OF MORGANTOWN, a municipal corporation and political subdivision of the State of West Virginia in Monongalia County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of FIFTEEN MILLION THREE HUNDRED AND EIGHTY THOUSAND TWO HUNDRED AND TWENTY SEVEN DOLLARS ($15,380,227), 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, with interest on each installment at the rate of 2% per annum as set forth on said EXHIBIT B. The interest and SRF administrative fee (as defined in the hereinafter described Bond Legislation) on this Bond shall be payable quarterly 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 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"). The interest and SRF administrative fee 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 Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement by and among the Issuer, the Authority and the DEP, dated January _____, 2010.

This Bond is issued (i) to pay the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the wastewater portion of the existing

public combined waterworks, sewerage, and stormwater system of the Issuer (the "Project"); (ii) to fund the reserve account for the Series 2009 C Bonds; and (iii) to pay certain costs of issuance of the Bonds and related costs. The existing public combined waterworks, sewerage, and stormwater 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 20 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on September 1, 2009, and a Supplemental Resolution and Conformed Ordinance duly adopted by the Issuer on January 5, 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) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 1992 (WEST VIRGINIA SRF PROGRAM), DATED SEPTEMBER 8, 1992, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $11,900,000 (THE "SERIES 1992 BONDS"); (2) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 1995 (WEST VIRGINIA SRF PROGRAM), DATED APRIL 27, 1995, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $1,601,477 (THE "SERIES 1995 BONDS"); (3) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2000 A (WEST VIRGINIA SRF PROGRAM), DATED FEBRUARY 29, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $7,842,000 (THE "SERIES 2000 A BONDS"); (4) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2000 B (WEST VIRGINIA INFRASTRUCTURE FUND), DATED FEBRUARY 29, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $2,488,000 (THE "SERIES 2000 B BONDS"); (5) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2001 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED FEBRUARY 8, 2001, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $3,812,470 (THE "SERIES 2001 A BONDS"); (6) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2006 A (WEST VIRGINIA SRF PROGRAM), DATED JUNE 30, 2006, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $6,410,191 (THE "SERIES 2006 A BONDS"); AND (7) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2007 A (WEST VIRGINIA SRF PROGRAM), DATED AUGUST 14, 2007, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $8,500,000 (THE "SERIES 2007 A BONDS") (COLLECTIVELY, THE "PRIOR BONDS"); AND (8) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 A, DATED JANUARY ___, 2010, ISSUED SIMULTANEOUSLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $_____ (THE "SERIES 2010 A BONDS"); (9) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 D (WEST VIRGINIA DWTRF PROGRAM), DATED JANUARY ___, 2010, ISSUED SIMULTANEOUSLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $9,317,286 (THE 'SERIES 2010 D BONDS"); (10) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 E (WEST VIRGINIA DWTRF PROGRAM/ARRA), DATED JANUARY ___, 2010, ISSUED SIMULTANEOUSLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $100,000 (THE "SERIES 2010 E BONDS'); (11) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 B (WEST VIRGINIA SRF PROGRAM/ARRA),

DATED JANUARY ___, 2010, ISSUED SIMULTANEOUSLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $81,600 (THE "SERIES 2010 B BONDS"); AND (12) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 F, DATED JANUARY ___, 2010, ISSUED SIMULTANEOUSLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $_____ (THE "SERIES 2010 F BONDS").

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Series 2010 A Bonds, Series 2010 B Bonds, Series 2010 D Bonds, Series 2010 E Bonds, Series 2010 F Bonds and the Prior Bonds, and from moneys 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 the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Gross Revenues, the moneys in the Series 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 on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Series 2010 A Bonds, Series 2010 B Bonds, Series 2010 D Bonds, Series 2010 E Bonds, Series 2010 F Bonds and the Prior 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 which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, including the Series 2010 A Bonds, Series 2010 B Bonds, Series 2010 D Bonds, Series 2010 E Bonds, Series 2010 F Bonds Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

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

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation,

shall be applied solely to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the registered owner of this Bond.

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

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

[Remainder of Page Intentionally Blank]

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

[SEAL]

By: _____
Mayor

By: _____
City Manager

ATTEST:

By: _____
City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 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

By: _____
Its: Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

| AMOUNT | DATE | AMOUNT | DATE |
|---|---|---|---|
| (1) $ | | (19) | |
| (2) | | (20) | |
| (3) | | (21) | |
| (4) | | (22) | |
| (5) | | (23) | |
| (6) | | (24) | |
| (7) | | (25) | |
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| (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 ARRA Assistance Agreement.** The Series 2010 B Bonds and Series 2010 C Bonds shall be sold to the Authority, pursuant to the terms and conditions of the ARRA Assistance Agreement. If not so authorized by previous ordinance or resolution, the Mayor and the City Manager are specifically authorized and directed to execute the ARRA Assistance Agreement in the form attached hereto as "Exhibit A" and made a part hereof, and the City Clerk is directed to affix the seal of the Issuer, attest the same and deliver the ARRA Assistance Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed. The ARRA Assistance Agreement, including all schedules and exhibits attached thereto, are hereby approved an incorporated into this Bond Legislation.

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

## ARTICLE IV

## [RESERVED]

## ARTICLE V

## FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

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

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

(2) Depreciation Fund (established by the Prior Ordinances);

(3) Operation and Maintenance 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 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 1992 Bonds Sinking Fund (established by Prior Ordinances);

(2) Series 1992 Bonds Reserve Account established by Prior Ordinances);

(3) Series 1995 Bonds Sinking Fund (established by Prior Ordinances);

(4) Series 1995 Bonds Reserve Account established by Prior Ordinances);

(5) Series 2000 A Bonds Sinking Fund (established by Prior Ordinances);

(6) Series 2000 A Bonds Reserve Account established by Prior Ordinances);

(7) Series 2000 B Bonds Sinking Fund (established by Prior Ordinances);

(8) Series 2000 B Bonds Reserve Account established by Prior Ordinances);

(9) Series 2001 A Bonds Sinking Fund (established by Prior Ordinances);

(10) Series 2001 A Bonds Reserve Account established by Prior Ordinances);

(11) Series 2006 A Bonds Sinking Fund (established by Prior Ordinances);

(12) Series 2006 A Bonds Reserve Account established by Prior Ordinances);

(13) Series 2007 A Bonds Sinking Fund (established by Prior Ordinances);

(14) Series 2007 A Bonds Reserve Account established by Prior Ordinances);

(15) Series 2010 A Bonds Sinking Fund (established by Series 2010 A Bond Ordinance);

(16) Series 2010 A Bonds Reserve Account (established by Series 2010 A Bond Ordinance);

(17) Series 2010 D Bonds Sinking Fund (established by Series 2010 D Bond Ordinance);

(18) Series 2010 D Bonds Reserve Account (established by Series 2010 D Bond Ordinance);

(19) Series 2010 E Bonds Sinking Fund (established by Series 2010 E Bond Ordinance);

(20) Series 2010 E Bonds Reserve Account (established by Series 2010 E Bond Ordinance);

(21) Series 2010 F Bonds Sinking Fund (established by Series 2010 F Bond Ordinance);

(20) Series 2010 F Bonds Reserve Account (established by Series 2010 F Bond Ordinance);

(21) Series 2010 B Bonds Sinking Fund;

(22) Series 2010 B Bonds Reserve Account

(23) Series 2010 C Bonds Sinking Fund; and

(24) Series 2010 C Bonds Reserve Account

**Section 5.03. System Revenues; Flow of Funds.**

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

(1) The Issuer shall first, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the respective Sinking Funds for the Prior Bonds, the amounts required by the respective Prior Ordinances to pay interest on the Prior Bonds; (ii) for deposit in the respective Sinking Funds for the Series 2010 A Bonds, Series 2010 D Bonds, Series 2010 E Bonds and Series 2010 F Bonds, the amounts required by the respective Ordinances to pay interest on the Series 2010 A Bonds, Series 2010 D Bonds, Series 2010 E Bonds and Series 2010 F Bonds; and (iii) commencing 4 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 1/3rd of the amount of interest which will mature and become due on the Series 2010 C Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2010 C Bonds Sinking Fund and the next quarterly interest payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of interest coming due on such date.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the respective Sinking Funds for the Prior Bonds, the amounts required by the respective Prior Ordinances to pay the principal of the Prior Bonds; (ii) for deposit in the respective Sinking Funds for the Series 2010 A Bonds, Series 2010 D Bonds, Series 2010 E Bonds and Series 2010 F Bonds, the amounts required by the respective Ordinances to pay the principal of the Series 2010 A Bonds, Series 2010 D Bonds, Series 2010 E Bonds and Series 2010 F Bonds; (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; and (iv) commencing 4 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 1/3rd of the amount of principal which will mature and become due on the Series 2010 C Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2010 C Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the respective Reserve Accounts for the Prior Bonds, the amounts required by the respective Prior Ordinances to be deposited therein; (ii) for deposit in the respective Reserve Accounts for the Series 2010 A Bonds, Series 2010 B B0nds, Series 2010 C Bonds and Series 2010 F Bonds, the amounts required by the respective Ordinances to be deposited therein; (iii) 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 or otherwise provided for pursuant to a surety bond, 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; and (iv) commencing 4 months prior to the first date of payment of principal of the Series 2010 E Bonds, if not fully funded upon issuance of the Series 2010 E Bonds or otherwise provided for pursuant to a surety bond, for deposit in the Series 2010 E Bonds Reserve Account, an amount equal to 1/120th of

the Series 2010 E Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2010 E Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2010 E Bonds Reserve Requirement.

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

(5) The Issuer shall next, from the moneys remaining in the Revenue Fund, on the first day of each month transfer to the Depreciation Fund, an amount equal to 2 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, emergency repairs, improvements or extensions to the System; provided, that any deficiencies in the Reserve Accounts (except to the extent such deficiency exists because the required payments into such accounts have not, as of the date of determination of a deficiency, funded such accounts to the maximum extent required hereof) shall be promptly eliminated with moneys from the Depreciation Fund.

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

Moneys in the Series 2010 B Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2010 B Bonds, as the same shall become due. Moneys in the Series 2010 B Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 2010 B Bonds, as the same shall come due, when other moneys in the Series 2010 B Bonds Sinking Fund are insufficient therefor, and for no other purpose.

Moneys in the Series 2010 C Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2010 C Bonds, as the same shall become due. Moneys in the Series 2010 C Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 2010 C Bonds, as the same shall come due, when other moneys in the Series 2010 C Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the Series 2010 B Bonds Sinking Fund and the Series 2010 B 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 due on the Series 2010 B Bonds, and then to the next ensuing principal payment due thereon.

All investment earnings on moneys in the Series 2010 C Bonds Sinking Fund and the Series 2010 C 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 due on the Series 2010 C Bonds, and then to the next ensuing principal payment due thereon.

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

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

As and when additional Bonds ranking on a parity with the Series 2010 b Bonds and Series 2010 C Bonds are issued, provision shall be made for additional payments into the respective sinking fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective reserve account in an amount equal to the requirement thereof.

The Issuer shall not be required to make any further payments into the Series 2010 B Bonds Sinking Fund or the Series 2010 B Bonds Reserve Account, when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2010 B Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

The Issuer shall not be required to make any further payments into the Series 2010 C Bonds Sinking Fund or the Series 2010 C Bonds Reserve Account, when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2010 C Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

Interest, principal or reserve payments, whether made for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Prior Bonds and the Series 2010 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 2010 B Bonds Sinking Fund, Series 2010 C Bonds Sinking Fund, Series 2010 B Bonds Reserve Account and the Series 2010 C Bonds Reserve Account created hereunder, and all amounts required for said accounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. The Issuer shall make the necessary arrangements whereby required payments into said accounts shall be automatically debited from

the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

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

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

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

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

B. The Issuer shall on the first day of each month (if such day is not a business day, then the next succeeding business day), deposit with the Commission the required interest, principal and reserve payments with respect to the Series 2010 b Bonds and series 2010 C Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation. The Issuer shall, on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission, the SRF Administrative Fee as set forth in the Schedule Y attached to the ARRA Assistance Agreement.

C. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the ARRA Assistance Agreement and submit a copy of said form along with a copy of its payment check to the Authority by the 5th day of such calendar month.

D. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinabove provided, are current and there remains in the Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into such funds during the following month or such other period as required by the Act, such excess shall be considered as surplus revenues (the "Surplus Revenues"). Surplus Revenues may be used for any lawful purpose of the System.

E. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay their respective charges and fees then due. In the case of payments to the Commission under this paragraph, the Issuer shall, 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 moneys in excess of the maximum amounts insured by FDIC in any of the funds and accounts shall at all times be secured, to the full extent thereof in excess of such

insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

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

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

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

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

**Section 5.04. Reserve Account Letter of Credit or Surety Bond**. With the advance written consent of the Authority, the Issuer may, in lieu of funding the Series 2010 B Bonds Reserve Account or Series 2010 C Bonds Reserve Account with cash or Qualified Investments, satisfy the respective Series 2010 B Bonds Reserve Requirement or Series 2010 C Bonds Reserve Requirement by obtaining a reserve account letter of credit, a surety bond, or other credit facility satisfactory to the Authority in an amount equal to the Series 2010 B Bonds Reserve Requirement or Series 2010 C Bonds Reserve Requirement respectively. The Issuer hereby authorizes the purchase of a reserve account letter of credit, a surety bond, or other credit facility satisfactory to the Authority, all as set forth in a Supplemental Resolution, and the execution and delivery of any applicable reimbursement agreement or note in such forms as shall be described in a Supplemental Resolution.

## ARTICLE VI

## BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

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

A. 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.

B. From the proceeds of the Series 2010 B 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.

C. Next, from the proceeds of the Series 2010 B Bonds, the Issuer may purchase a surety bond to fund the Series 2010 B Bonds Reserve Account as set forth in the Supplemental Resolution, or 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.

D. Next, from the proceeds of the Series 2010 C Bonds, the Issuer may purchase a surety bond to fund the Series 2010 C Bonds Reserve Account as set forth in the Supplemental Resolution, or 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.

E. As the Issuer receives advances of the remaining moneys derived from the sale of the Series 2010 B Bonds, such moneys 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 B Bonds.

F. As the Issuer receives advances of the remaining moneys derived from the sale of the Series 2010 C Bonds, such moneys 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 C Bonds.

G. 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 B Bonds and Series 2010 C Bonds shall be expended as approved by the DEP.

**Section 6.02. Disbursements From the Series 2010 Bond Construction Trust Fund**. On or before the closing date, the Board shall have delivered to the Authority and the DEP a report listing the specific purposes for which the proceeds of the Series 2010 B Bonds and Series 2010 C Bonds will be expended and the disbursement procedures of such proceeds, including an estimated monthly draw schedule. Payments for Costs of the Project shall be made monthly.

The Issuer hereby appoints and designates the Board, and the Authorized Officers thereof, as its agent (i) for the review and approval of all invoices for the Project to be paid from the proceeds of the Series 2010 B Bonds and Series 2010 C Bonds; (ii) to take any and all actions necessary to apply for and obtain a commitment from the DEP, specifically including, but not limited to, any administrative loan documents required by DEP; and (iii) to act on and execute documents on behalf of the Issuer for any and all federal and state actions as they relate to the planning, design and/or construction of the Project.

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 approval from, the Authority and the DEP of a completed and signed "Payment Requisition Form," a form of which is attached to the ARRA Assistance Agreement, in compliance with the construction schedule.

Pending such application, moneys 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 B Bonds and Series 2010 C 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 B Bonds and Series 2010 C 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 B Bonds and Series 2010 C 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 B Bonds and Series 2010 C Bonds shall not be nor constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of the Series 2010 B Bonds or Series 2010 C Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2010 B Bonds or Series 2010 C Bonds or the interest thereon.

**Section 7.03. Bonds Secured by Pledge of Gross Revenues; Lien Position with respect to Prior Bonds**. The payment of debt service of the Series 2010 B Bonds and Series 2010 C 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 Series 2010 A Bonds, Series 2010 D Bonds, Series 2010 E Bonds, Series 2010 F Bonds and the Prior Bonds. Such Gross Revenues in an amount sufficient to pay the principal of and interest on the Series 2010 Bonds and the Prior Bonds and to make all other payments provided for in the Bond Legislation are hereby irrevocably pledged to such payments as they become due.

**Section 7.04. Rates and Charges**. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal and the Issuer shall supply an opinion of counsel to such effect. Such rates and charges shall be sufficient to comply with the requirements of the ARRA Assistance Agreement and the Issuer shall supply a certificate of certified public accountant to such effect. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the water rate ordinance of the Issuer enacted July 21, 2010, the sewer rate ordinance of the Issuer enacted July 21, 2009, and the stormwater rate ordinance of the Issuer enacted April 17, 2008, which rates are incorporated herein by reference as a part hereof.

So long as the Series 2010 B Bonds or Series 2010 C Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required

sums set forth in the Bond Legislation and in compliance with the ARRA Assistance Agreement. In the event the schedule of rates, fees and charges initially established for the System in connection with the Series 2010 B Bonds and Series 2010 C Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation and the ARRA Assistance Agreement, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and the ARRA Assistance Agreement.

**Section 7.05. Sale of the System**. So long as the Prior Bonds are outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of or encumber the System, or any part thereof, except as provided in the Prior Ordinances. Additionally, so long as the Series 2010 B Bonds and Series 2010 C Bonds are outstanding and except as otherwise required by law or with the written consent of the DEP and the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding, in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 2010 B Bonds and Series 2010 C Bonds, immediately be remitted to the Commission for deposit in the Series 2010 B Bonds Sinking Fund and Series 2010 C Bonds Sinking Fund respectively, and, with the written permission of the DEP and the Authority, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and interest, if any, on the Series 2010 B Bonds and Series 2010 C Bonds. Any balance remaining after the payment of the Series 2010 B Bonds and Series 2010 C 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 Board shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of $50,000, the Board shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Revenue Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of $50,000 but not in excess of $200,000, the Board shall first, determine, upon consultation with a professional engineer, 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 upon public bidding. The proceeds of any such sale shall be deposited in the Depreciation Fund. The payment of such proceeds into the Depreciation Fund shall not reduce the amount required to be paid into such account by other provisions of this Bond Legislation.

No sale, lease or other disposition of the properties of the System shall be made by the Board if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall

be in excess of $200,000 and insufficient to pay all Bonds then Outstanding, without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of the 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.

Notwithstanding any of the foregoing provisions of this Section 7.05 to the contrary, the Issuer hereby reserves the right to sell a tract of about 200 acres on Mayfield Road heretofore acquired for the System, which property is not being used nor is it useful for the System, such sale to be at such time and in such manner and for such price as the Issuer, with prior written approval of the Board, shall determine and without any other restrictions upon such sale insofar as this Bond Legislation is concerned. Moneys received upon any such sale under this paragraph, after deduction of all costs of such sale, shall be deposited in the Revenue Fund.

**Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances**. Except as provided for in Section 7.06 and Section 7.07 hereof, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2010 Bonds and the Prior Bonds. All obligations issued by the Issuer after the issuance of the Series 2010 B Bonds and Series 2010 C 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 B Bonds and Series 2010 C Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts established by this Bond Legislation have been made and are current at the time of the issuance of such subordinate obligations.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2010 B Bonds and Series 2010 C Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Series 2010 B Bonds and Series 2010 C 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 and the DEP prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the 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 Ordinances shall be applicable. In addition, no Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2010 B Bonds and Series 2010 C Bonds pursuant to this Bond Legislation, without the prior written consent of the Authority and the DEP and without complying with the conditions and requirements herein provided (unless less restrictive than the provisions of the Prior Ordinances).

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2010 B Bonds and Series 2010 C Bonds.

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

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

(1) The Bonds then Outstanding;

(2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Bond Legislation then Outstanding; and

(3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues expected to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from the improvements to be financed by such Parity Bonds and any increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the issuance of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, which shall be filed in the office of the City Clerk prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12 consecutive month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to issuance of such Parity Bonds. For purposes of this test, the terms "Gross Revenues" and "Net Revenues" shall not include proceeds from the sale of capital assets.

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

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior lien of the Series 2010 B Bonds and Series 2010 C Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2010 B Bonds and Series 2010 C Bonds.

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

**Section 7.08. Books; Records and Audit**. The Board shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The Board shall permit the Authority and the DEP, or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Board shall submit to the Authority and the DEP such documents and information as they may reasonably require in connection with the 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 Board shall permit the Authority and the DEP, or their agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times 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 Board will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds issued pursuant to this Bond Legislation shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

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

The Board shall file with the Authority and the DEP, or any other original purchaser of the Series 2010 B Bonds and Series 2010 C Bonds, and shall mail in each year to

any Holder or Holders of the Series 2010 B Bonds and Series 2010 C Bonds, requesting the same, an annual report containing the following:

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

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

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

The Board shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountant (and to the extent legally required, in compliance with the applicable OMB Circular, or any successor thereof, and the Single Audit Act, or any successor thereof), and shall mail upon request, and make available generally, the report of the Independent Certified Public Accountant, or a summary thereof, to any Holder or Holders of the Series 2010 B Bonds and Series 2010 C Bonds and shall submit said report to the Authority and the DEP, or any other original purchaser of the Series 2010 B Bonds and Series 2010 C Bonds. Such audit report submitted to the Authority and the DEP shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if there are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

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

The Issuer shall provide the DEP with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as set forth in Exhibit E of the ARRA Assistance Agreement or as promulgated from time to time.

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

**Section 7.09. Rates**. Prior to the issuance of the Series 2010 B Bonds and Series 2010 C Bonds, equitable rates or charges for the use of and service rendered by the System shall be established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the City Clerk, which copies will be open to

inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2010 B Bonds and Series 2010 C Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2010 B Bonds and Series 2010 C Bonds, including the Series 2010 A Bonds, Series 2010 D Bonds, Series 2010 E Bonds, Series 2010 F Bonds and the Prior Bonds; provided that, in the event that amounts equal to or in excess of the reserve requirements are on deposit in the Series 2010 B Bonds Reserve Account, Series 2010 C Bonds Reserve Account and any reserve accounts for obligations on a parity with the Series 2010 B Bonds and Series 2010 C 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 B Bonds and Series 2010 C Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2010 B Bonds and Series 2010 C Bonds, including the Series 2010 A Bonds, Series 2010 D Bonds, Series 2010 E Bonds, Series 2010 F Bonds and the Prior Bonds. In any event, the Issuer shall not reduce the rates or charges for services set forth in the rate ordinances described in Section 7.04.

**Section 7.10. Operating Budget and Monthly Financial Report**. The Board shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority and the DEP within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by a professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Board shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of a professional engineer that such increased expenditures are necessary for the continued operation of the System. The Board shall within 30 days of adoption thereof mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority and the DEP and to any Holder of any Bonds who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Authority, the DEP and any Holder of any Bonds or anyone acting for and on behalf of such Holder of any Bonds.

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 Board shall each month complete a "Monthly Financial Report," a form of which is attached to the

ARRA Assistance Agreement, and forward a copy of such report to the Authority and the DEP by the 10th day of each month.

**Section 7.11. Engineering Services and Operating Personnel**. The Board shall obtain a certificate of the Consulting Engineers in the form attached to the ARRA Assistance Agreement, stating, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the Authority and the DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the DEP is sufficient to pay the costs of acquisition and construction of the Project, and all permits required by federal and state laws for construction of the Project have been obtained.

The Board shall provide and maintain competent and adequate engineering services satisfactory to the Authority and the DEP covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority and the DEP and the Issuer at the completion of construction that construction of the Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

The Issuer shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Issuer shall notify the DEP in writing of such receipt. The Issuer shall submit a "Performance Certificate," a form of which is attached to the ARRA Assistance Agreement as Exhibit A, to the DEP within 60 days of the end of the first year after the Project is completed.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to the DEP when the Project is 90% completed. The Issuer shall at all times provide operation and maintenance of the System in compliance with all state and federal standards.

The Issuer shall employ qualified operating personnel properly certified by the State before the Project is 50% complete and shall retain such a certified operator to operate the System during the entire term of the ARRA Assistance Agreement. The Issuer shall notify the DEP in writing of the certified operator employed at the 50% completion stage.

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 Board will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all

steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 20 days after the same shall become due and payable, the user of the services and facilities shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid, when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the stormwater portion of the System and any services and facilities of the waterworks portion of the System, to all users of the services of the stormwater system delinquent in payment of charges for the services of the stormwater system and will not restore such services of either the waterworks system or the stormwater system until all delinquent charges for the services of the stormwater system, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law. If the waterworks facilities are not owned by the Issuer, the Issuer shall use diligent efforts to enter into a termination agreement with the provider of such water services, subject to any required approval of such agreements by the Public Service Commission of West Virginia.

**Section 7.14. No Free Services**. The Board will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer or the Board, or any department, agency, instrumentality, officer or employee of either shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer, the Board and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

**Section 7.15. Insurance and Construction Bonds**.

A. The Board hereby covenants and agrees that so long as the Series 2010 B Bonds and Series 2010 C Bonds remain Outstanding, the Board will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

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

properties or for the other purposes provided herein for the Depreciation Fund. The Board 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 Board, the Authority, the prime contractor and all subcontractors as their respective interests may appear, in accordance with the ARRA Assistance Agreement, during construction of the Project on a 100% basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Issuer, the Board, 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 Board from claims for bodily injury and/or death and not less than $500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer and the Board from claims arising out of operation or ownership of motor vehicles of or for the System.

(3) 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 Board and such payment bonds will be filed with the Clerk of the County Commission of the County in which such work is to be performed prior to commencement of construction of any additions, extensions or improvements for the System in compliance with West Virginia Code, Section 38-2-39.

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

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

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

B. The Board 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 Board shall verify such bonds prior to commencement of construction.

The Board shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project

and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project; provided that the amounts and terms of such coverage are satisfactory to the Authority and the DEP. The Board shall verify such insurance prior to commencement of construction. In the event the ARRA Assistance Agreement so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the Board, the prime contractor and all subcontractors, as their interests may appear.

**Section 7.16. Mandatory Use**. The mandatory use of the stormwater facilities of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer. Accordingly, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, every owner, tenant or occupant of any real property located near the stormwater portion of the System, and where stormwater from real property affects or drains into the stormwater portion of the System, shall be deemed to be a user served by the stormwater portion of the System and it is declared that the mandatory use of the stormwater portion of the System by such real property owner is necessary and essential for the health and welfare of the inhabitants and residents of the Issuer and the State. To the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, every such owner, tenant or occupant shall, after a 30-day notice of the availability of the stormwater portion of the System, pay the rates and charges established therefor.

**Section 7.17. Completion of Project; Permits and Orders**. The Board shall complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

The Board has obtained all permits required by state and federal laws for the acquisition and construction of the Project, all orders and approvals from the Council and the DEP necessary for the acquisition and construction of the Project and the operation of the System and all approvals for issuance of the Series 2010 B Bonds and Series 2010 C Bonds required by state law, with all requisite appeal periods having expired without successful appeal and the Issuer shall supple an opinion of counsel to such effect.

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

The Issuer and the Board shall also comply with all applicable laws, rules and regulations issued by the Authority and the DEP or other state, federal or local bodies in regard to the 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 C 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 C Bonds during the term thereof is, under the terms of the Series 2010 C 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 C 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 C Bonds during the term thereof is, under the terms of the Series 2010 C 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 C 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 C Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of that portion of the Project to which such Private Business Use is related, all of the foregoing to be determined in accordance with the Code.

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

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

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

E. FURTHER ACTIONS. The Issuer shall 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 C Bonds will be and remain excludable from gross income for federal income tax purposes, and shall 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 Laws Compliance.** The Issuer shall provide the Authority, in a timely manner, with any and all information that may be requested of it

(including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

**Section 7.21. Contracts; Change Orders; Public Releases**. A. The Issuer shall, simultaneously with the delivery of the Series 2010 B Bonds and Series 2010 C Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

B. The Issuer shall submit all proposed change orders to the DEP for written approval. The Issuer shall obtain the written approval of the DEP before expending any proceeds of the Series 2010 B Bonds and Series 2010 C Bonds held in "contingency" as set forth in the schedule attached to the Certificate of the Consulting Engineer. The Issuer shall also obtain the written approval of the DEP before expending any proceeds of the Series 2010 B Bonds and Series 2010 C Bonds made available due to bid or construction or project underruns.

C. The Issuer shall list the funding as being provided by the Authority and the DEP 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 B Bonds and Series 2010 C 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 B Bonds and Series 2010 C Bonds, and shall be on a parity with the statutory mortgage lien in favor of the Holders of the Series 2010 A Bonds, Series 2010 D Bonds, Series 2010 E Bonds, Series 2010 F Bonds and the Prior Bonds.

## ARTICLE VIII

### INVESTMENT OF FUNDS; NON ARBITRAGE

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

Any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any

fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank may make any and all investments permitted by this section through its own investment or trust department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year (or more often if reasonably requested by the Issuer), a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2010 C Bonds are Outstanding and as long thereafter as necessary to comply with the Code and assure the exclusion of interest on the Series 2010 C Bonds from gross income for federal income tax purposes.

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

**Section 8.03. 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 covenants to calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, unless otherwise agreed by the 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. The Issuer may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer may deem appropriate in order to assure compliance with this Section 8.03. The Issuer shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 8.03 in accordance with the requirements of Section 148(f) of the Code and such Regulations. In the event the Issuer fails to make such rebates as required, the Issuer shall pay the required rebate amount, any and all penalties and other amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, and take any other actions necessary, in order to maintain the exclusion of interest on the Series 2010 C Bonds from gross income for federal income tax purposes.

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

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 B Bonds and Series 2010 C Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest on any Series 2010 B Bonds and Series 2010 C Bonds; or

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

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

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

(5) If default occurs with respect to the Series 2010 A Bonds, Series 2010 D Bonds, Series 2010 E Bonds or Series 2010 F Bonds or their respective Ordinances.

**Section 9.02. Remedies.** Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners; provided however, that all rights and remedies of the Holders of the Series 2010 B Bonds and Series 2010 C Bonds shall be on a parity with those of the Holders of the Series 2010 A Bonds, Series 2010 D Bonds, Series 2010 E Bonds, Series 2010 F Bonds and 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 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 B Bonds and Series 2010 C Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Gross Revenues and other moneys and

securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2010 B Bonds and Series 2010 C 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 on the Series 2010 B Bonds and Series 2010 C Bonds from gross income for federal income tax purposes.

## ARTICLE XI

## MISCELLANEOUS

**Section 11.01. Amendment or Modification of Bond Legislation**. Prior to the issuance of the Series 2010 B Bonds and Series 2010 C Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2010 B Bonds and Series 2010 C 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 B Bonds and Series 2010 C Bonds shall be made without the consent in writing of the Registered Owners of the Series Series 2010 B Bonds and Series 2010 C Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein pledged therefor without the consent of the Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Series 2010 B Bonds and Series 2010 C 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 B Bonds and Series 2010 C 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 B Bonds and Series 2010 C Bonds.

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

**Section 11.05. Conflicting Provisions Repealed; Prior Ordinances**. All ordinances, orders or resolutions and or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed; provided that, in the event of any

conflict between this Ordinance and the Prior Ordinances, the Prior Ordinances shall control (unless less restrictive), so long as the Prior Bonds are outstanding.

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

**Section 11.07.** **Appointment**. The Issuer does hereby appoint, designate and approve the hiring of Steptoe & Johnson PLLC, Morgantown, West Virginia, as bond counsel to the Issuer and the Board in connection with the issuance by the Issuer of the Series 2010 B Bonds and Series 2010 C Bonds.

**Section 11.08.** **Statutory Notice and Public Hearing**. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in the *Dominion Post*, a newspaper published and of general circulation in The City of Morgantown, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2010 B Bonds and Series 2010 C 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.

[Remainder of Page Intentionally Left Blank]

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

| | |
|---|---|
| Passed on First Reading: | August 4, 2009 |
| Passed on Second Reading: | August 18, 2009 |
| Passed on Final Reading Following Public Hearing: | September 1, 2009 |

By: _____
Mayor

ATTEST:

By: _____
City Clerk

APPROVED AND CORRECT AS TO FORM:

By: _____
City Solicitor

627490.00019



5216001.1

CERTIFICATION

Certified a true copy of a Conformed Ordinance duly enacted by the Council of THE CITY OF MORGANTOWN on the 1st day of September, 2009 as supplemented by Supplemental Resolution dated January 5, 2010.

Dated: January 28, 2010.

[SEAL]

Linda L. Lutz
City Clerk

## EXHIBIT B

## SPECIAL CONDITIONS – ARRA FUNDED PROJECTS

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

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

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

D. ASSET MANAGEMENT – The Local Government shall develop and implement an asset management plan in accordance with guidelines issued by DEP and is approved by DEP. New systems shall submit the asset management plan to DEP when the Project is complete. Existing systems shall submit the asset management plan to DEP within six months following completion of the Project.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

S. USER RATES – The Local Government shall covenant that it will not reduce its approved or enacted customer rates for at least eighteen months after completion of the Project or until such time as a cost of service study has been completed establishing the actual operation and maintenance expenses.

T. CLOSING CONDITIONS – The closing is contingent upon receipt by the DEP and the Authority of a satisfactory final title opinion and the completion of administrative review by the DEP.

SRF-ARRA/M
(11/09)

# ARRA ASSISTANCE AGREEMENT

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

THE CITY OF MORGANTOWN (C-544205/2009S-1077)
(Local Government)

W I T N E S S E T H:

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

WHEREAS, the United States Congress has provided additional capitalization grant funding under the Clean Water Act through the American Recovery and Reinvestment Act of 2009 (the "ARRA");

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

WHEREAS, under the Act the DEP is designated the instrumentality to enter into capitalization agreements with the United States Environmental Protection Agency ("EPA") to accept capitalization grant awards (U.S. General Services Administration; Catalog of Federal Domestic Assistance, 32nd Edition § 66.458 (1998)) and DEP has been awarded capitalization grants to partially fund the Program;

WHEREAS, the ARRA provides that at least fifty percent (50%) of the funds provided through the capitalization grant be provided as negative interest loans or principal forgiveness (the "ARRA Assistance");

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

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

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

WHEREAS, the Local Government is included on the DEP State Project Priority List and the Intended Use Plan and has met DEP's pre-application requirements for the Program;

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

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

WHEREAS, the Local Government has completed and filed with the Authority and DEP an Application for a Loan with attachments and exhibits and an Amended Application for a Loan also with attachments and exhibits (together, as further revised and supplemented, the "Application"), which Application is incorporated herein by this reference; and

WHEREAS, having reviewed the Application and the Fund having available sufficient funds therefor, the Authority and DEP are willing to lend the Local Government the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Local Government with

moneys held in the Fund, subject to the Local Government's satisfaction of certain legal and other requirements of the Program.

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

## ARTICLE I

## Definitions

1.1 Except where the context clearly indicates otherwise, the terms "Authority," "cost," "fund," "local government," and "project" have the definitions and meanings ascribed to them in the Act, the ARRA. or in the SRF Regulations.

1.2 "Consulting Engineers" means the professional engineer, licensed by the State, designated in the Application and any successor thereto.

1.3 "Loan" means the loan to be made by the Authority and DEP to the Local Government through the purchase of Local Bonds, as hereinafter defined, pursuant to this ARRA Assistance Agreement.

1.4 "Local Act" means the official action of the Local Government required by Section 4.1 hereof, authorizing the Local Bonds.

1.5 "Local Bonds" means the revenue bonds to be issued by the Local Government pursuant to the provisions of the Local Statute, as hereinafter defined, to evidence the Loan and to be purchased by the Authority with money held in the Fund, all in accordance with the provisions of this ARRA Assistance Agreement.

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

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

1.8 "Program" means the wastewater treatment facility acquisition, construction and improvement program coordinated through the capitalization grants program established under the Clean Water Act and administered by DEP.

1.9 "Project" means the wastewater treatment facility project hereinabove referred to, to be constructed or being constructed by the Local Government in whole or in part with the net proceeds of the Local Bonds or being or having been constructed by the Local Government in whole or in part with the proceeds of bond anticipation notes or other interim financing, which is to be paid in whole or in part with the net proceeds of the Local Bonds.

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

1.11 "System" means the wastewater treatment facility owned by the Local Government, of which the Project constitutes all or to which the Project constitutes an improvement, and any improvements thereto hereafter constructed or acquired from any sources whatsoever.

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

## ARTICLE II

### The Project and the System

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

2.2 Subject to the terms, conditions and provisions of this ARRA Assistance Agreement and the Local Act, the Local Government has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared for the Local Government by the Consulting Engineers.

2.3 All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Local Government, subject to any mortgage lien or other security interest as is provided for in the Local Statute unless a sale or transfer of all or a portion of said property is approved by DEP and the Authority.

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

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

2.6 The Local Government agrees that it will permit the Authority and DEP and their respective agents to have access to the records of the Local Government pertaining to the operation and maintenance of the System at any reasonable time following completion of construction of the Project and commencement of operation thereof or if the Project is an improvement to an existing system at any reasonable time following commencement of construction.

2.7 The Local Government shall require that each construction contractor furnish a performance bond and a payment bond, each in an amount at least equal to one hundred percent (100%) of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract and shall verify or have verified such bonds prior to commencement of construction.

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

(100%) basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Local Government, the prime contractor and all subcontractors, as their interests may appear. If facilities of the System which are detrimentally affected by flooding are or will be located in designated special flood or mudslide-prone areas and if flood insurance is available at a reasonable cost, a flood insurance policy must be obtained by the Local Government on or before the Date of Loan Closing, as hereinafter defined, and maintained so long as any of the Local Bonds are outstanding. Prior to commencing operation of the Project, the Local Government must also obtain, and maintain so long as any of the Local Bonds are outstanding, business interruption insurance if available at a reasonable cost.

2.9 The Local Government shall provide and maintain competent and adequate engineering services satisfactory to the Authority and DEP covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority, DEP and the Local Government at the completion of construction that construction is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies. The Local Government shall require the Consulting Engineers to submit Record Drawing, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Local Government shall notify DEP in writing of such receipt. The Local Government shall submit a Performance Certificate, the form of which is attached hereto as Exhibit A, and being incorporated herein by reference, to DEP within 60 days of the end of the first year after the Project is completed.

2.10 The Local Government shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to DEP when the Project is 90% completed. The Local Government shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Local Government shall employ qualified operating personnel properly certified by the State before the Project is 50% complete and shall retain such a certified operator(s) to operate the System during the entire term of this ARRA Assistance Agreement. The Local Government shall notify DEP in writing of the certified operator employed at the 50% completion stage.

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

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

2.13 The Local Government, during construction of the Project, shall complete Payment Requisition Forms, the form of which is attached hereto as Exhibit C and incorporated herein by reference, and forward such forms to DEP in compliance with the Local Government's construction schedule.

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

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

## ARTICLE III

### Conditions to Loan; Issuance of Local Bonds

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

(a) The Local Government shall have delivered to the Authority and DEP a report listing the specific purposes for which the proceeds of the Loan will be expended and the procedures as to the disbursement of loan proceeds, including an estimated monthly draw schedule;

(b) The Local Government shall have performed and satisfied all of the terms and conditions to be performed and satisfied by it in this ARRA Assistance Agreement;

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

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

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

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

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

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

(i) Such rates and charges for the System shall be sufficient to comply with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof, and the Authority and DEP shall have received a certificate of the accountant for the Local Government, or such other person or firm experienced in the finances of local governments and satisfactory to the Authority and DEP, to such effect; and

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

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

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

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

execution of this ARRA Assistance Agreement by the Authority or such later date as is agreed to in writing by DEP.

3.5 The Local Government understands and acknowledges that it is one of several local governments which have applied to the Authority and DEP for loans from the Fund to finance wastewater treatment projects and that the obligation of the Authority to make any such loan is subject to the Local Government's fulfilling all of the terms and conditions of this ARRA Assistance Agreement on or prior to the Date of Loan Closing and to the requirements of the Program. The Local Government specifically recognizes that the Authority will not purchase the Local Bonds unless and until sufficient funds are available in the Fund to purchase all the Local Bonds and that, prior to such purchase, the Authority may purchase the bonds of other local governments set out in the State Project Priority List, as defined in the SRF Regulations. The Local Government further specifically recognizes that all loans will be originated in conjunction with the SRF Regulations and with the prior approval of DEP.

3.6 The Local Government shall provide DEP with the appropriate documentation to comply with the special conditions regarding the public release and audit requirements established by federal and State regulations as set forth in Exhibit E attached hereto at such times as are set forth therein.

## ARTICLE IV

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

4.1 The Local Government shall, as one of the conditions of the Authority and DEP to make the Loan, authorize the issuance of and issue the Local Bonds pursuant to an official action of the Local Government in accordance with the Local Statute, which shall, as adopted or enacted, contain provisions and covenants in substantially the form as follows:

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

(i) to pay Operating Expenses of the System;

(ii) unless waived or modified by Schedule X and to the extent not otherwise limited by any outstanding loan resolution, indenture or other act or document and beginning on the date set forth in Schedule X, to provide debt service on

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

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

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

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

(b) Covenants substantially as follows:

(i) That the Local Bonds shall be secured by a pledge of either the net or gross revenues of the System as provided in the Local Act;

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

amount required in any year for debt service on the Local Bonds and any such prior or parity obligations;

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

(iv) That, except as otherwise required by State law or the Regulations, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, provided that the net proceeds to be realized from such sale, mortgage, lease or other disposition shall be sufficient to fully pay all of the Local Bonds outstanding and further provided that portions of the System when no longer required for the ongoing operation of such System as evidenced by certificates from the Consulting Engineer, may be disposed of with such restrictions as are normally contained in such covenants;

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

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

(vii) That the Local Government will not render any free services of the System;

(viii) That the Authority may, by proper legal action, compel the performance of the duties of the Local Government under the Local Act, including the making and collection of sufficient rates or charges for services rendered by the System, and shall also have, in the event of a default in payment of principal of or interest on the Local Bonds, the right to obtain the appointment of a receiver to administer the System or construction of the Project, or both, as provided by law and all rights as set forth in Section 5 of the Act;

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

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

(xi) That the Local Government shall annually cause the records of the System to be audited by an independent certified public accountant or independent public accountant and shall submit the report of said audit to the Authority and DEP, which report shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the Local Government's revenues are adequate to meet its Operating Expenses and debt service and reserve requirements;

(xii) That the Local Government shall annually adopt a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding fiscal year and shall submit a copy of such budget to the Authority and DEP within 30 days of adoption thereof;

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

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

(xv) That, as long as the Authority is the owner of any of the Local Bonds, the Local Government may authorize redemption of the Local Bonds with 30 days written notice to the Authority;

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

(xvii) That the Local Government shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required interest, principal and reserve account payment. The Local Government shall complete the Monthly Payment Form, attached hereto as Exhibit F and incorporated herein by reference, and submit a copy of said form along with a copy of the check or electronic transfer to the Authority by the 5th day of such calendar month. When required by the Authority, the Local Government shall make monthly payments to the Commission by electronic transfer;

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

(xix) That the Local Government shall have obtained the certificate of the Consulting Engineers to the effect that the Project has been or will be constructed in accordance with the approved plans, specifications and design as submitted to the Authority and DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and DEP is sufficient to pay the costs of acquisition and construction of the Project and all permits required by federal and State laws for construction of the Project have been obtained;

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

(xxi) That the Local Government shall submit all proposed change orders to the DEP for written approval. The Local Government shall obtain the written approval of the DEP before expending any proceeds of the Local Bonds held in "contingency" as set forth in the final Schedule A attached to the certificate of the Consulting Engineer. The Local Government shall obtain the written approval of the DEP before expending any proceeds of the Local Bonds available due to bid/construction/project underruns.

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

4.2 The Loan shall be secured by the pledge and assignment by the Local Government, as effected by the Local Act, of the fees, charges and other revenues of the Local Government from the System.

4.3 At least five percent (5%) of the proceeds of the Local Bonds will be advanced on the Date of Loan Closing. The remaining proceeds of the Local Bonds shall be advanced by the DEP monthly as required by the Local Government to pay Costs of the Project, provided, however, if the proceeds of the Local Bonds will be used to repay an interim financing, the proceeds will be advanced on a schedule mutually agreeable to the Local Government, the DEP and the Authority. The Local Bonds shall not bear interest during the construction period but interest shall commence accruing on the completion date as defined in the SRF Regulations, provided that the annual repayment of principal and payment of interest shall begin not later than one (1) year after the completion date. The repayment of principal and interest on the Local Bonds shall be as set forth on Schedule Y hereto. In no event shall the interest rate on or the net interest cost of the Local Bonds exceed any statutory limitation with regard thereto.

4.4 The Local Bonds shall be delivered to the Authority in fully registered form, transferable and exchangeable as provided in the Local Act at the expense of the Local Government. Anything to the contrary herein notwithstanding, the Local Bonds may be issued in one or more series.

4.5 As provided by the SRF Regulations, the Local Government agrees to pay from time to time, if required by the Authority and DEP, the Local Government's allocable share of the reasonable administrative expenses of the Authority relating to the Program. Such administrative expenses shall be determined by the Authority and shall include, without limitation, Program expenses, legal fees paid by the Authority and fees

paid to the trustee and paying agents for any bonds or notes to be issued by the Authority for contribution to the Fund and the fees and expenses of any corporate trustee for the Fund.

4.6 The obligation of the Authority to make any loans shall be conditioned upon the availability of moneys in the Fund in such amount and on such terms and conditions as, in the sole judgment of the Authority, will enable it to make the Loan.

## ARTICLE V

### Certain Covenants of the Local Government; Imposition and Collection of User Charges; Payments To Be Made by Local Government to the Authority

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

5.2 In the event, for any reason, the schedule of rates, fees and charges initially established for the System in connection with the Local Bonds shall prove to be insufficient to produce the required sums set forth in the Local Act and this ARRA Assistance Agreement, the Local Government hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges (or where applicable, immediately file with the PSC for a rate increase) and take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and this ARRA Assistance Agreement.

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

5.4 The Local Government hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Local Government, the Authority may exercise any or all of the rights and powers granted under Section 5 of the Act, including, without limitation, the right to impose, enforce and collect charges of the System.

## ARTICLE VI

### Other Agreements of the Local Government

6.1 The Local Government hereby acknowledges to the Authority and DEP its understanding of the provisions of the Act, vesting in the Authority and DEP certain powers, rights and privileges with respect to wastewater treatment projects in the event of default by the Local Government in the terms and covenants of this ARRA Assistance Agreement, and the Local Government hereby covenants and agrees that, if the Authority should hereafter have recourse to said rights and powers, the Local Government shall take no action of any nature whatsoever calculated to inhibit, nullify, void, delay or render nugatory such actions of the Authority in the due and prompt implementation of this ARRA Assistance Agreement.

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

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

## ARTICLE VII

### Miscellaneous

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

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

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

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

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

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

7.7 This ARRA Assistance Agreement shall terminate upon the earlier of:

(i) written notice of termination to the Local Government from either the Authority or DEP;

(ii) the end of ninety (90) days after the date of execution hereof by the Authority or such later date as is agreed to in writing by DEP if the Local Government has failed to deliver the Local Bonds to the Authority;

(iii) termination by the Authority and DEP pursuant to Section 6.2 hereof;

(iv) unless waived or modified by Schedule X, payment in full of the principal of and interest on the Loan and of any fees and charges owed by the Local Government to the Authority or DEP; provided that the amount of the Loan made under this ARRA Assistance Agreement in any succeeding fiscal year is contingent upon funds being appropriated by the State legislature or otherwise being available to make the Loan. In the event funds are not appropriated or otherwise available to make all of the Loan, the responsibility of the Authority and DEP to make all the Loan is terminated; provided further that the obligation of the Local Government to repay the outstanding amount of the Loan made by the Authority and DEP is not terminated due to such non-funding on any balance of the Loan. The DEP agrees to use its best efforts to have the amount contemplated under this ARRA Assistance Agreement included in its budget. Non-appropriation or non-funding of the Loan shall not be considered an event of default under this ARRA Assistance Agreement; or

(v) provided that the Authority and DEP reserve the right to terminate this ARRA Assistance Agreement upon five days written notice if the Local Bonds are not issued and the Project is not under written contract by January 28, 2010.

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

THE CITY OF MORGANTOWN

(SEAL)

By: _____
Its: Mayor
Date: January 28, 2010

Attest:

_____
Its: City Clerk

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

By: _____
Its: Acting Director
Date: January 28, 2010

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

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

Attest:

_____
Its: Secretary-Treasurer

{C1657414.1}

EXHIBIT A

FORM OF PERFORMANCE CERTIFICATE

[To Be Provided By DEP]

EXHIBIT B

MONTHLY FINANCIAL REPORT

**Name of Local Government**
**Name of Bond Issue(s)**_____
**Type of Project** _____ **Water** _____ **Wastewater**
**Fiscal Year** _____ **Report Month** _____

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

_____
Name of Person Completing Form

_____
Address

_____
Telephone

INSTRUCTIONS FOR COMPLETING MONTHLY FINANCIAL REPORT

Item 1 You will need a copy of the current fiscal year budget adopted by the Local Government to complete Items 1 and 2. In Item 1, provide the amount of actual **Gross Revenues** for the current month and the total amount year-to-date in the respective columns. Divide the budgeted annual Gross Revenues by 12. For example, if Gross Revenues of $1,200 are anticipated to be received for the year, each month the base would be increased by $100 ($1,200/12). This is the incremental amount for the Budget Year-to-Date column.

Item 2 Provide the amount of actual **Operating Expenses** for the current month and the total amount year-to-date in the respective columns. Any administrative fee should be included in the Operating Expenses. Divide the budgeted annual Operating Expenses by 12. For example, if Operating Expenses of $900 are anticipated to be incurred for the year, each month the base would be increased by $75 ($900/12). This is the incremental amount for the Budget Year-to-Date column.

Item 3 Provide the **Bond Payments (principal, interest and reserve account)** for all the outstanding bonds of the Local Government according to the source of funding. For example, Clean Water State Revolving Fund loan from Department of Environmental Protection, Drinking Water Treatment Revolving Fund loan from Bureau for Public Health, Infrastructure Fund loan from Infrastructure and Jobs Development Council, or a loan from the Water Development Authority, etc.

Item 4 Provide the amount deposited into the **Renewal and Replacement Fund** each month. This amount is equal to 2.5% of Gross Revenues minus the total reserve account payments included in Item 3. If Gross Revenues are $1,200, then $30 (2.5% of $1,200), LESS the amount of all reserve account payments in Item 3 should be deposited into the Renewal and Replacement Fund. The money in the Renewal and Replacement Fund should be kept separate and apart from all other funds of the Local Government.

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

EXHIBIT C

PAYMENT REQUISITION FORM

(All Copies to Be Provided by DEP for Each Project)

EXHIBIT D

FORM OF CERTIFICATE OF CONSULTING ENGINEER

_____
(Issuer)

(Name of Bonds)

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

1. My firm is engineer for the acquisition and construction of _____ to the _____ system (the "Project") of _____ (the "Issuer"), to be constructed primarily in _____County, West Virginia, which acquisition and construction are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the same meaning set forth in the bond _____ adopted or enacted by the Issuer on _____, and the ARRA Assistance Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection (the "DEP"), dated _____.

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

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

A, and my firm[1] has ascertained that all successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the DEP and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (ix) the Issuer has received the Buy American Certificate from each contractor; (x) as of the effective date thereof[2], the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the ARRA Assistance Agreement; (xi) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the DEP; and (xii) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project; Sources of Funds and Cost of Financing" for the Project.

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

By _____
West Virginia License No.

[SEAL]

---

[1]If another responsible party, such as the Issuer's attorney, reviews the insurance and payment bonds, then insert the following: [and in reliance upon the opinion of _____, Esq.] and delete "my firm has ascertained that".

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

EXHIBIT E

SPECIAL CONDITIONS

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

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

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

D. ASSET MANAGEMENT – The Local Government shall develop and implement an asset management plan in accordance with guidelines issued by DEP and is approved by DEP. New systems shall submit the asset management plan to DEP when the Project is complete. Existing systems shall submit the asset management plan to DEP within six months following completion of the Project.

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

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

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

H. PURCHASING REQUIREMENTS – The Local Government shall comply with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42

U.S.C. 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds $10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was $10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

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

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

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

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

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

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

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

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

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

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

S. USER RATES – The Local Government shall covenant that it will not reduce its approved or enacted customer rates for at least eighteen months after completion of the Project or until such time as a cost of service study has been completed establishing the actual operation and maintenance expenses.

T. CLOSING CONDITIONS – The closing is contingent upon receipt by the DEP and the Authority of a satisfactory final title opinion and the completion of administrative review by the DEP.

EXHIBIT F

MONTHLY PAYMENT FORM

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

Re: [Name of bond issue]

Ladies and Gentlemen:

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

Sinking Fund:

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

Witness my signature this ___ day of_____.

[Name of Local Government]

By: _____
Authorized Officer

Enclosure: copy of check(s)

EXHIBIT G

OPINION OF BOND COUNSEL FOR LOCAL GOVERNMENT

[To Be Dated as of Date of Loan Closing]

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

West Virginia Department of Environmental Protection
601 57th Street
Charleston, WV 25304

Ladies and Gentlemen:

We are bond counsel to _____ (the "Local Government"), a _____.

We have examined a certified copy of proceedings and other papers relating to the authorization of (i) a ARRA assistance agreement dated _____, ____, including all schedules and exhibits attached thereto (the "ARRA Assistance Agreement"), among the Local Government, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), and (ii) the issue of a series of revenue bonds of the Local Government, dated _____, ____ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the ARRA Assistance Agreement. The Local Bonds are issued in the principal amount of $_____, in the form of one bond, registered as to principal and interest to the Authority, with principal and interest payable quarterly on March 1, June 1, September 1, and December 1 of each year, beginning _____ 1, ____, and ending _____ 1, ____, all as set forth in the "Schedule Y" attached to the ARRA Assistance Agreement and incorporated in and made a part of the Local Bonds.

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

We have also examined the applicable provisions of _____ of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the bond duly adopted or enacted by the Local Government on _____, as supplemented by the supplemental

resolution duly adopted by the Local Government on _____ (collectively, the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the ARRA Assistance Agreement has been undertaken. The Local Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the ARRA Assistance Agreement.

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

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

2. The ARRA Assistance Agreement inures to the benefit of the Authority and the DEP and cannot be amended so as to affect adversely the rights of the Authority or the DEP or diminish the obligations of the Local Government without the consent of the Authority and the DEP.

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

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

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

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

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

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

Very truly yours,

SCHEDULE X

DESCRIPTION OF LOCAL BONDS

A. Series B Bonds (ARRA)

| | |
|---|---|
| Principal Amount of Local Bonds | $81,600 |
| Purchase Price of Local Bonds | $81,600 |

The Local Bonds shall bear no interest. The Authority at the direction of the DEP shall forgive the principal amount of the Local Bonds. Principal forgiveness shall begin on December 1, 2012, and shall be made quarterly thereafter (March 1, June 1, September 1 and December 1 of each year) as set forth on Schedule Y attached hereto and incorporated herein by reference.

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

The Local Government shall make monthly payments into the Renewal and Replacement Fund as required by Section 4.1 of this Agreement for at least the term of the Local Bonds.

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

B. Series C Bonds (CWSRF Base Program)

| | | |
|---|---|---|
| Principal Amount of Local Bonds | ~~$15,203,668~~ | 15,380,227 |
| Purchase Price of Local Bonds | ~~$15,203,668~~ | 15,380,227 |

The Local Bonds shall bear interest at a rate of 2% per annum. Commencing December 1, 2012, principal and interest of the Local Bonds is payable quarterly, with an administrative fee of 1%. Quarterly payments will be made on March 1, June 1, September 1 and December 1 of each year as set forth on the Schedule Y attached hereto and incorporated herein by reference.

The Local Government shall submit its payments monthly to the Commission with instructions that the Commission will make quarterly payments to the Authority at such address as is given to the Commission in writing by the Authority. If the Reserve Account is not fully funded at closing, the Local Government shall commence the payment of the 1/120 of the maximum annual debt service on the first day of the month it makes its first monthly payment to the Commission. The Local Government shall

instruct the Commission to notify the Authority of any monthly payments which are not received by the 20th day of the month in which the payment was due.

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

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

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

(i) The City of Morgantown Combined Utility System Revenue Bonds, Series 1992 (West Virginia SRF Program), dated September 8, 1992, issued in the original aggregate principal amount of $11,900,000;

(ii) The City of Morgantown Combined Utility System Revenue Bonds, Series 1995 (West Virginia SRF Program), dated April 27, 1995, issued in the original aggregate principal amount of $1,601,477;

(iii) The City of Morgantown Combined Utility System Revenue Bonds, Series 2000 A (West Virginia SRF Program), dated February 29, 2000, issued in the original aggregate principal amount of $7,842,000;

(iv) The City of Morgantown Combined Utility System Revenue Bonds, Series 2000 B (West Virginia Infrastructure Fund), dated February 29, 2000, issued in the original aggregate principal amount of $2,488,000;

(v) The City of Morgantown Combined Utility System Revenue Bonds, Series 2001 A (West Virginia Infrastructure Fund), dated February 8, 2001, issued in the original aggregate principal amount of $3,812,470;

(vi) The City of Morgantown Combined Utility System Revenue Bonds, Series 2006 A (West Virginia SRF Program), dated June 30, 2006, issued in the original aggregate principal amount of $6,410,191;

(vii) The City of Morgantown Combined Utility System Revenue Bonds, Series 2007 A (West Virginia SRF Program), dated August 14, 2007, issued in the original aggregate principal amount of $8,500,000;

(viii) The City of Morgantown Taxable-Combined Utility System Revenue Bonds, Series 2010 A (Direct Payment Build America Bonds), issued simultaneously with the Series 2010 C Bonds in the original aggregate principal amount of $48,350,000;

(ix) The Series 2010 B Bonds issued simultaneously with the Series 2010 C Bonds in the original aggregate principal amount of $81,600;

(x) The City of Morgantown Combined Utility System Revenue Bonds, Series 2010 D (West Virginia DWTRF Program/ARRA), issued simultaneously with the Series 2010 C Bonds in the original aggregate principal amount of $100,000;

(xi) The City of Morgantown Combined Utility System Revenue Bonds, Series 2010 E (West Virginia DWTRF Program) issued simultaneously with the Series 2010 C Bonds in the original aggregate principal amount of $9,317,286.

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

**BOND DEBT SERVICE**
City of Morgantown
ARRA
10 Years

| | |
|---|---|
| Dated Date | 1/28/2010 |
| Delivery Date | 1/28/2010 |

Series B

| Period Ending | Debt Service | Principal Forgiveness |
|---|---|---|
| 1/28/2010 | | |
| 12/1/2012 | -2,040 | -2,040 |
| 3/1/2013 | -2,040 | -2,040 |
| 6/1/2013 | -2,040 | -2,040 |
| 9/1/2013 | -2,040 | -2,040 |
| 12/1/2013 | -2,040 | -2,040 |
| 3/1/2014 | -2,040 | -2,040 |
| 6/1/2014 | -2,040 | -2,040 |
| 9/1/2014 | -2,040 | -2,040 |
| 12/1/2014 | -2,040 | -2,040 |
| 3/1/2015 | -2,040 | -2,040 |
| 6/1/2015 | -2,040 | -2,040 |
| 9/1/2015 | -2,040 | -2,040 |
| 12/1/2015 | -2,040 | -2,040 |
| 3/1/2016 | -2,040 | -2,040 |
| 6/1/2016 | -2,040 | -2,040 |
| 9/1/2016 | -2,040 | -2,040 |
| 12/1/2016 | -2,040 | -2,040 |
| 3/1/2017 | -2,040 | -2,040 |
| 6/1/2017 | -2,040 | -2,040 |
| 9/1/2017 | -2,040 | -2,040 |
| 12/1/2017 | -2,040 | -2,040 |
| 3/1/2018 | -2,040 | -2,040 |
| 6/1/2018 | -2,040 | -2,040 |
| 9/1/2018 | -2,040 | -2,040 |
| 12/1/2018 | -2,040 | -2,040 |
| 3/1/2019 | -2,040 | -2,040 |
| 6/1/2019 | -2,040 | -2,040 |
| 9/1/2019 | -2,040 | -2,040 |
| 12/1/2019 | -2,040 | -2,040 |
| 3/1/2020 | -2,040 | -2,040 |
| 6/1/2020 | -2,040 | -2,040 |
| 9/1/2020 | -2,040 | -2,040 |
| 12/1/2020 | -2,040 | -2,040 |
| 3/1/2021 | -2,040 | -2,040 |
| 6/1/2021 | -2,040 | -2,040 |
| 9/1/2021 | -2,040 | -2,040 |
| 12/1/2021 | -2,040 | -2,040 |
| 3/1/2022 | -2,040 | -2,040 |
| 6/1/2022 | -2,040 | -2,040 |
| 9/1/2022 | -2,040 | -2,040 |
| | **-81,600** | **-81,600** |

**BOND DEBT SERVICE**

City of Morgantown

20 Years

2% Interest Rate, 1% Administrative Fee

| | |
|---|---|
| Dated Date | 1/28/2010 |
| Delivery Date | 1/28/2010 |

2010

Series C

| Period Ending | Principal | Coupon | Interest | Debt Service | Annual Debt Service |
|---|---|---|---|---|---|
| 1/28/2010 | | | | | |
| 12/1/2012 | 156,833 | 2.000% | 76,901.14 | 233,734.14 | |
| 3/1/2013 | 157,617 | 2.000% | 76,116.97 | 233,733.97 | |
| 6/1/2013 | 158,405 | 2.000% | 75,328.89 | 233,733.89 | |
| 9/1/2013 | 159,197 | 2.000% | 74,536.86 | 233,733.86 | 934,935.86 |
| 12/1/2013 | 159,993 | 2.000% | 73,740.88 | 233,733.88 | |
| 3/1/2014 | 160,793 | 2.000% | 72,940.91 | 233,733.91 | |
| 6/1/2014 | 161,597 | 2.000% | 72,136.95 | 233,733.95 | |
| 9/1/2014 | 162,405 | 2.000% | 71,328.96 | 233,733.96 | 934,935.70 |
| 12/1/2014 | 163,217 | 2.000% | 70,516.94 | 233,733.94 | |
| 3/1/2015 | 164,033 | 2.000% | 69,700.85 | 233,733.85 | |
| 6/1/2015 | 164,853 | 2.000% | 68,880.69 | 233,733.69 | |
| 9/1/2015 | 165,677 | 2.000% | 68,056.42 | 233,733.42 | 934,934.90 |
| 12/1/2015 | 166,506 | 2.000% | 67,228.04 | 233,734.04 | |
| 3/1/2016 | 167,338 | 2.000% | 66,395.51 | 233,733.51 | |
| 6/1/2016 | 168,175 | 2.000% | 65,558.82 | 233,733.82 | |
| 9/1/2016 | 169,016 | 2.000% | 64,717.94 | 233,733.94 | 934,935.31 |
| 12/1/2016 | 169,861 | 2.000% | 63,872.86 | 233,733.86 | |
| 3/1/2017 | 170,710 | 2.000% | 63,023.56 | 233,733.56 | |
| 6/1/2017 | 171,564 | 2.000% | 62,170.01 | 233,734.01 | |
| 9/1/2017 | 172,422 | 2.000% | 61,312.19 | 233,734.19 | 934,935.62 |
| 12/1/2017 | 173,284 | 2.000% | 60,450.08 | 233,734.08 | |
| 3/1/2018 | 174,150 | 2.000% | 59,583.66 | 233,733.66 | |
| 6/1/2018 | 175,021 | 2.000% | 58,712.91 | 233,733.91 | |
| 9/1/2018 | 175,896 | 2.000% | 57,837.80 | 233,733.80 | 934,935.45 |
| 12/1/2018 | 176,776 | 2.000% | 56,958.32 | 233,734.32 | |
| 3/1/2019 | 177,659 | 2.000% | 56,074.44 | 233,733.44 | |
| 6/1/2019 | 178,548 | 2.000% | 55,186.15 | 233,734.15 | |
| 9/1/2019 | 179,440 | 2.000% | 54,293.41 | 233,733.41 | 934,935.32 |
| 12/1/2019 | 180,338 | 2.000% | 53,396.21 | 233,734.21 | |
| 3/1/2020 | 181,239 | 2.000% | 52,494.52 | 233,733.52 | |
| 6/1/2020 | 182,145 | 2.000% | 51,588.32 | 233,733.32 | |
| 9/1/2020 | 183,056 | 2.000% | 50,677.60 | 233,733.60 | 934,934.65 |
| 12/1/2020 | 183,972 | 2.000% | 49,762.32 | 233,734.32 | |
| 3/1/2021 | 184,891 | 2.000% | 48,842.46 | 233,733.46 | |
| 6/1/2021 | 185,816 | 2.000% | 47,918.00 | 233,734.00 | |
| 9/1/2021 | 186,745 | 2.000% | 46,988.92 | 233,733.92 | 934,935.70 |
| 12/1/2021 | 187,679 | 2.000% | 46,055.20 | 233,734.20 | |

**BOND DEBT SERVICE**

City of Morgantown

| Period Ending | Principal | Coupon | Interest | Debt Service | | 2010 C Annual Debt Service |
|---|---|---|---|---|---|---|
| 3/1/2022 | 188,617 | 2.000% | 45,116.80 | 233,733.80 | | |
| 6/1/2022 | 189,560 | 2.000% | 44,173.72 | 233,733.72 | | |
| 9/1/2022 | 190,508 | 2.000% | 43,225.92 | 233,733.92 | | 934,935.64 |
| 12/1/2022 | 191,460 | 2.000% | 42,273.38 | 233,733.38 | | |
| 3/1/2023 | 192,418 | 2.000% | 41,316.08 | 233,734.08 | | |
| 6/1/2023 | 193,380 | 2.000% | 40,353.99 | 233,733.99 | | |
| 9/1/2023 | 194,347 | 2.000% | 39,387.09 | 233,734.09 | | 934,935.54 |
| 12/1/2023 | 195,318 | 2.000% | 38,415.35 | 233,733.35 | | |
| 3/1/2024 | 196,295 | 2.000% | 37,438.76 | 233,733.76 | | |
| 6/1/2024 | 197,277 | 2.000% | 36,457.29 | 233,734.29 | | |
| 9/1/2024 | 198,263 | 2.000% | 35,470.90 | 233,733.90 | | 934,935.30 |
| 12/1/2024 | 199,254 | 2.000% | 34,479.59 | 233,733.59 | | |
| 3/1/2025 | 200,251 | 2.000% | 33,483.32 | 233,734.32 | | |
| 6/1/2025 | 201,252 | 2.000% | 32,482.06 | 233,734.06 | | |
| 9/1/2025 | 202,258 | 2.000% | 31,475.80 | 233,733.80 | | 934,935.77 |
| 12/1/2025 | 203,269 | 2.000% | 30,464.51 | 233,733.51 | | |
| 3/1/2026 | 204,286 | 2.000% | 29,448.17 | 233,734.17 | | |
| 6/1/2026 | 205,307 | 2.000% | 28,426.74 | 233,733.74 | | |
| 9/1/2026 | 206,334 | 2.000% | 27,400.20 | 233,734.20 | | 934,935.62 |
| 12/1/2026 | 207,365 | 2.000% | 26,368.53 | 233,733.53 | | |
| 3/1/2027 | 208,402 | 2.000% | 25,331.71 | 233,733.71 | | |
| 6/1/2027 | 209,444 | 2.000% | 24,289.70 | 233,733.70 | | |
| 9/1/2027 | 210,491 | 2.000% | 23,242.48 | 233,733.48 | | 934,934.42 |
| 12/1/2027 | 211,544 | 2.000% | 22,190.02 | 233,734.02 | | |
| 3/1/2028 | 212,602 | 2.000% | 21,132.30 | 233,734.30 | | |
| 6/1/2028 | 213,665 | 2.000% | 20,069.29 | 233,734.29 | | |
| 9/1/2028 | 214,733 | 2.000% | 19,000.97 | 233,733.97 | | 934,936.58 |
| 12/1/2028 | 215,807 | 2.000% | 17,927.30 | 233,734.30 | | |
| 3/1/2029 | 216,886 | 2.000% | 16,848.27 | 233,734.27 | | |
| 6/1/2029 | 217,970 | 2.000% | 15,763.84 | 233,733.84 | | |
| 9/1/2029 | 219,060 | 2.000% | 14,673.99 | 233,733.99 | | 934,936.40 |
| 12/1/2029 | 220,155 | 2.000% | 13,578.69 | 233,733.69 | | |
| 3/1/2030 | 221,256 | 2.000% | 12,477.91 | 233,733.91 | | |
| 6/1/2030 | 222,362 | 2.000% | 11,371.63 | 233,733.63 | | |
| 9/1/2030 | 223,474 | 2.000% | 10,259.82 | 233,733.82 | | 934,935.05 |
| 12/1/2030 | 224,591 | 2.000% | 9,142.45 | 233,733.45 | | |
| 3/1/2031 | 225,714 | 2.000% | 8,019.50 | 233,733.50 | | |
| 6/1/2031 | 226,843 | 2.000% | 6,890.93 | 233,733.93 | | |
| 9/1/2031 | 227,977 | 2.000% | 5,756.71 | 233,733.71 | | 934,934.59 |
| 12/1/2031 | 229,117 | 2.000% | 4,616.83 | 233,733.83 | | |
| 3/1/2032 | 230,263 | 2.000% | 3,471.24 | 233,734.24 | | |
| 6/1/2032 | 231,414 | 2.000% | 2,319.93 | 233,733.93 | | |
| 9/1/2032 | 232,571 | 2.000% | 1,162.86 | 233,733.86 | | 934,935.86 |
| | **15,380,227** | | **3,318,482.28** | **18,698,709.28** | * | **18,698,709.28** |

* Plus a Quarterly administrative fee of $20,740.52 for a total Administrative expense of $1,659,241.60

091220alj120709.wpd

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

FINAL

12/27/2009

Entered: December 7, 2009

CASE NO. 09-1220-WS-CN

MORGANTOWN UTILITY BOARD,
a municipal utility,
Application for Certificate to construct upgrades to the water treatment plant and the water system, including addition of a membrane filtration process, addition of two water storage tanks, installation of various water transmission pipelines, upgrades to the office and shop facilities, addition of a new shop access road; to construct upgrades to the wastewater treatment plant and the sewer system, including addition of odor control facilities at various locations, addition of one sewer equalization tank, installation of various sewer interceptor pipelines, upgrades to various sewer pumping stations and force mains, and miscellaneous additions and upgrades related thereto.

RECOMMENDED DECISION

On July 29, 2009, the Morgantown Utility Board (Board or Applicant) filed applications for certificates of convenience and necessity to construct improvements to its water and sanitary sewer systems. With regard to the water system, the Board is seeking to upgrade the water treatment plant and distribution system, including the addition of a membrane filtration process, the addition of two water storage tanks, the installation of various water transmission pipelines, upgrades to the office and shop facilities, the addition of a new shop access road and various other miscellaneous additions and upgrades. The improvements to the water treatment plant and related facilities were proposed to expand treatment and pumping capacity and to provide overall improved treated water quality. According to the Board, improved capacity is necessary to meet projected customer demand. Improved treated water quality will result primarily from the addition of the membrane filtration process, improved flocculation and sedimentation and improved chemical application and disinfection processes. The Board noted that the only utility serving the service area was the Morgantown Utility Board. Improvements to the water system and related facilities were also proposed in order to strengthen system reliability. The Board stated that improved reliability would result primarily from the addition of redundant facilities, especially in critical locations. A secondary benefit of the proposed work would be enhanced system capacity. The Board asserted that the proposed improvements will serve the public interest, are necessary in order to meet project customer demand, are appropriate in scope, scale and cost, and are within the authority and responsibility of the Board.

The Morgantown City Council enacted increased water rates to support the proposed project on July 21, 2009. The increased rates and charges will become effective for bills rendered on or after January 1, 2012. The Board anticipated that the water treatment plant and water system improvements would cost approximately $50,080,000. The Board will finance the proposed improvements primarily through the issuance of a municipal bond ordinance. In addition to a municipal bond ordinance in the amount of $40,080,000, the Board proposes using a Drinking Water Treatment Revolving Fund loan in the amount of $10,000,000 to cover the remainder of the project cost.

With respect to the sewer system, the Board plans to upgrade the wastewater treatment plant and the sewer collection system, including the addition of odor control facilities at various locations, the addition of one sewer equalization tank, the installation of various sewer interceptor pipelines, upgrades to various sewer pumping stations and force mains, and various other miscellaneous additions and upgrades. The Board stated that improvements to the sewer system and related facilities were being proposed in order to strengthen system reliability, increase system capacity and improve environmental water and air quality as they are affected by sewer system operations. Improved reliability will result primarily from the addition of redundant facilities, especially in critical locations. The second benefit of the proposed work will be enhanced system capacity, which will help eliminate or lesson discharges from Combined Sewer Overflows (CSOs), thus improving water quality. Air quality will be improved by the installation of odor control facilities at certain locations. The Board asserted that the proposed improvements will serve the public interest, are necessary in order to meet projected customer demand, are appropriate in scope, scale and cost, and are within the authority and responsibility of the Board.

As with the water system, the Morgantown City Council approved increased sewer rates and charges to support the proposed project, which will also become effective for bills rendered on or after January 1, 2012. The project will be financed through a West Virginia Division of Environment Protection (DEP) Clean Water State Revolving Fund loan in the amount of $17,629,000, a contribution from West Virginia University in the amount of $313,000, and a contribution from Canyon Public Service District (Canyon) in the amount of $1,065,000.

In addition to the two applications, the Board submitted separate Rule 42 Exhibits for the water and sewer systems, proposed existing rate structures for the water and sewer systems, facilities plans, agreements with other utilities, customer listings, bond and rate ordinances, permit applications, proposed funding sources, operator licenses, engineering reports, plans and specifications, a draft notice of filing and assorted other information.

By Notice of Filing Order entered on July 29, 2009, the Board was directed to provide notice to its customers of the filing of the water and sewer certificate applications. The Notice informed the customers also of the increased rates and charges that the Morgantown City Council had adopted to support the project. The increased water rates and charges will generate approximately $4,728,000 annually, an increase in annual revenue of 99%, while the increased sewer rates and charges will

generate approximately $1,934,000 annually, representing an increase in annual revenue of 34%. The Board was ordered to give notice of the filing of the application by publishing a copy of the Notice of Filing one time in a qualified newspaper, published and of general circulation in Monongalia County, making due return to the Commission of proper certification immediately thereafter. Anyone desiring to protest or intervene was given leave to do so, in writing, within thirty days following the date of publication. The Notice further provided that, if no substantial protest to the application was filed within the 30-day protest period, the Commission could waive formal hearing and grant the certificates based upon the evidence submitted with the applications and the Commission's review thereof.

On August 4, 2009, the Board filed a petition and petition for waiver of any obligation to provide individual notice to its customers that it was seeking a rate increase, since the Board is not actually seeking a rate increase as part of its certificate application, the City of Morgantown having already adopted the water and sewer municipal rate ordinances. The Board requested that the Commission issue an order stating that Rule 10.3.d of the Commission's Rules of Practice and Procedure does not require the Board to serve individual notice upon its retail customers because it is not seeking a rate increase in the certificate application. In the alternative, if the Commission concludes that the individual notice requirements of Rule 10.3.d apply in this case, the Board requested a waiver of those requirements, given that the water and sewer rate increases were first approved and duly noticed in public meetings by the Morgantown Utility Board and subsequently enacted by the Morgantown City Council, pursuant to W. Va. Code §24-2-4b and the charter and code of the City of Morgantown, including public notice and public hearing prior to enactment. The Board estimated that it would cost approximately $14,000 to provide timely public notice to each individual water and/or sewer customer. The Board stated that, regardless of the fact that it is a large publicly-owned municipal utility with considerable resources, such an expenditure of public funds for duplicative and unnecessary purposes is a hardship that should be avoided.

On August 5, 2009, Commission Staff filed its response to the Board's petition and petition for waiver. Commission Staff agreed with the arguments set forth by the Board and recommended that the Commission grant the petition.

On August 10, 2009, the Board filed an affidavit of publication from The Dominion Post, a qualified newspaper published and generally circulated in the City of Morgantown, Monongalia County, verifying that the required Notice of Filing was published in that newspaper on August 4, 2009. The 30-day protest period expired on September 3, 2009, with no protests having been filed in response to the Notice of Filing either by that date or by the date of this Order.

On August 25, 2009, the Board filed proof of the required publication for the water and sewer rate increases enacted by the Morgantown City Council on July 21, 2009.

On August 27, 2009, Staff Attorney Cassius H. Toon filed the Initial Joint Staff Memorandum herein, attached to which was the Initial Internal

Memorandum prepared by Utilities Analysts Karen Buckley and Sandy Mitchell of the Water and Wastewater Division and Technical Analyst Joseph Marakovits of the Engineering Division. Commission Staff described the proposed project and proposed financing and requested several additional pieces of information so that it could complete its review of the applications. Staff indicated that it would file its recommendation within the Commission's required time frame. Along with the Initial Joint Staff Memorandum, the Staff Attorney filed Commission Staff's first set of interrogatories and data requests to the Morgantown Utility Board, formally requesting the information described in the Memoranda.

On September 1, 2009, the Board filed its responses to Staff's first set of interrogatories and data requests. The Board clarified that the total cost of the water project was $50,080,000 and that the total amount of the sewer project was $17,780,000. The Board clarified that the water project will be financed with the $10,000,000 loan from the Bureau of Public Health Drinking Water Treatment Revolving Fund, at 2% interest for a term of 20 years, with the balance of the project cost to be funded by a municipal bond issuance in the amount of $40,080,000, over a 30-year term, with an estimated interest rate of 5%. The sewer project will be funded by contributions from Canyon Public Service District in the amount of $1,065,000 and from West Virginia University in the amount of $313,000, and a DEP State Revolving Fund Loan in the amount of $17,629,000 for a term of 20 years at 3% interest. The District indicated that it was still awaiting written confirmation of the funding commitment from the Bureau for Public Health and indicated that the municipal bond issuance would be completed after the Board had received bids on the project and was authorized to award the contract. With respect to the sewer project, the Board has received the contribution from West Virginia University and will receive the contribution from Canyon Public Service District. The Board was awaiting written confirmation of the DEP loan.

By Referral Order issued September 15, 2009, the Commission referred this matter to the Division of Administrative Law Judges for a decision to be rendered on or before December 11, 2009, if no substantial protest to the application was filed, or on or before January 11, 2010, if substantial protest was filed. Additionally, the Commission granted the petition filed by the Board and stated that the Board was not required to provide individual notice to its customers of the rates passed by the Morgantown City Council in support of the projects.

On October 13, 2009, the Board filed a copy of a letter from the DEP, confirming the DEP's intention to provide long-term financing through the Clean Water State Revolving Fund for the Board's wastewater improvement project. The DEP committed an amount of $17,568,684, to be issued at a 2% interest rate, with a 1% annual administrative fee, for a term of 20 years. The DEP letter also indicated that the Board was eligible to be considered for a $60,000 loan with 100% debt forgiveness from green economic stimulus funds provided by <u>The American Recovery and Reinvestment Act of 2009</u>, (ARRA). There would be no annual administrative fee associated with the ARRA loan.

On October 23, 2009, Staff Attorney Toon filed the Final Joint Staff Memorandum in this proceeding, attached to which was the Utilities Division Final Recommendation prepared by Ms. Buckley, Ms. Mitchell and

Mr. Marakovits. Commission Staff first addressed the water project. The water project consists of the construction or installation of a water treatment plant; wastewater pump station; membrane filtration and building; backwash pump station and metering pit; river water and high service pump station; an intake structure; rapid mix, flocculation and sedimentation; filter and chemical buildings; filter backwash holding basin; combined backwash holding basin; clearwells; two new distribution water storage tanks; site work; approximately 6 miles of water main ranging in diameter from 2 inches to 24 inches in the areas of University Avenue, South University Avenue, Scotts Run and Sabraton-Rt. 7 and I-68; office and shop improvements; and a shop access road. According to Commission Staff, the existing water treatment facility has conventional dual media gravity filters and sufficient high service pumps for a capacity of 16 mgd. However, raw water pumping and limited flocculation/sedimentation reduce overall plant capacity to approximately 13.2 mgd. The project will initially increase treatment capacity to a full 16 mgd for the near term, through year 2017, and will further facilitate expansion to 24 mgd for the long term, through year 2031. The total construction cost is estimated at $38,290,000, not including construction contingencies of $1,914,500. The total project cost is estimated to be $50,080,000, which calculates to a per-customer cost of $4,782 based on 10,473 customers, which Commission Staff deemed to be reasonable for a water project. The project had not yet been let out to bid.

Several treatment plant expansions were evaluated by the Board and its consulting engineer. The chosen option, membrane filtration, was deemed to be the best treatment alternative to allow the Board to continue meeting current and future regulations, improve the quality and quantity of drinking water supplied to its customers and provide the Board with the ability to expand the treatment facility to capacities up to and greater than 24 mgd without the need for additional plant property.

According to the engineering report filed with the application, the improvements and upgrades to the existing water treatment facility are necessary to ensure adequate capacity for the near term through year 2017 and to facilitate further upgrades through the year 2031. Additionally, the project provides for needed operational redundancy, including raw water pumping, rapid mix, filtration and clear well storage. Improvements to the chemical and physical treatment capabilities are needed to meet current and future requirements of the Federal Safe Drinking Water Act, including chlorine dioxide to reduce THM and HAA5 levels, while the additional membrane filtration is needed to further polish the gravity filter effluent. The two proposed water storage tanks will provide needed additional storage and help stabilize the hydraulic grade line of their respective service areas. The proposed 24-inch water main in the downtown portion of University Avenue will replace a problematic cast iron main that has experienced several major leaks in recent years. The proposed 24-inch water main at South University Avenue will increase pumping rates from the water treatment plant into the transmission system. The proposed 16-inch water main at Scotts Run is needed to increase pumping rates from a booster station into the transmission system. The proposed office and shop additions will result in several improvements to those facilities, including better heating and cooling, better lighting and utilization of work space, increased office

and locker space and a new training/lunch room. Staff believes that these improvements will enhance the water quality and water service provided to the customers of the Board.

The plans and specifications for the project have been approved by the West Virginia Office of Environmental Health Services, which issued Permit No. 18,172 on November 24, 2008, and Permit No. 18,365 on July 29, 2009. Technical Staff's review of the project plans and specifications did not reveal any conflicts with the Commission's Rules and Regulations for the Government of Water Utilities (Water Rules).

The information included in the filing indicates that operation and maintenance expenses are projected to increase approximately $484,300 annually as a result of the project. These increased costs include additional power requirements for the intermediate pump station and treatment plant improvements; additional chemicals (chlorine dioxide); additional plant labor; additional pump and equipment maintenance; and membrane filter replacement. With respect to the membrane filter replacement, the Board has estimated a total cost of $1,139,400, amortized over 20 years, for an annual requirement of $91,500. Staff suggested that the Board set up an escrow account for those funds. Commission Staff is of the opinion that the projected operation and maintenance expenses are reasonable for the project.

In the financial review for the water project, Commission Staff explained that the Board intends to finance the project with a $10,000,000 loan from the Drinking Water Treatment Revolving Fund. That loan is broken down into two loans. Loan A is through The American Recovery and Reinvestment Act of 2009, in the amount of $100,000, with an estimate rate of 2% for a term of 20 years. The annual debt service payment on that loan is estimated to be $6,072. Loan B is in the amount of $9,900,000 through the DWTRF's base program. That loan has a term of 20 years at 2% interest. The annual debt service payment on that loan is estimated to be $600,996. There will be no administrative fee for either loan. There is also a depreciation/renewal and replacement reserve requirement of 2.5% of operating revenues. The balance of the project will be funded by a municipal bond issuance in the amount of $40,080,000, to be amortized over a period of 30 years at an estimated interest rate of 5%. The annual payment on the municipal loan is estimated to be $2,581,897. Crews and Associates will be the underwriter for the municipal loan. The funding letter states that Crews and Associates understands that the Board may desire to replace the debt service funds with a Surety Bond or Letter of Credit.

The Rule 42 Exhibit for the water project, filed by the Board with the application, was based on the year ended June 30, 2008, and projected to project completion. It includes going-level adjustments to reflect the water rates that went into effect on October 4, 2008. The going-level water adjustments also reflect increases to payroll, power, chemicals, workers compensation and employee benefits. With respect to the project-related increases in revenues, Commission Staff noted that the Board had enacted a municipal water rate ordinance increasing water rates by 99% to become effective January 1, 2012. Those rates and charges should generate an additional $4,657,397 in annual operating revenues. The annual operation and maintenance expenses are expected to increase by $484,300. However, including non-project-related going-level

expense increases, there is an increase of approximately $1,008,998 in expenses. Commission Staff has reviewed the projected revenues, expenses and debt service and believes that the enacted rates are sufficient to cover the project-related expenses and debt service. It is anticipated that, at completion of the project, the Board should experience an annual cash flow surplus of $604,144, with debt service coverage of 117.12%. Therefore, Commission Staff believes the project is financially feasible and should be approved.

With respect to the sewer project, Technical Staff explained that the project consists of the construction or installation of chemical and biological odor control at the existing wastewater treatment facility in Star City; a West Run-Burroughs Run upgrade; a West Run surge tank; a High Street-Willey Street-Chestnut Street upgrade; a Central Monongahela interceptor grit chamber; a Cobun Creek Pump Station upgrade; water plant sewage force main; Deckers Creek Pump Station upgrade, including a new 36-inch force main, new pumps and variable frequency drives; ozone odor control; division of the wet well; interconnection of force mains; upgrade of the combined sewage overflow; and miscellaneous repairs.

The total construction cost is estimated at $15,707,200, not including a construction contingency of $1,211,670. The project has not yet been bid. The total debt of $17,628,684 calculates to a per-customer cost of $1,037 based on 17,000 customers, which is reasonable for a sewer project.

Currently, the Board operates a combined sanitary/storm water collection system, consisting of various lengths of gravity main in diameters ranging from 4 inches to 42 inches; 13 pump stations; various lengths of force main in diameters of 2 inches to 16 inches; and a 10.06 mgd sewage treatment facility. The project will address odor control problems at the sewage treatment facility and capacity and odor control issues in the collection system. The Board's Long Term Control Plan, approved by the West Virginia Department of Environment Protection, requires ongoing improvements to the collection system to reduce combined sewer overflows. The Board and its project engineer evaluated five different odor control alternatives for the project. Commission Staff agreed with the chosen alternatives.

With respect to the need for the project, improvements to the District's existing sewage treatment facility at Star City are needed to eliminate troublesome odor problems that have generated many complaints from surrounding homes and business. The West Run-Burroughs Run upgrade includes additional pumping and force main capacity to accommodate high customer growth in the areas of West Run, Canyon Road, and Burroughs Run on the Board's sanitary collection system. This work will also provide additional capacity for the pending connection of Canyon Public Service District to the system. The West Run surge tank construction has already been completed as a wet well expansion to the West Run Pump Station to equalize peak flows. The High Street-Willey Street-Chestnut Street upgrade will be done as a sanitary sewer/storm water separation project in the Board's overall scheme to reduce CSOs in the downtown section of its collection system. The grit chamber construction on the Central Monongahela intercept is necessary to provide easy access to Board employees that have to periodically clean out accumulated grit in the interceptor. The Cobun Creek Pump Station is badly in need of new pumps

to replace the old pumps which have exceeded their useful life. The new force main at the water treatment plant is necessary to handle flows from the new lift station being built to accommodate the pending upgrades to the water treatment plant. The upgrade at the Deckers Creek Pump Station is necessary to reduce CSO discharges into Deckers Creek and the Central Monongahela interceptor and eliminate odor at the Deckers Creek Pump Station. All of these improvements will allow the Board to comply with its NPDES Permit and Long Term Control Plan for reducing CSOs, as well as provide additional capacity to accommodate customer growth and provide odor control for customer convenience.

The DEP approved the original plans and specifications for the project on October 7, 2009. Technical Staff's review of the plans and specifications did not reveal any conflicts with the Commission's Rules and Regulations for the Government of Sewer Utilities (Sewer Rules).

According to the engineering report, operation and maintenance expenses are estimated to increase approximately $250,000 annually as a result of the project. Of that amount, $150,000 represents the Deckers Creek Pump Station upgrade, including power, pump maintenance, grit removal and chemicals for odor control. The remaining $100,000 includes maintenance expenses for the grit chamber on the Central Monongahela Interceptor, power expenses for the various pump stations in the project and odor control chemicals for the Star City treatment plant. Commission Staff is of the opinion that the projected operation and maintenance expenses were reasonable.

In the financial review of the sewer project, Commission Staff noted that the Board intends to finance the project with a contribution from Canyon Public Service District in the amount of $1,065,000 and a contribution from West Virginia University in the amount of $313,000. The bulk of the financing will consist of a DEP State Revolving Fund loan through its base program in the amount of $17,568,684, over a term of 20 years, at 2% interest and a 1% administrative fee. The annual payment on that loan will be $1,163,479, which includes the administrative fee of $96,955. There will also be a depreciation/renewal and replacement reserve equal to 2.5% of operating revenues. The Board will also receive a $60,000 ARRA loan with 100% debt forgiveness and no annual administrative fee.

The Rule 42 Exhibit for the sewer project filed with the application is based on the year ended June 30, 2008, and projected to project completion. It includes going-level adjustments for the increased sewer rates that went into effect on November 22, 2008. The going-level expense adjustments reflect increases to payroll, power and transmission and distribution maintenance equipment. The sewer adjustments also include other sewage revenue to reflect new rates for sewer satellites. Staff noted that Canyon Public Service District, in Case No. 08-0396-PSD-S-PC, entered into a service agreement with the Board for its sewage to be sent to the Board for treatment at the Board's treatment plant. In order to fund the sewer project, the Morgantown City Council enacted a rate ordinance increasing rates by 34% to become effective on January 1, 2012. Those rates should generate an annual $2,215,996 in additional annual operating revenue. Post-project going-level expenses are estimated to increase by $649,807 over going level, including both project and non-project-related expense adjustments. Commission Staff

determined that, at project completion, the Board should experience an annual cash surplus of $1,260,891, with debt service coverage of 150.53%. Therefore, Staff considers the sewer project to be financially feasible and should be approved.

In summary, Commission Staff recommended that the applications for certificates of convenience and necessity to construct upgrades to the water treatment plant and water system, and to the wastewater treatment plant and sewer system, should be granted, with approval of the proposed project financing for both projects. Additionally, Staff recommended other conditions to be applied to approval of the projects.

On December 7, 2009, the Board filed the commitment letter for the DWTRF loan for the water project of $10,000,000.

## DISCUSSION

Having reviewed the documents in the case file and the final Staff recommendations for the water and sewer projects proposed by the Morgantown Utility Board, the undersigned is of the opinion that the projects are reasonable and should be certificated. They are fully funded by committed funding or the proposal for the bond issuance, are required by the public convenience and necessity, will be fully supported by adequate rates which have already been enacted without objection by the customers of the Morgantown Utility Board, and have been fully noticed to the public, again, without protest from the customers of the Morgantown Utility Board. The Staff review was thorough and resulted in Staff recommendations that both the water and sewer upgrade projects be certificated. Therefore, the projects will be certificated, with the conditions requested by Commission Staff.

The undersigned notes that both the water project and the sewer project received de minimis ARRA funding. For most water and sewer certificate applications filed with the Commission following the passage of The American Recovery and Reinvestment Act of 2009, which utilized ARRA funding, revised procedures were utilized and revised post-approval requirements were imposed, to allow a more streamlined and time-saving process for projects dependent upon ARRA funding, due to the short time table imposed by ARRA. However, the amounts of ARRA funding awarded to these two projects is so minuscule compared to the total project cost that it simply would be inappropriate to utilize that process for these two projects. Accordingly, the standard language and requirements for non-ARRA water and sewer projects are being incorporated in this order.

## FINDINGS OF FACT

### Water Project

1. On July 29, 2009, the Morgantown Utility Board filed an application with the Public Service Commission for a certificate of public convenience and necessity for a project to upgrade its water treatment plant and distribution system. (See, application filed July

29, 2009; Final Joint Staff Memorandum and attachment filed October 23, 2009).

2. By Notice of Filing Order entered on July 29, 2009, the Morgantown Utility Board was required to publish a Notice of Filing one time in a newspaper, published and generally circulated in Monongalia County, providing anyone affected by the application thirty (30) days in which to file written protests with the Public Service Commission. No protests were filed within the thirty-day protest period or as of the date of this Order. (See, Notice of Filing Order entered July 29, 2009; affidavit of publication filed August 10, 2009; case file generally).

3. The Board will finance the water project through a $10,000,000 loan from the DWTRF for a term of 20 years at 2% interest, $100,000 of which is ARRA funding, and a municipal bond issue in the amount of $40,080,000 to be amortized over a period of thirty (30) years at an estimated interest rate of 5%. The underwriter will be Crews and Associates. (See, BPH letter dated September 9, 2009, filed December 7, 2009; application and draft bond ordinance filed July 29, 2009; Final Joint Staff Memorandum and attachment filed October 23, 2009).

4. The Project will not require an additional rate increase. In 2009, the Board enacted a rate increase which will become effective in January 2012. Based upon those rates, and with adjustment by Commission Staff for different expenses, at project completion, the Board should experience a cash flow surplus of $604,144, with debt service coverage of 117.12%. (See, Final Joint Staff Memorandum and attachment filed October 23, 2009).

5. Commission Technical Staff has reviewed the original plans and specifications for the Project and has concluded that there are no conflicts with the Commission's Water Rules concerning engineering requirements. (See, Final Joint Staff Memorandum and attachment filed October 23, 2009).

6. The improvements and upgrades to the existing water treatment facility will ensure adequate capacity for the near term through year 2017 and will facilitate further upgrades through the year 2031. Additionally, the project provides for needed operational redundancy, including raw water pumping, rapid mix, filtration and clear well storage. Improvements to the chemical and physical treatment capabilities will meet current and future requirements of the Federal Safe Drinking Water Act, including chlorine dioxide to reduce THM and HAA5 levels, while the additional membrane filtration will further polish the gravity filter effluent. The two proposed water storage tanks will provide needed additional storage and help stabilize the hydraulic grade line of their respective service areas. The proposed 24-inch water main in the downtown portion of University Avenue will replace a problematic cast iron main that has experienced several major leaks in recent years. The proposed 24-inch water main at South University Avenue will increase pumping rates from the water treatment plant into the transmission system. The proposed 16-inch water main at Scotts Run will increase pumping rates from a booster station into the transmission system. The proposed office and shop additions will result in several improvements to those facilities, including better heating and cooling, better lighting and utilization of work space, increased office and locker space and a

new training/lunch room. Staff believes that these improvements will enhance the water quality and water service provided to the customers of the Board. (See, Final Joint Staff Memorandum and attachment filed October 23, 2009).

7. After concluding its review, Commission Staff recommended that a certificate of convenience and necessity be granted to the Morgantown Utility Board, that the proposed financing be approved and that various other conditions with regard to certification of the project be adopted. (See, Final Joint Staff Memorandum and attachment filed October 23, 2009).

Sewer Project

1. On July 29, 2009, the Morgantown Utility Board filed an application with the Public Service Commission for a certificate of public convenience and necessity for a project to upgrade the wastewater treatment plant and the sewer collection system. (See, application filed July 29, 2009; Final Joint Staff Memorandum and attachment filed October 23, 2009).

2. By Notice of Filing Order entered on July 29, 2009, the Morgantown Utility Board was required to publish a Notice of Filing one time in a newspaper, published and generally circulated in Monongalia County, providing anyone affected by the application thirty (30) days in which to file written protests with the Public Service Commission. No protests were filed within the thirty-day protest period or as of the date of this Order. (See, Notice of Filing Order entered July 29, 2009; affidavit of publication filed August 10, 2009; case file generally).

3. The Board will finance the project through a $1,065,000 contribution from Canyon Public Service District, a $313,000 contribution from West Virginia University, a $60,000 DEP ARRA loan with 100% debt forgiveness and a $17,568,684 DEP State Revolving Fund base program loan with a term of 20 years, at 2% interest and a 1% administrative fee. (See, DEP letter dated October 7, 2009, filed October 13, 2009; application filed July 29, 2009; Final Joint Staff Memorandum filed October 23, 2009).

4. The Project will not require an additional rate increase. In 2009, the Board enacted a rate increase to become effective in January 2012. Based upon those rates, and with adjustment by Commission Staff for different expenses, at project completion, the Board should experience a cash flow surplus of $1,260,891, with debt service coverage of 150.53%. (See, Final Joint Staff Memorandum and attachment filed October 23, 2009).

5. Commission Technical Staff has reviewed the original plans and specifications for the Project and has concluded that there are no conflicts with the Commission's Sewer Rules concerning engineering requirements. (See, Final Joint Staff Memorandum and attachment filed October 23, 2009).

6. The proposed improvements to the District's existing sewage treatment facility at Star City will eliminate troublesome odor problems

that have generated many complaints from surrounding homes and business. The West Run-Burroughs Run upgrade includes additional pumping and force main capacity to accommodate high customer growth in the areas of West Run, Canyon Road, and Burroughs Run on the Board's sanitary collection system. This work will also provide additional capacity for the pending connection of Canyon Public Service District to the system. The West Run surge tank construction has already been completed as a wet well expansion to the West Run Pump Station to equalize peak flows. The High Street-Willey Street-Chestnut Street upgrade will be done as a sanitary sewer/storm water separation project in the Board's overall scheme to reduce CSOs in the downtown section of its collection system. The grit chamber construction on the Central Monongahela intercept will provide easy access to Board employees that have to periodically clean out accumulated grit in the interceptor. The Cobun Creek Pump Station is badly in need of new pumps to replace the old pumps which have exceeded their useful life. The new force main at the water treatment plant is necessary to handle flows from the new lift station being built to accommodate the pending upgrades to the water treatment plant. The upgrade at the Deckers Creek Pump Station will reduce CSO discharges into Deckers Creek and the Central Monongahela interceptor and eliminate odor at the Deckers Creek Pump Station. The proposed improvements will allow the Board to comply with its NPDES Permit and Long Term Control Plan for reducing CSOs, as well as provide additional capacity to accommodate customer growth and provide odor control for customer convenience. (See, application filed July 29, 2009; Final Joint Staff Memorandum and attachment filed October 23, 2009).

7. After concluding its review, Commission Staff recommended that a certificate of convenience and necessity be granted to the Morgantown Utility Board, that the proposed financing be approved and that various other conditions with regard to certification of the project be adopted. (See, Final Joint Staff Memorandum and attachment filed October 23, 2009).

## CONCLUSIONS OF LAW

### Water Project

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

2. The enacted post-project rates and charges of the Morgantown Utility Board, which will become effective in January 2012, appear to be sufficient to cover all project-related costs, as well as the Board's going-level operation and maintenance expenses.

3. The proposed funding package for the project, consisting of a $10,000,000 loan from the DWTRF for a term of 20 years at 2% interest, $100,000 of which is ARRA funding, and a municipal bond issue in the amount of $40,080,000 to be amortized over a period of thirty (30) years at an estimated interest rate of 5%, is reasonable and is sufficient to cover the cost of the project, at its current cost estimates.

4. A certificate of convenience and necessity should be granted to the Morgantown Utility Board for the water project specified herein, without specifically approving the project's plans and specifications.

Sewer Project

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

2. The enacted post-project rates and charges of the Morgantown Utility Board, to become effective in January 2012, appear to be sufficient to cover all project-related costs, as well as the Board's going-level operation and maintenance expenses.

3. The proposed funding package for the sewer project, consisting of a $1,065,000 contribution from Canyon Public Service District, a $313,000 contribution from West Virginia University, a $60,000 DEP ARRA loan with 100% debt forgiveness and a $17,568,684 DEP State Revolving Fund base program loan with a term of 20 years, at 2% interest and a 1% administrative fee, is reasonable and is sufficient to cover the cost of the project, at its current cost estimates.

4. A certificate of convenience and necessity should be granted to the Morgantown Utility Board for the project specified herein, without specifically approving the project's plans and specifications.

ORDER

IT IS, THEREFORE, ORDERED that the applications filed by the Morgantown Utility Board on July 29, 2009, for certificates of convenience and necessity to upgrade its water treatment plant and distribution system and to upgrade its wastewater plant and sewer collection system, as described in the filed plans and specifications, at a total project cost of $50,080,000 for the water project and a total project cost of $19,006,684 for the sewer project, be, and they hereby are, granted, without specifically approving the plans and specifications filed herein.

IT IS FURTHER ORDERED that the proposed water project financing package, consisting of a loan in the amount of $10,000,000 from the Drinking Water Treatment Revolving Fund, of which $100,000 represents funds from The American Recovery and Reinvestment Act of 2009, for a term of 20 years at 2% interest, with no administrative fee, and a municipal bond issuance in the amount of $40,080,000 to be amortized over thirty (30) years at 5% interest, using Crews & Associates as the underwriters, be, and it hereby is, approved.

IT IS FURTHER ORDERED that the sewer project funding package, consisting of a $1,065,000 contribution from Canyon Public Service District, a $313,000 loan from West Virginia University, a $60,000 ARRA loan from the Division of Environmental Protection with 100% debt forgiveness and no administrative fee and a DEP State Revolving Fund loan in the amount of $17,568,684 for a term of 20 years at 2% interest and a 1% administrative fee, be, and it hereby is, approved.

IT IS FURTHER ORDERED that, upon finalization of the water and sewer funding packages, the Morgantown Utility Board file letters with the Commission detailing the specifics of those funding packages, including the terms and conditions of any loans awarded and the bond issuance.

IT IS FURTHER ORDERED that, if, for either the water project or sewer project, the project scope changes or project cost or financing changes require an additional rate increase, the Morgantown Utility Board petition the Commission for approval of such change(s) prior to commencing construction.

IT IS FURTHER ORDERED that the Morgantown Utility Board cannot proceed to construction unless and until it has received all required federal, state and local permits, and unless the finally-established funding packages are adequate to cover all project costs, as determined at the conclusion of the bidding process with a bid awarded for each construction contract or vendor contract for the projects.

IT IS FURTHER ORDERED that the Morgantown Utility Board provide a copy of the engineer's certified tabulation of bids, within ten (10) days of the bid opening date, for each construction contract or vendor contract to be awarded for these projects.

IT IS FURTHER ORDERED that the Morgantown Utility Board provide a copy of the certification of substantial completion for each contract associated with these projects, within ten (10) days of issuance.

IT IS FURTHER ORDERED that, if these projects require the use of Division of Highways' rights-of-way, the Morgantown Utility Board 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 removed from the Commission's docket of open cases.

The Executive Secretary is hereby ordered to serve a copy of this order upon the Commission by hand delivery, and upon all parties of record by United States Certified Mail, return receipt requested.

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

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

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

Commission sooner than five (5) days after approval of such waiver by the Commission.

Melissa K. Marland
Chief Administrative Law Judge

MKM:cdk
091220a.wpd

# WEST VIRGINIA

Infrastructure & Jobs Development Council

Gov. Joe Manchin, III
Chairman

Kenneth Lowe, Jr.
Public Member

Dwight Calhoun
Public Member

David "Bones" McComas
Public Member

Ron Justice
Public Member

Angela K. Chestnut
Executive Director

Barbara J. Pauley
Administrative Secretary

April 6, 2009

James L. Green, General Manager
Morgantown Utility Board
278 Green Bag Road
P.O. Box 852
Morgantown, WV 26507

Re: Morgantown Utility Board
Sewer Project 2009S-1077

Dear Mr. Green,

The West Virginia Infrastructure and Jobs Development Council (Council) has reviewed the Morgantown Utility Board's (Board) preliminary application to upgrade WWTP odor control and lift stations at West Run, Canyon Road , Burr Run, and Cobun Creek (Project).

Based on the findings of the Sewer Technical Review Committee, the Council has determined that the Project is technically feasible within the guidelines of the Infrastructure and Jobs Development Act. The Board should carefully review the enclosed comments of the Sewer Technical Review Committee as the Board may need to address certain issues raised in said comments as it proceeds with the Project.

Upon consideration of the preliminary application, the Council determined that the Board should utilize a $1,065,000 Canyon PSD contribution, a $313,000 West Virginia University contribution and pursue a $6,114,000 Clean Water State Revolving Fund loan to fund this $7,492,000 project. Please contact the West Virginia Division of Environmental Protection office at (304) 926-0499 X1611 for specific information on the steps the Board needs to follow to apply for these funds. **Please note that this letter <u>does not</u> constitute funding approval from this agency.**

If you have any questions regarding this matter, please contact the Angela Chestnut at 304-558-4607 X201.

Sincerely,

Kenneth Lowe, Jr.

Enclosure

cc: Mike Johnson, P.E., DEP (w/o enclosure) (via e-mail)
Region VI Planning & Development Council
Don Knorr, Strand Associates

300 Summers Street, Suite 980 • Charleston, WV 25301 • Phone (304) 558-4607 • Fax (304) 558-4609

www.wvinfrastructure.com

THE CITY OF MORGANTOWN

Combined Utility System Revenue Bonds, Series 2010 B
(West Virginia SRF Program/ARRA); and
Combined Utility System Revenue Bonds, Series 2010 C
(West Virginia SRF Program)

CROSS-RECEIPT FOR BOND AND BOND PROCEEDS

On the 28th day of January, 2010, the undersigned authorized representative of the West Virginia Water Development Authority (the "Authority"), for and on behalf of the Authority, and the undersigned Mayor of The City of Morgantown (the "Issuer"), for and on behalf of the Issuer, hereby certify as follows:

1. On the 28th day of January, 2010, the Authority received the Combined Utility System Revenue Bonds, Series 2010 B (West Virginia SRF Program/ARRA), of the Issuer, in the principal amount of $81,600, numbered BR-1 (the "Series 2010 B Bonds") and the Combined Utility System Revenue Bonds, Series 2010 C (West Virginia SRF Program), of the Issuer, in the principal amount of $15,380,227, numbered CR-1 (the "Series 2010 C Bonds", and collectively with the Series 2010 B Bonds, the "Bonds"), both issued as a single, fully registered Bond, and dated January 28, 2010.

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

3. The Issuer has received and hereby acknowledges receipt from the Authority, as the original purchaser of the Series 2010 B Bonds, of $-0-, being a portion of the principal amount of the Series 2010 B Bonds. The balance of the principal amount of the Series 2010 B Bonds will be advanced by the Authority and by the DEP to the Issuer as acquisition and construction of the Project progresses. The Issuer has received and hereby acknowledges receipt from the Authority, as the original purchaser of the Series 2010 C Bonds, of $975,937, being a portion of the principal amount of the Series 2010 C Bonds. The balance of the principal amount of the Series 2010 C Bonds will be advanced by the Authority and by the DEP to the Issuer as acquisition and construction of the Project progresses.

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Dated as of the day and year first written above.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

By: Carol A. Cummings
Its: Authorized Representative

THE CITY OF MORGANTOWN

By: Bree Bye
Its: Mayor

01.02.10
627490.00039

THE CITY OF MORGANTOWN

Combined Utility System Revenue Bonds, Series 2010 B
(West Virginia SRF Program/ARRA); and
Combined Utility System Revenue Bonds, Series 2010 C
(West Virginia SRF Program)

DIRECTION TO AUTHENTICATE AND DELIVER BONDS

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

Ladies and Gentlemen:

There are delivered to you herewith on this 28th day of January, 2010.

(1) Bond No. BR-1, constituting the entire original issue of The City of Morgantown Combined Utility System Revenue Bonds, Series 2010 B (West Virginia SRF Program/ARRA), in the principal amount of $81,600 (the "Series 2010 B Bonds"), and Bond No. CR-1, constituting the entire original issue of The City of Morgantown Combined Utility System Revenue Bonds, Series 2010 C (West Virginia SRF Program), in the principal amount of $15,380,227 (the "Series 2010 C Bonds") both dated January 28, 2010 (collectively, the Bonds"), executed by the Mayor and the Clerk of The City of Morgantown (the "Issuer") and bearing the official seal of the Issuer, authorized to be issued under and pursuant to a Bond Ordinance duly enacted by the Issuer on September 1, 2009, and a Supplemental Resolution and Conformed Ordinance duly adopted by the Issuer on January 5, 2010 (collectively, the "Bond Legislation");

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

(3) Executed counterparts of a ARRA Assistance Agreement for the Bonds, dated January 28, 2010 (the "ARRA Assistance Agreement"), by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"); and

(4) Executed opinions of nationally recognized bond counsel regarding the validity of the ARRA Assistance Agreement and the Bonds.

You are hereby requested and authorized to deliver the Series 2010 B Bonds to the Authority upon payment to the Issuer of the sum of $-0-, representing a portion of the principal amount of the Series 2010 B Bonds. Prior to such delivery of the Series 2010 B Bonds, you will please cause the

Series 2010 B Bonds to be authenticated and registered by an authorized officer, as Bond Registrar, in accordance with the forms of Certificate of Authentication and Registration thereon. You are also hereby requested and authorized to deliver the Series 2010 C Bonds to the Authority upon payment to the Issuer of the sum of $975,937, representing a portion of the principal amount of the Series 2010 C Bonds. Prior to such delivery of the Series 2010 C Bonds, you will please cause the Series 2010 C Bonds to be authenticated and registered by an authorized officer, as Bond Registrar, in accordance with the forms of Certificate of Authentication and Registration thereon.

[Remainder of Page Intentionally Blank]

Dated as of the day and year first written above.

THE CITY OF MORGANTOWN

By: _____
Its: Mayor

O1.02.10
627490.00039

SPECIMEN

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF MORGANTOWN
COMBINED UTILITYSYSTEM REVENUE BOND, SERIES 2010 B
(WEST VIRGINIA SRF PROGRAM/ARRA)

No. BR-1 $81,600

KNOW ALL MEN BY THESE PRESENTS: That on this the 28th day of January, 2010, THE CITY OF MORGANTOWN, a municipal corporation and political subdivision of the State of West Virginia in Monongalia County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of EIGHTY-ONE THOUSAND SIX HUNDRED DOLLARS ($81,600), 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, 2012 to and including September 1, 2022, 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 SRF 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.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Department of Environmental protection (the "DEP), and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement by and between the Issuer and the Authority, on behalf of the DEP, dated January 28, 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 wastewater portion of the existing public combined waterworks, sewerage, and stormwater system of the Issuer (the "Project"); (ii) and (ii) to pay certain costs of issuance of the Bonds and related costs. The existing public combined waterworks, sewerage, and stormwater 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 20 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on September 1, 2009, and a Supplemental Resolution and Conformed Ordinance duly adopted by the Issuer on January 5, 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) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 1992 (WEST VIRGINIA SRF PROGRAM), DATED SEPTEMBER 8, 1992, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $11,900,000 (THE "SERIES 1992 BONDS"); (2) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 1995 (WEST VIRGINIA SRF PROGRAM), DATED APRIL 27, 1995, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $1,601,477 (THE "SERIES 1995 BONDS"); (3) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2000 A (WEST VIRGINIA SRF PROGRAM), DATED FEBRUARY 29, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $7,842,000 (THE "SERIES 2000 A BONDS"); (4) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2000 B (WEST VIRGINIA INFRASTRUCTURE FUND), DATED FEBRUARY 29, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $2,488,000 (THE "SERIES 2000 B BONDS"); (5) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2001 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED FEBRUARY 8, 2001, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $3,812,470 (THE "SERIES 2001 A BONDS"); (6) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2006 A (WEST VIRGINIA SRF PROGRAM), DATED JUNE 30, 2006, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $6,410,191 (THE "SERIES 2006 A BONDS"); AND (7) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2007 A (WEST VIRGINIA SRF PROGRAM), DATED AUGUST 14, 2007, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $8,500,000 (THE "SERIES 2007 A BONDS") (COLLECTIVELY, THE "PRIOR BONDS"); AND (8) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 A, DATED JANUARY 28, 2010, ISSUED SIMULTANEOUSLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $37,950,000 (THE "SERIES 2010 A BONDS"); (9) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 D (WEST VIRGINIA DWTRF PROGRAM), DATED JANUARY 28, 2010, ISSUED SIMULTANEOUSLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $9,317,286 (THE 'SERIES 2010 D BONDS"); (10) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 E (WEST VIRGINIA DWTRF PROGRAM/ARRA), DATED JANUARY 28, 2010, ISSUED SIMULTANEOUSLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $100,000 (THE "SERIES 2010 E BONDS'); (11) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 C (WEST VIRGINIA SRF PROGRAM), DATED JANUARY 28, 2010, ISSUED SIMULTANEOUSLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $15,380,227 (THE "SERIES 2010 C BONDS"); AND (12) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 F, DATED JANUARY 28, 2010, ISSUED SIMULTANEOUSLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $7,250,000 (THE "SERIES 2010 F BONDS").

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Series 2010 A Bonds, Series 2010 C Bonds, Series 2010 D Bonds, Series 2010 E Bonds, Series 2010 F Bonds and the Prior 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 an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Gross Revenues, the moneys in the Series 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 on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Series 2010 A Bonds, Series 2010 C Bonds, Series 2010 D Bonds, Series 2010 E Bonds, Series 2010 F Bonds and the Prior 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 which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, including the Series 2010 A Bonds, Series 2010 C Bonds, Series 2010 D Bonds, Series 2010 E Bonds, Series 2010 F Bonds Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

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

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

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

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

[Remainder of Page Intentionally Blank]

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

[SEAL]

By: _____
Mayor

By: _____
City Manager

ATTEST:

By: _____
City Clerk

SPECIMEN

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 28, 2010.

THE HUNTINGTON NATIONAL BANK,
as Registrar

By: _____
Its: Authorized Officer

SPECIMEN

CH5316071

EXHIBIT A

RECORD OF ADVANCES

| AMOUNT | DATE | AMOUNT | DATE |
|---|---|---|---|
| (1) $-0- | January 28, 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 Morgantown

ARRA

10 Years

| | | |
|---|---|---|
| Dated Date | 1/28/2010 | Series B |
| Delivery Date | 1/28/2010 | |

| Period Ending | Debt Service | Principal Forgiveness |
|---|---|---|
| 1/28/2010 | | |
| 12/1/2012 | -2,040 | -2,040 |
| 3/1/2013 | -2,040 | -2,040 |
| 6/1/2013 | -2,040 | -2,040 |
| 9/1/2013 | -2,040 | -2,040 |
| 12/1/2013 | -2,040 | -2,040 |
| 3/1/2014 | -2,040 | -2,040 |
| 6/1/2014 | -2,040 | -2,040 |
| 9/1/2014 | -2,040 | -2,040 |
| 12/1/2014 | -2,040 | -2,040 |
| 3/1/2015 | -2,040 | -2,040 |
| 6/1/2015 | -2,040 | -2,040 |
| 9/1/2015 | -2,040 | -2,040 |
| 12/1/2015 | -2,040 | -2,040 |
| 3/1/2016 | -2,040 | -2,040 |
| 6/1/2016 | -2,040 | -2,040 |
| 9/1/2016 | -2,040 | -2,040 |
| 12/1/2016 | -2,040 | -2,040 |
| 3/1/2017 | -2,040 | -2,040 |
| 6/1/2017 | -2,040 | -2,040 |
| 9/1/2017 | -2,040 | -2,040 |
| 12/1/2017 | -2,040 | -2,040 |
| 3/1/2018 | -2,040 | -2,040 |
| 6/1/2018 | -2,040 | -2,040 |
| 9/1/2018 | -2,040 | -2,040 |
| 12/1/2018 | -2,040 | -2,040 |
| 3/1/2019 | -2,040 | -2,040 |
| 6/1/2019 | -2,040 | -2,040 |
| 9/1/2019 | -2,040 | -2,040 |
| 12/1/2019 | -2,040 | -2,040 |
| 3/1/2020 | -2,040 | -2,040 |
| 6/1/2020 | -2,040 | -2,040 |
| 9/1/2020 | -2,040 | -2,040 |
| 12/1/2020 | -2,040 | -2,040 |
| 3/1/2021 | -2,040 | -2,040 |
| 6/1/2021 | -2,040 | -2,040 |
| 9/1/2021 | -2,040 | -2,040 |
| 12/1/2021 | -2,040 | -2,040 |
| 3/1/2022 | -2,040 | -2,040 |
| 6/1/2022 | -2,040 | -2,040 |
| 9/1/2022 | -2,040 | -2,040 |
| | **-81,600** | **-81,600** |

(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
THE CITY OF MORGANTOWN
COMBINED UTILITY
SYSTEM REVENUE BOND, SERIES 2010 C
(WEST VIRGINIA SRF PROGRAM)

No. CR-1 $15,380,227

KNOW ALL MEN BY THESE PRESENTS: That on this the 28th day of January, 2010, THE CITY OF MORGANTOWN, a municipal corporation and political subdivision of the State of West Virginia in Monongalia County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of FIFTEEN MILLION THREE HUNDRED AND EIGHTY THOUSAND TWO HUNDRED AND TWENTY SEVEN DOLLARS ($15,380,227), 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, 2012 to and including September 1, 2032 as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference, with interest on each installment at the rate of 2% per annum as set forth on said EXHIBIT B. The interest and SRF administrative fee (as defined in the hereinafter described Bond Legislation) on this Bond shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2012 to and including September 1, 2032 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"). The interest and SRF administrative fee 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 Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and

otherwise in compliance with, the ARRA Assistance Agreement by and among the Issuer, the Authority and the DEP, dated January 28, 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 wastewater portion of the existing public combined waterworks, sewerage, and stormwater system of the Issuer (the "Project"); (ii) to fund the reserve account for the Series 2009 C Bonds; and (iii) to pay certain costs of issuance of the Bonds and related costs. The existing public combined waterworks, sewerage, and stormwater 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 20 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on September 1, 2009, and a Supplemental Resolution and Conformed Ordinance duly adopted by the Issuer on January 5, 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) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 1992 (WEST VIRGINIA SRF PROGRAM), DATED SEPTEMBER 8, 1992, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $11,900,000 (THE "SERIES 1992 BONDS"); (2) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 1995 (WEST VIRGINIA SRF PROGRAM), DATED APRIL 27, 1995, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $1,601,477 (THE "SERIES 1995 BONDS"); (3) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2000 A (WEST VIRGINIA SRF PROGRAM), DATED FEBRUARY 29, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $7,842,000 (THE "SERIES 2000 A BONDS"); (4) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2000 B (WEST VIRGINIA INFRASTRUCTURE FUND), DATED FEBRUARY 29, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $2,488,000 (THE "SERIES 2000 B BONDS"); (5) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2001 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED FEBRUARY 8, 2001, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $3,812,470 (THE "SERIES 2001 A BONDS"); (6) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2006 A (WEST VIRGINIA SRF PROGRAM), DATED JUNE 30, 2006, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $6,410,191 (THE "SERIES 2006 A BONDS"); AND (7) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2007 A (WEST VIRGINIA SRF PROGRAM), DATED AUGUST 14, 2007, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $8,500,000 (THE "SERIES 2007 A BONDS") (COLLECTIVELY, THE "PRIOR BONDS"); AND (8) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 A, DATED JANUARY 28, 2010, ISSUED SIMULTANEOUSLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL

AMOUNT OF $37,950,000 (THE "SERIES 2010 A BONDS"); (9) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 D (WEST VIRGINIA DWTRF PROGRAM), DATED JANUARY 28, 2010, ISSUED SIMULTANEOUSLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $9,317,286 (THE 'SERIES 2010 D BONDS"); (10) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 E (WEST VIRGINIA DWTRF PROGRAM/ARRA), DATED JANUARY 28, 2010, ISSUED SIMULTANEOUSLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $100,000 (THE "SERIES 2010 E BONDS'); (11) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 B (WEST VIRGINIA SRF PROGRAM/ARRA), DATED JANUARY 28, 2010, ISSUED SIMULTANEOUSLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $81,600 (THE "SERIES 2010 B BONDS"); AND (12) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 F, DATED JANUARY 28, 2010, ISSUED SIMULTANEOUSLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $7,250,000 (THE "SERIES 2010 F BONDS").

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Series 2010 A Bonds, Series 2010 B Bonds, Series 2010 D Bonds, Series 2010 E Bonds, Series 2010 F Bonds and the Prior Bonds, and from moneys 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 the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Gross Revenues, the moneys in the Series 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 on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Series 2010 A Bonds, Series 2010 B Bonds, Series 2010 D Bonds, Series 2010 E Bonds, Series 2010 F Bonds and the Prior 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 which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, including the Series 2010 A Bonds, Series 2010 B Bonds, Series 2010 D Bonds, Series 2010 E Bonds, Series 2010 F Bonds Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

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

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

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

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

[Remainder of Page Intentionally Blank]

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

[SEAL]

By: _____
Mayor

By: _____
City Manager

ATTEST:

By: _____
City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 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 28, 2010.

THE HUNTINGTON NATIONAL BANK,
as Registrar

SPECIMEN

By: _____
Its: Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

| AMOUNT | DATE | AMOUNT | DATE |
|---|---|---|---|
| (1) $975,937 | January 28, 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 Morgantown

20 Years

2% Interest Rate, 1% Administrative Fee

| | |
|---|---|
| Dated Date | 1/28/2010 |
| Delivery Date | 1/28/2010 |

2010
Series C

| Period Ending | Principal | Coupon | Interest | Debt Service | Annual Debt Service |
|---|---|---|---|---|---|
| 1/28/2010 | | | | | |
| 12/1/2012 | 156,833 | 2.000% | 76,901.14 | 233,734.14 | |
| 3/1/2013 | 157,617 | 2.000% | 76,116.97 | 233,733.97 | |
| 6/1/2013 | 158,405 | 2.000% | 75,328.89 | 233,733.89 | |
| 9/1/2013 | 159,197 | 2.000% | 74,536.86 | 233,733.86 | 934,935.86 |
| 12/1/2013 | 159,993 | 2.000% | 73,740.88 | 233,733.88 | |
| 3/1/2014 | 160,793 | 2.000% | 72,940.91 | 233,733.91 | |
| 6/1/2014 | 161,597 | 2.000% | 72,136.95 | 233,733.95 | |
| 9/1/2014 | 162,405 | 2.000% | 71,328.96 | 233,733.96 | 934,935.70 |
| 12/1/2014 | 163,217 | 2.000% | 70,516.94 | 233,733.94 | |
| 3/1/2015 | 164,033 | 2.000% | 69,700.85 | 233,733.85 | |
| 6/1/2015 | 164,853 | 2.000% | 68,880.69 | 233,733.69 | |
| 9/1/2015 | 165,677 | 2.000% | 68,056.42 | 233,733.42 | 934,934.90 |
| 12/1/2015 | 166,506 | 2.000% | 67,228.04 | 233,734.04 | |
| 3/1/2016 | 167,338 | 2.000% | 66,395.51 | 233,733.51 | |
| 6/1/2016 | 168,175 | 2.000% | 65,558.82 | 233,733.82 | |
| 9/1/2016 | 169,016 | 2.000% | 64,717.94 | 233,733.94 | 934,935.31 |
| 12/1/2016 | 169,861 | 2.000% | 63,872.86 | 233,733.86 | |
| 3/1/2017 | 170,710 | 2.000% | 63,023.56 | 233,733.56 | |
| 6/1/2017 | 171,564 | 2.000% | 62,170.01 | 233,734.01 | |
| 9/1/2017 | 172,422 | 2.000% | 61,312.19 | 233,734.19 | 934,935.62 |
| 12/1/2017 | 173,284 | 2.000% | 60,450.08 | 233,734.08 | |
| 3/1/2018 | 174,150 | 2.000% | 59,583.66 | 233,733.66 | |
| 6/1/2018 | 175,021 | 2.000% | 58,712.91 | 233,733.91 | |
| 9/1/2018 | 175,896 | 2.000% | 57,837.80 | 233,733.80 | 934,935.45 |
| 12/1/2018 | 176,776 | 2.000% | 56,958.32 | 233,734.32 | |
| 3/1/2019 | 177,659 | 2.000% | 56,074.44 | 233,733.44 | |
| 6/1/2019 | 178,548 | 2.000% | 55,186.15 | 233,734.15 | |
| 9/1/2019 | 179,440 | 2.000% | 54,293.41 | 233,733.41 | 934,935.32 |
| 12/1/2019 | 180,338 | 2.000% | 53,396.21 | 233,734.21 | |
| 3/1/2020 | 181,239 | 2.000% | 52,494.52 | 233,733.52 | |
| 6/1/2020 | 182,145 | 2.000% | 51,588.32 | 233,733.32 | |
| 9/1/2020 | 183,056 | 2.000% | 50,677.60 | 233,733.60 | 934,934.65 |
| 12/1/2020 | 183,972 | 2.000% | 49,762.32 | 233,734.32 | |
| 3/1/2021 | 184,891 | 2.000% | 48,842.46 | 233,733.46 | |
| 6/1/2021 | 185,816 | 2.000% | 47,918.00 | 233,734.00 | |
| 9/1/2021 | 186,745 | 2.000% | 46,988.92 | 233,733.92 | 934,935.70 |
| 12/1/2021 | 187,679 | 2.000% | 46,055.20 | 233,734.20 | |

**BOND DEBT SERVICE**

City of Morgantown

2010 C

| Period Ending | Principal | Coupon | Interest | Debt Service | | Annual Debt Service |
|---|---|---|---|---|---|---|
| 3/1/2022 | 188,617 | 2.000% | 45,116.80 | 233,733.80 | | |
| 6/1/2022 | 189,560 | 2.000% | 44,173.72 | 233,733.72 | | |
| 9/1/2022 | 190,508 | 2.000% | 43,225.92 | 233,733.92 | | 934,935.64 |
| 12/1/2022 | 191,460 | 2.000% | 42,273.38 | 233,733.38 | | |
| 3/1/2023 | 192,418 | 2.000% | 41,316.08 | 233,734.08 | | |
| 6/1/2023 | 193,380 | 2.000% | 40,353.99 | 233,733.99 | | |
| 9/1/2023 | 194,347 | 2.000% | 39,387.09 | 233,734.09 | | 934,935.54 |
| 12/1/2023 | 195,318 | 2.000% | 38,415.35 | 233,733.35 | | |
| 3/1/2024 | 196,295 | 2.000% | 37,438.76 | 233,733.76 | | |
| 6/1/2024 | 197,277 | 2.000% | 36,457.29 | 233,734.29 | | |
| 9/1/2024 | 198,263 | 2.000% | 35,470.90 | 233,733.90 | | 934,935.30 |
| 12/1/2024 | 199,254 | 2.000% | 34,479.59 | 233,733.59 | | |
| 3/1/2025 | 200,251 | 2.000% | 33,483.32 | 233,734.32 | | |
| 6/1/2025 | 201,252 | 2.000% | 32,482.06 | 233,734.06 | | |
| 9/1/2025 | 202,258 | 2.000% | 31,475.80 | 233,733.80 | | 934,935.77 |
| 12/1/2025 | 203,269 | 2.000% | 30,464.51 | 233,733.51 | | |
| 3/1/2026 | 204,286 | 2.000% | 29,448.17 | 233,734.17 | | |
| 6/1/2026 | 205,307 | 2.000% | 28,426.74 | 233,733.74 | | |
| 9/1/2026 | 206,334 | 2.000% | 27,400.20 | 233,734.20 | | 934,935.62 |
| 12/1/2026 | 207,365 | 2.000% | 26,368.53 | 233,733.53 | | |
| 3/1/2027 | 208,402 | 2.000% | 25,331.71 | 233,733.71 | | |
| 6/1/2027 | 209,444 | 2.000% | 24,289.70 | 233,733.70 | | |
| 9/1/2027 | 210,491 | 2.000% | 23,242.48 | 233,733.48 | | 934,934.42 |
| 12/1/2027 | 211,544 | 2.000% | 22,190.02 | 233,734.02 | | |
| 3/1/2028 | 212,602 | 2.000% | 21,132.30 | 233,734.30 | | |
| 6/1/2028 | 213,665 | 2.000% | 20,069.29 | 233,734.29 | | |
| 9/1/2028 | 214,733 | 2.000% | 19,000.97 | 233,733.97 | | 934,936.58 |
| 12/1/2028 | 215,807 | 2.000% | 17,927.30 | 233,734.30 | | |
| 3/1/2029 | 216,886 | 2.000% | 16,848.27 | 233,734.27 | | |
| 6/1/2029 | 217,970 | 2.000% | 15,763.84 | 233,733.84 | | |
| 9/1/2029 | 219,060 | 2.000% | 14,673.99 | 233,733.99 | | 934,936.40 |
| 12/1/2029 | 220,155 | 2.000% | 13,578.69 | 233,733.69 | | |
| 3/1/2030 | 221,256 | 2.000% | 12,477.91 | 233,733.91 | | |
| 6/1/2030 | 222,362 | 2.000% | 11,371.63 | 233,733.63 | | |
| 9/1/2030 | 223,474 | 2.000% | 10,259.82 | 233,733.82 | | 934,935.05 |
| 12/1/2030 | 224,591 | 2.000% | 9,142.45 | 233,733.45 | | |
| 3/1/2031 | 225,714 | 2.000% | 8,019.50 | 233,733.50 | | |
| 6/1/2031 | 226,843 | 2.000% | 6,890.93 | 233,733.93 | | |
| 9/1/2031 | 227,977 | 2.000% | 5,756.71 | 233,733.71 | | 934,934.59 |
| 12/1/2031 | 229,117 | 2.000% | 4,616.83 | 233,733.83 | | |
| 3/1/2032 | 230,263 | 2.000% | 3,471.24 | 233,734.24 | | |
| 6/1/2032 | 231,414 | 2.000% | 2,319.93 | 233,733.93 | | |
| 9/1/2032 | 232,571 | 2.000% | 1,162.86 | 233,733.86 | | 934,935.86 |
| | **15,380,227** | | **3,318,482.28** | **18,698,709.28** | * | **18,698,709.28** |

* Plus a Quarterly administrative fee of $20,740.52 for a total Administrative expense of $1,659,241.60

(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:

_____

STEPTOE & JOHNSON PLLC
ATTORNEYS AT LAW

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

Writer's Contact Information

January 28, 2010

The City of Morgantown
Combined Utility System Revenue Bonds, Series 2010 B
(West Virginia SRF Program/ARRA)

The City of Morgantown
Morgantown, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

West Virginia Department of Environmental Protection
Charleston, West Virginia

Ladies and Gentlemen:

We have served as bond counsel to The City of Morgantown (the "Issuer"), a municipal corporation and political subdivision of the State of West Virginia in connection with its $81,600 Combined Utility System Revenue Bonds, Series 2010 B (West Virginia SRF Program/ARRA), dated the date hereof (the "Bonds").

We have examined the law and a certified copy of proceedings and other papers relating to the authorization of (i) a ARRA Assistance Agreement dated January 28, 2010, including all schedules and exhibits attached thereto (the "ARRA Assistance Agreement"), among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), and (ii) the Bonds to be purchased by the Authority in accordance with the provisions of the ARRA Assistance Agreement. The Bonds are issued in the principal amount of $81,600, in the form of one bond, bearing no interest, registered as to principal only to the Authority, with principal forgivable in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2012 to and including September 1, 2032, as set forth in "Schedule Y" attached to the ARRA Assistance Agreement and incorporated in and made a part of the Bonds. The Series 2010 B Bonds are not subject to the SRF administrative fee (as defined in the hereinafter described Bond Legislation).

The Bonds are issued for the purposes of: (i) to pay a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the wastewater portion of the existing public combined waterworks, sewerage, and stormwater system of the Issuer; and (ii) to pay certain costs of issuance of the Bonds and related costs.

We have also examined the applicable provisions of Chapter 8, Article 20 and Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (collectively, the "Act"), and the Bond Ordinance duly enacted by the Issuer on September 1, 2009, as supplemented by the Supplemental Resolution and Conformed Ordinance duly adopted by the Issuer on January 5, 2010 (collectively, the

"Bond Legislation"), pursuant to and under which Act and Bond Legislation the Bonds are authorized and issued, and the ARRA Assistance Agreement has been undertaken. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Bond Legislation and the ARRA Assistance Agreement. All capitalized terms used herein and not defined herein shall have the same meanings set forth in the Bond Legislation.

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

1. The ARRA Assistance Agreement has been duly authorized by and executed on behalf of the Issuer and is a valid and binding special obligation of the Issuer enforceable in accordance with the terms thereof.

2. The ARRA Assistance Agreement inures to the benefit of the Authority and DEP and cannot be amended so as to affect adversely the rights of the Authority or the DEP or diminish the obligations of the Issuer without the written consent of the Authority and the DEP.

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

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

5. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Gross Revenues of the System and secured by a first lien on and pledge of the Gross Revenues of the System, on a parity with the Issuer's: (1) Combined Utility System Revenue Bonds, Series 1992 (West Virginia DWTRF Program), dated September 8, 1992, issued in the original aggregate principal amount of $11,900,000 (the "Series 1992 Bonds"); (2) Combined Utility System Revenue Bonds, Series 1995 (West Virginia DWTRF Program), dated April 27, 1995, issued in the original aggregate principal amount of $1,601,477 (the "Series 1995 Bonds"); (3) Combined Utility System Revenue Bonds, Series 2000 A (West Virginia DWTRF Program), dated February 29, 2000, issued in the original aggregate principal amount of $7,842,000 (the "Series 2000 A Bonds"); (4) Combined Utility System Revenue Bonds, Series 2000 B (West Virginia Infrastructure Fund), dated February 29, 2000, issued in the original aggregate principal amount of $2,488,000 (the "Series 2000 B Bonds"); (5) Combined Utility System Revenue Bonds, Series 2001 A (West Virginia Infrastructure Fund), dated February 8, 2001, issued in the original aggregate principal amount of $3,812,470 (the "Series 2001 A Bonds"); (6) Combined Utility System Revenue Bonds, Series 2006 A (West Virginia DWTRF Program), dated June 30, 2006, issued in the original aggregate principal amount of $6,410,191 (the "Series 2006 A Bonds"); (7) Combined Utility System Revenue Bonds, Series 2007 A (West Virginia DWTRF Program), dated August 14, 2007, issued in the original aggregate principal amount of $8,500,000 (the "Series 2007 A Bonds"); (collectively, the "Prior Bonds") (8) Combined Utility System Revenue Bonds, Series 2010 A Direct Payment Build America Bonds), dated January 28, 2009, issued simultaneously herewith in the

original aggregate principal amount of $37,950,000 (the "Series 2010 A Bonds"); (9) Combined Utility System Revenue Bonds, Series 2010 C (West Virginia SRF Program), dated January 28, 2010, issued simultaneously herewith in the original aggregate principal amount of $15,380,227, (the "Series 2010 C Bonds"); (10) Combined Utility System Revenue Bonds, Series 2010 D (West Virginia DWTRF Program), dated January 28, 2010, issued simultaneously herewith in the original aggregate principal amount of $9,317,286, (the "Series 2010 D Bonds (11) Combined Utility System Revenue Bonds, Series 2010 E (West Virginia DWTRF Program/ARRA), dated January 28, 2010, issued simultaneously herewith in the original aggregate principal amount of $100,000, (the "Series 2010 E Bonds"); and (12) Combined Utility System Revenue Bonds, Series 2010 F (Bank Qualified), dated January 28, 2010, issued simultaneously herewith in the original aggregate principal amount of $7,250,000, (the "Series 2010 F Bonds");

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

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

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

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

Very truly yours,

STEPTOE & JOHNSON PLLC

01.02.10
627490.00039

STEPTOE & JOHNSON PLLC
ATTORNEYS AT LAW

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Writer's Contact Information

January 28, 2010

The City of Morgantown
Combined Utility System Revenue Bonds, Series 2010 C
(West Virginia SRF Program)

The City of Morgantown
Morgantown, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

West Virginia Department of Environmental Protection
Charleston, West Virginia

Ladies and Gentlemen:

We have served as bond counsel to The City of Morgantown (the "Issuer"), a municipal corporation and political subdivision of the State of West Virginia in connection with its $15,380,227 Combined Utility System Revenue Bonds, Series 2010 C (West Virginia SRF Program), dated the date hereof (the "Bonds").

We have examined the law and a certified copy of proceedings and other papers relating to the authorization of (i) a ARRA Assistance Agreement dated January 28, 2010, including all schedules and exhibits attached thereto (the "ARRA Assistance Agreement"), among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), and (ii) the Bonds to be purchased by the Authority in accordance with the provisions of the ARRA Assistance Agreement. The Bonds are issued in the principal amount of $15,380,227, in the form of one bond, bearing interest at the rate of 2% per annum, registered as to principal and interest to the Authority, with principal of and interest on the Bonds payable quarterly on March 1, June 1, September 1, and December 1 of each year, beginning December 1, 2012, to and including September 1, 2032, all as set forth in "Schedule Y" attached to the ARRA Assistance Agreement and incorporated in and made a part of the Bonds. The Series 2010 C Bonds are subject to the SRF Administrative Fee equal to 1% of the principal amount of the Series 2010 C Bonds as set forth in the Schedule Y attached to the ARRA Assistance Agreement.

The Bonds are issued for the purposes of: (i) to pay a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the wastewater portion of the existing public combined waterworks, sewerage, and stormwater system of the Issuer; (ii) to fund the reserve account for the Bonds; and (iii) to pay certain costs of issuance of the Bonds and related costs.

We have also examined the applicable provisions of Chapter 8, Article 20 and Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (collectively, the "Act"), and the Bond Ordinance duly enacted by the Issuer on September 1, 2009, as supplemented by the Supplemental

Resolution and Conformed Ordinance duly adopted by the Issuer on January 5, 2010 (collectively, the "Bond Legislation"), pursuant to and under which Act and Bond Legislation the Bonds are authorized and issued, and the ARRA Assistance Agreement has been undertaken. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Bond Legislation and the ARRA Assistance Agreement. All capitalized terms used herein and not defined herein shall have the same meanings set forth in the Bond Legislation.

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

1. The ARRA Assistance Agreement has been duly authorized by and executed on behalf of the Issuer and is a valid and binding special obligation of the Issuer enforceable in accordance with the terms thereof.

2. The ARRA Assistance Agreement inures to the benefit of the Authority and DEP and cannot be amended so as to affect adversely the rights of the Authority or the DEP or diminish the obligations of the Issuer without the written consent of the Authority and the DEP.

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

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

5. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Gross Revenues of the System and secured by a first lien on and pledge of the Gross Revenues of the System, on a parity with the Issuer's: (1) Combined Utility System Revenue Bonds, Series 1992 (West Virginia DWTRF Program), dated September 8, 1992, issued in the original aggregate principal amount of $11,900,000 (the "Series 1992 Bonds"); (2) Combined Utility System Revenue Bonds, Series 1995 (West Virginia DWTRF Program), dated April 27, 1995, issued in the original aggregate principal amount of $1,601,477 (the "Series 1995 Bonds"); (3) Combined Utility System Revenue Bonds, Series 2000 A (West Virginia DWTRF Program), dated February 29, 2000, issued in the original aggregate principal amount of $7,842,000 (the "Series 2000 A Bonds"); (4) Combined Utility System Revenue Bonds, Series 2000 B (West Virginia Infrastructure Fund), dated February 29, 2000, issued in the original aggregate principal amount of $2,488,000 (the "Series 2000 B Bonds"); (5) Combined Utility System Revenue Bonds, Series 2001 A (West Virginia Infrastructure Fund), dated February 8, 2001, issued in the original aggregate principal amount of $3,812,470 (the "Series 2001 A Bonds"); (6) Combined Utility System Revenue Bonds, Series 2006 A (West Virginia DWTRF Program), dated June 30, 2006, issued in the original aggregate principal amount of $6,410,191 (the "Series 2006 A Bonds"); (7) Combined Utility System Revenue Bonds, Series 2007 A (West Virginia DWTRF Program), dated August 14, 2007, issued in the original aggregate principal amount of $8,500,000 (the "Series 2007 A Bonds"); (collectively, the "Prior Bonds") (8) Combined Utility System Revenue Bonds, Series 2010

A (Direct Payment Build America Bonds), dated January 28, 2009, issued simultaneously herewith in the original aggregate principal amount of $37,950,000 (the "Series 2010 A Bonds"); (9) Combined Utility System Revenue Bonds, Series 2010 B (West Virginia SRF Program/ARRA), dated January 28, 2010, issued simultaneously herewith in the original aggregate principal amount of $81,600, (the "Series 2010 C Bonds"); (10) Combined Utility System Revenue Bonds, Series 2010 D (West Virginia DWTRF Program), dated January 28, 2010, issued simultaneously herewith in the original aggregate principal amount of $9,317,286, (the "Series 2010 D Bonds (11) Combined Utility System Revenue Bonds, Series 2010 E (West Virginia DWTRF Program/ARRA), dated January 28, 2010, issued simultaneously herewith in the original aggregate principal amount of $100,000, (the "Series 2010 E Bonds"); and (12) Combined Utility System Revenue Bonds, Series 2010 F (Bank Qualified), dated January 28, 2010, issued simultaneously herewith in the original aggregate principal amount of $7,250,000, (the "Series 2010 F Bonds");

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

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

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

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

Very truly yours,

STEPTOE & JOHNSON PLLC

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STEPTOE & JOHNSON PLLC
ATTORNEYS AT LAW

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Writer's Contact Information

January 28, 2010

The City of Morgantown
Combined Utility System Revenue Bonds, Series 2010 D
(West Virginia DWTRF Program); and
Combined Utility System Revenue Bonds, Series 2010 E
(West Virginia DWTRF Program/ARRA)

The City of Morgantown
Morgantown, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

West Virginia Bureau for Public Health
Charleston, West Virginia

Ladies and Gentlemen:

We are counsel to The City of Morgantown in Monongalia County, West Virginia (the "Issuer"). As such counsel, we have examined copies of the approving opinion of Steptoe & Johnson PLLC, as bond counsel, a ARRA Assistance Agreement for the Series 2010 D Bonds and Series 2010 E Bonds, dated January 28, 2010, including all schedules and exhibits attached thereto, by and among the Issuer and the West Virginia Water Development Authority (the "Authority") and the West Virginia Bureau for Public Health (the "BPH"), (the "ARRA Assistance Agreement"), a Bond Ordinance duly enacted by the Issuer on September 1, as supplemented by a Supplemental Resolution and Conformed ordinance duly adopted by the Issuer on January 5, 2010 (collectively, the "Bond Legislation"), and other documents relating to the above-captioned Bonds of the Issuer (the "Bonds"). All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Legislation and the ARRA Assistance Agreement when used herein.

We are of the opinion that:

1. The Issuer has been duly created and is validly existing as a municipal corporation and political subdivision of the State of West Virginia, and the Mayor, Clerk and members of the council of the Issuer have been duly and properly elected or appointed, as applicable, have taken the requisite oaths, and are authorized to act on behalf of the Issuer in their respective capacities.



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Huntington, WV • Columbus, OH

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2. The ARRA Assistance Agreement has been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the other parties thereto, constitute valid and binding agreements of the Issuer enforceable in accordance with its terms.

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

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

5. The Issuer has received all permits, licenses, approvals, consents, exemptions, orders, certificates and authorizations necessary for the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges for use of the System, including, without limitation, the receipt of all requisite orders and approvals from the DEP and the Public Service Commission of West Virginia, and has taken any other action required for the imposition of such rates and charges, including, without limitation, the enactment of a water ordinance adopted July 21, 2009, sewer rate ordinance adopted July 21, 2009 and a stormwater rate ordinance dated April 17, 2008. Such ordinances remain in full force and effect.

6. The Issuer has received the Recommended Decision entered on December 7, 2009, which became Final Order on December 27, 2009, in Case No. 09-1220-WS-CN of the Public Service Commission of West Virginia, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the financing for the Project. The time for appeal of such Final Order has expired prior to the date hereof without any appeal. Such Order is not subject to any appeal, further hearing, reopening or rehearing by any customer, protestant, intervener or other person not a party to such Order. Such order remains in full force and effect.

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

8. We have ascertained that all successful bidders have provided the drug-free workplace affidavit, submitted their drug free workplace plan, and the contracts contain language that complies with the Drug Free Workplace Act, Article 1D, Chapter 21 of the West Virginia Code. Prior to the execution of construction contracts by the Issuer, we will verify that all successful bidders have made the required provisions for all insurance and payment and performance bonds and we will verify such insurance policies and bonds for accuracy. Prior to the execution of construction contracts by the Issuer, we will review the contracts, the surety bonds and the policies or other evidence of insurance coverage in connection with the Project, and verify that such surety bonds and policies: (1) are in compliance with the contracts; (2) are adequate in form, substance and amount to protect the various interests of the Issuer; (3)

have been executed by duly authorized representatives of the proper parties; (4) meet the requirements of the Act, the Bond Legislation and the ARRA Assistance Agreement; and (5) all such documents constitute valid and legally binding obligations of the parties thereto in accordance with the terms, conditions and provisions thereof.

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

Very truly yours,

STEPTOE & JOHNSON PLLC

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627490.00040

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Writer's Contact Information

# TITLE OPINION

January 28, 2010

West Virginia Infrastructure and Jobs Development Council
Charleston, West Virginia

West Virginia Department of Environmental Protection
Charleston, West Virginia

West Virginia Department of Health and Human Resources
Office of Environmental Health Services
Charleston, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

**Re: Morgantown Utility Board**
**IJDC Project Nos. 2009S-1077; 2009W-1076**

Dear Ladies and Gentlemen:

This firm represents the Morgantown Utility Board ("MUB" or "the Board") with regard to a proposed project noted above, together with all appurtenant facilities (the "Project"), and provides this title opinion on behalf of the Board to satisfy the requirements of the West Virginia Infrastructure and Jobs Development Council (the "Council") and the West Virginia Department of Environmental Protection (the "DEP") with regard to the financing proposed for the Project. Please be advised of the following:

1. That I am of the opinion that the Board is a duly created and existing municipal corporation of the City of Morgantown, possessed with all the powers and authority granted to combined municipal water and sewer utilities under the laws of the State of West Virginia and has the full power and authority to construct, operate and maintain the Project as approved by the DEP.

2. That MUB has received all necessary permits and approvals for the construction of the Project.



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3. That I have investigated and ascertained the location of and am familiar with the legal description of the necessary sites, including easements and/or rights of way, required for the Project as set forth in the plans for the Project prepared by Strand Associates, the consulting engineers for the Project.

4. That this firm has examined the records on file in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, the county in which the Project is to be located, and, in my opinion, MUB has acquired legal title or such other estate or interest in the necessary site components for the Project as described below:

Rights of ways required: 34 Rights of way received: 34

Fee simple conveyances needed: 2 Conveyances received: 2

5. That all deeds or other documents which have been acquired to date by the Board have been duly recorded in the aforesaid Clerk's Office in order to protect the legal title to and interest of the Board.

Sincerely,

STEPTOE & JOHNSON, PLLC

THE CITY OF MORGANTOWN

Combined Utility System Revenue Bonds, Series 2010 B
(West Virginia SRF Program/ARRA); and
Combined Utility System Revenue Bonds, Series 2010 C
(West Virginia SRF Program)

GENERAL CERTIFICATE OF ISSUER AND ATTORNEY ON:

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

We, the undersigned MAYOR and CLERK of The City of Morgantown in Monongalia County, West Virginia (the "Issuer"), and the undersigned COUNSEL TO THE ISSUER hereby certifies on this 28th day of January, 2010 in connection with the Issuer's Combined Utility System Revenue Bonds, Series 2010 B (West Virginia SRF Program/ARRA), and Combined Utility System Revenue Bonds, Series 2010 C (West Virginia SRF Program) both dated the date hereof (collectively, the "Bonds"), as follows:

1. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined herein shall have the same meaning as set forth in the Bond Ordinance of the Issuer

duly enacted September 1, 2009, and the Supplemental Resolution and Conformed Ordinance duly adopted January 5, 2010 (collectively, the "Bond Legislation").

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

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

4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS: There has been no adverse change in the financial condition of the Issuer since the approval, execution and delivery by the Issuer of the ARRA Assistance Agreement and the Issuer has met all conditions prescribed in the ARRA Assistance Agreement. The Issuer has or can provide the financial, institutional, legal and managerial capabilities necessary to complete the Project.

There are outstanding obligations of the Issuer which will rank on a parity with the Bonds as to liens, pledge, source of and security for payment, being the Issuer's (1) Combined Utility System Revenue Bonds, Series 1992 (West Virginia SRF Program), dated September 8, 1992, issued in the original aggregate principal amount of $11,900,000 (the "Series 1992 Bonds"); (2) Combined Utility System Revenue Bonds, Series 1995 (West Virginia SRF Program), dated April 27, 1995, issued in the original aggregate principal amount of $1,601,477 (the "Series 1995 Bonds"); (3) Combined Utility System Revenue Bonds, Series 2000 A (West Virginia SRF Program), dated February 29, 2000, issued in the original aggregate principal amount of $7,842,000 (the "Series 2000 A Bonds"); (4) Combined Utility System Revenue Bonds, Series 2000 B (West Virginia Infrastructure Fund), dated February 29, 2000, issued in the original aggregate principal amount of $2,488,000 (the "Series 2000 B Bonds"); (5) Combined Utility System Revenue Bonds, Series 2001 A (West Virginia Infrastructure Fund), dated February 8, 2001, issued in the original aggregate principal amount of $3,812,470 (the "Series 2001 A Bonds"); (6) Combined Utility System Revenue Bonds, Series 2006 A (West Virginia SRF Program), dated June 30, 2006, issued in the original aggregate principal amount of $6,410,191 (the "Series 2006 A Bonds"); (7) Combined Utility System Revenue Bonds, Series 2007 A (West Virginia SRF Program), dated August 14, 2007, issued in the original aggregate principal amount of $8,500,000 (the "Series 2007 A Bonds") (collectively the "Prior Bonds"); (8) Combined Utility System Revenue Bonds, Series 2010 A (Direct Payment Buy America Bonds), dated January 28, 2010, issued in the original aggregate principal

amount of $37,950,000 issued simultaneously herewith (the "Series 2010 A Bonds"); (9) Combined Utility System Revenue Bonds, Series 2010 D (West Virginia DWTRF Program), dated January 28, 2010, issued in the original aggregate principal amount of $9,317,286, issued simultaneously herewith (the "Series 2010 D Bonds"); (10) Combined Utility System Revenue Bonds, Series 2010 E (West Virginia DWTRF Program/ARRA), dated January 28, 2010, issued in the original aggregate principal amount of $100,000, issued simultaneously herewith (the "Series 2010 E Bonds"); and (11) Combined Utility System Revenue Bonds, Series 2010 F (Bank Qualified), dated January 28, 2010, issued in the original aggregate principal amount of $7,250,000 issued simultaneously herewith (the "Series 2010 F Bonds") The Issuer is current on all Prior Bonds' payments and is in compliance with all covenants and requirements of the Prior Ordinance. The Series 2010 A Bonds, Series 2010 B Bonds, Series 2010 C Bonds, Series 2010 D Bonds, and Series 2010 F Bonds are collectively known as the "Series 2010 Bonds".

The Series 2010 Bonds shall be issued on a parity with the Prior Bonds, with respect to liens, pledge, source of and security for payment and in all other respects. The Issuer has obtained (i) a certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met, (ii) the written consent of the registered owners of the Series 1992 Bonds, Series 1995 Bonds, Series 2000 A Bonds, Series 2000 B Bonds, Series 2001 A Bonds, Series 2006 A Bonds and Series 2007 A Bonds to the issuance of the Series 2010 Bonds on a parity with the Prior Bonds. Other than the Prior Bonds, there are no other bonds, notes or other obligations of the Issuer which are secured by revenues or assets of the System.

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

Bond Ordinance

Supplemental Resolution

ARRA Assistance Agreement

Public Service Commission Orders

Infrastructure Council Approval

City Charter

Oaths of Office of Officers and Councilmembers

Resolution on Open Governmental Proceedings Rules

Water Rate Ordinance

Sewer Rate Ordinance

Stormwater Rate Ordinance

Minutes on Enactment of Rate Ordinances and Notice of Public Hearing

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

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

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

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

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

Prior Bond Ordinance and Supplemental Resolution

Consent of WDA to Issuance of Parity Bonds

Evidence of Insurance

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

| Name | Date of Commencement of Office | Date of Termination of Office |
|---|---|---|
| William Byrne, Mayor | 07/01/2009 | 06/30/2011 |
| Charlie Byrer | 07/01/2009 | 06/30/2011 |
| Marti Shamberger | 07/01/2009 | 06/30/2011 |
| Don Spencer | 07/01/2009 | 06/30/2011 |
| Jennifer Selin | 07/01/2009 | 06/30/2011 |
| John Gaddis | 07/01/2009 | 06/30/2011 |

Ron Bane 07/01/2009 06/30/2011

The duly appointed City Clerk is Linda Little and the duly appointed Counsel to the Issuer is Steptoe & Johnson PLLC, in Charleston, West Virginia.

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

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

9. CONTRACTORS' INSURANCE, ETC.: All contractors have been required to maintain Worker's Compensation, public liability and property damage insurance, and builder's risk insurance where applicable, in accordance with the Bond Legislation. The successful bidders have provided the Drug-Free Workplace Affidavit as evidence of compliance with the provisions of Article 1D, Chapter 21 of the West Virginia Code. Prior to the execution of construction contracts by the Issuer, all insurance for the System required by the Bond Legislation will be in full force and effect.

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

The Special Conditions of the ARRA Assistance Agreement are attached as Exhibit A and hereby incorporated herein.

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

11. INSURANCE. The Issuer will maintain or, as appropriate, will require all contractors to maintain worker's compensation, public liability, property damage insurance, standard hazard insurance, builder's risk insurance, flood insurance and business interruption insurance, where applicable, in accordance with the Bond Legislation and the ARRA Assistance Agreement. All insurance for the System required by the Bond Legislation and the ARRA Assistance Agreement are in full force and effect.

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

13. RATES: The Issuer has duly enacted a sewer rate ordinance on July 21, 2009, a water rate ordinance enacted July 21, 2009 and a stormwater rate ordinance enacted on April 17, 2008, setting rates and charges of the System. The time for appeal of such Orders has expired prior to the date hereof without any appeal and such rates are currently in full force and effect.

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

15. BOND PROCEEDS: A. On the date hereof, the Issuer received $_-0- from the Authority and the DEP, being a portion of the principal amount of the Series 2010 B Bonds. The balance of the principal amount of the Series 2010 B Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

B. On the date hereof, the Issuer received $975,937 from the Authority and the DEP, being a portion of the principal amount of the Series 2010 C Bonds. The balance of the principal amount of the Series 2010 C Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

16. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE: Upon adoption of the Bond Ordinance, an abstract thereof, determined by the Governing Body to contain sufficient information as to give notice of the contents thereof, was published once each week for 2 successive weeks, with not less than 6 full days between each publication, the first such publication

occurring not less than 10 days before the date stated below for the public hearing, in *The Dominion Post,* a qualified newspaper of general circulation in The City of Morgantown, no newspaper being published therein, together with a notice to all persons concerned, stating that the Bond Ordinance had been adopted and that the Issuer contemplated the issuance of the Bonds described in such Bond Ordinance, stating that any person interested may appear before the Council at the public hearing held at a public meeting of Council on the 1st day of September, 2009, at 7:00 p.m., at the Morgantown City Hall and present protests, and stating that a certified copy of the Bond Ordinance was on file at the office of the Clerk of the Issuer for review by interested parties during the office hours of the Issuer. At such hearing all objections and suggestions were heard by the Governing Body and the Bond Ordinance became finally adopted, enacted and effective as of the date of such public hearing, and remains in full force and effect.

17. PUBLIC SERVICE COMMISSION ORDER: The Issuer has received the Recommended Decision entered on December 7, 2009, which became Final Order on December 27, 2009 of the Public Service Commission of West Virginia, in Case No. 09-1220-WS-CN, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the financing for the Project. The time for appeal of such Final Order has expired prior to the date hereof without any appeal. Such Order is not subject to any appeal, further hearing, reopening or rehearing by any customer, protestant, intervener or other person not a party to such Order. Such order remains in full force and effect.

18. SPECIMEN BONDS: Delivered concurrently herewith are true and accurate specimens of the Bonds.

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

20. CLEAN WATER ACT: The Project described in the Bond Ordinance complies with the Clean Water Act.

21. PROCUREMENT OF ENGINEERING SERVICES: The Issuer has complied in all respects with the requirements of Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended, in the procurement of engineering services to be paid from proceeds of the Bonds.

22. EXECUTION OF COUNTERPARTS: This document may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same document.

[Remainder of Page Intentionally Blank]

WITNESS our signatures and the official seal of The City of Morgantown on this the day and year first above written.

[CORPORATE SEAL]

| SIGNATURE | OFFICIAL TITLE |
| --- | --- |
| _____ | Mayor |
| _____ | Clerk |
| _____ | Counsel to Issuer |

01.02.10
627490.00039

## EXHIBIT A

## SPECIAL CONDITIONS – ARRA FUNDED PROJECTS

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

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

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

D. ASSET MANAGEMENT – The Local Government shall develop and implement an asset management plan in accordance with guidelines issued by DEP and is approved by DEP. New systems shall submit the asset management plan to DEP when the Project is complete. Existing systems shall submit the asset management plan to DEP within six months following completion of the Project.

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

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

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

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

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

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

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

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

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

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

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

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

Q. CIVIL RIGHTS – The Local Government shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments

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

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

S. USER RATES – The Local Government shall covenant that it will not reduce its approved or enacted customer rates for at least eighteen months after completion of the Project or until such time as a cost of service study has been completed establishing the actual operation and maintenance expenses.

T. CLOSING CONDITIONS – The closing is contingent upon receipt by the DEP and the Authority of a satisfactory final title opinion and the completion of administrative review by the DEP.

THE CITY OF MORGANTOWN (WEST VIRGINIA)

$15,380,227 Combined Utility System Revenue Bonds, Series 2010 C
(West Virginia SRF Program)
and
$7,250,000 Combined Utility System Revenue Bonds, Series 2010 F
(Bank Qualified)

# TAX AND NON-ARBITRAGE CERTIFICATE

The undersigned, Mayor of The City of Morgantown (the "Issuer"), on this 28th day of January, 2010, being the official of the Issuer duly charged with the responsibility for the issuance of the $15,380,227 Combined Utility System Revenue Bonds, Series 2010 C (West Virginia SRF Program) (the "Series 2010 C Bonds") and the $7,250,000 Combined Utility System Revenue Bonds, Series 2010 F (Bank Qualified) (the "Series 2010 F Bonds" and together with the Series 2010 C Bonds, the "Series 2010 Bonds"), all dated January 28, 2010, hereby certifies as follows, (all capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Ordinance enacted by the Issuer on September 1, 2009, as supplemented by Supplemental Resolution and Conformed ordinance adopted by the Issuer on January 5, 2010 (collectively, the "Bond Legislation"), pursuant to which the Series 2010 Bonds are issued):

## A. DEFINITIONS

The following words and phrases shall have the following meanings or such other meanings as may be required under the Code or the Regulations. Any capitalized word or term used herein but not defined herein shall have the meaning set forth in the Bond Legislation.

"**Bona Fide Debt Service Fund**" shall mean a fund which may include proceeds of an issue, that:

(a) Is used primarily to achieve a proper matching of revenues with principal and interest payments within each Bond Year; and

(b) Is depleted at least once each Bond Year, except for a reasonable carryover amount not to exceed the greater of:

(i) the earnings on the fund for the immediately preceding Bond Year; or

(ii) one-twelfth (1/12th) of the principal and interest payments on the Bonds for the immediately preceding Bond Year.

"**Bond Act**" means Article 20 of Chapter 8 of the Code of West Virginia of 1931, as amended.

"**Bond Counsel**" means the law firm or firms delivering its or their approving opinion or opinions with the respect to the issuance of the Bonds and the exclusion of interest on the Bonds from gross income for the purposes of federal income taxation.

"**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, or

such other period as shall be determined by the Issuer, except that the first Bond Year shall begin on the Closing Date.

"**Bond Yield**" means the yield of the Bonds, calculated in accordance with the provisions of Section 1.148-4 of the Regulations.

"**Code**" means the Internal Revenue Code of 1986, as amended, and all rulings and regulations promulgated thereunder.

"**Computation Date**" means each Installment Computation Date and the Final Computation Date.

"**Computation Date Credit**" means $1,000.00. Only one Computation Date Credit for each Computation Date is permitted for the Bonds.

"**Costs of Issuance**" means all costs incurred in connection with the issuance of the Bonds within the meaning of Section 147(g) of the Code. Examples of costs of issuance include (but are not limited to):

(a) underwriters' spread (whether realized directly or derived through purchase of the Bonds at a discount below the price at which a substantial number of Bonds are sold to the public);

(b) counsel fees (including Bond Counsel, Underwriters' Counsel, Issuer's Counsel, and any other specialized counsel fees incurred in connection with the issuance of the Bonds);

(c) financial advisor fees incurred in connection with the issuance of the Bonds;

(d) trustee fees and registrar fees;

(e) paying agent, disbursement agent, and certifying and authenticating agent fees related to issuance of the Bonds;

(f) accountant fees related to issuance of the Bonds;

(g) printing costs (for the Bonds and of preliminary and final offering materials); and

(h) costs incurred in connection with any required public approval process (e.g., publication costs for public notices generally and costs of the public hearing or voter referendum).

"**Date of Issue**" means January 28, 2010.

"**Discharged**" means, with respect to any Bond, the date on which all amounts due with respect to such Bond are actually and unconditionally due if cash is available at the place of payment and no interest accrues with respect to the Bond after such date.

"**Fair Market Value**" of an Investment means as follows:

(a) In General. Except as specifically otherwise provided below, 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. The Fair Market Value of an Investment that is purchased directly from the United States Treasury is its purchase price.

(b) Safe Harbor for Establishing Fair Market Value for Guaranteed Investment Contracts and Investments Purchased for a Yield Restricted Defeasance Escrow. The purchase price of a guaranteed investment contract is treated as its Fair Market Value on the purchase date if -

(i) The institution makes a bona fide solicitation for a specified guaranteed investment contract and reserves at least three (3) bona fide bids from providers that have no material financial interest in the issue (e.g. as underwriters or brokers);

(ii) The institution purchases 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 contracts, if any, offered to 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 takes into account as a significant factor the Issuer's reasonably expected draw down 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 obligor on the governmental investment contract certifies the administrative costs that it is paying (or expects to pay) to third parties in connection with the guaranteed investment contract.

(c) Safe Harbor for Establishing Fair Market Value for Certificates of Deposit. The Fair Market Value of a certificate of deposit is its purchase price if it has a fixed rate of interest, a fixed payment schedule, and a substantial penalty for early withdrawal and the yield on the certificate of deposit is not less than (i) the yield on reasonably comparable direct obligations of the United States; and (ii) the highest

yield that is published or posted by the provider to be currently available on reasonably comparable certificates of deposit offered to the public.

"**Final Computation Date**" means the date on which the last Bond is Discharged.

"**Future Value**" means the amount determined by using the following formula:

$$FV = PV(1+i)^n$$

where:

FV = The future value of the nonpurpose receipt or payment at the end of the interval. Each interval ends on the last day of a compounding interval. The compounding interval is the same compounding interval used in computing the Bond Yield.

PV = The future value of the nonpurpose receipt or payment at the beginning of the interval, or the amount thereof if the computation is for the first interval. The first interval begins on the date the nonpurpose receipt or payment is actually or constructively received or paid (or otherwise is taken into account). The amount of every nonpurpose receipt and payment with respect to an issue that is taken into account at the beginning of the first interval may be rounded to the nearest whole dollar. The preceding sentence shall not apply to receipts and payments with respect to investments in a restricted escrow within the meaning of Section 1.148-8(g) of the Regulations.

i = The Bond Yield during the interval (expressed as a decimal) divided by the number of compounding intervals in a year.

$^n$ = A fraction, the numerator of which is the length of the interval and the denominator of which is the length of a whole compounding interval.

"**Gross Proceeds**" means Proceeds and Replacement Proceeds of the Bonds within the meaning of the Regulations.

"**Installment Computation Date**" means the last day of the fifth Bond Year and each succeeding fifth Bond Year.

"**Investment**" means any security, obligation, annuity contract, or investment type property as defined in section 148(b) of the Code.

"**Investment Proceeds**" means any amounts actually or constructively received from investing Proceeds of an issue of bonds.

"**IRS**" means the Internal Revenue Service.

"**Issue Price**" means $22,652,332.20 being the combined Issue Price of the Series 2010 C Bonds and the Series 2010 F Bonds.

For the Series 2010 C Bonds, the Issue Price is the price paid by the first buyer of the Series 2010 C Bonds.

For the Series 2010 F Bonds, the Issue Price is the initial offering price to the public at which price a substantial amount of the Bonds is sold. For this purpose, ten percent (10%) is a substantial amount, and the term "the public" does not include bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers. The Issue Price generally is the first price at which the Bonds are sold to the public, and the issue price will not change if part of the issue is subsequently sold at a different price. The Issue Price of bonds that are not substantially identical is determined separately. The Issue Price of a bond issue for which a bona fide public offering is made is determined as of the sale date based on reasonable expectations regarding the initial public offering price. The Issue Price of the Bonds may not exceed their fair market value as of the sale date.

"**Net Sale Proceeds**" means Sale Proceeds less the amount of those Sale Proceeds invested in a reasonably required reserve or replacement fund under Section 148(d) of the Code and as part of a minor portion under Section 148(e) of the Code.

"**Nonpurpose Investment**" means any Investment that is not acquired to carry out the governmental purpose of an issue.

"**Payment**" means a payment as defined in Section 1.148-3(d) of the Regulations for purposes of computing the Rebate Amount, and a payment as defined in Section 1.148-5(b) of the Regulations for purposes of computing the Yield on an Investment.

"**Present Value**" means the amount determined by using the following formula:

$$PV = \frac{FV(1+i)^n}{(1+i)^n}$$

where i equals the discount rate divided by the number of compounding intervals in a year and n equals the sum of (i) the number of whole compounding intervals for the period ending on the date as of which the Future Value is determined and (ii) a fraction the numerator of which is the length of any short compounding interval during such period and the denominator of which is the length of a whole compounding interval.

"**Present Value of an Investment**" shall mean the value of an investment computed under the economic accrual method; using the same compounding interval and financial conventions used to compute the yield on the Bonds. On any valuation date, the Present Value of an Investment is equal to the Present Value of all unconditionally payable receipts to be received from the payments to be paid for the investment after that date, using the Yield on the Investment as the discount rate.

"**Proceeds**" means any Sale Proceeds and Investment Proceeds of an issue of bonds. Proceeds do not include amounts that are actually or constructively received that with respect to an Investment that is acquired for the governmental purpose of an issue that are properly allocable to the immaterially higher yield under Section 1.148-2(d) of the Regulations or Section 143(g) of the Code or to qualified administrative cost recoverable under Section 1.148-5(e).

"**Rebate Amount**" means, in respect of the Series 2010 Bonds, the amount determined pursuant to the Code and Regulations in accordance with section E(1) hereof. Generally, under the Regulations, the rebate amount, as of any date, equals the excess of the Future Value of all Receipts with respect to Nonpurpose Investments allocated to the Gross Proceeds of the Series 2010 Bonds over the Future Value of all the Payments with respect to such Nonpurpose Investments computed in accordance with the Regulations.

"**Rebate Analyst**" means the entity or person chosen by the Issuer in accordance with section E(3) hereof to determine the Rebate Amounts.

"**Rebate Payment Date**" means the date following a Computation Date on which the Rebate Amount is mailed or otherwise filed with the IRS. The Rebate Payment Date cannot be a date which is more than 60 days after a Computation Date.

"**Receipt**" means a receipt as defined in Section 1.148-3(d) of the Regulations for purposes of computing the Rebate Amount, and a receipt as defined in Section 1.148-5(b) of the Regulations for purposes of computing Yield on an Investment.

"**Regulation**" or "**Regulations**" means the temporary, proposed or final Income Tax Regulations promulgated by the Department of the Treasury that are applicable to the Series 2010 Bonds.

"**Replacement Proceeds**" means amounts that are treated as replacement proceeds of an issue of bonds under Section 1.148-1(c) of the Regulations. Generally, amounts are Replacement Proceeds of an issue if the amounts have a sufficiently direct nexus to the governmental purpose of the issue to conclude that the amounts would have been used for that governmental purpose if the proceeds of the issue were not used or to be used for that governmental purpose. Replacement Proceeds include, but are not limited to, sinking funds or pledged funds to the extent that those funds are held by or derived from a substantial beneficiary of the issue (which, for this purpose includes the issuer and any related party to the issuer).

"**Sale Proceeds**" means amounts actually or constructively received from the sale of an issue of bonds (including amounts used to pay underwriter's discount and compensation and accrued interest other than pre-issuance accrued interest). Sale Proceeds also include, but are not limited to, amounts derived from the sale of a right that is associated with a Series 2010 Bond and that is described in Section 1.148-4(b)(4) of the Regulations.

"**Tax-Exempt Bond**" means any tax-exempt bond within the meaning of Section 103 of the Code and Section 1.150-1 of the Regulations that is not investment property within the meaning of Section 148(b)(3) of the Code.

"**Underwriter**" means Crews & Associates, Inc., Little Rock, Arkansas.

"**Universal Cap**" means the maximum value of Nonpurpose Investments which may be allocated to the Series 2010 Bonds under Section 1.148-6 of the Regulations and is determined by reference to the Value of all outstanding Series 2010 Bonds of the issue. For purposes of this determination Nonpurpose Investments include cash, Tax-Exempt Bonds (i.e., any tax-exempt bond that is not investment property under Section 148(b)(3) of the Code), qualified mortgage loans, and qualified student loans.

"**Valuation Date**" means the date on which the value of the Universal Cap and the Nonpurpose Investments allocable to the Series 2010 Bonds thereunder must be determined under Section 1.148-6 of

the Regulations. In general, beginning with the first Bond Year beginning after second year anniversary of the Issue Date, the first day of each Bond Year constitutes a Valuation Date.

"**Value of a Bond**" means the value of a bond determined under Section 1.148-4(e) of the Regulations. Under those Regulations, value generally means:

> (a) In the case of a plain par bond (within the meaning of Section 1.148-1(b) of the Regulations), its outstanding stated principal amount, plus accrued unpaid interest or in the case of a plain par bond actually redeemed, or that is treated as redeemed, its stated redemption price on the redemption date plus accrued unpaid interest; and
>
> (b) In the case of a bond other than a plain par bond, the value on a date of such a bond is generally its Present Value on that date, using the yield on the issue of which the bonds are a part as the discount factor. In determining the Present Value of a variable rate bond, the initial interest rate on the bond established by the index or other rate setting mechanism is used to determine the interest payments on that bond.

"**Value of an Investment**" means the value of an investment determined under Section 1.148-5(d) of the Regulations. Under those Regulations, value as of any date generally means, for any fixed rate investment (within the meaning of Section 1.148-1(b) of the Regulations) or Yield Restricted Investment, Present Value on that date, and for any plain par investment (within the meaning of Section 1.148-1(b) of the Regulations), the outstanding stated principal amount, plus accrued unpaid interest, as of that date.

"**Yield**" or "**yield**" means the yield computed under Section 1.148-4 of the Regulations for the Bonds, and the yield computed under Section 1.148-5 of the Regulations for an Investment.

"**Yield Restricted Investments**" means any Investments which either (1) bear a yield that is no greater than the Bond Yield, or (2) are investments in one or more Tax-Exempt Bonds.

B. GENERAL

1. This certificate is being executed and delivered pursuant to Section 148 of the Code. I am an officer of the Issuer charged with the responsibility of issuing the Series 2010 Bonds. I am familiar with the facts, circumstances, and estimates herein certified and am duly authorized to execute and deliver this certificate on behalf of the Issuer.

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

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

4. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on January 28, 2010, the date on which the Series 2010 Bonds are to be physically

delivered in exchange for the issue price thereof, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

5. The Issuer has covenanted in the Bond Legislation 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 Bonds which would cause the Series 2010 Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Series 2010 Bonds) so that the interest on the Series 2010 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.

6. A. The Series 2010 C Bonds were sold on January 28, 2010, to the West Virginia Water Development Authority (the "Authority") pursuant to a ARRA Assistance Agreement dated January 28, 2010, by and among the Issuer, the Authority and the West Virginia Department of Environmental Protection (the "DEP"), for an aggregate purchase price of $15,380,227 (100% of par value), at which time, the Issuer received $975,937 from the Authority and the DEP. The balance of the principal amount of the Series 2010 C Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

B. The Series 2010 F Bonds were sold on January 21, 2010, to the Underwriter for a purchase price of $7,228,605.20 (par amount of $7,250,000.00, plus original issue premium of $22,105.20 and less underwriter's discount of $43,500.00).

7. A. The Series 2010 C Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the purposes of (i) paying a portion of the costs of acquisition and construction of certain improvements and extensions to the wastewater portion of the existing public combined waterworks, sewerage and stormwater system of the Issuer; (ii) fully funding the Series 2010 C Bonds Reserve Account; and (iii) paying costs of issuance and related costs.

B. The Series 2010 F Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the following purpose: (i) to finance the costs of acquisition and construction of certain additions, betterments and improvements to the existing waterworks portion of the combined waterworks, sewerage and stormwater system of the Issuer; (ii) to pay the premium for the surety bond to fund reserve accounts for the Series 2010 F Bonds; (iii) to capitalize a portion of the interest on the Series 2010 F Bonds to December 1, 2011; and (iv) to pay certain costs of issuance and related costs.

8. The sources of proceeds of the Bonds is as follows:

| SOURCES | |
|---|---|
| Series 2010 A Bonds * | $33,319,200 |
| Series 2010 B Bonds | $ 81,600 |
| Series 2010 C Bonds | $15,380,227 |
| Series 2010 D Bonds | $ 9,317,286 |
| Series 2010 E Bonds | $ 100,000 |
| Series 2010 F Bonds | $ 7,250,000 |
| Original Issue Premium | $ 22,105 |
| Canyon PSD Contribution | $ 1,065,000 |
| WVU Contribution | $ 313,000 |

| | |
|---|---|
| Total | $66,848,418 |

**Amount deposited into Project account (does not include costs of issuance)*

9. The proceeds of sale of the Bonds will be applied as follows:

| USES | |
|---|---|
| Acquisition and Construction of Project | $64,767,912 |
| Funding the Series 2010 D Bonds Reserve Account | $ 566,383 |
| Funding the Series 2010 E Bonds Reserve Account | $ 6,081 |
| Costs of Issuance for 2010 D Bonds & Series 2010 E Bonds | $ 41,000 |
| Funding the Series 2010 C Bonds Reserve Account | $ 934,937 |
| Costs of Issuance for 2010 B Bonds & Series 2010 C Bonds | $ 41,000 |
| Deposit to Series 2010 F Cost of Issuance for Fund(1) | $ 159,495 |
| Capitalized Interest | $ 331,610 |
| Total | $66,848,418 |

(1) Includes bond counsel fee, underwriters counsel fees, printing fees, registrar fee, premium of Bond Insurer and premium for surety bond to fully fund the Series 2010 F Bonds Reserve Account at the Reserve Requirement.

10. The Underwriter has stated, in its certificate, a copy of which is attached as EXHIBIT A - UNDERWRITER'S CERTIFICATE hereto (the "Underwriter's Certificate") that the Series 2010 F Bonds have been reoffered, and a substantial amount thereof sold, to purchasers other than bond houses, brokers or other intermediaries, at the initial offering prices not greater than the respective prices shown on the cover page of the Official Statement for the Series 2010 F Bonds.

11. The yield on the Series 2010 Bonds, as so computed, has been determined to be 1.8686% (the "Bond Yield"), based on a "purchase price" equal to the Issue Price for the Series 2010 Bonds.

C. THE SERIES 2010 C BONDS

1. Pursuant to Article V of the Bond Legislation, the following special funds or accounts have been created or continued:

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

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

(3) Rebate Fund (established by the Prior Resolutions);

(4) Series 2010 Bonds Construction Trust Fund;

(5) Series 2010 C Bonds Sinking Fund; and

(6) Series 2010 C Bonds Reserve Account.

2. Pursuant to Article VI of the Bond Legislation, the proceeds of the Series 2010 C Bonds will be deposited as follows:

(1) Proceeds of the Series 2010 C Bonds in the amount of $0 will be deposited with the Commission in the Series 2010 C Bonds Sinking Fund as capitalized interest.

(2) Proceeds of the Series 2010 C Bonds in the amount of $934,937 will be deposited with the Commission in the Series 2010 C Bonds Reserve Account.

(3) As the Issuer receives advances of the remaining monies derived from the sale of the Series 2010 C 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 and, until so expended, are hereby pledged as additional security for the Series 2010 C Bonds.

3. Monies held in the Series 2010 C Bonds Sinking Fund will be used solely to pay principal of and interest on the Series 2010 C Bonds, and will not be available to meet costs of acquisition and construction of the Project. Except to the extent transferred to the Rebate Fund at the request of the Issuer, all investment earnings on monies in the Series 2010 C Bonds Sinking Fund and the Series 2010 C Bonds Reserve Account will be withdrawn therefrom, not less than once each year, and, during construction of the Project, deposited into the Series 2010 Bonds Construction Trust Fund, and following completion of construction of the Project, will be deposited in the Revenue Fund, and such amounts will be applied as set forth in the Bond Legislation.

4. Except for the Series 2010 C Bonds Sinking Fund, and the Series 2010 C Bonds Reserve Account there are no other funds or accounts established or held by the Issuer which are reasonably expected to be used to pay debt service on the Series 2010 C Bonds, or which are pledged as collateral for the Series 2010 C Bonds and for which there is a reasonable assurance that amounts therein will be available to pay debt service on the Series 2010 C Bonds, if the Issuer encounters financial difficulties. The Issuer does not expect that monies in the Renewal and Replacement Fund will be used or needed for payments upon the Series 2010 C Bonds, and because such amounts may be expended for other purposes, there is no reasonable assurance that such amounts would be available to meet debt service if the Issuer encounters financial difficulties; thus, such amounts may be invested without yield limitation. Except as provided herein, no funds which have been or will be used to acquire directly or indirectly securities, obligations, annuity contracts, investment-type property or 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 desegregation plan or other investment property producing a yield in excess of the yield on the Series 2010 C Bonds, have been or will be pledged to payment of the Series 2010 C Bonds. Less than 10% of the proceeds of the Series 2010 C Bonds, if any, will be deposited in the Series 2010 C Bonds Reserve Account and or any other reserve or replacement fund. The amounts deposited in the Series 2010 C Bonds Reserve Account from time to time by the Issuer will not exceed the maximum annual principal and interest on the Series 2010 C Bonds, and will not exceed 125% of average annual principal and interest on the Series 2010 B Bonds. The amounts deposited in the Series 2010 C Bonds Reserve Account from time to time by the Issuer will not exceed the maximum annual principal and interest on the Series 2010 C Bonds, and will not exceed 125% of

average annual principal and interest on the Series 2010 C Bonds. Amounts in the Series 2010 B Bonds Reserve Account, not to exceed 10% of the proceeds of the Series 2010 B Bonds, if invested, will be invested without yield limitation. The establishment of the Series 2010 C Bonds Reserve Account is required by the Authority, is vital to its purchase of the Series 2010 C Bonds, and is reasonably required to assure payments of debt service on the Series 2010 C Bonds.

5. With the exception of the amount deposited in the Series 2010 C Bonds Sinking Fund for payment of interest on the Series 2010 C Bonds, if any, and amounts deposited in the Series 2010 C Bonds Reserve Account, if any, all of the proceeds of the Bonds will be expended on the Project within 30 months from the date of issuance thereof.

6. The Series 2010 C Bonds Sinking Fund (other than the Series 2010 C Bonds Reserve Account therein) is intended primarily to achieve a proper matching of payments of debt service on the Series 2010 C Bonds each year. The Series 2010 C Bonds Sinking Fund (other than the Series 2010 C Bonds Reserve Account therein) will be depleted at least once a year except for a reasonable carryover amount not in excess of the greater of 1/12th of annual debt service on the Series 2010 C Bonds, or 1 year's interest earnings on the Series 2010 C Bonds Sinking Fund (other than the Series 2010 C Bonds Reserve Account therein). Except as otherwise allowed, any money deposited in the Series 2010 C Bonds Sinking Fund for payment of the principal of or interest on the Series 2010 C Bonds (other than the Series 2010 C Bonds Reserve Account therein), will be spent within a 13-month period beginning on the date of receipt and will be invested without yield limitation, and any monies received from the investment of amounts held in the Series 2010 C Bonds Sinking Fund (other than in the Series 2010 C Bonds Reserve Account therein) will be spent within a 1-year period beginning on the date of receipt.

D. THE SERIES 2010 F BONDS

1. The principal amounts, interest rates, interest and principal payment dates, and debt service with respect to the Series 2010 F Bonds are detailed in the Series 2010 F Bonds.

2. [Reserved]

3. A Sinking Fund for the Series 2010 F Bonds is created under the Bond Legislation. Monies deposited in the Series 2010 F Sinking Fund, including subsequent deposits thereto, will be spent within a 13-month period beginning on the date of deposit and will be depleted at least once a year, except for a reasonable carryover amount not in excess of 1/12 of the annual debt service with respect to the Series 2010 F Bonds. The Series 2010 F Bonds all bear interest at a fixed interest rate and the average maturity of the Series 2010 F Bonds is in excess of 5 years. The Series 2010 F Sinking Fund is designed to achieve a proper matching of the Issuer's revenues and debt service on the Series 2010 F Bonds within each Bond Year. All monies held in the Series 2010 F Sinking Fund will be used to pay debt service on the Series 2010 F Bonds. The Series 2010 F Sinking Fund qualifies as a Bona Fide Debt Service Fund and all monies in the Series 2010 F Sinking Fund will be invested without restriction as to yield and are not subject to rebate.

4. A Reserve Account is created under the Bond Legislation for the Series 2010 F Bonds in an aggregate amount equal to the lesser of (i) 10% of the original principal amount of the Series 2010 F Bonds, (ii) Maximum Annual Debt Service at the time of original issuance of the Series 2010 F Bonds, or (iii) 125% of average annual Debt Service at the time of original issuance of the Series 2010 F Bonds (the "Reserve Account Requirement"). The monies in the Reserve Account will be invested

without restriction as to yield. All earnings on amounts deposited in the Reserve Accounts will, to the extent the yield thereon exceeds the yield on the Series 2010 F Bonds, be subject to rebate.

5. A Renewal and Replacement Fund is created, or continued, under the Bond Legislation, to be funded through monthly deposits of Revenues in an amount equal to 2 1/2% of the Gross Revenues of the System. Absent an Event of Default on the Series 2010 F Bonds, and depletion in full of the Reserve Account, the Renewal and Replacement Fund is not expected to be used for the purpose of paying Debt Service on the Series 2010 F Bonds. Such monies will be invested without restriction as to yield and are not subject to rebate.

6. A Redemption Account for the Series 2010 F Bonds is created under the Bond Legislation. In the event monies are deposited into the Redemption Account, to the extent they are not part of a Bona Fide Debt Service Fund, they will, to the extent the yield thereon exceeds the yield on the Series 2010 F Bonds, be subject to rebate. Otherwise, they will be invested without restriction as to yield and are not subject to rebate.

7. A Costs of Issuance Fund is created under the Bond Legislation to be funded from proceeds of the Series 2010 F Bonds in the amount of $23,964.06, to pay costs of issuance of the Series 2010 F Bonds. An additional $135,530.64 will be deposited in the Costs of Issuance Fund to pay the premium of Bond Insurer and the premium for surety bond to fully fund the Series 2010 F Bonds Reserve Account at the Reserve Requirement. All such amounts shall be fully expended within 6 months from the date hereof. Pending such disbursement, such monies will be invested without restriction as to yield and are not subject to rebate.

8. A Construction Fund is created under the Bond Legislation to be funded only from remaining proceeds of the Series 2010 F Bonds to pay costs of the Project. All such amounts shall be fully expended within 3 years from the date hereof. Pending such disbursement, such monies will be invested without restriction as to yield and are not subject to rebate. Work with respect to the acquisition and construction of the Project will commence shortly and will proceed with due diligence to completion. Acquisition and construction of the Project is expected to be completed within 3 years. All proceeds of the Series 2010 F Bonds designated for the Project will be expended within 3 years from the date of issuance thereof. The Project will be operated solely for a public purpose as a local governmental activity of the Issuer. The Issuer expects no part of the Project financed by proceeds of the Series 2010 F Bonds will be sold or otherwise disposed of prior to the last maturity date of the Series 2010 F Bonds. None of the proceeds of the Series 2010 F Bonds will be used to reimburse the Issuer for costs of the Project previously incurred and paid by the Issuer with its own funds.

Except for the proceeds of the Series 2010 F Bonds designated for the Project, no other funds of the Issuer will be available to meet costs of the Project, which would constitute "replacement proceeds" within the meaning of Treas. Reg. § 1.148-1(c), inasmuch as (i) the Issuer does not reasonably expect that the term of the Series 2010 F Bonds is longer than is reasonably necessary for the governmental purposes of the Issuer, (ii) the weighted average maturity of the Series 2010 F Bonds does not exceed 120% of the average expected economic life of the Project, and (iii) there are no amounts that have a sufficiently direct nexus to the Series 2010 F Bonds or to the governmental purpose of the Series 2010 F Bonds to conclude that the amounts would have been used for that governmental purpose if the proceeds of the Series 2010 F Bonds were not used or to be used for that governmental purpose.

9. Other than the funds and accounts described above, there are no other funds or accounts of the Issuer which (i) are reasonably expected to be used to pay Debt Service on the Series

2010 F Bonds or which are pledged as collateral to secure repayment of Debt Service on the Series 2010 F Bonds and (ii) for which there is a reasonable assurance that amounts therein will be available to pay Debt Service on the Series 2010 F Bonds.

10. Accrued interest, if any, with respect to the Series 2010 F Bonds in an amount less than 6 month's interest on the Series 2010 F Bonds may be applied within one year from the date hereof toward the payment of interest first due on the Series 2010 F Bonds, as detailed in the Schedules. Pending such disbursement, such monies, if any, will be invested without restriction as to yield.

E. REBATE OF EXCESS ARBITRAGE

1. Rebate Fund; Calculation of Rebate Amount.

(a) Section 148(f) of the Code requires the payment to the United States of the excess of the amount earned on the investment of Gross Proceeds in Nonpurpose Investments over the amount that would have been earned on such investments had the amount so invested been invested at a rate equal to the Bond Yield, together with any income attributable to such excess. Except as provided below, and as previously set forth as excepted in Sections C and D hereof, all other funds or accounts treated as containing Gross Proceeds are subject to this requirement.

(b) Pursuant to the Bond Legislation, the Issuer has created the Rebate Fund to be held by the Depository Bank. On or before 45 days following each Computation Date, an amount shall be deposited into the Rebate Fund by the Issuer so that the balance held in the Rebate Fund shall equal the aggregate Rebate Amount due as of the Rebate Payment Date following such Computation Date. Monies so deposited shall be derived from the Issuer's own funds.

(c) To meet the rebate requirements of Section 148(f) of the Code, the Issuer (or the Rebate Analyst described in section E(3) hereof) agrees and covenants to take the following actions:

(i) For each investment of (i) amounts held in the Reserve Accounts, and (ii) any other monies held by the Issuer which constitute Gross Proceeds, the Issuer shall record the purchase date of such investment, its purchase price, accrued interest due on its purchase date, its face amount, its coupon rate, the frequency of its interest payment, its disposition price, accrued interest due on its disposition date and its disposition date.

(ii) For each Installment Computation Date with respect to Rebate Amounts specified in paragraph (iii) below, the Issuer shall compute the Yield on the Series 2010 Bonds as required by the Code and Regulations. If any of the Series 2010 Bonds are redeemed prior to their scheduled maturity, the Issuer agrees to seek the advice of Bond Counsel or other rebate expert to recompute the Yield on the Series 2010 Bonds as required by the Regulations.

(iii) For each Computation Date, the Issuer shall determine the amount of earnings received on all Nonpurpose Investments described in paragraph (i) above this section E(1)(c) that are allocable to Gross Proceeds of the Series 2010 Bonds. In addition, where

Nonpurpose Investments are retained by the Bond Commission after retirement of the Series 2010 Bonds, any unrealized gains or losses as of the date of retirement of the Series 2010 Bonds must be taken into account in calculating the earnings on such Nonpurpose Investments to the extent required by the Regulations.

(iv) In determining the Nonpurpose Investments that are allocable to Gross Proceeds of the Series 2010 Bonds, the Issuer shall consider the allocation rules set forth in the Regulations, including the rules relating to the Universal Cap. In general, the Universal Cap represents the maximum value of Nonpurpose Investments that may be allocated to an issue of bonds and is determined by reference to the Value of all the outstanding bonds of the issue.

(v) For each Computation Date, the Issuer shall calculate for each Nonpurpose Investment described in paragraph (iii) above, an amount equal to the earnings which would have been received on such Nonpurpose Investment at an interest rate equal to the Yield on the Series 2010 Bonds as described in paragraph (ii) above. The method of calculation shall follow that set forth in the Regulations.

(vi) In determining the amount of any rebate computed pursuant to this section, all earnings on any Bona Fide Debt Service Fund to the extent such earnings do not exceed $100,000 in any Bond year shall not be taken into account.

(vii) For each Computation Date, the Issuer shall calculate the Rebate Amount (computed from the Issue Date of the Series 2010 Bonds to each such Computation Date) by any appropriate method provided in the Code and Regulations that is applicable to the Series 2010 Bonds, taking into account any computation credit allowed thereunder. In determining the Rebate Amount, the Issuer shall account for the amounts determined under paragraphs (iii), (iv), and (v) above.

(viii) If the Rebate Amount exceeds the amount on deposit in the Rebate Account, the Issuer shall immediately pay that amount, or cause that amount to be paid, into the Rebate Account.

2. Payment to United States. (a) Installment Computation Dates. Unless the Series 2010 Bonds are redeemed prior to such time, the Issuer shall pay to the United States, not later than sixty (60) days after each Installment Computation Date, an amount which, when added to all previous rebate payments made with respect to the Series 2010 Bonds, is equal to not less than ninety percent (90%) of the Rebate Amount (computed from the date of issuance of the Series 2010 Bonds to each such Installment Computation Date).

(b) Final Computation Date. The Issuer shall pay to the United States, not later than sixty (60) days after the last outstanding Series 2010 Bonds are paid or redeemed, one hundred percent (100%) of the Rebate Amount for the Final Computation Date (computed from the date of issuance of the Series 2010 Bonds to the Final Computation Date).

(c) Mailing of Rebate Payment. Each Payment of an installment shall be mailed to the Internal Revenue Service Center, Internal Revenue Service Center, Ogden, Utah 84201-0027. Each payment shall be accompanied by (i) a copy of IRS Form 8038-T, and (ii) the CUSIP number for the Series 2010 Bond with the latest maturity.

(d) Excess Balance in Rebate Fund; Excess Rebate Payments. If on the Rebate Payment Date the balance on deposit in the Rebate Fund is in excess of the Rebate Amount attributable to the Series 2010 Bonds, such excess may be withdrawn by the Issuer from the Rebate Fund. The Issuer may direct that any overpayment of rebate may be recovered from any rebate payment previously made to the United States under any procedure that may be permitted by the Code or the Regulations.

(e) Recordkeeping. In connection with the rebate requirement, the Issuer shall maintain (or cause to be maintained) the following records:

(i) The Issuer shall record all amounts paid to the United States pursuant to section E(2) hereof.

(ii) The Issuer shall retain records of the rebate calculations until six years after the Final Computation Date.

(iii) The Issuer shall keep and record the data described in section E(1)(c) hereof pertaining to the investment of the proceeds of the Series 2010 Bonds until six years after the Final Computation Date.

3. Rebate Analyst. (a) A Rebate Analyst shall be appointed to perform the rebate calculations, as required herein.

(b) The Issuer may rely conclusively upon the opinions, calculations, determinations, directions and advice of the Rebate Analyst. The charges and fees for such Rebate Analyst shall be paid by the Issuer upon presentation of an invoice for services rendered in connection therewith.

4. Failure to Pay Rebate Amounts. In the event the Issuer fails to pay at the proper time and in the proper amounts, any Rebate Amount, it will pay the rebate amount plus interest within 180 days after discovery of such failure as set forth in Section 1.148-3(h)(3) of the Regulations. Notwithstanding the foregoing, in the event the Issuer fails to pay at the proper time and in the proper amount any Rebate Payment or correction amount, it hereby covenants and agrees to pay any penalty required by Internal Revenue Service in lieu of a declaration of taxability on the Series 2010 Bonds.

F. MISCELLANEOUS

1. The Series 2010 C Bonds and the Series 2010 F Bonds are considered a single issue pursuant to Section 1.150-1(c) of the Regulation.

2. The amount designated as "Cost of Issuance" of the Series 2010 Bonds consists only of costs which are directly related to and necessary for the issuance of the Series 2010 Bonds.

3. The Issuer shall, on the date hereof or immediately hereafter, enter into a

contract for the construction of the Project, and the amount to be expended pursuant to such contract exceeds 5% of the net sale proceeds of the Bonds.

4. Work with respect to the acquisition and construction of the Project will proceed with due diligence to completion. Acquisition and construction of the Project is expected to be completed within 24 months.

5. The Issuer shall file Form 8038-G in a timely fashion with the Internal Revenue Service Center, Ogden, Utah. The Form 8038-G attached hereto as EXHIBIT B - FORM 8038-G is, to the best of my knowledge, true and correct, and may be relied upon by Bond Counsel.

6. None of the proceeds of the Series 2010 Bonds will be used (directly or indirectly) in any trade or business carried on by, or will be used to make or finance loans to, any person who is not a governmental unit.

7. The original proceeds of the Series 2010 Bonds will not exceed the amount necessary for the purpose of the issue, except to the extent any such proceeds are required for rebate to the United States.

8. A. The Issuer shall use the proceeds of the Series 2010 C Bonds solely to pay a portion of the costs of acquisition and construction of certain improvements and extensions to the wastewater portion of the existing public combined waterworks, sewerage and stormwater system of the Issuer; to fully fund the Series 2010 C Bonds Reserve Account; and to pay costs of issuance and related costs.

B. The Issuer shall use the proceeds of the Series 2010 F Bonds solely to pay the premium for the surety bond to fund a Reserve Account for the Series 2010 F Bonds; to pay the costs of acquisition and construction of the Project; to capitalize the interest on the Series 2010 F Bonds to December 1, 2011; and to pay costs of issuance and related costs.

9. The Issuer shall not permit at any time or times any of the proceeds of the Series 2010 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 Series 2010 Bonds from treatment afforded by Section 103(a) of the Code by reason of classification of the Series 2010 Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code and the Treasury Regulations promulgated or to be promulgated thereunder.

10. The Series 2010 Bonds are not, and will not be, in whole or part, directly or indirectly, federally guaranteed within the meaning of Section 149(b) of the Code.

11. The Issuer has not entered and will not enter into any transaction to reduce the Yield on an investment of the Gross Proceeds of the Series 2010 Bonds so as to cause the amount to be rebated to the United States Treasury to be less than it would have been had the transaction been at arm's length and the Yield on the Series 2010 Bonds not been relevant to either party to the transaction, and that all investments of Gross Proceeds will be made on an arm's length, Fair Market Value basis.

12. On each Valuation Date, the Issuer agrees to value the Universal Cap and the Nonpurpose Investments allocable to the Series 2010 Bonds thereunder in accordance with the Regulations. Notwithstanding anything herein to the contrary, the failure to perform the determination of

Nonpurpose Investments allocable to the Series 2010 Bonds as of a Valuation Date shall not be considered a violation of this provision if the application of the Universal Cap would not result in a reduction or reallocation of Gross Proceeds of an issue.

13. No portion of the proceeds of the Series 2010 Bonds will be used directly or indirectly to replace funds of the Issuer or other related governmental agency that have been used directly or indirectly to acquire securities or obligations which may reasonably be expected, on the date hereof, to produce a yield materially higher than the Yield on the Series 2010 Bonds.

14. In connection with the Series 2010 Bonds, there has not been created or established, and the Issuer does not expect that there will be created or established, any sinking fund, pledged fund or similar fund (other than as specifically identified in this Tax and Arbitrage Certificate), including without limitation any arrangement under which money, securities, or obligations are pledged directly or indirectly to secure the Series 2010 Bonds or any contract securing the Series 2010 Bonds or any arrangement providing for compensating or minimum balances to be maintained by the Issuer or related governmental agencies with any registered owner of the Series 2010 Bonds.

15. The Series 2010 Bonds are not and will not be part of a transaction or series of transactions that (i) attempt to circumvent the provisions of Section 148 of the Code, or any successor thereto, and the Regulations promulgated thereunder which enable the Issuer to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage or (ii) increase the burden on the market for tax-exempt obligations in any manner, including, without limitation, by selling obligations that would not otherwise be sold or selling a larger amount of obligations, or issuing them sooner, or allowing them to remain outstanding longer, than would otherwise be necessary.

16. No other obligations are being issued by the Issuer or any related entity at substantially the same time and sold pursuant to a common plan of financing and which will be paid out of substantially the same source of funds (or which will have substantially the same claim to be paid out of substantially the same source of funds) as the Series 2010 Bonds or which will be paid directly or indirectly from proceeds of the sale of the Series 2010 Bonds.

17. The issuance of the Series 2010 Bonds will not involve the use of a "device" or an "abusive transaction" within the meaning of Section 149(d)(4) of the Code and the Regulations thereunder.

18. The Issuer covenants to comply with all requirements of the Code that must be satisfied subsequent to the issuance of the Series 2010 Bonds in order that the interest thereon be and continue to be excludable from gross income for federal income tax purposes.

19. The Issuer will rebate to the United States the amount, if any, required by the Code and to take all steps necessary to make such rebates. 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, and take all other actions required of it in order to maintain the exclusion of interest on the Series 2010 Bonds from gross income for federal income tax purposes.

20. The Issuer has retained the right to amend the Bond Legislation authorizing the issuance of the Series 2010 Bonds if such amendment is necessary to assure compliance with

Section 148(f) of the Code or as may otherwise be necessary to assure the exclusion of interest on the Series 2010 Bonds from the gross income of the holders thereof.

21. The Issuer shall comply with all yield restrictions on Series 2010 Bond proceeds as set forth in the Code.

22. The Issuer covenants and agrees to comply with the rebate requirements of the Code if not exempted therefrom, and with all other requirements of the Code necessary, proper or desirable to maintain the tax-exempt status of the Series 2010 Bonds and the interest thereon. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Series 2010 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 the Bond Legislation.

23. The Series 2010 Bonds are a fixed yield issue. No interest or other amount payable on any of the Series 2010 Bonds (other than in the event of an unanticipated contingency) is determined by reference to (or by reference to an index that reflects) market interest rates or stock or commodity prices after the date of issue.

24. Under Section 1.148-2(b) of the Regulations, an officer of the Issuer must certify the issuer's expectations as of the issue date. In accordance therewith, the undersigned Mayor of the Issuer hereby in good faith certifies that the representations and covenants set forth in this Certificate constitute the reasonable expectations of the Issuer as of the Issue Date. Accordingly, the representations and covenants set forth herein are intended and may be relied upon as the certification described in Section 1.148-2(b) of the Regulations and are being delivered as part of the record of proceedings in connection with the issuance of the Series 2010 Bonds.

25. Pursuant to Section 265(b)(3)(D)(ii) of the Code, the Series 2010 F Bonds shall be treated as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Code and shall be deemed so designated as the Series 2010 F Bonds and the issue of which they are a part satisfy the requirements set forth in Section 265(b)(3)(D)(ii) of the Code.

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

27. Steptoe & Johnson PLLC is entitled to rely upon the representations, expectations, covenants, certifications and statements contained herein in rendering its opinions regarding the tax-exempt status of interest on the Series 2010 Bonds.

28. Notwithstanding any other provision hereof, any provision of this Tax and Arbitrage Certificate shall be amended at any time and such amendment shall be complied with, upon receipt by the Issuer of an opinion of Bond Counsel that such amendment is necessary or permissible under the then current Code and Regulations and is either necessary to or will not adversely affect the excludability of interest on the Series 2010 Bonds from gross income of the recipients thereof for federal income tax purposes.

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

WITNESS my signature on this 28th day of January, 2010.

THE CITY OF MORGANTOWN

Bill Byrne

Mayor

EXHIBIT A

UNDERWRITER'S CERTIFICATE (Series 2010 F Bonds)

[Included in Series 2010 F Bonds Transcript as Document No. 22]

EXHIBIT B

IRS FORM 8038-G

[Included in Transcript as Document No. 40]

THE CITY OF MORGANTOWN

Combined Utility System Revenue Bonds, Series 2010 B
(West Virginia SRF Program/ARRA); and
Combined Utility System Revenue Bonds, Series 2010 C
(West Virginia SRF Program)

CERTIFICATE OF ENGINEER

I, Timothy Ball, Registered Professional Engineer, West Virginia License No. 9452, of Morgantown Utility Board, in Morgantown, West Virginia, hereby certify this 28th day of January, 2010 as follows:

1. I am chief engineer for Morgantown Utility Board responsible for the acquisition and construction of certain extensions, additions, betterments and improvements to the wastewater portion of the existing public combined waterworks, sewerage and stormwater system (the "Project") (the existing public combined waterworks, sewerage, and stormwater system of the Issuer, the Project and any further extensions, additions, betterments and improvements thereto are herein called the "System") of The City of Morgantown (the "Issuer"), to be constructed in Monongalia County, West Virginia, which acquisition and construction are being permanently financed in part by the proceeds of the above-captioned bonds (collectively, the "Bonds") of the Issuer. Capitalized terms used herein and not defined herein shall have the same meaning set forth in the Bond Ordinance enacted by the Issuer on September 1, 2009, as supplemented by the Supplemental Resolution and Conformed ordinance of the Issuer adopted January 5, 2010 (collectively, the "Bond Legislation"), the ARRA Assistance Agreement for the Bonds by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), dated January 28, 2010, (the "ARRA Assistance Agreement").

2. The Bonds are being issued (i) to pay the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the wastewater portion of the existing public combined waterworks, sewerage, and stormwater system of the Issuer; (ii) to to fund the reserve account for the Bonds; and (iii) to pay certain costs of issuance of the Bonds and related costs.

3. To the best of my knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs and approved by the DEP and the Authority and any change orders approved by the Issuer, the Authority, the DEP and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least 22 years, if properly constructed, operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan

of financing set forth in the Schedule B attached hereto as Exhibit A and Steptoe & Johnson, PLLC, counsel to the Issuer, will ascertain that all successful bidders have made required provisions for all insurance and payment and performance bonds and such insurance policies or binders and such bonds will be verified for accuracy; (iv) the successful bidders have provided the Drug-Free Workplace Affidavit as evidence of compliance with the provisions of Article 1D, Chapter 21 of the West Virginia Code; (v) the successful bidders received any and all addenda to the original bid documents; (vi) the bid documents relating to the Project reflect the Project as approved by the DEP and the bid forms provided to the bidders contain the critical operational components of the Project; (vii) the successful bids include prices for every item on such bid forms; (viii) the uniform bid procedures were followed; (ix) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (x) the net proceeds of the Bonds, together with all other monies on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the DEP; and (xi) attached hereto as Exhibit A is the final amended "Schedule B - Final Total Cost of Project, Sources of Funds and Cost of Financing" for the Project.

4. I have received the Buy American Certification from each contractor, as required only for Contracts 9-2009 and 10-2009.

5. The Project will serve no new customers.

[Remainder of Page Intentionally Blank]

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

MORGANTOWN UTILITY BOARD

(SEAL)

Timothy Ball, P.E.
West Virginia License No. 9452

11.19.09
627490.00039

| GLOBAL OVERVIEW - ALL SOURCES | TOTAL | Muni Bond | DWTRF ARRA | DWTRF Conventional | SRF ARRA/Green | SRF Conventional |
|---|---|---|---|---|---|---|
| 5. Land | 0 | 0 | 0 | 0 | 0 | 0 |
| 6. ROW Activities | 0 | 0 | 0 | 0 | 0 | 0 |
| 7. Contingency | 2,481,513 | 1,358,500 | 0 | 467,036 | 0 | 655,977 |
| 8. Miscellaneous Railroad Permit | 300,000 | 0 | 0 | 100,000 | 0 | 200,000 |
| Remburse for Prior Projects | 2,863,000 | 777,500 | 0 | 0 | 0 | 2,085,500 |
| 9. Total (Lines 1 – 8) | 64,767,912 | 40,600,200 | 100,000 | 8,703,822 | 81,600 | 15,282,290 |
| **C. COST OF FINANCING** | | | | | | |
| 10. DWTRF Funded Reserve (From Repayments) | 572,464 | 0 | 0 | 572,464 | 0 | 0 |
| 11. CWSRF Funded Reserve | 934,937 | 0 | 0 | 0 | 0 | 934,937 |
| 12. Registrar Fees | 2,000 | 0 | 0 | 1,000 | 0 | 1,000 |
| 13. Bond Counsel | 80,000 | 0 | 0 | 40,000 | 0 | 40,000 |
| 14. Total Cost of Financing (line 10 through 13) | 1,589,401 | 0 | 0 | 613,464 | 0 | 975,937 |
| **15. Total Cost of Project (line 9 plus Line 14)** | **66,357,313** | **40,600,200** | **100,000** | **9,317,286** | **81,600** | **16,258,227** |
| **B. SOURCE OF FUNDS** | | | | | | |
| 16. Federal Grants | 0 | 0 | 0 | 0 | 0 | 0 |
| 17. State Grant | 0 | 0 | 0 | 0 | 0 | 0 |
| 18. Other Grants REFUND CITY B&O TAX (2%) | 0 | 0 | 0 | 0 | 0 | 0 |
| 19. Any Other Source - Canyon PSD Contribution * | 1,065,000 | 500,000 | 0 | 0 | 0 | 565,000 |
| 20. Any Other Source - WVU Contribution ** | 313,000 | 0 | 0 | 0 | 0 | 313,000 |
| 21. Total Grants (Lines 16 – 20) | 1,378,000 | 500,000 | 0 | 0 | 0 | 878,000 |
| **22. Net Proceeds from Bond Issue (Deposit in Project Fund)** | **64,979,313** | **40,100,200** | **100,000** | **9,317,286** | **81,600** | **15,380,227** |

James L Green — 1/28/10

James Green, General Manager — Date

T. Ball — 1/28/10

Timothy Ball, Chief Engineer — Date

1/28/10

Dan Boroff, City Manager — Date

# *Perry & Associates*
Certified Public Accountants, A.C.

PARKERSBURG
1035 Murdoch Avenue
Parkersburg, WV 26101
(304) 422-2203

MARIETTA
428 Second Street
Marietta, OH 45750
(740) 373-0056


January 22, 2010

The City of Morgantown

Combined Utility System Revenue Bonds, Series 2010 A
(Direct Payment Build America Bonds);
Combined Utility System Revenue Bonds, Series 2010 B
(West Virginia SRF Program);
Combined Utility System Revenue Bonds, Series 2010 C
(West Virginia SRF Program/ARRA);
Combined Utility System Revenue Bonds, Series 2010 D
(West Virginia DWTRF Program);
Combined Utility System Revenue Bonds, Series 2010 E
(West Virginia DWTRF Program/ARRA); and
Combined Utility System Revenue Bonds, Series 2010 F
(Bank Qualified)

The City of Morgantown
Morgantown, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

West Virginia Department of Environmental Protection
Charleston, West Virginia

West Virginia Bureau for Public Health
Charleston, West Virginia

Ladies and Gentlemen:

Based upon the rates and charges set forth in the sewer rate ordinance enacted by The City of Morgantown (the "Issuer") on July 21, 2009, the water rate ordinance enacted July 21, 2009 and the stormwater rate ordinance enacted on April 17, 2008, 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 combined waterworks, sewerage and stormwater 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 115% of the maximum amount required in any year for debt service on the Issuer's:

(1) Combined Utility System Revenue Bonds, Series 2010 A (Direct Payment Build America Bonds), in the original aggregate principal amount of $37,950,000; (2) Combined Utility System Revenue Bonds, Series 2010 B (West Virginia SRF Program) in the original aggregate principal amount of $81,600; (3) Combined Utility System Revenue Bonds, Series 2010 C (West Virginia SRF Program/ARRA), in the original aggregate principal amount of $15,203,668; (4) Combined Utility System Revenue Bonds, Series 2010 D (West Virginia DWTRF Program), in the original aggregate principal amount of $9,317,286, (5) Combined Utility System Revenue Bonds, Series 2010 E (West Virginia DWTRF Program/ARRA), in the original aggregate principal amount of $100,000, and (6) Combined Utility System Revenue Bonds, Series 2010 F (Bank Qualified) in the original aggregate principal amount of $7,250,000, (collectively the "Series 2010 Bonds"), and all other obligations secured by a lien on or payable from such revenues, including the Issuer's: (1) Combined Utility System Revenue Bonds, Series 1992 (West Virginia SRF Program), dated September 8, 1992, issued in the original aggregate principal amount of $11,900,000 (the "Series 1992 Bonds"); (2) Combined Utility System Revenue Bonds, Series 1995 (West Virginia SRF Program), dated April 27, 1995, issued in the original aggregate principal amount of $1,601,477 (the "Series 1995 Bonds"); (3) Combined Utility System Revenue Bonds, Series 2000 A (West Virginia SRF Program), dated February 29, 2000, issued in the original aggregate principal amount of $7,842,000 (the "Series 2000 A Bonds"); (4) Combined Utility System Revenue Bonds, Series 2000 B (West Virginia Infrastructure Fund), dated February 29, 2000, issued in the original aggregate principal amount of $2,488,000 (the "Series 2000 B Bonds"); (5) Combined Utility System Revenue Bonds, Series 2001 A (West Virginia Infrastructure Fund), dated February 8, 2001, issued in the original aggregate principal amount of $3,812,470 (the "Series 2001 A Bonds"); (6) Combined Utility System Revenue Bonds, Series 2006 A (West Virginia SRF Program), dated June 30, 2006, issued in the original aggregate principal amount of $6,410,191 (the "Series 2006 A Bonds"); and (7) Combined Utility System Revenue Bonds, Series 2007 A (West Virginia SRF Program), dated August 14, 2007, issued in the original aggregate principal amount of $8,500,000 (the "Series 2007 A Bonds").

It is our further opinion that the Net Revenues actually derived from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of the Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by the Bonds, if any, 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,

Perry and Associates CPAs A.C.

**Perry and Associates**
Certified Public Accountants, A.C.

# Charter

# of the

# CITY OF MORGANTOWN

Approved by voters: April 29, 1977

# CHARTER

# OF THE

# CITY OF MORGANTOWN

EDITOR'S NOTE: The Morgantown Charter was approved by the voters on April 29, 1977. Dates appearing in parentheses following section headings indicate those sections were subsequently amended, added or repealed on the dates given.

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# CHARTER

# OF THE

# CITY OF MORGANTOWN

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## ARTICLE I
## POWERS OF THE CITY

SECTION 1.01. INCORPORATION.
The inhabitants of the portion of the County of Monongalia, in the State of West Virginia, within the limits of the City of Morgantown as they now exist, or as they may hereafter be, shall be and continue a body politic and corporate in perpetuity by the name and style of "The City of Morgantown."

SECTION 1.02. POWERS OF THE CITY.
The City shall have all the powers specifically provided for in this Charter and shall also have all the powers now or 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 it is possible for a City to have, as fully and completely as though they were specifically enumerated in this Charter.

SECTION 1.03. CONSTRUCTION.
The powers of the City under this Charter shall be construed liberally in favor of the City, and the specific mention of particular powers in the Charter shall not be construed as limiting in any way the general power stated in this Article.

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 governmental subdivision of the State of West Virginia or one or more states or civil divisions of agencies thereof, or the United States or any agency thereof.

SECTION 2.05. PROHIBITIONS.

(a) Holding Other Office. 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) Conflicts of Interest, Penalties. No member of Council shall vote upon or participate in the furtherance of any matter in which that Councilmember has, either directly or indirectly, a substantial financial or other substantial personal interest, as a member, manager, officer, bondholder or stockholder of any partnership, business, firm or corporation. Such interest shall include, but not be limited to, an interest in any contract furnishing material, services, or supplies to the City or to any contractor, or workmen for the City, any sale of land to or from the City, any lease to or from the City, annulment of any street, or any special privilege or right which may inure to the benefit of such Councilmember directly or indirectly, except as such privilege may benefit him generally as a citizen of the community.

Any Councilmember who willfully conceals such interest or willfully violates the requirements of this section shall be guilty of malfeasance in office and shall forfeit his office. Violation of this section with the knowledge express or implied of the person, or of the corporate officer, agent or employee contracting with the City, shall render voidable by action of the City Council, any transaction prohibited by the preceding paragraph. Removal of any Councilmember for violation of the provisions of this section shall be accomplished in the manner provided by law for the removal of elected Municipal officers.

(c) 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.

(d) 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 City 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 constitute ground for removal from office.

It is the intention of this subsection (d) that the Council shall act in all matters as a body, and it is contrary to the spirit of this section for any of its members to seek individually to influence the official acts of the Manager, or any other officer, or employee, or for the Council or any of its members to direct or request the appointment of any person to, or his removal from, office; or to interfere in any way with the performance by such officers or employees of their duties.

(e) Council shall not appoint or otherwise establish permanent or standing committees for the conduct of Council business.

SECTION 2.08. CITY CLERK.

The Council shall appoint 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 duty to:

(1) Give notice of and attend all meetings of the Council, keep the journal of its proceedings, authenticate by his signature and record in full in a book kept for the purpose all ordinances and resolutions of the Council, prepare and keep up to date an index of all such ordinances and resolutions, and keep all such records available for public inspection.

(2) Make and certify copies of any ordinance, resolution or order of this 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, to 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 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. INQUIRIES OR INVESTIGATIONS.

The Council may make or cause to be made inquiries or investigations into the affairs of the City and the conduct of any City department, office or agency and for this purpose may invite or subpoena witnesses, administer oaths, take testimony and require the production of evidence.

A written report of the findings of fact shall be made to the Council within a reasonable time of the conclusion of any inquiry or investigation conducted under this section, which report shall be made a public record. There may be deleted from such report any matter permitted by the State code to be discussed in a closed or executive session; provided that no such finding of fact deleted from the report shall be made the basis of any punitive or disciplinary action, nor shall it be the basis for the denial of due process.

Inquiries or investigations under this section shall not be conducted during the recess of any regular or special meeting, but shall be conducted only at meetings called especially for the purpose of conducting an inquiry or investigation.

Any person who fails or refuses to obey a lawful order issued in the exercise of these powers by Council shall be guilty of a misdemeanor and punishable by a fine of not less than $50 nor more than $500.
(Amended April 24, 1979.)

(7) Convey or lease or authorize the conveyance or lease of any lands from the City or to the City;
(8) Require a license to do business;
(9) Provide for a public improvement;
(10) Lay out or vacate a public street, avenue, road, alley or way;
(11) Relate to planning and zoning;
(12) Provide for a contractual or other agreement with another jurisdiction;
(13) Adopt with or without amendment ordinances proposed under the initiative power;
(14) Change ward boundaries;
(15) 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 in 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 Morgantown 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 indicate matter to be omitted by enclosing it in brackets or by strikeout type and shall indicate new matter by underscoring or by italics.

(b) Procedure. Any and all ordinances shall be adopted, in accordance with the following requirements, except where different or additional requirements are specified by law, in which event such other different or additional requirements shall be applicable.

The Council may by ordinance specify other additional requirements for the enactment of ordinances or may prescribe a procedure for the enactment of ordinances in greater detail than prescribed by this Charter, but the Council shall not, except in an emergency as specified in Section 2.14 or except as otherwise provided by law, lessen or reduce the requirements of this Charter.

(1) 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, shall distribute a copy to each Councilmember and to the Manager, and shall file a reasonable number of copies in the office of the City Clerk. Codes of technical regulations need not be read.

(2) A proposed ordinance shall be read by title at a second or succeeding meeting of Council with at least two weeks intervening between each meeting, unless a member demands that the ordinance be read in full at the second or succeeding meeting. If such demand is made, the ordinance shall be read in full as demanded.

(3) At least five days before the meeting at which a proposed ordinance, the principal object of which is the raising of revenue for the Municipality, is to be finally adopted, the Council shall cause notice of the proposed adoption of said proposed ordinance to be published as a Class I-O legal advertisement in compliance with

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 CODIFICATION AND PRINTING.

(a) Codification. To the extent that it has not already done so, 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 looseleaf form, together with the 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 Morgantown City Code. Copies of the code shall be furnished to City officers, placed in the City library and in the City Clerk's office for free public reference and made available for purchase from the City by the public at a reasonable price fixed by the Council.

(b) 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 by the City Clerk to the public at reasonable prices to be fixed by the Council. Following publication of the Morgantown 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 City 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. He need not be a resident of the City or State at the time of his appointment but must reside in the City while in office.

(4) He shall see that all laws, ordinances and 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 and enforced.

(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 complete reports on the finances and administrative activities of the City as of the end of each fiscal year. The report on finances shall be made in accordance with generally accepted accounting principles for municipal governments and agencies.

(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) The City Manager shall devote his whole working time to the performance of the duties of his office, and while occupying such office shall not engage, directly or indirectly, or be actively interested in any business which would be in conflict with the performance of his duties concerning the affairs of the City of Morgantown.

(11) He shall perform such other duties as are specified in this Charter or may be required by the Council.

## ARTICLE IV
## ADMINISTRATIVE DEPARTMENTS AND AGENCIES

SECTION 4.01. GENERAL PROVISIONS.

(a) Creation of Departments, etc. The Council may, by ordinance establish City departments, offices or agencies in addition to those created by this Charter and may prescribe the function of all departments, offices and agencies, except that no function assigned by this Charter to a particular department, office or agency may be discontinued or, unless the Charter specifically so provides, assigned to any other.

(b) Direction and Supervision. All departments, offices and agencies under the direction and supervision of the Manager shall be administered by an officer appointed by and subject to the direction and supervision of the Manager. With the consent of Council, the Manager may serve as the head of one or more of such departments, offices or agencies or may appoint one person as the head of two or more of them.

SECTION 4.02. BOARDS, AUTHORITIES AND COMMISSIONS.

The Council may by ordinance create, alter, or abolish such agencies, in the form of boards, authorities or commissions, as it may deem necessary in order to perform any Municipal functions, and to confer powers, authority and duties upon them, consistent with State law. The members thereof shall be appointed by Council.

(6) Policies and procedures governing relationships with employee organizations;
(7) Grievance procedures, including procedures for the hearing of grievances by the Personnel Board, which may render advisory opinions based on its findings to the City Manager with a copy to the employee;
(8) Provide advice and guidance to all City officials, department heads and supervisors as necessary for the administration of the City personnel system.

## 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 made in accordance with generally accepted accounting principles for municipal governments and agencies. In organizing the budget the Manager shall utilize the most feasible combination of expenditure classification by fund, organization unit, program, purpose or 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; and 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;

(1) The times and places where copies of the capital program are available for inspection by the public, and
(2) The time and place, not less than two weeks after such publication, for a public hearing on the capital program.

(b) Adoption. The Council by resolution shall adopt the capital program with or without amendment after the public hearing and 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 next 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 6.02. PLANNING COMMISSION.

It is intended that the Planning Commission shall serve in an advisory capacity to the Council. Any Planning Commission heretofore established shall continue to operate as though established under the provisions of the Code of West Virginia, Chapter 8, Article 24, as amended. All actions lawfully taken under prior acts are validated and continued in effect until amended or repealed by action taken under the authority of said Article. The membership of existing commissions and boards shall continue until changed by law or vote of a majority of all the members of Council.

SECTION 6.03. COMPREHENSIVE PLAN.

The adoption of a comprehensive plan by a Planning Commission under the authority of acts prior to the enactment of said Code, Chapter 8, Article 24, is validated and shall continue in effect until amended under the authority of said Article 24. In its advisory capacity, the Planning Commission shall review and make recommendations on any matter to be considered by Council which is specifically related to the comprehensive plan, including land and development regulations and the capital program provided for in Article V, Section 5.05.

SECTION 6.04. VACANCIES IN OFFICE.

The office of a member of the Planning Commission and the office of a member of the Board of Zoning Appeals shall become vacant upon his death, resignation, removal from office, or failure to attend three consecutive regular meetings without being excused by the Commission or by the Board, as the case may be, either before or after such failure of attendance.

## ARTICLE VII
## NOMINATIONS AND ELECTIONS

SECTION 7.01. CITY ELECTIONS.

(a) Regular Elections. The regular City election shall be held on the last Tuesday in April in each odd-numbered year.

(b) Qualified Voters. All citizens qualified by the constitution and 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.

(c) Conduct of Elections. Except as otherwise provided by this Charter, the provisions of the general election laws of the State of West Virginia shall apply to elections held under this Charter. To the extent that is has not already done so, the Council shall adopt by ordinance all regulations which it considers desirable, consistent with law and this Charter.

SECTION 7.02. NOMINATIONS.

(a) Petitions. Any one or more qualified voters of the City may be nominated for City Council, to be elected at large, from the ward in which he resides. Such nominations shall be by separate petition each signed by seventy-five (75) or more qualified voters residing in such ward; provided however, no voter shall sign more than one nominating petition and, if a voter signs more than one, his signature shall be void except as to the first filed of the petitions signed by him. The signatures to a nominating petition need not all be affixed on one paper, but to

NOMINATING PETITION

We, the undersigned qualified voters of the City of Morgantown, hereby nominate _____, whose residence is _____, for councilmember at large for the _____ ward to be voted for at the election to be held on the _____ day of April, 19 ____; and we individually certify that we are qualified voters of the city and of the _____ ward and that we have not signed nominating petitions for any other candidates for that office.

Name Street and Number and City Date of signing

(spaces for signatures and required data)

CERTIFICATE OF CIRCULATOR

The undersigned is the circulator of this petition paper, which contains _____ signatures. Each signature affixed thereto was made in my presence and is, I believe, the genuine signature of the person whose name it purports to be.

Signature of circulator_____
Address_____

Date_____

ACCEPTANCE OF NOMINATION

I hereby accept the nomination for a member of the city council and agree to serve if elected.

Signature_____
Date_____

(e) Withdrawal of Candidacy. Any candidate wishing to withdraw his or her candidacy shall notify the City Clerk in writing of the same in accordance with the requirements of general statutory law.

(f) Write-In Candidates. A write-in candidate's certificate of announcement of candidacy shall be filed with the City Clerk no later than the fourteenth day before the election, under normal circumstances. In those cases where a lone candidate for a ward Councilmember position dies, or is disqualified or removed from the ballot by a court, the deadline shall be the fifth day before the election, or the day following the occurrence of the vacancy, whichever is later. (Added July 6, 1993.)

SECTION 7.05. WARDS, ADJUSTMENT OF WARD BOUNDARIES.

(a) Number of Wards. The territory included in the City shall be, and is hereby divided into seven wards and the number of wards shall not be increased or decreased.

(b) Ward Boundary Commission. The Council shall appoint seven qualified voters, one from each of the seven wards of the City as they exist at the time of such appointment, who shall comprise a Ward Boundary Commission. The voters chosen shall not be employed by the City in any other capacity. The appointment shall be made not later than 30 days after the commencement of each Council's term of office.

(c) Report. The Commission shall file with the City Clerk a report containing a recommended plan and a map for adjustment of ward boundaries to comply with the specifications set forth in subsection (d), which report shall be made between November 15 and November 30 of each even-numbered year.

(d) Specifications. Except as otherwise provided in Section 10.05, the ward boundaries shall be adjusted from time to time in accordance with the following specifications:

(1) Each ward shall be formed of contiguous territory, and its boundary lines shall follow the precinct lines and the center lines of streets wherever practicable.

(2) Each ward shall contain as nearly as practicable the same number of qualified voters, determined from the registration for the last statewide general election. This specification shall not be construed to require the adjustment of precinct boundaries or to require the sacrifice of compactness of wards for the sake of achieving equality of numbers of registered voters among the seven wards of the City. The report shall include a map and description of the boundaries of each of the wards.

## ARTICLE VIII
## INITIATIVE, REFERENDUM AND RECALL

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 the 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.

(c) Recall. The qualified voters of the City shall have the power to require the holding of a special Municipal election to submit the question of the recall of an elected officer. Not more than one recall election shall be held with respect to an officer during his term of office.

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 committees 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 ten 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.

(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) Withdrawl 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. POWER OF RECALL.

The qualified electors shall have the power to recall any member of Council whether elected by popular vote or selected to fill a vacancy, and may exercise such power by filing with the City Clerk a petition signed by qualified electors of the City equal in number to at least twenty percent of the registered voters at the last general Municipal election. The petition shall be signed and verified in the manner required for an initiative petition, shall contain a demand for the removal of the Councilmember or members, and shall contain a general statement of the reasons for which the removal is sought.

SECTION 8.08. ELECTION UNDER RECALL PETITION.

The City Clerk shall, in the manner hereinbefore provided for initiative and referendum petitions, certify to Council the sufficiency of the recall petition. Thereafter, Council shall cause a special election to be held in not less than forty-five days nor more than ninety days from the date of such certification. The published notice of such special election shall contain the reasons for demanding the recall in not more than two hundred words and a justification by the Councilmember within the same limits; provided, however, that if the petition seeks to recall more than one Councilmember, each Councilmember may provide a justification of not more than one hundred words. Ballots shall be in the following form:

"Shall _____ be removed
from the council of the City of Morgantown?
☐ For the recall of _____
☐ Against the recall of _____"

Upon notification by Council of the results of the election, if a majority of those voting on the question have favored recall, the office of the Councilmember so recalled shall be vacant. Provisions of this Charter with respect to general Municipal elections shall determine election procedure insofar as applicable.

SECTION 8.09. FILLING COUNCIL VACANCY CAUSED BY RECALL.

When a vacancy occurs on the result of a recall election or when a Councilmember resigns after a recall petition certified by the City Clerk to be sufficient is presented to Council, the vacancy shall be filled in accordance with the provisions of Section 2.06 of this Charter.

(4) 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 ($500.00) or less than fifty dollars ($50.00).

(2) 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. CHARTER AMENDMENTS.

Amendments to this Charter shall be framed and adopted in the manner provided by law.

SECTION 9.04. 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.

SECTION 9.05. OATHS.

Every person elected or appointed to any office, before proceeding to exercise the authority, or discharge the duties thereof, shall take the oath or affirmation prescribed by the Constitution of this State.

## 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. An employee holding a City position at the time this Charter takes full effect, who was serving in that same or comparable position at the time of its adoption, shall not be subject to competitive tests as a condition of continuance in the same position.

(b) Term of First Council. The terms of the Councilmembers elected at the said first election shall commence on the day following certification or approval of the said election results by the then existing Council and shall expire on June 30 of the first odd-numbered year following the effective date of this Charter.

(c) Expiration of Terms of Councilmembers Elected Under Provisions of Previous Charter. The office of any Councilmember elected under the provisions of the previous Charter at the regular City election held thereunder on the first Tuesday of June immediately preceding the effective date of this Charter (July 1), is hereby abolished, and no person so elected shall assume the office of Councilmember.

On the effective date of this Charter (July 1) Councilmembers who are commencing the second year of a term under the provisions of the previous Charter shall continue in office only until their successors are elected under the provisions of subsection (a) hereof, and have qualified for such office, and they shall exercise such powers and duties, express or implied, as are imposed upon them by this Charter for the conduct of the first election under this Charter.

CITY OF MORGANTOWN

AN ORDINANCE CREATING THE MORGANTOWN UTILITY BOARD AND PROVIDING FOR THE TRANSFER OF MANAGEMENT, CONTROL AND OPERATION OF THE MUNICIPAL WATERWORKS SYSTEM AND SEWERAGE SYSTEM OF THE CITY OF MORGANTOWN, WEST VIRGINIA, FROM THE MORGANTOWN WATER COMMISSION AND MORGANTOWN SANITARY BOARD TO THE MORGANTOWN UTILITY BOARD.

WHEREAS, the City of Morgantown (the "City") presently owns and operates a municipal waterworks system (the "Waterworks System"), consisting of a water filtration and treatment plant, reservoirs, water tanks, distribution lines, booster stations and all appurtenant facilities and properties, and a municipal sewerage system (the "Sewerage System"), consisting of a sewerage treatment plant, collection and transportation lines, lift stations and all appurtenant facilities and properties;

WHEREAS, the Waterworks System has heretofore been managed by The Morgantown Water Commission, a board or commission created pursuant to an ordinance enacted September 5, 1950, and the Sewerage System has heretofore been managed by the Morgantown Sanitary Board, a board or commission created pursuant to an ordinance enacted August 11, 1964;

WHEREAS, the City has considered the effects of combining the operation, control and management of the Waterworks System and the Sewerage System under a single board or commission and has determined that certain efficiencies will be achieved by elimination of duplication of some services and facilities and by providing for a unified management of the Waterworks System and the Sewerage System;

WHEREAS, the City has provided for refunding of all of its existing Waterworks Revenue Bonds and Sewer Revenue Bonds through the issuance of Combined Waterworks and Sewerage System Refunding Revenue Bonds, Series 1987 (the "Bonds") and, upon conclusion of such refunding and defeasance of the Waterworks Revenue Bonds and Sewer Revenue Bonds, will have no Waterworks Revenue Bonds or Sewer Revenue Bonds outstanding, the payment of which has not been made or provided for;

WHEREAS, the City is permitted, pursuant to Chapter 8, Article 20 of the Code of West Virginia, 1931, as amended (the "Act") to combine by ordinance the Waterworks System and the Sewerage System into a single undertaking and to operate the same in combination under a single board or commission; and

WHEREAS, the City now desires to provide for the manner of and procedure for transferring supervision and control of its separately existing Waterworks System and Sewerage System from the heretofore separate boards into a single board or committee to be known as the "Morgantown Utility Board;"

NOW, THEREFORE, THE CITY OF MORGANTOWN HEREBY ORDAINS:

Section 1. That upon the issuance of the Bonds, the management, control and operation of the Waterworks System and the Sewerage System of the City shall be vested in the Morgantown Utility Board (the "Board"), hereby created and appointed and functioning as hereinafter provided.

Section 2. The Board shall consist of 5 persons, each of whom shall be citizens and residents of the City, shall be persons of outstanding reputation, ability and integrity, and shall be appointed by the Common Council of the City. The City Manager of the City shall notify all appointees of their appointment. The terms of such Boardmembers first appointed shall be for 1, 2, 3, 4 and 5 years, respectively, from the 1st day of the month in which appointed. In the event of a vacancy and also within 30 days after the expiration of the term of office of any Boardmember, a successor shall be appointed by the Common Council of said City. All vacancies shall be filled for the unexpired term only and all other appointments shall be for a term of 5 years, to commence on the date following the scheduled expiration date of the previous term. The Board shall adopt rules of procedure for the time and place of its meetings and the conduct thereof. Any Boardmember shall be eligible for reappointment upon the expiration of his term. The Boardmembers shall each receive compensation for their services at the rate of $500 per year, payable semi-annually, and in addition, shall be reimbursed for any and all expenses incurred in the performance of their duties under order of the Board. Each Boardmember shall be subject to removal for just cause by the Common Council of the City of Morgantown by the recorded vote of a majority of said Council after a public hearing thereon. The decision of the Common Council as to such removal shall be final and not subject to review by any court, arbitrator or other body, and each Boardmember accepting such appointment shall acknowledge the finality of such decision.

Section 3. At the first meeting of the Board and annually thereafter it shall organize by designating one of the Boardmembers to act as Chairman and another or others to act as Secretary and/or Treasurer thereof. The Chairman shall preside at all meetings when present and shall call special meetings on his own motion, or when requested to do so by any two Boardmembers. The Secretary shall keep a record of the proceedings which shall be available for inspection as other municipal records. The Treasurer shall disburse the funds of the Board as directed by it. In the event that any Boardmember shall be unable to fulfill the duties of his office for a period of 6 months, a majority of the remainder of the said Boardmembers may declare the office of such Boardmember vacant and the Common Council of said City shall thereupon fill such vacancy as otherwise provided for herein.

Section 4. The Board shall have full and complete supervision, management and control of the Waterworks System and Sewerage System, including the maintenance, operations, improvements and extension thereof, which shall be combined as a single system (the "System"). All bills for water and sewer service shall be collected and accounted for by the Board in the manner and form required by law, the Public Service Commission of West Virginia and the ordinances of the City, and all disbursements and accounts of the System shall be ordered paid out only upon approval of said Board; provided, however, that all such supervision, management and control of the System and the collection and accounting for bills for water and sewer service shall be consistent and in accordance with any ordinances pursuant to which the City may have authorized and issued any bonds from time to time outstanding, which by their terms are payable from and secured by the revenues of the System. The Board shall have the power and authority to make all contracts, agreements and other matters necessary or proper for the full and complete supervision, management and control of the System.

Section 5. The Board shall have power to employ, fix the compensation of, and discharge, a superintendent of the System, and shall direct, employ and fix the compensation of and discharge all other employees of the System. The superintendent of the System, upon his appointment and taking office, shall furnish and file with the City Clerk, a bond in the sum and penalty of $50,000, the cost of such bond to be payable from revenues of the System and such bond to be payable to the City and conditioned as to the faithful performance of the superintendent's duties as are fixed by the Board.

Section 6. The Board shall provide reports, at least semiannually, or as otherwise required by law, to the City Manager and Council of the City, indicating the Board's financial condition. The Board shall also, if requested by the Mayor or City Manager of

the City, provide the City with yearly audited financial statements, minutes of all meetings of the Board, an annual budget, and other information as may reasonably be requested.

Section 7. Following the defeasance of the Water Revenue Bonds and Sewer Revenue Bonds, all assets and liabilities of the Waterworks System and Sewerage System, including accounts receivable and accounts payable, and all employees thereof, shall be under the management and control of the Board. Personnel policies and practices, and other matters affecting employees of the Board, except pensions, shall be determined by the Board.

Section 8. Upon transfer of the management and control of the employees of the Waterworks System and Sewerage System to the Board, all such employees shall be under the general pension plan of the City, subject to such adjustments as shall be provided for by resolution of Council of the City.

Section 9. The following persons are hereby appointed as the initial members of the Board:

Richard M. Gardner is hereby appointed to serve a term of 1 year from the first day of the month of such appointment.

Benjamin L. Glasscock is hereby appointed to serve a term of 2 years from the first day of the month of such appointment.

Arthur F. Hahn is hereby appointed to serve a term of 3 years from the first day of the month of such appointment.

Thomas H. VanLandingham is hereby appointed to serve a term of 4 years from the first day of the month of such appointment.

Curtis J. Tompkins is hereby appointed to serve a term of 5 years from the first day of the month of such appointment.

Section 10. The Common Council of the City enacts this Ordinance for the assurance and protection of the citizens of the City and for the purpose of assuring the holders of bonds of the City payable from the income and revenues of the System of an efficient operation and maintenance thereof. No amendment or repeal of this Ordinance shall be enacted unless due notice thereof shall be published in a newspaper of general circulation within the City once each week for 2 successive weeks and a public hearing held thereon at a time and place to be fixed in said notice. Any such Ordinance shall otherwise be adopted in accordance with the rules and regulations of the Common Council of said City.

Section 11. This Ordinance shall be effective from the date of its enactment.

Passed on First Reading: August 18, 1987

Enacted on Final Reading
following Public Hearing: September 1, 1987

THE CITY OF MORGANTOWN

[SEAL]

Mayor

ATTEST:

City Clerk

09/18/87
MCOMB1-B

# ARTICLE 169
## Utility Board


169.01 Creation; members; compensation.
169.02 Organization.
169.03 Powers and duties.
169.04 General Manager created; other employees.
169.05 Financial reports; minutes; budget.
169.06 Waterworks, sewerage system and stormwater system accounts; personnel policies.
169.07 Pension plan.


CROSS REFERENCES
Combined waterworks and sewage system - see W.Va. Code Art. 8-20

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169.01 CREATION; MEMBERS; COMPENSATION.

(a) Upon the issuance of the combined waterworks and sewerage system refunding revenue bonds, the management, control and operation of the waterworks system and the sewerage system of the City shall be vested in the Morgantown Utility Board (the "Board"), created, appointed and functioning as hereinafter provided.

(b) The management, control and operation of the stormwater drainage and sewer system of the City shall be vested in the Morgantown Utility Board.

(c) The Board shall consist of five persons, each of whom shall be citizens and residents of the City, shall be persons of outstanding reputation, ability and integrity, and shall be appointed by Council. The City Manager shall notify all appointees of their appointment. The terms of such Boardmembers first appointed shall be for one, two, three, four and five years, respectively, from the first day of the month in which appointed. In the event of a vacancy and also within thirty days after the expiration of the term of office of any Boardmember, a successor shall be appointed by Council. All vacancies shall be filled for the unexpired term only and all other appointments shall be for a term of five years, to commence on the date following the scheduled expiration date of the previous term. The Board shall

adopt rules of procedure for the time and place of its meetings and the conduct thereof. Any Boardmember shall be eligible for reappointment upon the expiration of his term. The Boardmembers shall each receive compensation for their services at the rate established by ordinance of Council and in addition, shall be reimbursed for any and all expenses incurred in the performance of their duties under order of the Board. Each Boardmember shall be subject to removal for just cause by Council by the recorded vote of a majority of Council after a public hearing thereon. The decision of Council as to such removal shall be final and not subject to review by any court, arbitrator or other body, and each Boardmember accepting such appointment shall acknowledge the finality of such decision.
(Ord. 02-13. Passed 5-21-02.)

169.02 ORGANIZATION.

At the first meeting of the Board and annually thereafter, it shall organize by designating one of the Boardmembers to act as chairman and another or others to act as secretary and/or treasurer thereof. The chairman shall preside at all meetings when present and shall call special meetings on his own motion, or when requested to do so by any two Boardmembers. The secretary shall keep a record of the proceedings which shall be available for inspection as other Municipal records. The treasurer shall disburse the funds of the Board as directed by it. In the event that any Boardmember shall be unable to fulfill the duties of his office for a period of six months, a majority of the remainder of the Boardmembers may declare the office of such Boardmember vacant and Council shall thereupon fill such vacancy as otherwise provided for herein. (Ord. 9-1-87.)

169.03 POWERS AND DUTIES.

The Board shall have full and complete supervision, management and control of the waterworks system and sewerage system, including the maintenance, operations, improvements and extension thereof, which shall be combined as a single system (the "system"). The Board shall also have full and complete supervision, management and control of the stormwater drainage system, including the maintenance, operations, improvements and extension thereof. All bills for water, sewer and stormwater service shall be collected and accounted for by the Board in the manner and form required by law, the Public Service Commission and/or the ordinances of the City, and all disbursements and accounts of the system shall be ordered paid out only upon approval of such Board; provided however, that all such supervision, management and control of the systems and the collection and accounting for bills for water, sewer and stormwater service shall be consistent and in accordance with any ordinance pursuant to which the City may have authorized and issued any bonds from time to time outstanding, which by their terms are payable from and secured by the revenues of the system. The Board shall have the power and authority to make all contracts, agreements and other matters necessary or proper for the full complete supervision, management and control of the system. (Ord. 02-13. Passed 5-21-02.)

169.04 GENERAL MANAGER CREATED; OTHER EMPLOYEES.

The Board shall have power to employ, affix the compensation of and discharge a General Manager of the system and shall direct, employ and fix the compensation of and discharge all other employees of the system. The General Manager of the system, upon his appointment and taking office, shall furnish and file with the City Clerk, a bond in the sum and penalty of fifty thousand dollars ($50,000), the cost of such bond to be payable from revenues of the system and such bond shall be payable to the City and conditioned as to the faithful performance of the General Manager's duties as are fixed by the Board.
(Ord. 02-13. Passed 5-21-02.)

169.05 FINANCIAL REPORTS; MINUTES; BUDGET.

The Board shall provide reports, at least semiannually, or as otherwise required by law, to the City Manager and Council, indicating the Board's financial condition. The Board shall also, if requested by the Mayor or City Manager provide the City with yearly audited financial statements, minutes of all meetings of the Board, an annual budget and other information as may reasonably be requested. (Ord. 9-1-87.)

169.06 WATERWORKS, SEWERAGE SYSTEM, AND STORMWATER SYSTEM ACCOUNTS; PERSONNEL POLICIES.

Following the defeasance of the water revenue bonds and sewer revenue bonds, all assets and liabilities of the waterworks system and sewerage system, including accounts receivable and accounts payable and all employees thereof, shall be under the management and control of the Board. All assets and liabilities of the stormwater system, including accounts receivable and accounts payable, shall be under the management and control of the Board. Personnel policies and practices and other matters affecting employees of the Board, except pensions, shall be determined by the Board. (Ord. 02-13. Passed 5-21-02.)

169.07 PENSION PLAN.

Upon transfer of the management and control of the employees of the waterworks system and sewerage system to the Board, all such employees shall be under the general pension plan of the City, subject to such adjustments as shall be provided for by resolution of Council. (Ord. 9-1-87.)

See Tabs 22, 23 and 24 for additional amendments.

**AN ORDINANCE AMENDING ARTICLE 931, SECTION 931.01 OF THE MORGANTOWN CITY CODE, AS THE SAME APPLIES TO CREATION OF THE MORGANTOWN STORMWATER UTILITY AND THE OPERATION AND MANAGEMENT OF THE SAME BY THE MORGANTOWN UTILITY BOARD.**

The City Council of the City of Morgantown hereby ordains that Article 931, Section 931.01 of the Morgantown City Code is amended as follows (new matter underlined, deleted matter struck through):

931.01 ESTABLISHED; DUTIES; FEES:

(a) There is hereby established the Morgantown Stormwater Utility, which shall be operated as a municipal stormwater system and combined with the existing public combined waterworks and sewerage system of The City of Morgantown (the "City") under Chapter 8, Article 20 of the West Virginia Code of 1931, as amended (the "Act"). This utility shall serve the Morgantown urban watershed, which shall include all areas within the corporate boundaries of the City of Morgantown and all adjacent and contiguous areas over and through which surface and stormwater flows into the City of Morgantown. The Stormwater Utility shall provide storm, flood and surface water drainage management services to all real property located within the Morgantown urban watershed.

(b) The Morgantown Stormwater Utility shall protect, to the greatest extent practicable, life, property and the water environment from loss, injury and damage by pollution, erosion, flooding, and other potential hazards, whether from natural causes or from human activity, and shall protect, to the greatest extent practicable, surface waters and receiving waters from pollution, mechanical damage, excessive flows, and other conditions which degrade the water environment, reduce recharging of groundwater, or endanger aquatic and benthic life within the Morgantown urban watershed and other receiving waters of the State. The Morgantown Stormwater Utility shall further meet the requirements of state and federal law and the City's municipal stormwater NPDES permit.

(c) The Morgantown Stormwater Utility is authorized to plan, acquire, improve, construct, inspect, develop, install, modify, manage, operate, maintain, replace, control, demolish, abandon, regulate, and fund storm and surface water drainage services, system and facilities within the urban watershed. The Utility is further authorized to acquire property and/or rights in land by gift, purchase, lease, or exercise of the right to eminent domain, to construct, to reconstruct, to improve, to better and to extend stormwater and flood management facilities within the City watershed. The Utility is further authorized to charge and collect rages and fees for these services, which rates and fees shall be determined by the Council of the City of Morgantown. The Utility is further authorized to accept federal funds under any federal law for actions

preliminary to construction/reconstruction or construction/reconstruction of stormwater and flood management facilities.

(d) The Morgantown Stormwater Utility is authorized, in anticipation of the collection of revenues of and from stormwater facilities, to issue revenue bonds to finance in whole or in part the cost of acquisition, construction, reconstruction, improvement, betterment or extension of such facilities, and to pledge punctual payment of said bonds and interest thereon all or any part of the revenues of the Utility.

(e) The Morgantown Stormwater Utility may enter into and perform contracts and agreements with other governmental entities, utility enterprises and private parties for or concerning the planning, construction, lease or other acquisition and the financing of stormwater and flood management facilities and the maintenance and operation thereof.

(f) Fees and charges for stormwater management services shall be subject to review, approval and enactment by the Morgantown City Council, pursuant to the Morgantown City Charter and the City Code of the City of Morgantown and the duly enacted operating procedures of City Council. Enacted rates and fees shall be sufficient to fully fund the operation of the Morgantown Stormwater Utility. Collected rates and fees shall be solely for the operation of the Stormwater Utility.

(g) Article 169, of the Morgantown City Code shall be amended to authorize the Morgantown Utility Board to operate and maintain the stormwater ~~collection~~ system <u>as a part of the City's existing public combined waterworks and sewerage system pursuant to the Act.</u>

(h) A new Article 929 shall be added to the Streets, Utilities, and Public Services Code of the City of Morgantown which shall address applicable stormwater management rules and regulations, as well as applicable service fees.

(i) All power and authority possessed by the City of Morgantown pertaining to public flood control and storm and surface water drainage services and operation of the Stormwater Utility is hereby transferred to the Morgantown Utility Board. The appointed General Manager of the Utility Board shall serve as Director of the Morgantown Stormwater Utility.

(j) All storm and surface water drainage systems or facilities owned or controlled by the City of Morgantown, and revenues raised for the purpose of or pertaining to public flood control and storm and surface water drainage services and operation of the Stormwater Utility, are to be collected and/or managed by the Morgantown Utility Board. The Utility Board shall, no less than annually, present to the City Council a budget and audited financial statements of the Stormwater Utility.

This ordinance shall be effective upon enactment.

FIRST READING: April 3, 2007

ADOPTED: May 1, 2007

FILED:

RECORDED:

Mayor

City Clerk

CL1153433.3

**AN ORDINANCE AMENDING ARTICLE 169, SECTION 169.03 OF THE MORGANTOWN CITY CODE, AS THE SAME APPLIES TO CREATION OF THE MORGANTOWN STORMWATER UTILITY AND THE OPERATION AND MANAGEMENT OF THE SAME BY THE MORGANTOWN UTILITY BOARD.**

The City Council of the City of Morgantown hereby ordains that Article 169, Section 169.03 of the Morgantown City Code is amended as follows (new matter underlined, deleted matter struck through):

169.03 POWERS AND DUTIES:

The Board shall have full and complete supervision, management and control of the waterworks system, ~~and~~ the sewerage system and the stormwater system, including the maintenance, operations, improvements and extension thereof, all of which shall be combined as a single system under Chapter 8, Article 20 of the West Virginia Code of 1931, as amended (the "system"). ~~The Board shall also have full and complete supervision, management and control of the stormwater drainage system, including the maintenance, operations, improvements and extension thereof.~~ All bills for water, sewer and stormwater service shall be collected and accounted for by the Board in the manner and form required by law, the Public Service Commission and/or the ordinances of the City, and all disbursements and accounts of the system shall be ordered paid out only upon approval of such Board; provided however, that all such supervision, management and control of the systems and the collection and accounting for bills for water, sewer and stormwater service shall be consistent and in accordance with any ordinance pursuant to which the City may have authorized and issued any bonds form time to time outstanding, which by their terms are payable from and secured by the revenues of the system. The Board shall have the power and authority to make all contracts, agreements and other matters necessary or proper for the full complete supervision, management and control of the system.

This ordinance shall be effective upon enactment.

FIRST READING: April 3, 2007

ADOPTED: May 1, 2007

FILED:

RECORDED:

Mayor

Acting City Clerk

CL1154284.1

# PUBLISHER'S CERTIFICATE

.....

VS.

.....

STATE OF WEST VIRGINIA
COUNTY OF MONONGALIA

I ...James Matuga..... Advertising Manager of THE DOMINION POST, a newspaper of general circulation published in the City of Morgantown, County and State aforesaid, do hereby certify that the annexed

.....Legal Notice.....

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The publisher's fee for said publication is $ ..136..05.....

Given under my hand this.....1.....day of.....May....., 20..07.....

(SEAL)

Advertising Manager of THE DOMINION POST

Subscribed and sworn to before me this ...1..... day of ...May....., 20....07...

.....

Notary Public of Monongalia County, W.Va.

My commission expires on the ..13... day of ...Dec....., 2009.....

OFFICIAL SEAL
NOTARY PUBLIC, STATE OF WEST VIRGINIA
KELLEY V. DLUGOS
46 ANTIETAM DRIVE
MORGANTOWN, WV 26508
MY COMMISSION EXPIRES DEC. 13, 2009

012511 April 20, 27

THE CITY OF MORGANTOWN
NOTICE OF PUBLIC HEARING
ENACTMENT OF ORDINANCE AMENDING
CERTAIN PROVISIONS OF THE CITY
CODE RELATING TO THE
STORMWATER SYSTEM OF THE CITY

A public hearing will be held on the following-entitled Ordinance at a regular meeting of the Council of The City of Morgantown (the "City") to be held on Tuesday, May 1, 2007, at 7:30 p.m., prevailing time, in Council Chambers at the Morgantown City Hall, 389 Spruce Street, Morgantown, West Virginia, and at such hearing any person interested may appear before the Council and present protests; and all protests and suggestions shall be heard by the Council and it shall then take such actions as it shall deem proper in the premises upon an Ordinance entitled:

AN ORDINANCE AMENDING ARTICLE 169, SECTION 169.03 OF THE MORGANTOWN CITY CODE, AS THE SAME APPLIES TO CREATION OF THE MORGANTOWN STORMWATER UTILITY AND THE OPERATION AND MANAGEMENT OF THE SAME BY THE MORGANTOWN UTILITY BOARD.

The above-entitled Ordinance was adopted on first reading by the Council of the City on April 3, 2007.

The City currently owns and operates a combined waterworks and sewerage system under Chapter 8, Article 20 of the West Virginia Code of 1931, as amended (the "Act"). The City also currently owns and operates a stormwater utility system for the benefit of the City and surrounding environs. The City desires to combine its existing stormwater utility with the existing combined waterworks and sewerage system of the City and to thereafter operate and maintain such combined waterworks, sewerage, and stormwater system of the City as a single combined system under the Act. The above entitled ordinance effects amendments to Article 169 of the Morgantown City Code as the same relates to creation of the Morgantown Stormwater Utility and the management of the same by the Morgantown Utility Board in order to combine the existing stormwater utility with the existing public combined waterworks and sewerage system of the City.

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

Following said public hearing, the Council intends to enact said Ordinance upon final reading.

Dated: April 20, 2007

Linda Little
Clerk

# ARTICLE 931
## Morgantown Stormwater Utility

931.01 Established; duties; fees.

CROSS REFERENCES
Authority to regulate - see W.Va. Code Art. 8-20, 16-13

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931.01 ESTABLISHED; DUTIES; FEES.

(a) There is hereby established the Morgantown Stormwater Utility. This utility shall serve the Morgantown urban watershed, which shall include all areas within the corporate boundaries of the City of Morgantown and all adjacent and contiguous areas over and through which surface and stormwater flows into the City of Morgantown. The Stormwater Utility shall provide storm, flood and surface water drainage management services to all real property located within the Morgantown urban watershed.

(b) The Morgantown Stormwater Utility shall protect, to the greatest extent practicable, life, property and the water environment from loss, injury and damage by pollution, erosion, flooding, and other potential hazards, whether from natural causes or from human activity, and shall protect, to the greatest extent practicable, surface waters and receiving waters from pollution, mechanical damage, excessive flows, and other conditions which degrade the water environment, reduce recharging of groundwater, or endanger aquatic and benthic life within the Morgantown urban watershed and other receiving waters of the State. The Morgantown Stormwater Utility shall further meet the requirements of state and federal law and the City's municipal stormwater NPDES permit.

(c) The Morgantown Stormwater Utility is authorized to plan, acquire, improve, construct, inspect, develop, install, modify, manage, operate, maintain, replace, control, demolish, abandon, regulate, and fund storm and surface water drainage services, system and facilities within the urban watershed. The Utility is further authorized to acquire property and/or rights in land by gift, purchase, lease, or exercise of the right to eminent domain, to construct, to reconstruct, to improve, to better and to extend stormwater and flood management facilities within the City watershed. The Utility is further authorized to charge and collect rates and fees for these services, which rates and fees shall be determined by the Council of the City of Morgantown. The Utility is further authorized to accept federal funds under any federal law for actions preliminary to construction/reconstruction or construction/reconstruction of stormwater and flood management facilities.

(d) The Morgantown Stormwater Utility is authorized, in anticipation of the collection of revenues of and from stormwater facilities, to issue revenue bonds to finance in whole or in part the cost of acquisition, construction, reconstruction, improvement, betterment or extension of such facilities, and to pledge punctual payment of said bonds and interest thereon all or any part of the revenues of the Utility.

(e) The Morgantown Stormwater Utility may enter into and perform contracts and agreements with other governmental entities, utility enterprises and private parties for or concerning the planning, construction, lease or other acquisition and the financing of stormwater and flood management facilities and the maintenance and operation thereof.

(f) Fees and charges for stormwater management services shall be subject to review, approval and enactment by the Morgantown City Council, pursuant to the Morgantown City Charter and the City Code of the City of Morgantown and the duly enacted operating procedures of City Council. Enacted rates and fees shall be sufficient to fully fund the operation of the Morgantown Stormwater Utility. Collected rates and fees shall be solely for the operation of the Stormwater Utility.

(g) Article 169, of the Morgantown City Code shall be amended to authorize the Morgantown Utility Board to operate and maintain the stormwater collection system.

(h) A new Article 929 shall be added to the Streets, Utilities, and Public Services Code of the City of Morgantown which shall address applicable stormwater management rules and regulations, as well as applicable service fees.

(i) All power and authority possessed by the City of Morgantown pertaining to public flood control and storm and surface water drainage services and operation of the Stormwater Utility is hereby transferred to the Morgantown Utility Board. The appointed General Manager of the Utility Board shall serve as Director of the Morgantown Stormwater Utility.

(j) All storm and surface water drainage systems or facilities owned or controlled by the City of Morgantown, and revenues raised for the purpose of or pertaining to public flood control and storm and surface water drainage services and operation of the Stormwater Utility, are to be collected and/or managed by the Morgantown Utility Board. The Utility Board shall, no less than annually, present to the City Council a budget and audited financial statements of the Stormwater Utility. (Ord. 02-14. Passed 5-21-02.)

AN ORDINANCE AMENDING ARTICLE 169 OF THE MORGANTOWN CITY CODE BY ADDING A NEW SECTION 169.01(B) THERETO AND AMENDING SECTIONS 169.03, 169.04 AND 169.06 AS THE SAME APPLY TO STORMWATER MANAGEMENT AND CONTROL BY THE MORGANTOWN UTILITY BOARD.

WHEREAS, Morgantown City Council desires to amend article 169 of the Morgantown City Code so as to clearly state that the Morgantown Utility Board has the authority to manage and control stormwater.

NOW, THEREFORE, the City of Morgantown hereby ordains that article 169 is amended by adding a new subsection 169.01(b) thereto and adding to sections 169.03, 169.04 and 169.06, all of which shall read as follows (new matter underlined, ~~deleted matter struck through~~):

169.01 CREATION; MEMBERS; COMPENSATION.

a) Upon the issuance of the combined waterworks and sewerage system refunding revenue bonds, the management, control and operation of the waterworks system and the sewerage system of the City shall be vested in the Morgantown Utility Board (the "Board"), created, appointed and functioning as hereinafter provided.

b) <u>The management, control and operation of the stormwater drainage and sewer system of the City shall be vested in the Morgantown Utility Board.</u>

c) The Board shall consist of five persons, each of whom shall be citizens and residents of the City, shall be persons of outstanding reputation, ability and integrity, and shall be appointed by Council. The City Manager shall notify all appointees of their appointment. The terms of such Boardmembers first appointed shall be for one, two, three, four and five years, respectively, from the first day of the month in which appointed. In the event of a vacancy and also within thirty days after the expiration of the term of office of any Boardmember, a successor shall be appointed by Council. All vacancies shall be filled for the unexpired term only and all other appointments shall be for a term of five years, to commence on the date following the scheduled expiration date of the previous term. The Board shall adopt rules of procedure for the time and place of its meetings and the conduct thereof. Any Boardmember shall be eligible for reappointment upon the expiration of his term. The Boardmembers shall each receive compensation for their services at the rate established by ordinance of Council and in addition, shall be reimbursed for any and all expenses incurred in the performance of their duties under order of the Board. Each Boardmember shall be

subject to removal for just cause by Council by the recorded vote of a majority of Council after a public hearing thereon. The decision of Council as to such removal shall be final and not subject to review by any court, arbitrator or other body, and each Boardmember accepting such appointment shall acknowledge the finality of such decision.

169.03 POWERS AND DUTIES.

The Board shall have full and complete supervision, management and control of the waterworks system and sewerage system, including the maintenance, operations, improvements and extension thereof, which shall be combined as a single system (the "system"). The Board shall also have full and complete supervision, management and control of the stormwater drainage system, including the maintenance, operations, improvements and extension thereof. All bills for water, sewer and stormwater service shall be collected and accounted for by the Board in the manner and form required by law, the Public Service Commission and/or the ordinances of the City, and all disbursements and accounts of the system shall be ordered paid out only upon approval of such Board; provided however, that all such supervision, management and control of the systems and the collection and accounting for bills for water, sewer and stormwater service shall be consistent and in accordance with any ordinance pursuant to which the City may have authorized and issued any bonds from time to time outstanding, which by their terms are payable from and secured by the revenues of the system. The Board shall have the power and authority to make all contracts, agreements and other matters necessary or proper for the full complete supervision, management and control of the systems.

169.04 GENERAL MANAGER ~~SUPERINTENDENT~~ CREATED OTHER EMPLOYEES.

The Board shall have power to employ, affix the compensation of and discharge a General Manager ~~Superintendent~~ of the system and shall direct, employ and fix the compensation of and discharge all other employees of the system. The General Manager ~~Superintendent~~ of the system, upon his appointment and taking office, shall furnish and file with the City Clerk, a bond in the sum and penalty of fifty thousand dollars ($50,000), the cost of such bond to be payable from revenues of the system and such bond shall be payable to the City and conditioned as to the faithful performance of the General Manager's ~~Superintendent's~~ duties as are fixed by the Board.

169.06 WATERWORKS, SEWERAGE SYSTEM, AND STORMWATER SYSTEM ACCOUNTS; PERSONNEL POLICIES.

Following the defeasance of the water revenue bonds and sewer revenue bonds, all assets and liabilities of the waterworks system and sewerage system, including accounts receivable and accounts payable and all employees thereof, shall be under the management and control of the Board. All assets and liabilities of the stormwater system, including accounts receivable and accounts payable, shall be under the management and control of the Board. Personnel policies and practices and other matters affecting employees of the Board, except pensions, shall be determined by the Board.

This Ordinance shall be effective upon date of adoption.

Mayor

FIRST READING: May 7, 2002

ADOPTED: May 21, 2002

FILED: May 22, 2002

RECORDED: May 22, 2002

Linda L. Lotte
City Clerk

STATE OF WEST VIRGINIA, CITY OF MORGANTOWN, ss.

I, Bill Byrne do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia and the Charter of the City of Morgantown, and that I will faithfully and impartially perform the duties of the office of Mayor for the City of Morgantown so long as I shall continue therein to the best of my skill and judgement.

Bill Byrne

Subscribed and sworn to before me by _____ this 7th day of July, 2009.

Linda L.
Clerk of the City of Morgantown

STATE OF WEST VIRGINIA, CITY OF MORGANTOWN, ss.

I, Donald L. Spencer do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia and the Charter of the City of Morgantown, and that I will faithfully and impartially perform the duties of the office of Deputy Mayor for the City of Morgantown so long as I shall continue therein to the best of my skill and judgement.

Donald L. Spencer

Subscribed and sworn to before me by _____ this 7th day of July, 2009.

Linda L.
Clerk of the City of Morgantown

STATE OF WEST VIRGINIA, CITY OF MORGANTOWN, ss.

I, Marti Shamberger do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia and the Charter of the City of Morgantown, and that I will faithfully and impartially perform the duties of the office of Councilor for the City of Morgantown so long as I shall continue therein to the best of my skill and judgement.

x Marti Shamberger

Subscribed and sworn to before me by _____ this 7th day of July, 2009.

Linda L. [illegible]
Clerk of the City of Morgantown

STATE OF WEST VIRGINIA, CITY OF MORGANTOWN, ss.

I, Charlie Byrer do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia and the Charter of the City of Morgantown, and that I will faithfully and impartially perform the duties of the office of Councilor for the City of Morgantown so long as I shall continue therein to the best of my skill and judgement.

x Charles W. Byrer

Subscribed and sworn to before me by _____ this 7th day of July, 2009.

Linda L. [illegible]
Clerk of the City of Morgantown

STATE OF WEST VIRGINIA, CITY OF MORGANTOWN, ss.

I, Jenny Selin do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia and the Charter of the City of Morgantown, and that I will faithfully and impartially perform the duties of the office of Councilor for the City of Morgantown so long as I shall continue therein to the best of my skill and judgement.

x Jenny Selin

Subscribed and sworn to before me by _____ this 7th day of July, 2009.

Linda L. [illegible]
Clerk of the City of Morgantown

STATE OF WEST VIRGINIA, CITY OF MORGANTOWN, ss.

I, Don Spencer do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia and the Charter of the City of Morgantown, and that I will faithfully and impartially perform the duties of the office of Councilor for the City of Morgantown so long as I shall continue therein to the best of my skill and judgement.

x Don L. Spencer

Subscribed and sworn to before me by _____ this 7th day of July, 2009.

Linda L. [illegible]
Clerk of the City of Morgantown

STATE OF WEST VIRGINIA, CITY OF MORGANTOWN, ss.

I, Bill Byrne do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia and the Charter of the City of Morgantown, and that I will faithfully and impartially perform the duties of the office of Councilor for the City of Morgantown so long as I shall continue therein to the best of my skill and judgement.

x Bill Byrne

Subscribed and sworn to before me by _____ this 7th day of July, 2009.

Linda L L
Clerk of the City of Morgantown

STATE OF WEST VIRGINIA, CITY OF MORGANTOWN, ss.

I, John Caddis do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia and the Charter of the City of Morgantown, and that I will faithfully and impartially perform the duties of the office of Councilor for the City of Morgantown so long as I shall continue therein to the best of my skill and judgement.

x _____

Subscribed and sworn to before me by _____ this 7th day of July, 2009.

Linda L. L
Clerk of the City of Morgantown

STATE OF WEST VIRGINIA, CITY OF MORGANTOWN, ss.

I, Ron Bane do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia and the Charter of the City of Morgantown, and that I will faithfully and impartially perform the duties of the office of Councilor for the City of Morgantown so long as I shall continue therein to the best of my skill and judgement.

x

Subscribed and sworn to before me by City Clerk this 15th day of June, 2009.

Linda L. Lucas
Clerk of the City of Morgantown

ORD 09-32

**AN ORDINANCE AMENDING ARTICLE 927.01 OF THE MORGANTOWN CITY CODE AND SETTING FEES, RATES AND CHARGES FOR THE PROVISION OF WATER SERVICE.**

SCHEDULE NO. 1

APPLICABILITY

Applicable in entire territory served ~~(except for the former Cheat Neck Public Service District service area as provided in Schedule 6 and the former Pounds Hollow Water Association service area as provided in Schedule 7).~~ including the former Cheat Neck Public Service District service area and the former Pounds Hollow Water Association service area. Schedule 6 and Schedule 7 are eliminated. Effective for bills rendered on or after ~~October 4, 2008~~ January 1, 2012.

AVAILABILITY OF SERVICE

Available for general, domestic, commercial and industrial service.

RATE

| Gallons Used Per Month | | Rate Per 1,000 Gallons |
|---|---|---|
| ~~First~~ | ~~2,000~~ | ~~$2.34~~ |
| ~~Next~~ | ~~58,000~~ | ~~$1.72~~ |
| ~~All Over~~ | ~~60,000~~ | ~~$1.28~~ |
| First 60,000 | | $3.87 |
| All Over 60,000 | | $2.53 |

MINIMUM CHARGE

No bill will be rendered for less than the following amounts, according to the size of the meter installed, to wit:

| Meter (inches) | Rate Per Month | |
|---|---|---|
| 5/8 inch or less | $ ~~4.68~~ | $ 3.87 |
| 3/4 inch | ~~7.05~~ | 5.83 |
| 1 inch | ~~11.70~~ | 9.68 |
| 1½ inch | ~~23.40~~ | 19.35 |
| 2 inch | ~~37.44~~ | 30.96 |
| 3 inch | ~~70.20~~ | 58.05 |
| 4 inch | ~~117.00~~ | 96.75 |
| 6 inch | ~~234.00~~ | 193.50 |
| 8 inch | ~~374.40~~ | 309.60 |

SCHEDULE NO. 1 (Continued)

DELAYED PAYMENT PENALTY

The above tariff is net. On all current usage billings not paid in full when due, ~~three percent (3%)~~ ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is only to be collected once for each month where it is appropriate.

TAP FEE 3/4 inch or 1 inch

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

RECONNECTION CHARGE

A fee of fifteen dollars ($15.00) during Utility Board regular working hours and twenty-five dollars ($25.00) after hours shall be charged whenever the supply of water is turned off for violation of rules, nonpayment of bills, or fraudulent use of water.

LEAK ADJUSTMENT

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

## SCHEDULE NO. 2

### APPLICABILITY

Applicable in entire territory served ~~(except for the former Cheat Neck Public Service District service area as provided in Schedule 6 and the former Pounds Hollow Water Association service area as provided in Schedule 7.)~~ including the former Cheat Neck Public Service District service area and the former Pounds Hollow Water Association service area. Schedule 6 and Schedule 7 are eliminated. Effective for bills rendered on or after ~~October 4, 2008.~~ January 1, 2012.

### AVAILABILITY OF SERVICE

Available for general, domestic, commercial and industrial service.

### RATE

| ~~Gallons Used Per Quarter~~ | | ~~Rate Per 1,000 Gallons~~ |
|---|---|---|
| ~~First~~ | ~~6,000~~ | ~~$2.34~~ |
| ~~Next~~ | ~~174,000~~ | ~~$1.72~~ |
| ~~All Over~~ | ~~180,000~~ | ~~$1.28~~ |

| Gallons Used Bi-Monthly | Rate Per 1,000 Gallons |
|---|---|
| First 120,000 | $3.87 |
| All Over 120,000 | $2.53 |

### MINIMUM CHARGE

No bill will be rendered for less than the following amounts, according to the size of the meter installed, to wit:

| Meter (inches) | Rate Per (~~Quarter~~ Bi-Monthly) | |
|---|---|---|
| 5/8 inch or less | $ ~~14.04~~ | $ 7.74 |
| 3/4 inch | ~~21.15~~ | 11.66 |
| 1 inch | ~~35.10~~ | 19.36 |
| 1½ inch | ~~70.20~~ | 38.70 |
| 2 inch | ~~112.32~~ | 61.92 |
| 3 inch | ~~210.60~~ | 116.10 |
| 4 inch | ~~351.00~~ | 193.50 |
| 6 inch | ~~702.00~~ | 387.00 |
| 8 inch | ~~1,123.20~~ | 619.20 |

### DELAYED PAYMENT PENALTY

The above tariff is net. On all current usage billings not paid in full when due, three ~~percent (3%)~~ ten percent (10%) will be added to the net amount unpaid. This delayed payment penalty is not interest and is only to be collected once for each month where it is appropriate.

SCHEDULE NO. 2 (Continued)

TAP FEE 3/4 inch or 1 inch

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

RECONNECTION CHARGE

A fee of fifteen dollars ($15.00) during Utility Board regular working hours and twenty-five dollars ($25.00) after hours shall be charged whenever the supply of water is turned off for violation of rules, nonpayment of bills, or fraudulent use of water.

LEAK ADJUSTMENT

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

## SCHEDULE NO. 3

APPLICABILITY

Applicable in the City of Morgantown.

AVAILABILITY OF SERVICE

Available for service to public fire hydrants.

RATE

The City of Morgantown shall pay as a public fire charge at the rate of $100.00 per hydrant per annum, payable in twelve equal monthly installments. This charge covers all water system facilities existing at Morgantown, West Virginia which are used in whole or in part for public fire service.

## SCHEDULE NO. 4

### APPLICABILITY

Applicable in the municipalities served by the Board excluding the City of Morgantown.

### AVAILABILITY OF SERVICE

Available for service to public fire hydrants.

### RATE

Any municipality shall pay as a public fire charge at the rate of $100.00 per hydrant per annum, payable in twelve equal monthly installments. This charge covers all water system facilities existing in any municipality which are used in whole or in part for public fire service.

## SCHEDULE NO. 5

### APPLICABILITY

Applicable in entire territory served (except municipalities).

### AVAILABILITY OF SERVICE

Available for service to private fire protection facilities.

| RATE | Per Annum |
|---|---|
| Fire Hydrants, each | $ .145.00 |
| Sprinkler Heads, 312 or less | 145.00 |
| Sprinkler Heads, each additional | .52 |
| | |
| Hose Connections, for fire use only: | |
| 2½ inch openings, each | $ 84.50 |
| 2 inch openings, each | 44.20 |
| 1½ inch openings, each | 24.25 |
| 1¼ inch openings, each | 16.00 |
| 1 inch openings, each | 10.00 |

### MINIMUM CHARGE

One hundred forty-five dollars ($145.00) per annum.

### DELAYED PAYMENT PENALTY

The above tariff is net. On all current usage billings not paid in full when due, ~~three percent (3%)~~ ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is only to be collected once for each month where it is appropriate.

### TERMS AND CONDITIONS OF SERVICE

Charges for service rendered under this schedule are billed ~~quarterly~~ bi-monthly in arrears, and bills are payable on or before the twentieth (20th) day following the date rendered.

## ~~SCHEDULE NO. 6~~

~~APPLICABILITY~~

~~Applicable in entire territory heretofore designated by the Monongalia County Commission as the Cheek Neck Public Service District. Effective for bills rendered on or after October 4, 2008~~

~~AVAILABILITY OF SERVICE~~

~~Available for general domestic, commercial and industrial service.~~

~~RATE~~

| | | | |
|---|---|---|---|
| ~~First~~ | ~~2,000 gal per month or~~ | ~~6,000 gal per quarter~~ | ~~$ 3.87 per 1,000~~ |
| ~~Next~~ | ~~8,000 gal per month or~~ | ~~24,000 gal per quarter~~ | ~~3.59 per 1,000~~ |
| ~~Next~~ | ~~20,000 gal per month or~~ | ~~60,000 gal per quarter~~ | ~~3.48 per 1,000~~ |
| ~~Next~~ | ~~30,000 gal per month or~~ | ~~90,000 gal per quarter~~ | ~~3.39 per 1,000~~ |
| ~~All Over~~ | ~~60,000 gal per month or~~ | ~~180,000 gal per quarter~~ | ~~3.29 per 1,000~~ |

~~MINIMUM CHARGE~~

~~No bill will be rendered for less than the following amounts, according to the size of the meter installed:~~

| | | |
|---|---|---|
| ~~5/8 inch meter~~ | ~~7.74 per month or~~ | ~~$ 23.22 per quarter~~ |
| ~~3/4 inch meter~~ | ~~11.15 per month or~~ | ~~33.45 per quarter~~ |
| ~~1 inch meter~~ | ~~19.81 per month or~~ | ~~59.43 per quarter~~ |
| ~~1½ inch meter~~ | ~~44.58 per month or~~ | ~~133.74 per quarter~~ |
| ~~2 inch meter~~ | ~~79.26 per month or~~ | ~~237.73 per quarter~~ |
| ~~3 inch meter~~ | ~~178.33 per month or~~ | ~~534.99 per quarter~~ |
| ~~4 inch meter~~ | ~~317.03 per month or~~ | ~~951.09 per quarter~~ |
| ~~6 inch meter~~ | ~~713.32 per month or~~ | ~~2,139.96 per quarter~~ |

~~DELAYED PAYMENT PENALTY~~

~~The above tariff is net. On all current usage billings not paid in full when due, three percent (3%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is only to be collected once for each month where it is appropriate.~~

~~TAP FEE (3/4 inch or 1 inch)~~

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

~~SCHEDULE NO. 6 (Continued)~~

~~RECONNECTION CHARGE~~

~~A fee of fifteen dollars ($15.00) during Utility Board regular working hours and twenty five dollars ($25.00) after hours shall be charged whenever the supply of water is turned off for violation of rules, nonpayment of bills, or fraudulent use of water.~~

~~LEAK ADJUSTMENT~~

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

~~SCHEDULE NO. 7~~

~~APPLICABILITY~~

~~Applicable in entire territory heretofore designated as the Pounds Hollow Water Association. Effective for bills rendered on or after October 4, 2008.~~

~~AVAILABILITY OF SERVICE~~

~~Available for water utility service.~~

~~RATE~~

| | | |
|---|---|---|
| ~~First~~ | ~~6,000 gallons used per month~~ | ~~$ 3.66 per 1,000 gallons~~ |
| ~~Next~~ | ~~4,000 gallons used per month~~ | ~~3.30 per 1,000 gallons~~ |
| ~~Next~~ | ~~10,000 gallons used per month~~ | ~~3.00 per 1,000 gallons~~ |
| ~~All Over~~ | ~~20,000 gallons used per month~~ | ~~1.84 per 1,000 gallons~~ |

~~MINIMUM CHARGE~~

~~No bill will be rendered for less than the following amount: $21.96 bi-monthly~~

~~DELAYED PAYMENT PENALTY~~

~~The above tariff is net. On all current usage billings not paid in full when due, three percent (3%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is only to be collected once for each month where it is appropriate.~~

~~TAP FEE (3/4 inch or 1 inch)~~

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

~~RECONNECTION CHARGE~~

~~A fee of fifteen dollars ($15.00) during Utility Board regular working hours and twenty five dollars ($25.00) after hours shall be charged whenever the supply of water is turned off for violation of rules, nonpayment of bills, or fraudulent use of water.~~

~~SCHEDULE NO. 7 (Continued)~~

~~LEAK ADJUSTMENT~~

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

The rates and charges set out herein will become effective for service provided on or after ~~October 4, 2008~~ January 1, 2012.

**FIRST READING** June 2, 2009

ADOPTED: July 21, 2009

FILED: July 22, 2009

RECORDED: July 22, 2009

MAYOR

CITY CLERK

ORD09-31

**AN ORDINANCE AMENDING ARTICLE 925.03 OF THE MORGANTOWN CITY CODE AND SETTING FEES, RATES AND CHARGES FOR THE PROVISION OF SEWER SERVICE.**

SCHEDULE NO. 1

APPLICABILITY

Applicable to entire territory served, except that served by Cheat Lake Wastewater Treatment Plant. Effective for bills rendered on or after ~~November 22, 2008,~~ January 1, 2012.

AVAILABILITY

Available for sanitary sewer service.

RATE

Based upon the metered amount of water supplied.

| Gallons Used | |
|---|---|
| ~~First 2,000 per month or 6,000 per quarter~~ | ~~$ 3.75 per 1,000 gallons~~ |
| ~~Next 58,000 per month or 174,000 per quarter~~ | ~~$ 3.19 per 1,000 gallons~~ |
| ~~All over 60,000 per month or 180,000 per quarter~~ | ~~$ 3.11 per 1,000 gallons~~ |
| First 60,000 per month | $ 4.66 per 1,000 gallons |
| All Over 60,000 per month | $ 4.00 per 1,000 gallons |

MINIMUM CHARGE

| | | |
|---|---|---|
| Per month | ~~$ 7.50~~ | $ 4.66 |
| ~~Per quarter~~ Bi-monthly | ~~$22.50~~ | $ 9.32 |

TAP FEE

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

SCHEDULE NO. 1 (Continued)

DELAYED PAYMENT PENALTY

The above tariff is net. On all current usage billings not paid in full when due, ~~three percent (3%)~~ ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is only to be collected once for each month where it is appropriate.

RECONNECTION CHARGE

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

LEAK ADJUSTMENT

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

## SCHEDULE NO. 2

### APPLICABILITY

Applicable to territory served by Cheat Lake Wastewater Treatment Plant.

### AVAILABILITY

Available for sanitary sewer service.

### RATE

Based upon the metered amount of water supplied.

| Gallons Used | | |
|---|---|---|
| First 2,000 per month | | |
| ~~or 6,000 per quarter~~ | | |
| or 4,000 bi-monthly | $ 8.75 | per 1,000 gallons |
| Next 8,000 per month | | |
| ~~or 24,000 per quarter~~ | | |
| or 16,000 bi-monthly | $ 8.00 | per 1,000 gallons |
| Next 20,000 per month | | |
| ~~or 60,000 per quarter~~ | | |
| or 40,000 bi-monthly | $ 7.50 | per 1,000 gallons |
| Next 30,000 per month | | |
| ~~or 90,000 per quarter~~ | | |
| or 60,000 bi-monthly | $ 7.00 | per 1,000 gallons |
| Next 940,000 per month | | |
| ~~or 2,820,000 per quarter~~ | | |
| or 1,880,000 bi-monthly | $ 6.00 | per 1,000 gallons |
| ~~Next~~ All Over 1,000,000 per month | | |
| ~~or 3,000,000 per quarter~~ | | |
| or 2,000,000 bi-monthly | $ 5.50 | per 1,000 gallons |

### MINIMUM CHARGE

| | |
|---|---|
| Per month | $ 17.50 |
| ~~Per quarter~~ Bi-monthly | $ ~~52.50~~ $ 35.00 |

### TAP FEE

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

### DELAYED PAYMENT PENALTY

The above tariff is net. On all current usage billings not paid in full when due, ~~three percent (3%)~~ ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is only to be collected once for each month where it is appropriate.

RECONNECTION CHARGE

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

LEAK ADJUSTMENT

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

SCHEDULE NO. 3

APPLICABILITY

Applicable to territory served.

AVAILABILITY

Available for sanitary sewer service to other systems.

RATE

All wastewater from other systems will be treated at the approved rate of ~~$1.21~~ 1.50 per 1,000 gallons.

SURCHARGE

~~$0.54~~ $0.83 per 1,000 gallons of wastewater treated from Scotts Run Public Service District until the contribution related to plant capital costs is refunded; the amount of the credit to Scotts Run Public Service District will be debited to Contributions in Aid of Construction.

The rates and charges set out herein will become effective for all sewage delivered into the system on or after ~~November 22, 2008~~ January 1, 2012.

**FIRST READING** June 2, 2009

ADOPTED: July 21, 2009

MAYOR

FILED: July 22, 2009

RECORDED: July 22, 2009

CITY CLERK

AN ORDINANCE AMENDING ARTICLE 929, SECTIONS 929.05 AND 929.06, OF THE MORGANTOWN CITY CODE, AS THE SAME APPLY TO STORMWATER MANAGEMENT RATES AND FEES.

The City of Morgantown hereby ordains that Sections 929.05 and 929.06 of its Streets, Utilities and Public Services Code are amended as follows:

929.05 FLAT RATE CHARGES:

The monthly service charge for users occupying a residential dwelling, as defined by the Director, shall be $3.63. After October 1, 2008, the monthly service charge for a single-family residential dwelling shall be $5.30. The City Council may, from time to time, by ordinance, change these service charges.

929.06 CHARGES BASED ON LAND AREA:

The monthly service charge for properties other than described in section 929.05 shall be computed in the following manner: $1.45 per 1,000 square feet of impervious area upon the property, as determined by the Director. After October 1, 2008, the monthly service charge for properties other than described in section 929.05 shall be computed in the following manner: $2.12 per 1.000 square feet of impervious area upon the property, as determined by the Director.

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

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

The City Council may, from time to time, by ordinance, change these rate charges.

This ordinance shall be effective May 3, 2007.

FIRST READING:

_____
Mayor

ADOPTED:

FILED:

_____
City Clerk

RECORDED:

**REGULAR MEETING APRIL 17, 2007:**

The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Tuesday, April 17, 2007, at 7:30 P.M.

**PRESENT:** Mayor Ron Justice, City Manager Dan Boroff, City Clerk Linda Little, City Attorney Steve Fanok, Assistant City Manager Jeff Mikorski, and Council Members Ron Bane, Jim Manilla, Frank Scafella, Teresa Miller, Bill Byrne, Don Spencer.

The meeting was called to order by the Mayor.

**APPROVAL OF MINUTES:** Minutes from the regular meeting on April 3, 2007, were approved as printed.

**CORRESPONDENCE:**

Mayor Justice read and presented proclamations for Cover the Uninsured and Remembrance of Victims of the Holocaust. Councilor Manilla read Jim Wood's email about the B-4 District. Pi Sigma Sigma members presented a student survey on WVU growth. Mayor Justice spoke of the Mon River Summit and related announcements.

**PUBLIC HEARING - AN ORDINANCE GRANTING AN AERIAL EASEMENT TO WVU FOR A PEDESTRIAN BRIDGE ACROSS UNIVERSITY AVENUE IN THIRD WARD:**

Pursuant to a legal notice appearing in the Dominion Post, Mayor Justice called for a public hearing on the above referenced ordinance.

There being no appearances or objections, Mayor Justice declared this public hearing closed.

**PUBLIC HEARING - AN ORDINANCE AMENDING SECTIONS 929.05 AND 929.06 AS APPLY TO STORMWATER RATES AND FEES:**

Pursuant to a legal notice appearing in the Dominion Post, Mayor Justice called for a public hearing on the above referenced ordinance.

Louis Birurakis, 435 Cobun Avenue, asked that the WVU Athletic Department pay for part of this for the Poponoe Run area.

There being no more appearances or objections, Mayor Justice declared this public hearing closed.

**UNFINISHED BUSINESS:**

**AN ORDINANCE GRANTING AN AERIAL EASEMENT TO WVU FOR A PEDESTRIAN BRIDGE ACROSS UNIVERSITY AVENUE IN THIRD WARD:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE AUTHORIZING THE CITY OF MORGANTOWN TO GRANT AN AERIAL EASEMENT TO THE WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS FOR THE PURPOSE OF WVU CONSTRUCTING A PEDESTRIAN BRIDGE ACROSS UNIVERSITY

AVENUE, NEAR WVU'S BUSINESS AND ECONOMICS BUILDING, WITHIN THE THIRD WARD OF THE CITY.

Motion by Byrne, second by Miller, to adopt the above entitled ordinance. Motion carried 7-0.

**AN ORDINANCE AUTHORIZING $8,500,000 OF COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2007 A FOR STORMWATER IMPROVEMENTS:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF EXTENSIONS. ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE STORMWATER PORTION OF THE EXISTING PUBLIC COMBINED WATERWORKS, SEWERAGE AND STORMWATER SYSTEM OF THE CITY OF MORGANTOWN AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $8,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2007 A (WEST VIRGINIA SRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE 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.

After discussion, motion by Byrne, second by Scafella, to pass the above entitled ordinance to third reading. Motion carried 7-0.

**AN ORDINANCE AMENDING SECTIONS 929.05 AND 929.06 AS APPLY TO STORMWATER RATES AND FEES:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE AMENDING ARTICLE 929, SECTIONS 929.05 AND 929.06, OF THE MORGANTOWN CITY CODE, AS THE SAME APPLY TO STORMWATER MANAGEMENT RATES AND FEES.

Jim Green was asked to describe the boundaries of the system and the watersheds. After discussion, motion by Manilla, second by Spencer, to adopt the above entitled ordinance. Motion carried 7-0.

**BOARDS AND COMMISSIONS:**

By acclamation, Paul Steel was reappointed to the Traffic Commission and Jerry Steketee was appointed to Beautification.

**PUBLIC PORTION:**

Louis Birurakis, 435 Cobun Avenue, spoke of sewage in Poponoe Run and his wife's property.

There being no more appearances or objections, Mayor Justice declared this public portion closed.

Mayor Justice suspended the rules for Jim Green, MUB, to report. MUB has proposed a larger

pipe on the edge of the property and are trying to keep it cost effective using a centerline right-of-way.

Council discussed right-of-way appearances and other concerns for sewage lines.

**SPECIAL COMMITTEE REPORTS:**

Councilor Byrne gave an update on the sister city program and Councilor Miller said the Planning Commission has another meeting with the Suncrest Neighborhood Association.

**NEW BUSINESS:**

APPROVAL OF LEVY RATES: The below entitled Rates of Levy was presented for Council's approval:

APPROVAL OF THE RATES OF LEVY LAID BY THE CITY OF MORGANTOWN AND APPROVED BY THE STATE AUDITOR FOR THE FISCAL YEAR BEGINNING JULY 1, 2007 IN ACCORDANCE WITH CHAPTER 11 ARTICLE 8 OF THE WEST VIRGINIA CODE.

After the City Manager's explanation, motion by Scafella, second by Byrne, to pass the above entitled Rates of Levy. Motion carried 7-0.

**CITY MANAGERS REPORT:**
**INFORMATION:**
Item No. 1:
As per your request, attached is a list of topics that have been suggested for the April Committee of the Whole Meeting.

**NEW BUSINESS:**
Item No. 1:
The second attachment is a memo from the Airport Director reporting the revised Five Year Airport Improvement Plan as negotiated with the FAA. The only major change is reallocating $20,000 in fiscal year 2007 from emergency lighting for vehicles to rehabilitate TWY "Charlie" and "South" Ramp Area. Given the importance of the ramp area, I recommend that the revision be approved. Special Note: Because of the current, commercial air services disruption, it is most probable that funding for the next Federal fiscal year may be significantly reduced (based upon commercial passenger count).

After discussion, motion by Spencer, second by Scafella, to approve the FAA Airport Improvement Plan. Motion carried 7-0.

Item No. 2.
Habitat for Humanity has an ongoing program to support affordable housing initiatives throughout North Central West Virginia. To further advance this work, the organization has requested a one time contribution of $1,000 to help publicize this initiative. Given the importance of this issue to the City of Morgantown, I recommend that the request be granted.

Motion by Scafella, second by Byrne, to allocate $1,000 for promotional purposes. Motion carried 7-0.

Item No. 3:
The third attachment is a memo from the Public Works Director reporting informal bid results for the Stewart Street Landslide Project. I agree with her findings and recommend that the contract be awarded to the low bidder Landscape Plus for $27, 490.

Motion by Scafella, second by Spencer, to approve the $27,490 for Landscape Plus to correct the landslide. Motion carried 7-0.

Item No.4:
The last attachment is a letter from MountainFest, LLC requesting a festival permit to allow controlled beer sales at Hazel Ruby McQuain Park on July 27th and July 28th of this year in support of the third annual Wild & Wonderful MountainFest Motorcycle Rally. Given the success of past events, I recommend that the request also be granted.

Motion by Manilla, second by Byrne, to grant MountainFest a festival permit for July 27th and 28th. Motion carried 7-0.

## CITY CLERK'S REPORT:

City Clerk Little gave a reminder of the City Election on April 24th.

## CITY ATTORNEY'S REPORT:

No Report.

## REPORT FROM COUNCIL MEMBERS (Reverse Order):

| | |
|---|---|
| Councilor Spencer: | Councilor Spencer commented on the VA Tech tragedy and the River Summit with Tennessee Riverpark information; announced daycare and affordable health care meetings; requested a graffiti ordinance; and spoke of Don Trevorrow's memorial service. |
| Councilor Byrne: | Councilor Byrne echoed condolences for the VA Tech situation and commended Bill Rumble for quick help with a tree problem. |
| Councilor Miller: | Councilor Miller observed the death of Annette Broome and requested a proclamation; commented on health care and childcare issues; and noted they cannot do anything about the B-4 District until the property owners are heard. |
| Councilor Scafella: | Councilor Scafella informed that the new Protzman traffic pattern is temporary: the right turn will be improved. |
| Councilor Manilla: | Councilor Manilla requested an Airport tour; noted the Sabraton sign is being worked on; and discussed the B-4 District. |
| Councilor Bane: | Councilor Bane addressed the B-4 District; spoke of VA Tech families; and covered planning concerns outside the City such as fire response and code inspections. |
| | Discussion ensued about monitoring graffiti versus an ordinance. |

Mayor Justice: Mayor Justice noted the COW will be on Wednesday because of the election; suggested a work session with the County Commission on overloaded services outside the City; and announced future events.

**ADJOURNMENT**: There being no further business, the meeting adjourned by unanimous consent at 9:09 p.m.

City Clerk

Mayor

***A FULL TRANSCRIPT OF ALL COUNCIL MEETINGS IS AVAILABLE ON CD AT THE MORGANTOWN CITY LIBRARY.**

**REGULAR MEETING APRIL 3, 2007:**

_____The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Tuesday, April 3, 2007, at 7:30 P.M.

**PRESENT:** Mayor Ron Justice, City Manager Dan Boroff, City Clerk Linda Little, City Attorney Steve Fanok, Assistant City Manager Jeff Mikorski, and Council Members Ron Bane, Jim Manilla, Frank Scafella, Teresa Miller, Bill Byrne, Don Spencer.

The meeting was called to order by the Mayor.

**APPROVAL OF MINUTES:** Minutes from the regular meeting on March 20, 2007, were approved as printed.

**CORRESPONDENCE:**

Mayor Justice read a Fair Housing Month proclamation. Marissa Travinski, BOPARC, gave an update on the WV Make It Shine Program Project Pride. Councilor Bane requested looking at the intersection of Price and Prospect Streets, although the Traffic Commission has considered it three times.

**BOARDS AND COMMISSIONS:**

No Business.

**PUBLIC PORTION:**

Louis Birurakis, 435 Cobun Avenue, spoke of new buildings and the sewer system.

There being no more appearances or objections, Mayor Justice declared this public portion closed.

**SPECIAL COMMITTEE REPORTS:**

Councilor Miller congratulated the Don Knotts display by the Museum Commission.

**NEW BUSINESS:**

**AN ORDINANCE AUTHORIZING $8,500,000 OF COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2007 A FOR STORMWATER IMPROVEMENTS:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE STORMWATER PORTION OF THE EXISTING PUBLIC COMBINED WATERWORKS, SEWERAGE AND STORMWATER SYSTEM OF THE CITY OF MORGANTOWN AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $8,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2007 A (WEST VIRGINIA SRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED

OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE 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.

After discussion, motion by Scafella, second by Byrne, to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**AN ORDINANCE AMENDING PRIOR COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS ORDINANCES TO ADD STORMWATER SYSTEM REVENUES:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE AMENDING THE PRIOR ORDINANCES OF THE CITY OF MORGANTOWN WHICH AUTHORIZED THE ISSUANCE OF THE CITY'S OUTSTANDING COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1992, SERIES 1995, SERIES 2000 A, SERIES 2000 B, SERIES 2001 A, AND SERIES 2006 A, IN ORDER TO ADD STORMWATER SYSTEM REVENUES OF THE COMBINED UTILITY SYSTEM OF THE CITY AS A SOURCE OF SECURITY AND REPAYMENT FOR SUCH BONDS.

After discussion and explanation by Vince Collins, motion by Byrne, second by Spencer, to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**AN ORDINANCE AMENDING SECTION 931.01 AS APPLIES TO CREATION OF THE MORGANTOWN STORMWATER UTILITY:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE AMENDING ARTICLE 931, SECTION 931.01 OF THE MORGANTOWN CITY CODE, AS THE SAME APPLIES TO CREATION OF THE MORGANTOWN STORMWATER UTILITY AND THE OPERATION AND MANAGEMENT OF THE SAME BY THE MORGANTOWN UTILITY BOARD.

Motion by Miller, second by Scafella, to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**AN ORDINANCE AMENDING SECTION 169.03 AS APPLIES TO CREATION OF THE MORGANTOWN STORMWATER UTILITY:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE AMENDING ARTICLE 169, SECTION 169.03 OF THE MORGANTOWN CITY CODE, AS THE SAME APPLIES TO CREATION OF THE MORGANTOWN STORMWATER UTILITY AND THE OPERATION AND MANAGEMENT OF THE SAME BY THE MORGANTOWN UTILITY BOARD.

Motion by Spencer, second by Byrne, to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**AN ORDINANCE AMENDING SECTIONS 929.05 AND 929.06 AS APPLY TO STORMWATER RATES AND FEES:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE AMENDING ARTICLE 929, SECTIONS 929.05 AND 929.06, OF THE

MORGANTOWN CITY CODE, AS THE SAME APPLY TO STORMWATER MANAGEMENT RATES AND FEES.

Motion by Miller, second by Manilla, to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**AN ORDINANCE GRANTING AN AERIAL EASEMENT TO WVU FOR A PEDESTRIAN BRIDGE ACROSS UNIVERSITY AVENUE IN THIRD WARD:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE AUTHORIZING THE CITY OF MORGANTOWN TO GRANT AN AERIAL EASEMENT TO THE WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS FOR THE PURPOSE OF WVU CONSTRUCTING A PEDESTRIAN BRIDGE ACROSS UNIVERSITY AVENUE, NEAR WVU'S BUSINESS AND ECONOMICS BUILDING. WITHIN THE THIRD WARD OF THE CITY.

After the City Manager's explanation and discussion, motion by Scafella, second by Manilla, to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**CONSIDERATION OF APPROVAL OF A RESOLUTION TO ADMINISTER A $6,333 GRANT FOR MAIN STREET MORGANTOWN TO UPDATE KIOSKS AND BROCHURES:** The above entitled Resolution was presented for Council's approval:

Motion by Byrne, second by Scafella, to approve the above entitled Resolution. Motion carried 7-0.

**CITY MANAGERS REPORT:**
**INFORMATION:**
Item No. 1:
Attached you will find a memo from the Public Works Director reporting a slip adjacent to Stewart Street. As per her comments, the situation is being treated as an emergency and could cost $30,000 to repair. As this work progresses, Council will be kept informed.

Item No. 2:
As way of update on the Downtown Development Plan Project, the following information is provided: $70,000 is available in the Capital Escrow Account to fund the work; the project will be conducted under the supervision of the City's Planning Office; principal elements will include land use, infrastructure, market/economic factors, and aesthetic/quality of life issues; and the process will include all concerned interests–property owners, merchants, professional services, government agencies, neighborhood associations, developers, WVU, and all other interested parties. In the near future, the Planning Department will seek Requests for Proposals from qualified firms to help effect the Plan. As this project advances, Council will be kept informed.

Item No.3:
The second attachment is a memo from Chief Fetty reporting a successful, Homeland Security grant application for an AMKUS Rescue Tool System complete with power unit. This system is valued at $50,000 and will significantly enhance the Fire Department's rescue capabilities. The Department and particularly Captain Bill Graham are to be commended for securing this important rescue system for the City.

**NEW BUSINESS:**
Item No. 1:

The third attachment is a recommendation from the Beautification Commission that the City contract with Biafore Landscaping for the Don Knotts Boulevard median project for an approximate cost of $17,000. A maintenance program will also be made part of the project. Given the importance of improving the appearance of the major entryway to the City, I also recommend that the project be approved.

After discussion, motion by Byrne, second by Spencer, to approve the issuance of the contract. Motion carried 7-0.

**CITY CLERK'S REPORT:**

City Clerk Little announced early voting dates and the Airport is heading the pepperoni roll sale.

**CITY ATTORNEY'S REPORT:**

No Report.

**REPORT FROM COUNCIL MEMBERS** (Reverse Order):

| | |
|---|---|
| Mayor Justice: | Mayor Justice noted the trees are in bloom and the docks are in at McQuain Park; announced the floating fountain has been designed, and advised of future meetings: League of Women Voters, WVU President search, day care forum, and remarked that Council is not paid for COW meetings; suggested limiting COW items and starting at 7:00 p.m.; proposed a tour of the Senior Center; and has gotten noise complaints. |
| Councilor Spencer: | Councilor Spencer discussed Home Rule, the Citizen Survey, and graffiti; and asked about the Block Grant progress. |
| Citizen | There was much discussion about Home Rule and the Survey among Councilors. |
| Councilor Byrne: | Councilor Byrne suggested informational and policy items at COW; had a request addressing noise violations on Rt. 7; and congratulated the WVU basketball team. |
| Councilor Miller: | Councilor Miller congratulated the WVU basketball team and Jamie Lemer for the Jerry West statue. |
| Councilor Scafella: | Councilor Scafella gave an update on the Senior Center. |
| Councilor Manilla: | No Report. |
| Councilor Bane: | Councilor Bane has addressed the Kiwanis Club and mentioned the county Pandemic drill by the Health Department. |

**ADJOURNMENT:** There being no further business, the meeting adjourned by unanimous consent at

9:15 p.m.

City Clerk

Mayor

***A FULL TRANSCRIPT OF ALL COUNCIL MEETINGS IS AVAILABLE ON CD AT THE MORGANTOWN CITY LIBRARY.**

**REGULAR MEETING JUNE 2, 2009:**

The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Tuesday, June 2, 2009, at 7:30 p.m.

**PRESENT:** City Manager Dan Boroff, Mayor Ron Justice, City Clerk Linda Little, City Attorney Steve Fanok, Assistant City Manager Jeff Mikorski and Council Members: Ron Bane, John Gaddis, Charlie Byrer, Jenny Selin, Bill Byrne, Don Spencer.

**APPROVAL OF MINUTES:** Minutes from the regular meeting on May 19th & special meeting on May 26, 2009, were approved as printed.

**CORRESPONDENCE:** Mayor Justice announced that there are a great many voting items on the agenda and asked that everyone help to keep the meeting moving along in a timely fashion. He stated that he will do his best to keep the discussions on track.

**PUBLIC HEARING -AN ORDINANCE AMENDING THE FY 2008-2009 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET HERETO ATTACHED AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIED TO THE GENERAL FUND:**

There being no appearances, Mayor Justice declared this public hearing closed.

**UNFINISHED BUSINESS:**

**AN ORDINANCE AMENDING THE FY 2008-2009 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET HERETO ATTACHED AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIED TO THE GENERAL FUND:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE AMENDING THE FY 2008-2009 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET HERETO ATTACHED AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIED TO THE GENERAL FUND

Motion by Byrne, second by Selin to adopt the above entitled Ordinance. Motion carried 7-0.

**BOARDS AND COMMISSIONS:** Councilor Spencer announced that there will be changes to the ward positions on the Beautification Commission, and he will give updates soon.

**NEW BUSINESS:**

**AN ORDINANCE AUTHORIZING THE CONVEYANCE OF PROPERTY TO THE CITY OF MORGANTOWN, AS REQUIRED BY THE CHARTER OF THE CITY OF MORGANTOWN:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE AUTHORIZING THE CONVEYANCE OF PROPERTY TO THE CITY OF MORGANTOWN, AS REQUIRED BY THE CHARTER OF THE CITY OF MORGANTOWN

After discussion, and explanation from the City Manager on Ordinance, motion by Byrne second by Gaddis to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**AN ORDINANCE AMENDING ARTICLE 927.01 OF THE MORGANTOWN CITY CODE AND SETTING FEES AND CHARGES FOR THE PROVISION OF WATER SERVICE:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE AMENDING ARTICLE 927.01 OF THE MORGANTOWN CITY CODE AND SETTING FEES AND CHARGES FOR THE PROVISION OF WATER SERVICE.

Motion by Gaddis, second by Bane, to amend Ordinance by adding Rates to second line of the first page and after Fees in body of Ordinance. Motion carried 7-0. After discussion, motion by Spencer, second by Gaddis to pass the above entitled Ordinance to second reading. Motion carried 7-0

**AN ORDINANCE AMENDING ARTICLE 925.03 OF THE MORGANTOWN CITY CODE AND SETTING FEES AND CHARGES FOR THE PROVISION OF SEWER SERVICE:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE AMENDING ARTICLE 925.03 OF THE MORGANTOWN CITY CODE AND SETTING FEES AND CHARGES FOR THE PROVISION OF SEWER SERVICE.

Motion by Byrne, second by Selin, to amend Ordinance by adding Rates to second line of the first page and after Fees in body of Ordinance. Motion carried 7-0. After discussion, motion by Gaddis, second by Bane to pass the above entitled Ordinance to second reading. Motion carried 7-0

**AN ORDINANCE ESTABLISHING THE RATES OF COMPENSATION FOR CITY OF MORGANTOWN EMPLOYEES FOR THE FISCAL YEAR 2009-2010:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE ESTABLISHING THE RATES OF COMPENSATION FOR CITY OF MORGANTOWN EMPLOYEES FOR THE FISCAL YEAR 2009-2010.

City Manager Dan Boroff made a minor amendment to above Ordinance. Amendment was after Appendix a, under the listing for Fire Department (Captain, Lieutenant, FFFC), the paragraph beginning with "The above rates for the titles of Captain and Lieutenant..." should have been deleted. Motion by acclamation to approve above minor amendment. Motion by Spencer second by Byrne to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**AN ORDINANCE AMENDING SECTIONS III-1(B)(LONGEVITY PAY), III-3(B)(SHIFT DIFFERENTIAL), AND III-4(HAZARDOUS DUTY PAY) OF THE PERSONNEL RULES OF THE CITY OF MORGANTOWN BY INCREASING THE MONETARY AMOUNTS WITHIN EACH:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE AMENDING SECTIONS III-1(B)(LONGEVITY PAY), III-3(B)(SHIFT DIFFERENTIAL), AND III-4(HAZARDOUS DUTY PAY) OF THE PERSONNEL RULES OF THE CITY OF MORGANTOWN BY INCREASING THE MONETARY AMOUNTS WITHIN EACH.

Motion by Gaddis, second by Bane to pass the above entitled Ordinance to second reading. Motion carried 7-0

**AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF REALTY IN THE SIXTH WARD OF THE CITY OF MORGANTOWN FROM (R-1A) SINGLE-FAMILY RESIDENTIAL DISTRICT TO (PUD) PLANNED UNIT DEVELOPMENT DISTRICT BY AMENDING ARTICLE 1331.02 OF THE PLANNING & ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH THEREIN:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF REALTY IN THE SIXTH WARD OF THE CITY OF MORGANTOWN FROM (R-1A) SINGLE-FAMILY RESIDENTIAL DISTRICT TO (PUD) PLANNED UNIT DEVELOPMENT DISTRICT BY AMENDING ARTICLE 1331.02 OF THE PLANNING & ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH THEREIN.

After discussion, motion by Spencer second by Selin to pass the above entitled Ordinance to second reading. Motion carried 7-0

**AN ORDINANCE AMENDING TABLE 1331.05.01 "PERMITTED LAND USES" OF THE PLANNING AND ZONING CODE AS IT PERTAINS TO "TATTOO PARLOR / BODY-PIERCING STUDIO" USES:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE AMENDING TABLE 1331.05.01 "PERMITTED LAND USES" OF THE PLANNING AND ZONING CODE AS IT PERTAINS TO "TATTOO PARLOR / BODY-PIERCING STUDIO" USES.

Motion by Gaddis, second by Bane to pass the above entitled Ordinance to second reading. Motion carried 7-0

**AN ORDINANCE AMENDING ARTICLE 1365.06 "PARKING SPACES ACCESSIBLE TO THE DISABLED" AND ARTICLE 1365.09 "PARKING DEVELOPMENT STANDARDS" OF THE PLANNING AND ZONING CODE:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE AMENDING ARTICLE 1365.06 "PARKING SPACES ACCESSIBLE TO THE DISABLED" AND ARTICLE 1365.09 "PARKING DEVELOPMENT STANDARDS" OF THE PLANNING AND ZONING CODE.

Motion by Spencer second by Byrne to pass the above entitled Ordinance to second reading. Motion carried

7-0

**AN ORDINANCE AMENDING ARTICLE 1321.08 "TREES" OF THE PLANNING AND ZONING CODE AS IT RELATES TO REMOVING DUPLICATED PROVISIONS AND UPDATING THE APPROVED STREET TREES AND SHRUBS LIST:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE AMENDING ARTICLE 1321.08 "TREES" OF THE PLANNING AND ZONING CODE AS IT RELATES TO REMOVING DUPLICATED PROVISIONS AND UPDATING THE APPROVED STREET TREES AND SHRUBS LIST.

Motion by Selin second by Byrne, to pass the above entitled Ordinance to second reading. Motion carried 7-0

**AN ORDINANCE AMENDING ARTICLE 1367 "LANDSCAPING AND SCREENING" OF THE PLANNING AND ZONING CODE AS IT RELATES TO REMOVING DUPLICATED PROVISIONS AND UPDATING THE APPROVED STREET TREES AND SHRUBS LIST:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE AMENDING ARTICLE 1367 "LANDSCAPING AND SCREENING" OF THE PLANNING AND ZONING CODE AS IT RELATES TO REMOVING DUPLICATED PROVISIONS AND UPDATING THE APPROVED STREET TREES AND SHRUBS LIST.

Motion by Selin, second by Byrne, to pass the above entitled Ordinance to second reading. Motion carried 7-0

**AN ORDINANCE AUTHORIZING THE LEASE PURCHASE ACQUISITION AND FINANCING OF CERTAIN ENERGY SAVING EQUIPMENT FOR VARIOUS DEPARTMENTS OF THE CITY OF MORGANTOWN, THE EXECUTION AND DELIVERY OF A LEASE PURCHASE AGREEMENT, A GUARANTEED ENERGY SAVINGS CONTRACT, AND OTHER DOCUMENTS RELATING TO SUCH ACQUISITION AND FINANCING AND APPROVING ALL MATTERS IN CONNECTION THEREWITH:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE AUTHORIZING THE LEASE PURCHASE ACQUISITION AND FINANCING OF CERTAIN ENERGY SAVING EQUIPMENT FOR VARIOUS DEPARTMENTS OF THE CITY OF MORGANTOWN, THE EXECUTION AND DELIVERY OF A LEASE PURCHASE AGREEMENT, A GUARANTEED ENERGY SAVINGS CONTRACT, AND OTHER DOCUMENTS RELATING TO SUCH ACQUISITION AND FINANCING AND APPROVING ALL MATTERS IN CONNECTION THEREWITH:

After discussion, motion by Spencer, second by Byrne to pass the above entitled Ordinance to second reading. Motion carried 7-0

**RESOLUTION TO APPROVE THE 2009-2010 MORGANTOWN MUNICIPAL AIRPORT FUND AND AIRPORT IMPROVEMENT FUND BUDGET:** The above entitled Resolution was presented for approval:

After discussion, motion by Gaddis, second by Selin to adopt the above stated Resolution. Motion carried 7-0.

**RESOLUTION APPROVING AND AUTHORIZING TO SUBMIT TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) THE 2008 COMMUNITY DEVELOPMENT BLOCK GRANT ACTION PLAN AMENDMENT:** The above entitled Resolution was presented for approval:

After discussion, and City Manager Dan Boroff explained above Resolution, motion by Byrne, second by Gaddis to adopt the above stated Resolution. Motion carried 7-0.

**RESOLUTION TO APPLY FOR AND ADMINISTER THE COMMUNITY PARTICIPATION GRANT PROGRAM, PROJECT NUMBER 09LEDA0286, FUNDS FOR USE BY THE APPALACHIAN EDUCATION INITIATIVE:** The above entitled Resolution was presented for approval:

Motion by Gaddis, second by Selin to adopt the above stated Resolution. Motion carried 7-0.

**PUBLIC PORTION:**

There being no appearances, Mayor Justice declared this public portion closed.

**SPECIAL COMMITTEE REPORTS:** Councilor Byrne commented on the Sister City Committee and on the events coming up including Mayor Hicks's visit next week.

**CITY MANAGER'S REPORT:**

**INFORMATION:**
Item No 1: Attached you will find a memo from Denny Poluga reporting a new graffiti and litter removal program. This looks to be a very promising venture that can significantly enhance the appearance of the City=s rails trails and municipal parks. The Boys and Girls Club is to be complimented on this initiative and appreciated for undertaking this body of work.

**NEW BUSINESS:**
Item No. 1: The second attachment is a memo from the Public Works Director reporting bid results for a 2x4 Bucket Truck and 4x4 Dump Truck. I agree with her comments and recommend that the contracts be awarded to the low bidders WV Tractor Sales (Bucket Truck) for $95,900 and Matheny Buick & GMC (Dump option 2) for $55,078.

Motion by Bane, second by Gaddis, to approve the above bid results. Motion carried 7-0.

Item No. 2: CASA for Kids is a meritorious, non profit, social services agency that provides critical support to abused and neglected children in the area. Because of technical qualifications, the agency recently lost one of its funding sources. To make certain that their services are not disrupted, I recommend that $3,000 be made available to support the program as requested.

Motion by Byrne, second by Bane, to approve the above funding request. Motion carried 7-0.

Item No. 3: The last attachment is a letter from Mountain Fest, LLC requesting a Festival Permit to allow controlled beer sales at Hazel Ruby McQuain Park as part of the fifth annual Wild & Wonderful Mountain Fest Motorcycle Rally to be held July 23- 26, 2009. Give the past successes of this event, I recommend that the permit be authorized.

After discussion, motion by Byrne, second by Bane, to approve the above festival permit. Motion carried 7-0.

**CITY CLERK'S REPORT:** No report.

**CITY ATTORNEY'S REPORT:** No report.

**REPORT FROM COUNCIL MEMBERS:**

Councilor Bane: Councilor Bane thanked the Public Works department for fixing the potholes around the city. He commented that there is a lot of debris on the trails and the area is dangerous. He confirmed with the Mayor that the police patrols are more frequent there in the summertime. He asked Council to carefully consider the MUB Rate increases, as the funds are needed to upgrade the City's aging infrastructure.

Councilor Gaddis: Councilor Gaddis reported that the South Park Neighborhood Welcome Sign has a part missing. He announced that with help from the Beautification Commission, the residents of Greenmont were able to plant flowers around the neighborhood. The Greenmont Neighborhood cleanup will take place on June 13th and the Block Party will take place on the 27th. Everyone is invited.

Councilor Byrer: Councilor Byrer reported calls received from residents about noise, loitering and drunkenness taking place in a pavilion adjacent to housing in his ward. He relayed their requests for more police patrols in the area.

He announced the Wiles Hill Neighborhood Plants Project will take place this Saturday, funded by the MHA. He inquired to Mr. Boroff about the dedication of the new fire station. Mr. Boroff replied that Chief Fetty is monitoring the situation closely and will inform as soon as possible on a date. Councilor Byrer then announced his Neighborhood Watch Meeting. He then asked about some signs for a Gentleman's Club in another County that have been found on the Mileground. City Attorney Steve Fanok advised that these signs are illegal if placed in public right-of-ways and can simply be removed and disposed of.

Councilor Selin: Councilor Selin gave an update on the Boys and Girls Club Service Project and asked that they be recognized at a Council Meeting. She suggested that community service for criminals could include graffiti removal along the trails. She thanked the Assistant City Manager and the Director of Planning for their work on updating the Planning Commission website and online information. The she announced the Suncrest Neighborhood Association Picnic on the 25th.

Councilor Byrne: Councilor Byrne praised the efforts of the Boys and Girls Club for their work on the graffiti clean up project but also insisted that graffiti management and clean up is a City job that should be undertaken immediately after graffiti shows up. He announced that the Mayor of Guanajuato will be visiting Morgantown on June 12-17th and invited everyone to attend the ground breaking of the new trail on Dorsey's Knob

Councilor Spencer: Councilor Spencer concurred with Councilor Byrne's comments on graffiti. He mentioned new legislation that allows citations for litter. He reported from the Legislature that the Parking Authority Legislation did not make it to the agenda of the Special Session, and will have to wait until next year. He stated several were robberies reported by members of the Suncrest Neighborhood Association. He encouraged everyone to be diligent in security during these trying economic times. He commented on the MUB rate increase citing reasons he supports it including, the needed infrastructure updates. Councilor Spencer discussed dumpster fires and the need for vigilance in preventing them. He announced an upcoming meeting to talk about the potential for developing a property on Christie Street. He told of the WVML Annual Conference in Charleston beginning August 4th. He concluded his comments by asking the Deputy/Vice Mayor issue to be placed on the COW agenda for further discussion.

Mayor Justice: Mayor Justice announced the upcoming Met Theatre Production of Willy Wonka as well as a documentary on Mosques. He talked about the Cat Fish Tournament sponsored by Cabelas as well as the event at Dorsey's Knob.

**ADJOURNMENT:** There being no further business, the meeting adjourned by unanimous consent at 8:35 p.m.

**City Clerk** **Mayor**

***A FULL TRANSCRIPT OF ALL CITY COUNCIL MEETINGS IS AVAILABLE ON CD AT THE MORGANTOWN CITY LIBRARY.**

**REGULAR MEETING JULY 21, 2009:**

The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Monday, July 21 2009, at 7:30 P.M.

**PRESENT:** Mayor Bill Byrne, City Manager Dan Boroff, City Clerk Linda Little, Assistant City Manager Jeff Mikorski, City Attorney Steve Fanok, Council Members, Ron Bane, John Gaddis, Charlie Byrer, Jenny Selin, Marti Shamberger, and Don Spencer.

The meeting was called to order by the City Clerk.

**APPROVAL OF MINUTES:** Minutes from the regular meeting on July 7, 2009, were approved as printed.

**CORRESPONDENCE:** Mayor Byrne presented a proclamation to retiring Airport Director Bob Hammel for his service to the City. Councilor Byrer and David McKain presented a plaque from Wiles Hill-Highland Park Neighborhood Association to the North Street Fire Station for their 60 years of service to the neighborhood.

**PUBLIC HEARING – AN ORDINANCE AMENDING 927.01 SETTING FEES AND CHARGES FOR WATER SERVICE:**

Pursuant to a legal notice appearing in the Dominion Post, Mayor Byrne called for a public hearing on the above referenced ordinance.

Scott Krabil, President Clinton Water Association, commended MUB on what a good job they are doing but requested that they phase the increase into the Water Bills.

Bill Wonderlin, Green Team, requested that MUB do anything it could to make updates and future systems as energy efficient as possible.

There being no more appearances or objections, Mayor Byrne declared this public hearing closed.

**PUBLIC HEARING - AN ORDINANCE AMENDING 925.03 SETTING FEES AND CHARGES FOR SEWER SERVICE:**

Pursuant to a legal notice appearing in the Dominion Post, Mayor Byrne called for a public hearing on the above referenced ordinance.

There being no appearances or objections, Mayor Byrne declared this public hearing closed.

**PUBLIC HEARING - AN ORDINANCE APPROVING A LEASE BETWEEN THE CITY AND WILLIAM A. BONFILI REGARDING MET BILLIARD PARLOR:**

Pursuant to a legal notice appearing in the Dominion Post, Mayor Byrne called for a public hearing on the above referenced ordinance.

There being no appearances or objections, Mayor Byrne declared this public hearing closed.

**UNFINISHED BUSINESS:**

**AN ORDINANCE AMENDING 927.01 SETTING FEES AND CHARGES FOR WATER SERVICE:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE AMENDING ARTICLE 927.01 OF THE MORGANTOWN CITY CODE AND SETTING FEES AND CHARGES FOR THE PROVISION OF WATER SERVICE

After discussion, Mayor Byrne suspended the rules for Jim Green to answer questions from Council. Council Spencer requested to read 6 items that will help citizens understand how important it is this ordinance is passed. *1. Help protect water quality by the installation of membrane water treatment; 2. Upgrade and expand the waste water treatment plan and greatly reduce the odor problems; 3. Replace and upgrade sewage flow capacity within the city to strengthen the city's ability to meeting future water and sewer infrastructure needs; 4. Contribute to upgrading the rail trail at a time when extensive repaving is needed; 5. Take advantage of some $7 million in stimulus funding which will benefit the future rates required to pay for water and sewer system upgrades; 6. Address a needed upgrade of a partly century old system which will help the city and its water system users prepare responsibly for the future.* Motion by Shamberger, second by Gaddis, to adopt the above entitled ordinance. Motion carried 7-0.

**AN ORDINANCE AMENDING 925.03 SETTING FEES AND CHARGES FOR SEWER SERVICE:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE AMENDING ARTICLE 925.03 OF THE MORGANTOWN CITY CODE AND SETTING FEES AND CHARGES FOR THE PROVISION OF SEWER SERVICE.

After discussion, motion by Bane, second by Selin, to adopt the above entitled ordinance. Motion carried 7-0.

**AN ORDINANCE APPROVING A LEASE BETWEEN THE CITY AND WILLIAM A. BONFILI REGARDING MET BILLIARD PARLOR:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE APPROVING A LEASE AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN (LESSOR) AND WILLIAM A. BONFILI (LESSEE) REGARDING THE MET BILLIARD PARLOR.

After discussion, motion by Gaddis, second by Shamberger, to adopt the above entitled Ordinance. Motion carried 7-0.

**BOARDS AND COMMISSIONS:** By acclamation Ralph Larue was reappointed to the Beautification Commission. Council will discuss Boards and Commission at the next COW meeting to decide on what commissions they wish to serve.

**NEW BUSINESS:**

**AN ORDINANCE AMENDING SUBSECTIONS 527.07(d) & 527.07(e) FOR APPLICATION FEES FOR NOISE CONTROL SPECIAL WAIVERS:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE AMENDING SUBSECTIONS 527.07(d) AND 527.07(e) OF THE GENERAL OFFENSES CODE OF THE CITY OF MORGANTOWN AS THE SAME APPLY TO APPLICATION FEES FOR NOISE CONTROL SPECIAL WAIVERS.

After discussion, motion by Bane, second by Selin, to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**AN ORDINANCE AMENDING FY 2009-2010 AS IT APPLIES TO THE GENERAL FUND:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE AMENDING THE FY 2009-2010 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND.

After discussion and explanation by the City Manager, motion by Bane, second by Selin, to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**AN ORDINANCE AMENDING FY 2009-2010 AS IT APPLIES TO THE COAL SEVERANCE FUND:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE AMENDING THE FY 2009-2010 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE COAL SEVERANCE FUND.

After discussion and explanation by the City Manager, motion by Bane, second by Selin, to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**CONSIDERATION OF APPROVAL OF A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE DIVISION OF CRIMINAL JUSTICE SERVICES TO RECEIVE AND ADMINISTER GRANT FUNDS PURSUANT TO PROVISIONS OF THE RECOVERY ACT JUSTICE ASSISTANCE GRANT PROGRAM:** The above entitled Resolution was presented for Council's approval.

After explanation from the City Manager, motion by Gaddis, second by Bane to approve the above entitled Resolution. Motion carried 7-0.

**PUBLIC PORTION:**

There being no appearances or objections, Mayor Byrne declared this public portion closed.

**SPECIAL COMMITTEE REPORTS:** Councilor Spencer gave an update on the Airport Advisory Committee meeting that the flight numbers are good at the Airport. Mayor Byrne reported that the Sunny-Side Up meeting this Thursday has a big agenda, and they will also be discussing a possibility of a TIF.

**CITY MANAGERS REPORT:**

**INFORMATION:**
Item No. 1: As per West Virginia Code 8-14-7, I am pleased to report that Mr. Charles Chico, Sr. has been appointed to the Morgantown Police Civil Service Commission. Given his commitment and interest in the Police Department, I am confident that he will well serve the Commission and the City of Morgantown.

Item No. 2: Attached is a memo from the Police and Fire Chiefs reporting a promising opportunity to acquire special equipment to support search and rescue river operations worth $260,000. As this initiative advances, Council will be kept advised.

Item No. 3: Comcast has informed the City that as part of improving the quality of the programming that it offers, that on July 30, 2009, it will convert additional channels to a digital format. The company will continue to offer a digital converter free for one year to mitigate inconveniences that this may cause. In the near future, these changes will be publicized by the company.

**NEW BUSINESS:**
Item No. 1: The second attachment is a letter from BOPARC requesting that City property be used to construct Burroughs Run Park as per existing deed requirements. Given the merits of BOPARC's proposal, I recommend that the request be granted.

After discussion, motion by Bane, second by Selin to approve the request from BOPARC. Motion carried 7-0.

Item No.2: The last attachment is a memo from the Public Works Director reporting bid results for the Metropolitan Theatre Plaster Restoration Project. I agree with her comments and recommend that the contract be awarded to the low bidder Veritas Contracting, L.L.C. for $517, 867

After discussion, motion by Shamberger, second by Bane to approve the bid results for the above project. Motion carried 7-0.

Item No. 3: Mr. Boroff added a resolution on grant funding for the Police Department for $20,000. This application has to be returned by Friday July 24, 2009 or the department will loose this critical funding. Given the merits of this situation, he asked Council to approve the late presented resolution.

After discussion, motion by Bane, second by Gaddis to approve the resolution to allow for funding.

**CITY CLERK'S REPORT:** No Report.

**CITY ATTORNEY'S REPORT:** No Report.

**REPORT FROM COUNCIL MEMBERS:**

Councilor Bane: Councilor Bane reported to Council that he has just returned from a Leadership Workshop meeting in Wheeling and he mentioned that everyone should visit that there because of its beautiful landmarks and rich history. He also visited NCWV Community College which has the best nursing school in the nation. He reminded all of the Iron Man triathlon and the Sprint Splash events coming up.

Councilor Gaddis: Councilor Gaddis mentioned that he has returned from his family reunion in Alabama and in 2010 his family reunion will be held in Morgantown. He announced the upcoming South Park and Greenmont NHA Meetings. He mentioned the

Councilor Byrer: Councilor Byrer praised the property maintenance brochure produced by Code Enforcement. He asked Mr. Boroff where copies of the pamphlets will be available. Mr. Boroff replied they are available at City Hall and Code Enforcement will make sure it is readily available to citizens and property owners. Councilor Byrer suggested that it be given to students when they move back in this fall. He mentioned a tree on Grove Street that is a hazard. Mr. Boroff stated it will be taken care of by the Tree Board. Councilor Byrer announced that he asked the Charter Board to look into the Deputy/Vice Mayor issue, and stated his opinion on the matter. He mentioned that August will be a busy month and listed several events taking place soon. He asked Mr. Boroff about excess timber at Krepps Park. Steve Fanok replied that BOPARC will receive the benefits of the timber.

Councilor Selin: Councilor Selin commended Terri Cutright and Mainstreet on the success of the Kids' Day event. She then talked about the Vision for Our Children Award presented to the City by Governor Manchin.

Councilor Shamberger: Councilor Shamberger talked about the success of the Downtown Strategic Planning Meetings recently held. She attended an OSHER Lifelong Learning program geared toward seniors that is grant funded based upon attendance. She mentioned a WVU wellness retreat for Women being held in Fairmont on August 1st. She then announced the upcoming meeting of the Woodburn NHA.

Councilor Spencer: Councilor Spencer commented that neighborhoods should be diligent in staying informed of new projects within the City. He announced the next Suncrest NHA meeting and then talked about Air Quality in Morgantown, citing an article in the Dominion Post and a New York City Air Quality study. He announced a Tree Board Meeting today and then gave his opinion on the National Health Care Reform Bill in

Washington. He asked that everyone be aware of the National Transportation Bill in Washington as well. He encouraged all to enjoy the trails at Dorsey Knob and the Botanical Gardens.

Mayor Byrne: Mayor Byrne commented that he received a letter congratulating him on becoming Mayor from Governor Manchin. He also attended the OSHER event with Councilor Shamberger and announced that he and his wife are becoming members to support the organization. He commented on Kid's Day and its success. He commented on his full calendar and announced all his upcoming engagements including a Bass Fishing Tournament, a special 85th anniversary event at the Met Theatre, the first Jerome Park revitalized NHA meeting, a fundraiser with the Morgantown Theatre Company in August, and an exciting announcement from Morgantown High School with more info to come. Lastly he asked Council to let him know the dates and times of all the Neighborhood Association meetings in Morgantown so he may attend them.

Steve Fanok then reminded everyone about Mountain Fest coming up this weekend. He informed that we are expecting about 50,000 bikers to flood the area for this event.

He al

**ADJOURNMENT:** There being no further business, the meeting adjourned by unanimous consent at 9:10 p.m.

City Clerk

Mayor

***A FULL TRANSCRIPT OF ALL COUNCIL MEETINGS IS AVAILABLE ON CD AT THE MORGANTOWN CITY LIBRARY.**

# PUBLISHER'S CERTIFICATE

_____

vs.

_____

016285 July 24, 31

**PUBLIC NOTICE OF CHANGE IN RATES BY MUNICIPALITIES**

NOTICE is hereby given that the City of Morgantown has adopted by ordinance on July 21, 2009, a tariff containing increased rates, tolls and charges for furnishing water service to approximately 22,930 water customers in the City of Morgantown in the County of Monongalia and surrounding areas.

The proposed increased rates and charges will become effective January 1, 2012, unless otherwise ordered by the Public Service Commission; and will produce approximately $4,728,000 annually in additional revenue, an increase of 99%. The average monthly bill for the various classes of customers will be changed as follows:

| | ($) INCREASE | (%) INCREASE |
|---|---|---|
| Residential | $8.44 | 94% |
| Commercial | $65.41 | 120% |
| Industrial/Public | $365.26 | 105% |
| Resale | $5,176.76 | 98% |

Resale customers of Morgantown Utility Board include: Cheat View Public Service District, Clinton Water Association, Chaplin Water, Clay-Battelle Public Service District, Pleasant Valley Public Service District, River Road Public Service District and the City of Star City.

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 in its review of this filing. The Commission shall review and approve or modify the increased rates only upon the filing of a petition within thirty (30) days of the adoption of the ordinance changing said rates or charges, by:

1. Any customer aggrieved by the changed rates or charges who presents to the Commission a petition signed by not less than twenty-five per cent of the customers served by such 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 change in said rates or charges and who presents to the Commission a petition alleging discrimination between customers within and without the municipal boundaries. Said petition shall be accompanied by evidence of discrimination; or

3. Any customer or group of customers who are affected by said change in rates who reside within the municipal boundaries and who present a petition to the Commission alleging discrimination between said customer or group of customers and other customers of the municipal utility. Said petition shall be accompanied by evidence of discrimination.

All petitions should be addressed to the Executive Secretary, Public Service Commission of West Virginia, 201 Brooks Street, P.O. Box 812, Charleston, West Virginia 25323.

A complete copy of the proposed rates, as well as a representative of the utility to provide any information requested concerning it, is available to all customers, prospective customers, or their agents and any of the following offices of the utility:

**Morgantown Utility Board**
**278 Greenbag Road**
**Morgantown, WV 26507**

A copy of the proposed rates is available for public inspection at the office of the Executive Secretary of the Public Service Commission at 201 Brooks Street, P.O. Box 812 Charleston, West Virginia 25323.

STATE OF WEST VIRGINIA
COUNTY OF MONONGALIA

I Eric Wilson Advertising Director of

THE DOMINION POST, a newspaper of general circulation

published in the City of Morgantown, County and State

aforesaid, do hereby certify that the annexed

Legal Notice

was published in the said THE DOMINION POST once a week

for 2 successive weeks commencing on the

24th day of July, 2009 and ending on the

31st day of July, 2009

The publisher's fee for said publication is 177.45

Given under my hand this 31st day of

July, 2009.

(SEAL)

Advertising Director of THE DOMINION POST

Subscribed and sworn to before me this 31st

day of July, 2009.

Kathy J. Custer

Notary Public of Monongalia County, W. Va.

My commission expires on the 13th day of

April, 2014

OFFICIAL SEAL
NOTARY PUBLIC, STATE OF WEST VIRGINIA
KATHY J. CUSTER
469 WESTWOOD STREET
STAR CITY, WV 26505
MY COMMISSION EXPIRES APRIL 13, 2014

# PUBLISHER'S CERTIFICATE

.....

VS.

.....

STATE OF WEST VIRGINIA
COUNTY OF MONONGALIA

I ..Eric T. Wilson..... Advertising Manager of THE DOMINION POST, a newspaper of general circulation published in the City of Morgantown, County and State aforesaid, do hereby certify that the annexed

Legal Notice

.....

.....

was published in the said DOMINION POST once a week for .....1..... successive weeks commencing on the ....10th.... day of ....July....., 20..09..... and ending on the ....10th.... day of ....July....., 20..09.....

The publisher's fee for said publication is $ ..40.56.....

Given under my hand this..23rd.....day of..July....., 20..09.....

(SEAL)

Advertising Manager of THE DOMINION POST

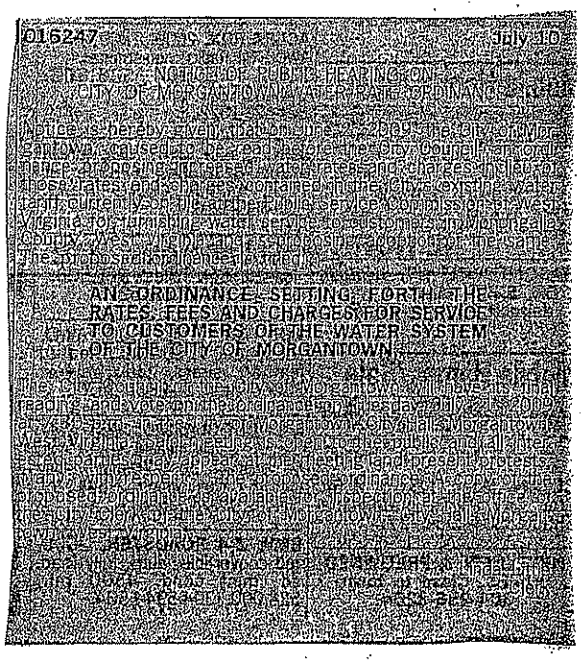
Subscribed and sworn to before me this ..23rd..... day of ..July....., 20..09.....

Kathy J. Custer

Notary Public of Monongalia County, W.Va.

My commission expires on the ..13th.. day of ..April....., 20..14.....

OFFICIAL SEAL
NOTARY PUBLIC, STATE OF WEST VIRGINIA
KATHY J. CUSTER
469 WESTWOOD STREET
STAR CITY, WV 26505
MY COMMISSION EXPIRES APRIL 13, 2014



016247 July 10

NOTICE OF PUBLIC HEARING ON
CITY OF MORGANTOWN WATER RATE ORDINANCE

Notice is hereby given that on June 2, 2009, the City of Morgantown caused to be read before the City Council an ordinance proposing increased water rates and charges in lieu of those rates and charges contained in the City's existing water tariff currently on file under Public Service Commission of West Virginia for furnishing water service to customers in Monongalia County, West Virginia and its proposing adoption of the same. The proposed ordinance is [illegible]

AN ORDINANCE SETTING FORTH THE RATES, FEES AND CHARGES FOR SERVICE TO CUSTOMERS OF THE WATER SYSTEM OF THE CITY OF MORGANTOWN

The City Council of the City of Morgantown will have its final reading and vote on the ordinance on Tuesday, July 21, 2009 [illegible] in the City of Morgantown, City Hall, Morgantown, West Virginia, [illegible] is open to the public and all interested parties may appear at the meeting and present protests, [illegible] with respect to the proposed ordinance. A copy of the proposed ordinance is available for inspection at the office of the City Clerk of the City of Morgantown, City Hall, Morgantown, West Virginia.

[illegible]

016286 July 24, 31

## PUBLIC NOTICE OF CHANGE IN RATES BY MUNICIPALITIES

*NOTICE is hereby given that the City of Morgantown has adopt*ed by ordinance on July 21, 2009, a tariff containing increased rates, tolls and charges for furnishing sewer service to approximately 15,000 sewer customers in the City of Morgantown in the County of Monongalia and surrounding areas.

The proposed increased rates and charges will become effective January 1, 2012, unless otherwise ordered by the Public Service Commission; and will produce approximately $1,934,000 annually in additional revenue, an increase of 34%. The average monthly bill for the various classes of customers will be changed, as follows:

| | ($) INCREASE | (%) INCREASE |
|---|---|---|
| Residential | $5.49 | 35% |
| Commercial | $44.45 | 44% |
| Industrial/Public | $225.92 | 33% |

**Satellite sewer systems served by MUB:** The Cities of Westover and Granville, Deckers Creek Public Service District and Dorsey Knob Public Service District and Scotts Run 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 in its review of this filing. The Commission shall review and approve or modify the increased rates only upon the filing of a petition within thirty (30) days of the adoption of the ordinance changing said rates or charges, by:

1. Any customer aggrieved by the changed rates or charges who presents to the Commission a petition signed by not less than twenty-five percent of the customers served by such 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 change in said rates or charges and who presents to the Commission a petition alleging discrimination between customers within and without the municipal boundaries. Said petition shall be accompanied by evidence of discrimination; or

3. Any customer or group of customers who are affected by said change in rates who reside within the municipal boundaries and who present a petition to the Commission alleging discrimination between said customer or group of customers and other customers of the municipal utility. Said petition shall be accompanied by evidence of discrimination.

All petitions should be addressed to the Executive Secretary, Public Service Commission of West Virginia, 201 Brooks Street, P.O. Box 812, Charleston, West Virginia 25323.

A complete copy of the proposed rates, as well as a representative of the utility to provide any information requested concerning it, is available to all customers, prospective customers, *or their agents and any of the following offices* of the utility:

Morgantown Utility Board
278 Greenbag Road
Morgantown, WV 26507

A copy of the proposed rates is available for public inspection at the office of the Executive Secretary of the Public Service Commission at 201 Brooks Street, P.O. Box 812 Charleston, West Virginia 25323.

# PUBLISHER'S CERTIFICATE

_____

vs.

_____

STATE OF WEST VIRGINIA
COUNTY OF MONONGALIA

I Eric Wilson Advertising Director of

THE DOMINION POST, a newspaper of general circulation

published in the City of Morgantown, County and State

aforesaid, do hereby certify that the annexed

Legal Notice

was published in the said THE DOMINION POST once a week

for 2 successive weeks commencing on the

24th day of July, 2009 and ending on the

31st day of July, 2009

The publisher's fee for said publication is 171.54

Given under my hand this 31st day of

July, 2009.

(SEAL)

Advertising Director of THE DOMINION POST

Subscribed and sworn to before me this 31st

day of July, 2009.

Kathy J. Custer

Notary Public of Monongalia County, W. Va.

My commission expires on the 13th day of

April, 20 14

OFFICIAL SEAL
NOTARY PUBLIC, STATE OF WEST VIRGINIA
KATHY J. CUSTER
469 WESTWOOD STREET
STAR CITY, WV 26505
MY COMMISSION EXPIRES APRIL 13, 2014

NOTICE OF PUBLIC HEARING ON
CITY OF MORGANTOWN SEWER RATE ORDINANCE

blic hearing will be held on Tuesday, July 21, 2009, at 7:30 p.m., prevailing time, on the following ordinance which was ficed on June 2, 2009. Any person interested may appear before the City Council of the City of Morgantown at the City Morgantown, West Virginia, and present any comment or protest thereto. Following which hearing City Council shall take action as it shall deem proper.

CITY OF MORGANTOWN

AN ORDINANCE SETTING FORTH THE RATES, FEES AND CHARGES FOR SERVICE TO CUSTOMERS OF THE SEWERAGE SYSTEM OF THE CITY OF MORGANTOWN.

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

RULES AND REGULATIONS

les and Regulations for the Government of Sewer Utilities, adopted by the Public Service Commission of West Virginia, and in effect, and all amendments thereto and modifications thereof hereafter made by said Commission.

SECTION 1 - TARIFF

SCHEDULE NO. 1

ICABILITY
cable to entire territory served except that served by Cheat Lake Wastewater Treatment Plant. Effective for bills rendered after January 1, 2012.

ABILITY
able for sanitary sewer service.

d upon the metered amount of water supplied.

is Used
60,000 per month $ 4.66 per 1,000 gallons
er 60,000 per month $ 4.00 per 1,000 gallons

UM CHARGE
month $ 4.66
nthly $ 9.32

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

YED PAYMENT PENALTY
bove tariff is net. On all current usage billings not paid in full when due, ten percent (10%) will be added to the net current nt unpaid. This delayed payment penalty is not interest and is only to be collected once for each month where it is priate.

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

ADJUSTMENT
15 per M gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible water leakage e customer's side of the meter. This rate shall be applied to all such unusual consumption above the customer's historical ge usage.

SCHEDULE NO. 2

CABILITY
able to territory served by Cheat Lake Wastewater Treatment Plant.

ABILITY
ble for sanitary sewer service.

d upon the metered amount of water supplied.

| | | | | | |
|---|---|---|---|---|---|
| is Used | | | | | |
| | 2,000 | per month or 4,000 | bi-monthly | $8.75 | per 1,000 gallons |
| | 8,000 | per month or 16,000 | bi-monthly | $8.00 | per 1,000 gallons |
| | 20,000 | per month or 40,000 | bi-monthly | $7.50 | per 1,000 gallons |
| | 30,000 | per month or 60,000 | bi-monthly | $7.00 | per 1,000 gallons |
| | 940,000 | per month or 1,880,000 | bi-monthly | $6.00 | per 1,000 gallons |
| er | 1,000,000 | per month or 2,000,000 | bi-monthly | $5.50 | per 1,000 gallons |

UM CHARGE
month $ 17.50
nthly $ 35.00

FEE
of seven hundred ($700.00) will be charged for new customers connecting to the sewerage system.

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

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

ADJUSTMENT
15 per M gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible water leakage e customer's side of the meter. This rate shall be applied to all such unusual consumption above the customer's historical ge usage.

SCHEDULE NO. 3

ICABILITY
able to territory served.

ABILITY
ble for sanitary sewer service to other systems.

astewater from other systems will be treated at the approved rate of $1.50 per 1,000 gallons.

HARGE
per 1,000 gallons of wastewater treated from Scotts Run Public Service District until the contribution related to plant l costs is refunded; the amount of the credit to Scotts Run Public Service District will be debited to Contributions in Aid of truction.

TION 2 - TARIFF EFFECTIVE DATE

ates, charges and penalties provided herein shall become effective January 1, 2012, or as soon thereafter as the same be approved by the Public Service Commission of West Virginia.

TION 3 - SEVERABILITY; REPEAL OF CONFLICTING ORDINANCES

rovisions of this Ordinance are severable, and if any clause, provision or section hereof shall be held void or unenforceable e West Virginia Public Service Commission or any court of competent jurisdiction, such holding shall not affect the remaini of this Ordinance. Upon the effective date hereof, all ordinances, resolutions, orders or parts thereof in conflict with the ions of this Ordinance are, to the extent of such conflicts, hereby repealed, and to the extent that the provisions of this ance do not touch upon the provisions of prior ordinances, resolutions, orders or parts thereof, the same shall remain in rce and effect.

TION 4 - STATUTORY NOTICE AND PUBLIC HEARING

introduction hereof, the City Clerk shall cause to be published a copy of this Ordinance once a week for two (2) succes weeks within a period of fourteen (14) consecutive days, with at least six (6) days between each publication, in the Domin ost, a qualified newspaper of general circulation in the City of Morgantown, and said notice shall state that this Ordinance been introduced, and that any person interested may appear before Council on Tuesday, July 21, 2009, at 7:30 p.m., date is not less than ten (10) days after the date of the first publication of the Ordinance and notice, and present any ment or protest thereto, following which hearing, Council shall take such action as it shall deem proper. Copies of this ance shall be available to the public for inspection at the office of the City Clerk, Morgantown, West Virginia.

CERTIFICATION AND NOTICE

eby certify that the foregoing is a true and accurate copy of an Ordinance which has been introduced and adopted on first ng at a meeting of the City Council of the City of Morgantown held June 2, 2009, pursuant to proper notice, at which ing a quorum was present and acting throughout. Any person interested may appear before the City Council of the City of antown at the City Hall, Morgantown, West Virginia, on Tuesday, July 21, 2009, at 7:30 p.m., being the date, time and of the proposed final adoption of this Ordinance, and be heard. The City Council will then take such action as it shall proper. The proposed ordinance may be inspected by the public at the Office of the Clerk in the City Hall, Morgantown, Virginia during regular office hours.

/s/ Linda Little
Clerk

# PUBLISHER'S CERTIFICATE

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VS.

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STATE OF WEST VIRGINIA
COUNTY OF MONONGALIA

I .....Eric Wilson..... Advertising Manager of THE DOMINION POST, a newspaper of general circulation published in the City of Morgantown, County and State aforesaid, do hereby certify that the annexed

.....Legal Notice.....

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was published in the said DOMINION POST once a week for .....2..... successive weeks commencing on the 10th day of .....July....., 20.....09..... and ending on the 17th day of .....July....., 20.....09.....

The publisher's fee for said publication is $ ..766.00.....

Given under my hand this.....23rd.....day of.....July 20....09..

(SEAL)

Advertising Manager of THE DOMINION POST

Subscribed and sworn to before me this .....23rd... day of .....July...., 20.....09..

.....Kathy J. Custer.....

Notary Public of Monongalia County, W.Va.

My commission expires on the .13th. day of .....April....., 20..14.....

OFFICIAL SEAL
NOTARY PUBLIC, STATE OF WEST VIRGINIA
KATHY J. CUSTER
469 WESTWOOD STREET
STAR CITY, WV 26505
MY COMMISSION EXPIRES APRIL 13, 2014

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

Entered by the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 22nd day of July 2009.

CASE NO. 09-1200-WS-CN

MORGANTOWN UTILITY BOARD
Monongalia County, West Virginia,
Application for Certificate to construct upgrades to the water treatment plant and the water system, including addition of a membrane filtration process, addition of two water storage tanks, installation of various water transmission pipelines, upgrades to the office and shop facilities, addition of a new shop access road; to construct upgrades to the wastewater treatment plant and the sewer system, including addition of odor control facilities at various locations, addition of one sewer equalization tank, installation of various sewer interceptor pipelines, upgrades to various sewer pumping stations and force mains, and miscellaneous additions and upgrades related thereto.

NOTICE OF FILING

WATER PROJECT

On July 20, 2009, the Morgantown Utility Board ("Applicant") filed an application, duly verified, for a Certificate to construct certain additions and improvements to the Applicant's water and sewer systems in Monongalia County. The application is on file with and available for public inspection at the Public Service Commission, 201 Brooks Street, in Charleston, West Virginia.

The Applicant estimates that construction of the water project will cost approximately $40,080,000. It is proposed that the construction will be financed as follows: Municipal bond issue in the amount of [illegible] WVDHHR DWTRF in the amount of $10,000,000.

The Applicant anticipates charging the following water rates for its customers:

SCHEDULE NO. 1

Applicable to all territories served.

| Gallons Used Per Month | Rate Per 1,000 Gallons |
|---|---|
| First 60,000 | $3.87 |
| All Over 60,000 | $2.53 |

MINIMUM MONTHLY BILL for various water meter sizes as follows:

| | |
|---|---|
| 5/8 inch or less | $3.87 per month |
| 3/4 inch | $5.80 per month |
| 1 inch | $9.68 per month |
| 1 1/2 inch | $19.35 per month |
| 2 inch | $30.97 per month |
| 3 inch | $58.08 per month |
| 4 inch | $96.78 per month |
| 6 inch | $193.50 per month |
| 8 inch | $302.60 per month |

DELAYED PAYMENT PENALTY
The above tariff is net. On all accounts not paid in full within twenty (20) days of the latest pay date, 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.

CONNECTION CHARGE (if applicable)
Prior to construction - $100.00.
After construction passes the premises to be served, charge for connection to system - $700.00.

These rates represent the following project-related increases:

| MONTHLY | ($)INCREASE | (%)INCREASE |
|---|---|---|
| Residential | $8.44 | 94% |
| Commercial | $56.61 | 120% |
| Industrial | $335.28 | 105% |
| Resale | $6,176.79 | 89% |
| Other | na | na |

These rates represent the following non-project-related increases:

| MONTHLY | ($)INCREASE | (%)INCREASE |
|---|---|---|
| Residential | na | na |
| Commercial | na | na |
| Industrial | na | na |
| Resale | na | na |
| Other | na | na |

SCHEDULE No. 2

Applicable to all territories served.

| Gallons Used Bi-Monthly | Rate Per 1,000 gallons |
|---|---|
| First 120,000 | $3.87 |
| All Over 120,000 | $2.53 |

MINIMUM BI-MONTHLY BILL for various water meter sizes as follows:

| | |
|---|---|
| 5/8 inch or less | $7.74 Bi-Monthly |
| 3/4 inch | $11.06 Bi-Monthly |
| 1 inch | $19.36 Bi-Monthly |
| 1 1/2 inch | $38.70 Bi-Monthly |
| 2 inch | $61.92 Bi-Monthly |
| 3 inch | $116.10 Bi-Monthly |
| 4 inch | $193.50 Bi-Monthly |
| 6 inch | $387.00 Bi-Monthly |
| 8 inch | $619.20 Bi-Monthly |

DELAYED PAYMENT PENALTY
The above tariff is net. On all accounts not paid in full within twenty (20) days of the latest pay date, 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.

CONNECTION CHARGE (if applicable)
Prior to construction - $100.00. After construction passes the premises to be served, charge for connection to system - $700.00.

These rates represent the following project-related increases:

| BI-MONTHLY | ($)INCREASE | (%)INCREASE |
|---|---|---|
| Residential | $16.88 | 94% |
| Commercial | $130.82 | 120% |
| Industrial | $770.52 | 105% |
| Resale | $10,053.52 | 89% |
| Other | na | na |

These rates represent the following non-project-related increases:

| BI-MONTHLY | ($)INCREASE | (%)INCREASE |
|---|---|---|
| Residential | na | na |
| Commercial | na | na |
| Industrial | na | na |
| Resale | na | na |
| Other | na | na |

Resale water customers of Morgantown Utility Board include Cheat View PSD, Clinton Water Association, Chaplin Water Association, Clay Battelle PSD, Pleasant Valley PSD, River Road PSD, and the City of Star City.

The proposed increased rates and charges will produce approximately $4,718,000 annually in additional revenue, an increase of 89%.

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 in its review of this filing.

WASTEWATER PROJECT

The Applicant estimates that construction of the wastewater project will cost approximately $18,007,000. It is proposed that the construction will be financed as follows: WVDEP CWSRF in the amount of $17,029,000; West Virginia University Contribution in the amount of $313,000; Canyon PSD Contribution in the amount of $1,065,000.

SCHEDULE No. 1

Applicable to all territories served except that served by the Cheat Lake Wastewater Treatment Plant.

| Gallons Used Per Month | Rate Per 1,000 Gallons |
|---|---|
| First 60,000 | $4.63 |
| All Over 60,000 | $4.00 |

MINIMUM BILL for various billing periods is as follows:

| | |
|---|---|
| Per month | $4.65 |
| Bi-monthly | $9.32 |

DELAYED PAYMENT PENALTY
The above tariff is net. On all accounts not paid in full within twenty (20) days of the latest pay date, 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.

CONNECTION CHARGE (if applicable)
Prior to construction - $100.00.
After construction passes the premises to be served, charge for connection to system - $700.00.

These rates represent the following project-related increases:

| MONTHLY | ($)INCREASE | (%)INCREASE |
|---|---|---|
| Residential | $3.49 | 39% |
| Commercial | $44.45 | 44% |
| Industrial | $225.82 | 33% |
| Resale | na | na |
| Other | na | na |

These rates represent the following non-project-related increases:

| MONTHLY | ($)INCREASE | (%)INCREASE |
|---|---|---|
| Residential | na | na |
| Commercial | na | na |
| Industrial | na | na |
| Resale | na | na |

SCHEDULE No. 2

Applicable to the territory served by the Cheat Lake Wastewater Treatment Plant.

| Gallons Used Per Month, or | Gallons Used Bi-monthly | Rate Per 1,000 Gallons |
|---|---|---|
| First 2,000 | First 4,000 | [illegible] |
| Next 8,000 | Next 16,000 | $8.00 |
| Next 20,000 | Next 40,000 | [illegible] |
| Next 30,000 | Next 60,000 | $7.00 |
| Next 940,000 | Next 1,880,000 | [illegible] |
| All Over 1,000,000 | All Over 2,000,000 | [illegible] |

MINIMUM BILL for various billing periods is as follows:

| | |
|---|---|
| Per month | $17.50 |
| Bi-monthly | $35.00 |

DELAYED PAYMENT PENALTY
The above tariff is net. On all accounts not paid in full within twenty (20) days of the latest pay date, 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.

CONNECTION CHARGE (if applicable)
All new customer connections - $700.00.

These rates represent the following project-related increases:

| MONTHLY | ($)INCREASE | (%)INCREASE |
|---|---|---|
| Residential | na | na |
| Commercial | na | na |
| Industrial | na | na |
| Resale | na | na |
| Other | na | na |

These rates represent the following non-project-related increases:

| MONTHLY | ($)INCREASE | (%)INCREASE |
|---|---|---|
| Residential | na | na |
| Commercial | na | na |
| Industrial | na | na |
| Resale | na | na |
| Other | na | na |

SCHEDULE No. 3

Applicable to all territories served - Satellite Utility Customers only.

| Gallons Used Per Month | Rate Per 1,000 Gallons |
|---|---|
| All wastewater | $1.60 |

Surcharge: ($0.37) per 1,000 gallons of wastewater treated from Scotts Run PSD until the contribution related to plant capital costs is refunded; the amount of the credit to Scotts Run PSD will be debited to Contributions in Aid of Construction.

MINIMUM BILL: NA
DELAYED PAYMENT PENALTY: NA
CONNECTION CHARGE (if applicable): NA

These rates represent the following project-related increases:

| MONTHLY | ($)INCREASE | (%)INCREASE |
|---|---|---|
| Residential | na | na |
| Commercial | na | na |
| Industrial | na | na |
| Resale | na | na |
| Other Satellite | see note: | 24% |

Note: varies widely by utility, based upon customer count, inflow/infiltration, etc.

These rates represent the following non-project-related increases:

| MONTHLY | ($)INCREASE | (%)INCREASE |
|---|---|---|
| Residential | na | na |
| Commercial | na | na |
| Industrial | na | na |
| Resale | na | na |
| Other Satellite | na | na |

The Morgantown Utility Board does not have any sewer resale customers.

Satellite utility customers of Morgantown Utility Board include Deckers Creek PSD, Dorsey's Knob PSD, Scotts Run PSD; and the Cities of Star City, Westover and Granville.

The proposed increased rates and charges will produce approximately $1,804,000 annually in additional revenues, an increase of 34%. 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 in its review of this filing.

Pursuant to W. Va. Code §24-2-11, IT IS ORDERED that the Morgantown Utility Board give notice of the filing of said application, by publishing a copy of this order once in a qualified newspaper as provided in W. Va. Code §59-3-1 et seq., published and of general circulation in Monongalia County, making due return to this Commission of proper certification of publication immediately after publication. Anyone desiring to protest or intervene should file a written protest or notice of intervention within 30 days following the date of this publication unless otherwise modified by Commission order. Failure to timely protest or intervene can affect your right to protest aspects of this certificate case, including any associated rate increases, or to participate in future proceedings. All protests or requests to intervene should briefly state the reason for the protest or intervention. Requests to intervene must comply with the Commission's rules on intervention set forth in the Commission's Rules of Practice and Procedure. All protests and interventions should be addressed to Sandra Squire, Executive Secretary, P. O. Box 812, Charleston, West Virginia 25323.

IT IS FURTHER ORDERED that if there is no substantial protest to the Application received within said thirty day period, the Commission may waive formal hearing and grant the application based on the evidence submitted with said application and its review thereof.

FOR THE COMMISSION:
Sandra Squire
Executive Secretary

# PUBLISHER'S CERTIFICATE

..................................................

VS.

..................................................

STATE OF WEST VIRGINIA
COUNTY OF MONONGALIA

I ....Eric Wilson........ Advertising Manager of THE DOMINION POST, a newspaper of general circulation published in the City of Morgantown, County and State aforesaid, do hereby certify that the annexed

Legal Notice

was published in the said DOMINION POST once a week for ......1...... successive weeks commencing on the ......4...... day of ......August......, 20....09.... and ending on the ......4...... day of ......August......, 20....09....

The publisher's fee for said publication is $ ......$872.02......

Given under my hand this......4......day of......August......, 20....09....

(SEAL)

Advertising Manager of THE DOMINION POST

Subscribed and sworn to before me this ......4...... day of ...August..., 20....09....

Notary Public of Monongalia County, W.Va.

My commission expires on the ....13.... day of ....April...., 20....14....

OFFICIAL SEAL
NOTARY PUBLIC, STATE OF WEST VIRGINIA
KATHY J. CUSTER
464 WESTWOOD STREET
STAR CITY, WV 26505
MY COMMISSION EXPIRES APRIL 13, 2014

CHAPTER THREE - Legislative
Art. 121. Council.

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ARTICLE 121
Council

GENERAL PROVISIONS
121.01 Membership attendance.
121.02 Term and compensation of Councilmanic appointees.
121.03 Councilperson not to be bond surety.
RULES OF PROCEDURE
121.04 Order of procedure.
121.05 Suspension or change.
121.06 Reading of minutes of preceding meeting.
121.07 Presiding officer; vote; authentication of legislation.
121.08 Decorum during debate.
121.09 Calling member to order.
121.10 Deciding questions of order.
121.11 Voting.
121.12 Consent calendar.
121.13 Reducing motion to writing.
121.14 Motion before Council; withdrawing motion.
121.15 Precedence of motions.
121.16 Statement of questions.
121.17 Call for the previous questio
121.18 Call for division of the quest.
121.19 Call for the ayes and noes.
121.20 Recordation of member's prot
121.21 Members not to withdraw.
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CROSS REFERENCES

General provisions - see CHTR. Art. II
Council action on budget - see CHTR. Sec. 5.06
Council action on capital program - see CHTR. Sec. 5.07
Nominations and elections - see CHTR. Art. VII
Recall - see CHTR. Sec. 8.01
Personal financial conflict - see CHTR. Sec. 9.01 et seq.
Open meetings - see W. Va. Code Art. 6-9A
Smoking prohibited in chambers - see FIRE PREV. 1505.02



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## GENERAL PROVISIONS

### 121.01 MEMBERSHIP ATTENDANCE.

Whenever at the time appointed for the meeting of Council, either in regular or special session, a quorum shall not be present, it shall be lawful for any three members who may be in attendance to order the Chief of Police or any policeman to arrest the absent members, or any of them, and cause them to appear forthwith at the place of meeting and there to remain until the meeting shall adjourn or their further attendance is excused. An order for bringing in an absent member shall be issued and signed by the Mayor or, in his absence, by the City Clerk, or in the absence of both, by three members of Council. The same shall be in form and effect as follows:

State of West Virginia:

To the Chief of Police, or any Policeman, of the City of Morgantown:

You are hereby commanded to take into custody _____, Member of Council of the City, and bring him forthwith to the Council Chamber to attend a meeting of such Council called according to law.

(1967 Code Sec. 2-8.) _____, Mayor

### 121.02 TERM AND COMPENSATION OF COUNCILMANIC APPOINTEES.

All appointees of Council shall hold office at the pleasure of Council and receive compensation therefor as Council may determine.
(1967 Code Sec. 2-11.)

### 121.03 COUNCILPERSON NOT TO BE BOND SURETY.

No member of Council shall be accepted or approved by Council as surety on any official bond required by law, or any provision of the City Code or other ordinance of the City, for any officer of the City.
(1967 Code Sec. 2-13.)

### 121.04 ORDER OF PROCEDURE.

The order of procedure for regular meetings of Council shall be as follows:

(a) Call Council to order - Mayor.
(b) Roll call by City Clerk.
(c) Pledge to the Flag.
(d) Approval of minutes.
(e) Correspondence.
(f) Unfinished business.
(g) Public portion which shall be subject to rules established by Council and adopted by resolution.
(h) Special committee reports.
(i) New business.
(j) City Manager's report.
(k) Report from City Clerk.
(l) Report from City Attorney.
(m) Report from Council members.
(n) Adjournment. (Ord. 91-20. Passed 9-16-91.)

121.05 SUSPENSION OR CHANGE.
The order of procedure prescribed by Section 121.04 may be suspended or changed, at any meeting for that time only, by the vote of a majority of the members present. (1967 Code Sec. 2-15.)

121.06 READING OF MINUTES OF PRECEDING MEETING.
At each meeting the journal of the preceding meeting shall be approved and attested by the City Clerk. (1967 Code Sec. 2-16.)

121.07 PRESIDING OFFICER; VOTE; AUTHENTICATION OF LEGISLATION.
(a) The presiding officer shall preserve order and decorum in Council and conduct its meetings in accordance with rules of parliamentary law and as herein provided, but the Mayor or Deputy Mayor shall be entitled to vote as a member of Council.

(b) The Mayor or Deputy Mayor, shall have no veto power over any action taken by a majority of Council. The Mayor shall authenticate, by his signature, when necessary, all the acts, orders and proceedings of Council declaring its will, in all things obeying its commands and the Deputy Mayor shall authenticate by his signature any such act, order, ordinance or resolution adopted by Council when the Mayor fails to do so. (Ord. 5-25-76.)

121.08 DECORUM DURING DEBATE.
(a) No dilatory motion shall be entertained.

(b) No one shall interrupt a member who has the floor except to call a point of order if he is transgressing the rules or request the speaker to yield the floor.

(c) When a member is speaking, no one shall engage in conversation or pass between the speaker and the presiding officer.

(d) No member shall speak more than twice on any question until all members have had an opportunity to speak. Council may, by majority vote, limit the time of debate for each member or total debate period on any question.

(e) No member shall obstruct any of Council's proceeding, or make an assault or threat, or abuse any member for words spoken in debate.

(f) No member shall refuse to obey a proper and lawful order of the Mayor or Deputy Mayor, subject to Council's determination of the priority or legality of such order.

(g) When any member persistently transgresses any of the provisions set forth in this section, after notice thereof, the presiding officer, subject to appeal of such ruling, may discipline the member by reprimand, or exclude the member from participating any further on the motion, matter or issue before Council.
(Ord. 5-25-76.)

121.09 CALLING MEMBER TO ORDER.
If any member transgresses the rules of Council, the Mayor shall, or any member may, call him to order; in which case the member called to order shall immediately sit down and be silent, unless permitted by Council to explain, and Council, if appealed to, shall decide the matter.
(1967 Code Sec. 2-18.)

121.10 DECIDING QUESTIONS OF ORDER.

All questions of order shall be decided by the Mayor, or the person acting instead of the Mayor, subject to an appeal of Council; and an appeal from the decision of the Mayor, or person acting instead of the Mayor, upon a question of order, shall be allowed to be put only upon the demand of a member besides the appellant. The question upon an appeal shall be put in the following form: "Shall the decision of the chair be sustained?" (1967 Code Sec. 2-19.)

121.11 VOTING.

The Mayor shall vote only as a member of Council and in case of a tie the motion shall fail. Every member of Council present, when a question is put, shall vote unless he is interested therein other than as a resident of the City, or unless Council, for special reason, shall excuse him. (1967 Code Sec. 2-20.)

121.12 CONSENT CALENDAR.

(a) When the City Manager determines that any item of business requires action by Council, but is of a routine and noncontroversial nature, he may cause such item to be presented at a regular meeting of Council as part of a consent calendar.

(b) The consent calendar shall be introduced by a motion "To approve the consent calendar", and shall be considered by Council as a single item.

(c) There shall be no debate or discussion by any member of Council regarding any item on the consent calendar, beyond asking questions for simple clarification.

(d) All items on the consent calendar which require public hearings shall be open for hearing simultaneously, and the Mayor shall announce, or direct the City Clerk to announce, the titles of all such items.

(e) On objection by any member of Council to inclusion of any item on the consent calendar, that item shall be removed from the consent calendar forthwith. Such objection may be recorded at any time prior to the taking of a vote on the motion to approve the consent calendar. All such items shall be considered individually, in the order in which they were objected to, immediately following consideration of the consent calendar.

(f) Approval of the motion to approve the consent calendar shall be fully equivalent to approval, adoption or enactment of each motion, resolution, ordinance or other item of business thereon, exactly as if each had been acted upon individually. (Ord. 10-3-78.)

121.13 REDUCING MOTION TO WRITING.

Every motion or other matter introduced before Council shall be reduced to writing, if the presiding officer or any member of Council requires it; but while the motion or other matter is being reduced to writing other business may be proceeded with. (1967 Code Sec. 2-21.)

121.14 MOTION BEFORE COUNCIL; WITHDRAWING MOTION.
When a motion is made and seconded, and stated by the Mayor, or presiding officer, or being in writing, read by the City Clerk, it shall be deemed before Council; such motion may be withdrawn at any time before a final vote, by the consent of Council. (1967 Code Sec. 2-23.)

121.15 PRECEDENCE OF MOTIONS.
When a question is before Council, no motion shall be entertained unless to amend, postpone or commit the original question or to adjourn and a motion to adjour shall always be in order unless Council is engaged in voting. A motion to adjourn o lay on the table shall be decided without debate; and an ordinance or resolution afte commitment and report may be recommitted at any time previous to its final passage. (1967 Code Sec. 2-24.)

121.16 STATEMENT OF QUESTIONS.
All questions shall be put in the following form: "As many as are in favor of the motion, say aye; contrary no", and in doubtful cases the Mayor, or presiding officer, may direct, or any member may call for, a division. (1967 Code Sec. 2-25.)

121.17 CALL FOR THE PREVIOUS QUESTION.
The call for the previous question shall be put in the following manner: "Shall the original question be put?" The call shall be recognized only upon demand of two members of Council, and, until decided, shall preclude all amendments or debate on the main question. (1967 Code Sec. 2-26.)

121.18 CALL FOR DIVISION OF THE QUESTION.
Any member of Council may call for a division of the question where the same will admit thereof. (1967 Code Sec. 2-27.)

121.19 CALL FOR THE AYES AND NOES.
The ayes and noes shall be taken and recorded upon any question upon the demand of any member of Council, but such call shall not preclude amendments or debate before the original question is put. (1967 Code Sec. 2-28.)

121.20 RECORDATION OF MEMBER'S PROTEST.
Any member of Council shall have the right to protest against any order, or resolution, of Council which he may think injurious to the public interest, and have the reasons for his protest entered upon the journal; but such protest shall not exceed fifty words in length. (1967 Code Sec. 2-29.)

121.21 MEMBERS NOT TO WITHDRAW.
No member of Council shall leave a meeting without the permission of the Mayor or presiding officer. (1967 Code Sec. 2-32.)

121.22 PROCEDURE IN ABSENCE OF QUORUM.
When more than two, and less than a quorum, of the members of Council have assembled at the time appointed for a meeting thereof, it shall be lawful for them to adjourn to a subsequent time and cause the Chief of Police or other police officer to give notice to the absent members of the time to which adjournment has been made, requiring their attendance to such adjourned meeting, and the same proceedings may be had to compel the attendance of any member at such adjourned meeting as if the same was a regular or special meeting.
(1967 Code Sec. 2-33.)

121.23 BUSINESS LAID UPON THE TABLE.
All business brought before Council by motion, resolution or in any other manner, and laid upon the table shall be considered as finally disposed of, unless taken from the table by order of Council, within sixty days following the meeting at which it was tabled. (1967 Code Sec. 2-34.)

121.24 APPLICABILITY OF ROBERT'S RULES OF ORDER.
Robert's Rules of Order shall govern the proceedings of Council except as otherwise specifically provided by this article or by ordinance.
(1967 Code Sec. 2-35.)

SPECIAL COMMITTEES

121.25 GENERAL PROVISIONS.
The Mayor or presiding officer of Council or a majority of the members of Council present at any meeting may appoint a special committee at any time for any purpose. The person or body appointing such special committee shall designate the subject or matter upon which such special committee shall make investigation and report to Council. Any special committee shall consist of such number of members as the appointing agency shall direct. The member first appointed on a special committee shall be the chairman thereof and the person second appointed shall be the vice chairman of such special committee.
(1967 Code Sec. 2-45.)

121.26 AGENDA; REPORT TO COUNCIL.
The chairman shall determine the agenda of any special committee meeting. He shall preside at all meetings of the committee and make its reports and findings to Council. In the absence of the chairman, the vice chairman shall perform like duties.
(1967 Code Sec. 2-37.)

121.27 MAYOR AS EX OFFICIO MEMBER.
The Mayor shall be ex officio a member of each special committee of Council, and may attend all of the meetings of the same and participate in the deliberations thereof. (1967 Code Sec. 2-38.)

121.28 MEETINGS.
(a) The meetings of any committee of Council may be convened upon the call of the chairman of such committee, or in his absence the vice chairman, or upon the request in writing of any two members of the committee. (1967 Code Sec. 2-39.)

(b) All Council committee meetings shall be announced in advance on Council floor, or by notifying all those members that can be reached, giving the agenda, date, time and place of each meeting, provided, however, should any committee find it necessary to call an emergency meeting, then the circumstances justifying such emergency meeting shall be indicated in that committee's report to Council irrespective of whether such committee reports on the matters discussed or business transacted at such emergency meeting. (Ord. 5-27-75.)

121.29 QUORUM.

A majority of the whole membership of any committee of Council shall constitute a quorum for the transaction of the business of such committee. (1967 Code Sec. 2-40.)

121.30 POWERS.

Every committee of Council shall have the right to request information through the City Manager from any department of the City and subject to the limitation imposed by Section 2.05(d) of the City Charter, shall have the right to summon before it or have in attendance at any of its meetings any officer, agent or employee of the City. It shall have the right to subpoena witnesses, to hold hearings, hear testimony or evidence, and do all other things proper or necessary in the investigation of any matter pending before such committee.
(1967 Code Sec. 2-41.)

121.31 RULES OF PROCEDURE.

Robert's Rules of Order shall govern the proceedings and deliberations of all of the committees of Council except as otherwise specifically provided by this article. (1967 Code Sec. 2-42.)

121.32 UNFINISHED BUSINESS.

Any matter pending before any committee of Council at the end of the councilmanic year on the thirtieth day of June may be acted upon by the committee before which it was pending upon that date and the members of all committees shall continue in office until their successors qualify. Any matter pending and not disposed of by the expiring committee shall be transferred to the agenda of the new committee immediately upon its appointment by the Mayor. (1967 Code Sec. 2-43.)

121.33 REMOVAL OF OFFICERS AND MEMBERS.

The Mayor may remove and replace the chairman, vice chairman or any member of any committee of Council at any time.
(1967 Code Sec. 2-44.)

**REGULAR MEETING SEPTEMBER 1, 2009:**

The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Monday, September 1, 2009, at 7:30 P.M.

**PRESENT:** Mayor Bill Byrne, City Manager Dan Boroff, City Clerk Linda Little, Assistant City Manager Jeff Mikorski, City Attorney Steve Fanok, Council Members, Ron Bane, John Gaddis, Charlie Byrer, Jenny Selin, Marti Shamberger, and Don Spencer.

The meeting was called to order by the Mayor.

**APPROVAL OF MINUTES:** Minutes from the regular meeting on August 18, 2009, were approved as printed.

**CORRESPONDENCE:**

Mayor Byrne read a letter from Helen Friedberg, Program Director Casa for Kids thanking Council for their funding for 2009-2010. Mayor mentioned a letter from Terri Konchesky thanking Chief Fetty and Bill Graham for the Resident Fire Academy. Councilor Byrer requested to suspend the rules to hear form Wiles Hill Neighborhood Association. Mayor Byrne commented that we can hear from them during the Public Portion. Mayor Byrne then presented a proclamation to the Morgantown Fire Fighters, Local 313 for their efforts on behalf of the Muscular Dystrophy Association.

**PUBLIC HEARING-AN ORDINANCE APPROVING A BOND SERIES FOR THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM:**

Pursuant to a legal notice appearing in the Dominion Post, Mayor Byrne called for a public hearing on the above referenced ordinance.

There being no appearances or objections, Mayor Byrne declared this public hearing closed.

**PUBLIC HEARING -AN ORDINANCE APPROVING A BOND SERIES FOR THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM:**

Pursuant to a legal notice appearing in the Dominion Post, Mayor Byrne called for a public hearing on the above referenced ordinance.

There being no appearances or objections, Mayor Byrne declared this public hearing closed.

**PUBLIC HEARING - AN ORDINANCE APPROVING A BOND SERIES FOR THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM:**

Pursuant to a legal notice appearing in the Dominion Post, Mayor Byrne called for a public hearing on the above referenced ordinance.

There being no appearances or objections, Mayor Byrne declared this public hearing closed.

**UNFINISHED BUSINESS:**

**AN ORDINANCE APPROVING A BOND SERIES FOR THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM:** The below entitled Ordinance was presented for third reading:

AN ORDINANCE FOR THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2009 'A' (WEST VIRGINIA SRF PROGRAM).

Motion by Spencer, second by Bane, to adopt the above entitled Ordinance. Motion carried 7-0.

**AN ORDINANCE APPROVING A BOND SERIES FOR THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM:** The below entitled Ordinance was presented for third reading:

AN ORDINANCE FOR THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2009 'B'.

Motion by Bane, second by Selin, to pass the adopt the above entitled Ordinance. Motion carried 7-0.

**AN ORDINANCE APPROVING A BOND SERIES FOR THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM:** The below entitled Ordinance was presented for third reading:

AN ORDINANCE FOR THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2009 'C' (WEST VIRGINIA DWTRF PROGRAM).

Motion by Gaddis, second by Bane, to adopt the above entitled Ordinance. Motion carried 7-0.

**BOARDS AND COMMISSIONS:** Motion by acclamation to appoint Don Spencer to replace Greg Good on the BOPARC Board.

**NEW BUSINESS:**

**AN ORDINANCE AUTHORIZING A LEASE WITH AERO FLIGHT TRAINING CENTER:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE AUTHORIZING A LEASE AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN (LESSOR) AND AERO AVIATION FLIGHT TRAINING CENTER, LLC (LESSEE) WHEREBY AERO AVIATION WILL BE LEASING OFFICE SPACE WITHIN THE MORGANTOWN MUNICIPAL AIRPORT'S SOUTH TERMINAL FROM THE CITY OF MORGANTOWN.

City Manager Dan Boroff gave an explanation of the lease, motion by Bane, second by Gaddis, to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**AN ORDINANCE AUTHORIZING TO DEED A PARCEL OF REAL ESTATE IN THE FOURTH WARD TO WVU BOARD OF GOVERNORS:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE AUTHORIZING THE CITY OF MORGANTOWN TO DEED A PARCEL OF REAL ESTATE, OWNED BY IT AND LOCATED IN THE FOURTH WARD OF THE CITY TO THE WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS, ON BEHALF OF WEST VIRGINIA UNIVERSITY.

After discussion, motion by Byrer, second by Bane, to table the above entitled Ordinance. After comment from City Manager on how inappropriate tabling the Ordinance would be, motion failed 1-6. After continued discussion, motion by Spencer, second by Selin to pass the above entitled Ordinance to second reading. Motion carried 6-1. Councilor Byrer voted No.

**PUBLIC PORTION:**

David McKain, President, Wiles Hill-Highland Park Neighborhood Association, requested that the City delayed passing the Fire Station property transfer Ordinance to allow an investigation of possible influence on the surrounding neighborhood.

Kitty Lozier, 345 Virginia Avenue, inquired what impact the Traffic Commission may have on WVU's decision making process.

Lora Kemp-Rye, 340 Virginia Avenue requested that the community be more informed on the land use decisions made by WVU in regard to this issue.

Erin Exline, 510 Short Street, noted that she would like WVU to keep the community involved in their decision making where it will directly affect the citizens.

Leigh Rosenecker, 621 Jones Avenue mentioned that she attended the new North Side Fire Station opening. She stated that the Ordinance should not be held up, but that the citizens should be included where issues affect them.

City Manager Dan Boroff explained that WVU is a state entity and is governed by the State of WV, and the Municipality has no control over their decisions. He also told the citizens that the Traffic Commission is an advisory committee, not a decision making body.

Mayor Byrne added that the City, WVU and the Wiles Hill Neighborhood need to communicate on this issue, however the city cannot and will not go back on its word to transfer the properties as previously agreed upon.

There being no more appearances or objections, Mayor Byrne declared this public portion closed.

**SPECIAL COMMITTEE REPORTS:** No reports.

**CITY MANAGER'S REPORT:**

**NEW BUSINESS:**

Item No 1:

Attached is a memo from the Public Works Director reporting bid results for the Met Theatre Back Stage MEP

project. I agree with her comments and recommend that the contract be award to Veritas Contracting, LLC for $74,997.50

Motion by Shamberger, second by Bane, to approve the bid results. Motion carried 7-0.

Item No. 2:
The second attachment is a list of intersections recommended by the Traffic Commission for placement of stop lines to support stop signs. The estimated cost of this pilot project is $8,000 to be conducted by a private contractor.

After discussion, motion by Selin, second by Spencer to approve the bid results, motion carried 7-0.

**CITY CLERK'S REPORT:** No report.

**CITY ATTORNEY'S REPORT:** No report.

**REPORT FROM COUNCIL MEMBERS:**

Councilor Bane: Councilor Bane stated that it is important that we continue to foster a good relationship with the President of WVU on behalf of the citizens in order to ensure future cooperation between the City and the University. He suggested that by keeping that relationship well there could be possible partnership in helping to work with the DOH.

Councilor Gaddis: Councilor Gaddis explained that we must support the neighborhoods and do what is right for them. He then called upon all citizens to simply follow traffic laws and heed all traffic control devices in order to reduce traffic calming needs

Councilor Byrer: Councilor Byrer stated that he will reinforce as a sub-theme to the Year of Active Transport the concepts of accountability, ownership and enforcement. He mentioned complaints of student activity that violates City Ordinances and that these violations are not penalized. He stated that it will improve everyone's quality of life when both students and citizens follow all regulations and laws, and when Police and Fire enforce those laws.

Councilor Selin: Councilor Selin talked about the North Side Fire Station opening and how much she enjoyed all the activities they had there for the community. She announced that the Farmer's Market is still going strong and there is a huge selection because it is now harvest time.

Councilor Shamberger: Councilor Shamberger announced that she attended the Jerome Park Neighborhood Association meeting and reported on their progress. She thanked the fire fighters for their prompt response to a large fire in her ward last night.

Councilor Spencer: Councilor Spencer mentioned the new Fire Station and thanked Chief Fetty for his leadership and service to the City. He then concurred with Councilor Byrer's remarks on enforcement of ordinances in the City. He asked for neighbors partnering with Police to report illicit activity. He shared success stories about a Wiles Hill storm drain project where groups came together in common interest and the construction of dorms in Evansdale. Citing these examples he inferred that the City and WVU are on their way to working together on the property transfer issue. He commended Wiles Hill neighbors for expressing their views on the issue. Councilor Spencer inquired about a landlord list on the City website. Jeff Mikorski explained how the search function works. Councilor Spencer thanked City staff, Police, Fire, Code Enforcement, BOPARC for all the summer events and their involvement. He commented on the new judge chosen by Governor Manchin for Monongalia County.

Mayor Byrne: Mayor Byrne mentioned the dedication of the new Honors Dorm in Sunnyside. He agreed that some key issues need to be enforced. He attended the Census meeting and talked about the census form and the importance in getting an accurate count. He mentioned the Brownsfield conference and some folks who are involved. He talked about the Fire Station opening and the upcoming 9/11 blood drive. He stated he'll be attending a dedication at the Blanch Rockefeller Neurosciences Institute. He reported that the Wheeling Symphony will be playing the waterfront on Labor Day with a guest artist from Pittsburgh.

Councilor Gaddis added thanks for those who attended the South Park/Greenmont Yard Sale. He asked folks to come out and support WVU Soccer.

He al

**ADJOURNMENT:** There being no further business, the meeting adjourned by unanimous consent at 8:50 p.m.

City Clerk

Mayor

***A FULL TRANSCRIPT OF ALL COUNCIL MEETINGS IS AVAILABLE ON CD AT THE MORGANTOWN CITY LIBRARY.**

**REGULAR MEETING AUGUST 18, 2009:**

The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Monday, August 18, 2009, at 7:30 P.M.

**PRESENT:** Mayor Bill Byrne, City Manager Dan Boroff, City Clerk Linda Little, Assistant City Manager Jeff Mikorski, City Attorney Steve Fanok, Council Members, Ron Bane, John Gaddis, Charlie Byrer, Jenny Selin, Marti Shamberger, and Don Spencer.

The meeting was called to order by the Mayor.

**APPROVAL OF MINUTES:** Minutes from the regular meeting on August 4, 2009, were approved as printed.

**CORRESPONDENCE:** Mayor Byrne presented a proclamation to Daryl Price for his thirty-six years & eight months of service to the City of Morgantown. Mayor Byrne mentioned a letter thanking the City for their support of the Arts in Morgantown.

**PUBLIC HEARING- AN ORDINANCE AMENDING THE TRAFFIC CODE, PARKING FEES:**

Pursuant to a legal notice appearing in the Dominion Post, Mayor Byrne called for a public hearing on the above referenced ordinance.

There being no appearances or objections, Mayor Byrne declared this public hearing closed.

**PUBLIC HEARING - AN ORDINANCE AMENDING THE ADMINISTRATIVE CODE, BEAUTIFICATION COMMISSION:**

Pursuant to a legal notice appearing in the Dominion Post, Mayor Byrne called for a public hearing on the above referenced ordinance.

There being no appearances or objections, Mayor Byrne declared this public hearing closed.

**PUBLIC HEARING - AN ORDINANCE AUTHORIZING A RIGHT-OF-WAY BETWEEN THE CITY AND WVU UNDER RAWLEY AVENUE:**

Pursuant to a legal notice appearing in the Dominion Post, Mayor Byrne called for a public hearing on the above referenced ordinance.

There being no appearances or objections, Mayor Byrne declared this public hearing closed.

**UNFINISHED BUSINESS:**

**AN ORDINANCE AMENDING THE TRAFFIC CODE, PARKING FEES:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE AMENDING SUBSECTIONS 363.08(b) AND (c) OF THE TRAFFIC CODE OF THE CITY OF MORGANTOWN AS THE SAME APPLY TO PARKING FEES FOR SPECIFIC METERED STREETS AND OFF STREET PARKING LOTS OF THE CITY.

Motion by Gaddis, second by Bane, to adopt the above entitled ordinance. Motion carried 7-0.

**AN ORDINANCE AMENDING THE ADMINISTRATIVE CODE, BEAUTIFICATION COMMISSION:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE AMENDING EACH AND EVERY SECTION OF ARTICLE 163 OF THE ADMINISTRATIVE CODE OF THE CITY OF MORGANTOWN; THEREBY, RENAMING THE CITY'S BEAUTIFICATION COMMISSION AS THE URBAN LANDSCAPE COMMISSION AND ALSO CLARIFYING MATTERS SUCH AS PURPOSE, MEMBERSHIP, TERMS, VACANCIES, OFFICERS, MEETINGS, FUNDS, AND ANNUAL REPORTS.

Motion by Spencer, second by Gaddis to adopt the above entitled ordinance. Motion carried 7-0.

**AN ORDINANCE AUTHORIZING A RIGHT-OF-WAY BETWEEN THE CITY AND WVU UNDER RAWLEY AVENUE** The below entitled Ordinance was presented for second reading:

AN ORDINANCE AUTHORIZING A RIGHT-OF-WAY AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN (GRANTOR) AND WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS (GRANTEE) ON BEHALF OF WEST VIRGINIA UNIVERSITY, AUTHORIZING THE PLACEMENT OF A STEAM AND CONDENSATE LINE UNDER AND THROUGH A PORTION OF RAWLEY AVENUE IN THE CITY OF MORGANTOWN.

After discussion, motion by Shamberger, second by Selin, to adopt the above entitled Ordinance. Motion carried 7-0.

**BOARDS AND COMMISSIONS:** Councilor Spencer suggested that new members of Boards and Commissions have an orientation. Councilor Bane stated that MUB and Transit both did excellent orientations with him. Councilor Gaddis also said that as a new member of Parking Authority he met with Tom Arnold and went through an extensive orientation. Mayor Byrne suggested that be the responsibility of the Council members on those boards to make sure new members are orientated properly.

**NEW BUSINESS:**

**AN ORDINANCE APPROVING A BOND SERIES FOR THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE FOR THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2009 'A' (WEST VIRGINIA SRF PROGRAM).

Motion by Bane, second by Gaddis, to pass the above entitled Ordinance to third reading. Motion carried 7-0.

**AN ORDINANCE APPROVING A BOND SERIES FOR THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE FOR THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2009 'B'.

Motion by Bane, second by Spencer, to pass the above entitled Ordinance to third reading. Motion carried 7-0.

**AN ORDINANCE APPROVING A BOND SERIES FOR THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE FOR THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2009 'C' (WEST VIRGINIA DWTRF PROGRAM).

After discussion and explanation by the City Manager, motion by Gaddis, second by Bane, to pass the above entitled Ordinance to third reading. Motion carried 7-0.

**PUBLIC PORTION:** Mary Ann Liberatore, 717 Madigan Avenue, thanked Councilor Bane for coming to see her. Ms. Liberatore stated that she has heard nothing concerning corrective action of her alley. Ms. Liberatore commented that the way we fix roads needs to change and better quality control implemented. Ms. Liberatore is hoping this Council will take immediate action to better serve the citizens and establish policy that truly economizes efficiency of effort and saves money.

There being no more appearances or objections, Mayor Byrne declared this public portion closed.

**SPECIAL COMMITTEE REPORTS:** Councilor Spencer reported on the WVML Conference. He stated that Vote by Mail and Home Rule are the two most important issues for municipalities right now. Councilor Selin commented that Lewisburg won an award for their community garden. Councilor Byrer also mentioned the WVML Conference. He reported that he and Councilor Gaddis attended the Board of Directors Meeting, and saw the new officers voted in, including new League President, Susan Webster. Councilor Gaddis talked to a representative of the DOH about traffic problems in Morgantown including games and students. He informed that the DOH Rep would contact the city about the possibility of a pilot traffic control program. Mayor Byrne thanked host city Charleston for the Conference and commented that Morgantown should be proud of the funding we have for the fire and police pension funds. He mentioned Hoppy Kerchival's presence as a guest speaker and his broadcast from the conference. He talked about Hoppy's support of Municipal Legislative issues. He also announced that he was appointed to the League Board of Directors and will participate in all League meetings this year. Mayor Byrne closed by announcing the City's receipt of the All Star Community Award.

**CITY MANAGER'S REPORT:**

**INFORMATION:**

Item No. 1:

Governor Manchin recently announced a $200,000 Transportation Enhancement Grant to the City of Morgantown to help construct the next phase of the High Street Streetscape Project (Pleasant Street to Kirk Street). With this announcement, $400,000 in Transportation funds are now available for the $935,000 project (balance funded with $328,000 CDBG; $157,000 Capital Escrow; and $50,000 Business Improvement District). Construction should start in Spring 2010.

**NEW BUSINESS:**

Item No 1:

Attached you will find a memo from the Public Works Director reporting bid results for salt to treat City streets this winter. I agree with her comments and recommend that the contract be awarded to the low bidder for Option 1 to Cargill Salt for a unit price of $66.48 per ton.

Motion by Bane, second by Gaddis to approve the bid results, motion carried 7-0.

**CITY CLERK'S REPORT:** City Clerk Linda Little thanked Daryl Price for his help with the United Way campaign.

**CITY ATTORNEY'S REPORT:** City Attorney Steve Fanok advised Council on Home Rule and what Municipalities are allowed to do beyond State Code. He asked them to tread carefully concerning this and stated he will talk with Mark Matkovick and the Municipal League again.

**REPORT FROM COUNCIL MEMBERS:**

Councilor Bane: Councilor Bane inquired to Mr. Boroff if the City is prepared for the upcoming influx of students back into the area. He replied that we are prepared for move-in day this Friday. Councilor Bane then asked that we keep Mrs. Liberatore and Mr. Price abreast of the developments concerning their alleys. He also mentioned that MUB is helpful both in and out of City Limits and can be contacted at any time. He asked Mr. Boroff about Barry Office Supplies and a new sign for the business. Mr. Boroff replied that Planning is helping them to resolve the situation.

Councilor Gaddis: Councilor Gaddis reported on his first Parking Authority Meeting and found out that they are solely responsible for downtown parking. He stated that he enjoyed the WVML Conference experience. He thanked the City Manager and Engineer for meeting with neighbors on Grandview about their issues. He then announced the South Park NHA Meeting and the South Park Greenmont Yard Sale coming up.

Councilor Byrer: Councilor Byrer suggested that businesses might utilize the principles of a Neighborhood watch due to robberies in the area. He reported that he toured the State Museum during the Conference. He announced the Wiles Hill NHA Porch Crawl last weekend and their upcoming meeting. He reported a problem with deer in his area and mentioned that fireworks are still being let off without penalty.

Councilor Selin: Councilor Selin reported that she and others participated in the Uphill Challenge as part of the Year of Active Transport. She also spoke about the Brew Ha-Ha event and the Triathlon. She talked about the opening of Ray's Pasties near the rail trail. She closed by stating that Laurel Street is happy with their speed bumps.

Councilor Shamberger: Councilor Shamberger thanked Mayor Byrne and Councilor Gaddis for attending her Neighborhood Association meeting. She reported that the Woodburn Neighborhood Sign weighs 200 pounds and hopes it will be returned before it has to be replaced. She mentioned the Woodburn Elementary School's 100th year celebration.

Councilor Spencer: Councilor Spencer also reported deer problems in his area as well. He mentioned the Rockland Md. website that may provide suggestions on how to deal with deer in neighborhoods. He passed a handout advocating the formation of bike lanes on City streets. Mayor Byrne suggested he bring this to the attention of the MPO. He requested that the Vice Mayor issue be placed on the COW again. He concurred with Councilor Selin on the Laurel Street speed bumps. He suggested that based on New York City experience, we raise fines on stolen recyclable metals. Councilor Byrer agreed. Councilor Spencer then welcomed the students back to the area and asked them to live as good citizens while they are here.

Mayor Byrne: Mayor Byrne spoke of a meeting with WVU on student arrivals and Fall Fest, a well planned event for the past 15 years. He reminded all to attend the Opening of the North Side Fire Station on Monday. He reminded Council of the Botanical Garden Tour on Thursday and mentioned CASA for Kids Fundraiser coming up. He also talked about the Brew Ha-Ha and commended Teri Cutright and Mainstreet for the event. He reported that he attended the art exhibits at the MAC and Arts Mon. He stated his gratitude for the arrival of government funds for streetscape projects. He announced that the Restore Shop benefiting Habitat for Humanity is now open. He then talked about an upcoming meeting with area Mayors on the 2010 Census. Mayor Byrne closed by welcoming back the students and encouraging them to live in Morgantown as good citizens.

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**ADJOURNMENT:** There being no further business, the meeting adjourned by unanimous consent at 8:55 p.m.

City Clerk

Mayor

**REGULAR MEETING AUGUST 4, 2009:**

The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Monday, August 4, 2009, at 7:30 P.M.

**PRESENT:** Mayor Bill Byrne, City Manager Dan Boroff, City Clerk Linda Little, Assistant City Manager Jeff Mikorski, City Attorney Steve Fanok, Council Members, Ron Bane, John Gaddis, Charlie Byrer, Jenny Selin, Marti Shamberger, and Don Spencer.

The meeting was called to order by the Mayor.

**APPROVAL OF MINUTES:** Minutes from the regular meeting on July 21, 2009, were approved as printed.

**CORRESPONDENCE:**

Mayor Byrne mentioned an e-mail from George Papandreas regarding the 25 cent per hour increase in selected parking meter fees; and a letter from Bob Losh, Chair of Celebration of America Committee, thanking the City Council and Police Department for their participation in the July 4th festivities. Mayor Byrne read a letter from Ref. Stonesifer from Trinity Episcopal Church inviting Council to the Morgantown Community Kitchen 25th Anniversary on August 23, 2009 at 10:30am. Mayor Byrne also received a note from Friends of Deckers Creek thanking Council for their continued support and presented proclamations for Breast Feeding Awareness Month and the WV Council of International Programs Day.

**PUBLIC HEARING – AN ORDINANCE AMENDING GENERAL OFFENSES CODE, APPLICATION FEES FOR NOISE CONTROL SPECIAL WAIVERS:**

Pursuant to a legal notice appearing in the Dominion Post, Mayor Byrne called for a public hearing on the above referenced ordinance.

There being no appearances or objections, Mayor Byrne declared this public hearing closed.

**PUBLIC HEARING - AN ORDINANCE AMENDING THE FY 2009-2010 BUDGET, GENERAL FUND:**

Pursuant to a legal notice appearing in the Dominion Post, Mayor Byrne called for a public hearing on the above referenced ordinance.

There being no appearances or objections, Mayor Byrne declared this public hearing closed.

**PUBLIC HEARING - AN ORDINANCE AMENDING THE FY 2009-2010 BUDGET, COAL**

**SEVERANCE FUND:**

Pursuant to a legal notice appearing in the Dominion Post, Mayor Byrne called for a public hearing on the above referenced ordinance.

There being no appearances or objections, Mayor Byrne declared this public hearing closed.

**UNFINISHED BUSINESS:**

**AN ORDINANCE AMENDING GENERAL OFFENSES CODE, APPLICATION FEES FOR NOISE CONTROL SPECIAL WAIVERS:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE AMENDING SUBSECTIONS 527.07(d) AND 527.07(e) OF THE GENERAL OFFENSES CODE OF THE CITY OF MORGANTOWN AS THE SAME APPLY TO APPLICATION FEES FOR NOISE CONTROL SPECIAL WAIVERS.

After discussion, motion by Bane, second by Gaddis, to adopt the above entitled ordinance. Motion carried 7-0.

**AN ORDINANCE AMENDING THE FY 2009-2010 BUDGET, GENERAL FUND:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE AMENDING THE FY 2009-2010 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND.

After explanation from the City Manager, motion by Gaddis, second by Bane, to adopt the above entitled ordinance. Motion carried 7-0.

**AN ORDINANCE AMENDING THE FY 2009-2010 BUDGET, COAL SEVERANCE FUND:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE AMENDING THE FY 2009-2010 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE COAL SEVERANCE FUND.

After discussion, motion by Gaddis, second by Byrer, to adopt the above entitled Ordinance. Motion carried 7-0.

**BOARDS AND COMMISSIONS:**

Jenny Selin was appointed to the Beautification Commission, Marti Shamberger was appointed to the Metropolitan Theatre Commission, John Gaddis was appointed to the Parking Authority, Mike Shuman was appointed to the Planning Commission, Mayor Byrne was appointed to Mainstreet Morgantown, and Charlie Byrer appointed to the Metropolitan Planning Organization. Council unanimously approved all appointments by

acclamation.

**NEW BUSINESS:**

**AN ORDINANCE APPROVING A BOND SERIES FOR THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE FOR THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2009 'A' (WEST VIRGINIA SRF PROGRAM).

Mayor Byrne suspended the rules to have Jim Green, MUB Director and Vince Collins from Steptoe and Johnson answer questions from Council. After discussion, motion by Bane, second by Selin, to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**AN ORDINANCE APPROVING A BOND SERIES FOR THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE FOR THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2009 'B'.

Motion by Bane, second by Spencer, to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**AN ORDINANCE APPROVING A BOND SERIES FOR THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE FOR THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2009 'C' (WEST VIRGINIA DWTRF PROGRAM).

After discussion and explanation by the City Manager, motion by Spencer, second by Byrer, to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**AN ORDINANCE AMENDING THE TRAFFIC CODE, PARKING FEES:** The above entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING SUBSECTIONS 363.08(b) AND (c) OF THE TRAFFIC CODE OF THE CITY OF MORGANTOWN AS THE SAME APPLY TO PARKING FEES FOR SPECIFIC METERED STREETS AND OFF STREET PARKING LOTS OF THE CITY.

Mayor Byrne suspended the rules to have Tom Arnold, Parking Authority answer questions. After discussion, motion by Gaddis, second by Bane to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**AN ORDINANCE AMENDING THE ADMINISTRATIVE CODE, BEAUTIFICATION COMMISSION:** The above entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING EACH AND EVERY SECTION OF ARTICLE 163 OF THE

ADMINISTRATIVE CODE OF THE CITY OF MORGANTOWN; THEREBY, RENAMING THE CITY'S BEAUTIFICATION COMMISSION AS THE URBAN LANDSCAPE COMMISSION AND ALSO CLARIFYING MATTERS SUCH AS PURPOSE, MEMBERSHIP, TERMS, VACANCIES, OFFICERS, MEETINGS, FUNDS, AND ANNUAL REPORTS.

After discussion and explanation from the City Manager, motion by Gaddis, second by Bane to pass the above entitled Ordinance to second reading. Motion carried 7-0

**AN ORDINANCE AUTHORIZING A RIGHT-OF-WAY BETWEEN THE CITY AND WVU UNDER RAWLEY AVENUE:** The above entitled Ordinance was presented for first reading.

AN ORDINANCE AUTHORIZING A RIGHT-OF-WAY AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN (GRANTOR) AND WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS (GRANTEE) ON BEHALF OF WEST VIRGINIA UNIVERSITY, AUTHORIZING THE PLACEMENT OF A STEAM AND CONDENSATE LINE UNDER AND THROUGH A PORTION OF RAWLEY AVENUE IN THE CITY OF MORGANTOWN.

Motion by Gaddis, second by Bane to pass the above entitled Ordinance to second reading. Motion carried 7-0

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**PUBLIC PORTION:**

Mary Ann Liberatore, 717 Madigan Avenue, informed Council of a poor paving job on an alley of Wagner Road. She expressed concern over how road ways are being chosen for paving and the quality of that paving job. She gave her opinion of the way City Engineers handle citizen's comments and respond to situations that she feels need to be attended to.

There being no more appearances or objections, Mayor Byrne declared this public portion closed.

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**SPECIAL COMMITTEE REPORTS:** Councilor Spencer reported that this is the Year of Active Transport and on August 8, 2009 their will be a Bicycle Climb from the Blvd to Star City.

**CITY MANAGERS REPORT:**

**INFORMATION:**

Item No. 1: Congressman Mollahan has announced that the United States Department of Justice will award the City of Morgantown a $167,408 grant to employ one Police Officer for a three year period. This action will increase the number of City Police Officers to 61.

**NEW BUSINESS:**

Item No. 1: Attached is a memo from the Airport Director reporting bid results for two FAA/State funded Airport projects. I agree with his comments and recommend the first contract be awarded to Lombardi Development Co. for a value engineered cost of $320,000 to fund an expansion of the South Terminal (south of the restaurant) to improve the Pilots= Area and to create additional office space for new rentals and Airport operations.

Motion by Bane, second by Gaddis to approve the bid results, motion carried 7-0.

Item No. 2: The second set of Airport bid results is for new Runway Incursion Markings required by the FAA. In that there was a bid irregularity in this process, I recommend that the contract be awarded to the compliant bidder Speidel Construction for $54,066.

Motion by Gaddis, second by Bane to approve the bid results, motion carried 7-0.

**CITY CLERK'S REPORT:** No Report.

**CITY ATTORNEY'S REPORT:** No Report.

**REPORT FROM COUNCIL MEMBERS:**

Councilor Bane:

Councilor Bane asked whether the Ordinance title needed to be read twice in a row by both Mayor Byrne and Clerk Little as is customarily done or if this procedure can be changed for time's sake.

Mr. Boroff replied that it did not need to be repeated; Mayor Byrne added that the Clerk used to read the whole Ordinance aloud, and years ago it was changed that she would only read the title.

Councilor Bane then asked what the next course of action would be to satisfy the discontentment of Mrs. Liberatore and others who have concerns over alley ways and paving. Mr. Boroff explained that the City tries to shape the asphalt in order to suit the individual needs of the property for proper drainage. He stated that the City hires professional pavers, and City employees perform customizing follow up work in this regard. Councilor Bane inquired, and then was reassured that a solution would be provided for Mrs. Liberatore and others who are dissatisfied with the paving.

Councilor Gaddis:

Councilor Gaddis talked about a rechargeable key card for use in meters that is easier than cash. Tom Arnold commented that it hold up to $100, can be purchased in the Parking Authority office, and works on every meter in town.

He mentioned the

Councilor Byrer:

Councilor Byrer continued on about Mrs. Liberatore's drainage issues related to the alley. He suggested that MUB evaluate a possible need for storm drops in alleys and encouraged the Engineering Department to work with MUB on this situation. He then asked Mr. Boroff what the status is of a tree with nuisance roots. He thanked all that participated in Wiles Hill Neighborhood's event for National Nigh Out. He reported some large fireworks being used on Highland Avenue at night an asked for police patrols in the area.

Councilor Selin: Councilor Selin asked about how layering the asphalt in alleys year after year might affect this situation. Mr. Boroff replied that the City does not own any specialized paving equipment used for grading the road surface before repaving, and added it is not necessary on a roadway such as an alley. Councilor Selin talked about upcoming Youth Commission events.

Councilor Shamberger: Councilor Shamberger announced the upcoming Woodburn Neighborhood Association Meeting. She then commented on the Met Theatre's Production of Sweeney Todd, and added that the Mayor was a great participant during a recent performance.

Councilor Spencer: Councilor Spencer talked about an event near Ground Zero in New York City, that he participated in last weekend. He cited an Officer who spoke at that event about the declining number of officers. He then talked about National Night Out events in his neighborhood, and the importance of Neighborhood Associations. He mentioned the development of a neighborhood park in his area, and reported the progress. Councilor Spencer also talked about Partners in Education programs and their importance to area children and schools and the community as a whole.

Mayor Byrne: Mayor Byrne thanked Councilors Shamberger and Spencer for attending the Friends of Deckers Creek and Education events in his absence. He thanked all involved in the Sweeney Todd Production. He thanked the Wiles Hill and Lake Street area for welcoming him. He mentioned attending the Suncrest Neighborhood Association Meeting which dealt with parking and other issues. He thanked Ralph LaRue and Officer Lantz for his community service. He talked about the commitment of WVU to improving Fraternity Housing, and commended them for their efforts. He stated that he attended the Groundbreaking of the Mon-Fayette Expressway, and relayed Governor Manchin's understanding of our greater transportation infrastructure needs. He reminded all to attend the Brew Ha-Ha comedy event downtown this weekend. He added that many City Officials and Administrative Staff are going to attend the WVML Conference in Charleston and that he is looking forward to it. He talked about a call he received from George Longenecker about the Botanical Gardens and asked if a tour could be set up for Council to see the Gardens. Lastly he talked about the newly formed Jerome Park Neighborhood Association, and their recent election of Officers.

Councilor Bane added that the Triathlon will be this weekend.

He al

**ADJOURNMENT:** There being no further business, the meeting adjourned by unanimous consent at 8:54 p.m.

**REGULAR MEETING JANUARY 5, 2010:**

The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Monday, January 5, 2010, at 7:30 P.M.

**PRESENT:** City Manager Dan Boroff, Mayor Bill Byrne, City Clerk Linda Little, Assistant City Manager Jeff Mikorski, City Attorney Steve Fanok, and Council Members, Ron Bane, John Gaddis, Charlie Byrer, Jenny Selin, Marti Shamberger, and Don Spencer.

The meeting was called to order by the Mayor.

**APPROVAL OF MINUTES:** Minutes from the regular meeting on December 15, 2009, were approved as printed.

**CORRESPONDENCE:** Mayor Byrne gave a reminder to Council of the WVML Conference from January 17 to 18, 2010' in Charleston, to let the City Clerk know if you are attending. Mayor Byrne then announced that this evening we have First Sgt. Steve Ford and Detective Chris Dalton attending this evening being honored for saving the life of a heart attack victim that crashed his truck on Brockway on December 9, 2009. Mayor Byrne asked Chief Phil Scott to come forward to present the Life Saving Award to First Sgt. Steve Ford and Detective Chris Dalton.

**PUBLIC HEARING-AN ORDINANCE REPEALING ARTICLE 1743 ADDRESSING FLOOD PLAINS AND ADD A NEW ARTICLE 1743:**

Pursuant to a legal notice appearing in the Dominion Post, Mayor Byrne called for a public hearing on the above referenced ordinance.

There being no appearances or objections, Mayor Byrne declared this public hearing closed.

**PUBLIC HEARING-AN ORDINANCE AMENDING 2009-2010 GENERAL FUND BUDGET:**

Pursuant to a legal notice appearing in the Dominion Post, Mayor Byrne called for a public hearing on the above referenced ordinance.

There being no appearances or objections, Mayor Byrne declared this public hearing closed.

**PUBLIC HEARING-AN ORDINANCE AMENDING 2009-2010 COAL SEVERANCE FUND BUDGET:**

Pursuant to a legal notice appearing in the Dominion Post, Mayor Byrne called for a public hearing on the above referenced ordinance.

There being no appearances or objections, Mayor Byrne declared this public hearing closed.

**UNFINISHED BUSINESS:**

**AN ORDINANCE REPEALING ARTICLE 1743 ADDRESSING FLOOD PLAINS AND ADD A NEW ARTICLE 1743:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE BY THE CITY OF MORGANTOWN REPEALING ARTICLE 1743 OF ITS BUILDING AND HOUSING CODE, ADDRESSING FLOOD PLAINS WITHIN THE CITY, AND ENACTING IN ITS PLACE A NEW ARTICLE 1743 WHICH ALSO ADDRESSES FLOOD PLAINS.

Motion by Gaddis, second by Byrer, to adopt the above entitled Ordinance. City Manager Dan Boroff explained that after the last meeting there were some minor amendments made to the Ordinance, and Council can motion to amend those this evening. After discussion on amendments, motion by Bane, second by Gaddis to approve minor amendments to Ordinance. Motion carried 7-0. After discussion on the main motion, main motion carried 7-0.

**AN ORDINANCE AMENDING 2009-2010 GENERAL FUND BUDGET:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE AMENDING THE FY 2009-2010 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND.

After explanation by the City Manager, motion by Spencer, second by Bane, to adopt the above entitled Ordinance. Motion carried 7-0.

**AN ORDINANCE AMENDING 2009-2010 COAL SEVERANCE FUND BUDGET:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE AMENDING THE FY 2009-2010 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE COAL SEVERANCE FUND.

Motion by Bane, second by Shamberger, to adopt the above entitled Ordinance. Motion carried 7-0.

**BOARDS AND COMMISSIONS:** Mayor Byrne complimented Terry Jones for serving on the Mon. River Trail Commission and other Commissions and also his service as a Councilmember Council then by acclamation reappointed James Shaffer & Leanne Cardoso to the BZA and Mike Shuman and Carol Pyles to the Planning Commission..

**NEW BUSINESS:**

**CONSIDERATION OF APPROVAL OF FIRST READING OF A SUPPLEMENTAL RESOLUTION PROVIDING FOR THE ISSUANCE OF THE COMBINED UTILITY SYSTEM REVENUE BONDS SERIES 2010 A AND COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 F:** The above Resolution was presented for approval:

City Manager Dan Boroff explained the City will know more about the exact payment periods and interest rates once bonds are sold. He also stated that the payment periods and interest rates can't exceed the limit set by the City Council. Mr. Boroff stated that this project is the largest public utility project in the State's history. The Mayor suspended the rules to let Vince Collins from Steptoe and Johnson to explain the bonds and answer any questions City Council had. After discussion, motion by Gaddis, second by Bane to pass the above entitled Resolution. Motion carried 7-0.

**CONSIDERATION OF APPROVAL OF FIRST READING OF A SUPPLEMENTAL RESOLUTION PROVIDING FOR THE ISSUANCE OF THE COMBINED UTILITY SYSTEM REVENUE BONDS SERIES 2010 B AND COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 C:(WEST VIRGINIA SRF PROGRAM):** The above Resolution was presented for approval:

Motion by Bane, second by Shamberger to pass the above entitled Resolution. Motion carried 7-0.

**CONSIDERATION OF APPROVAL TO CONSIDER AND ACT UPON A PROPOSED SUPPLEMENTAL RESOLUTION PROVIDING FOR THE ISSUANCE OF THE COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 D AND COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 E(WEST VIRGINIA DWTRF PROGRAM):**

The above Resolution was presented for approval:

Motion by Gaddis, second by Bane to pass the above entitled Resolution. Motion carried 7-0.

**APPROVAL TO CONSIDER AND ACT UPON A PROPOSED SWEEP RESOLUTION PERTAINING TO THE AUTOMATIC PAYMENT OF COMBINED UTILITY SYSTEM BONDS TO THE MUNICIPAL BOND COMMISSION:** The above Resolution was presented for approval:

Motion by Selin, second by Bane to pass the above entitled Resolution. Motion carried 7-0.

**PUBLIC PORTION:**

Delegate Charlene Marshall, 1010 Ashton Drive, wished everyone a Happy New Year and stated that she was here tonight to let Council know she supports their 2010 Legislatives Priorities. Delegate Marshall invited each one of them to visit her during the Legislative session or call upon her at anytime. Delegate Marshall also requested that the City take a look at clearing the snow/ice on Lakeland Avenue for when she was out there for a Holiday event, the residents seemed concerned about their street.

Mayor Byrne commented that the streets that Delegate Marshall mentioned are in the process of being adopted in to the City, so they can be maintained by the City.

Joe Kaehler, Met Theatre Manager, updated Council on the restoration of the Met Theatre

Glenn Gallagher, P.O. Box 1574, requested that a crosswalk be placed at the intersection of University Avenue and Westover Bridge by Wings Ole. Mr. Gallagher commented that this is one of the busiest intersections in the City.

Ray Swager, Swager General Contracting, mentioned an article by Dave Miline, Natural Resource Commission and asked for comments on that article, for it sounds like there should not be any public input.

Mayor Byrne explained to Mr. Swager the process of the Public Portion.

Mr. Swager stated that he has been around with a petition and citizens have signed against this urban deer hunt. He asked how many complaints did we get to warrant an urban deer hunt? Does it matter what people think?

Mayor Byrne said again someone will respond to your comments

Mayor Byrne commented that we have the Public Portion for people to give views and we have COW for round table discussion. Do the people matter, absolutely? We are elected by you. We make the best decisions we can with the information we are given as an elected group.

There being no more appearances Mayor Byrne then declared the Public Portion closed.

**SPECIAL COMMITTEE REPORTS:** No Reports.

**CITY MANAGERS REPORT:**

**INFORMATION:**

Item No 1:

Attached you will find a letter from the United Way requesting $500 to support Martin Luther King, Jr. Day community services. Given the past successes of this program, I recommend that the request be approved.

Motion by Shamberger, second by Selin to approve $500 to support King Jr. Day Community Services. Motion carried 7-0.

**CITY CLERK'S REPORT:** City Clerk Linda Little announced that Deputy Clerk Bethany Sypolt had a

healthy baby girl on December 23, 2009, at 1pm. They named her Allison Nichole Sypolt and everyone is doing well.

**CITY ATTORNEY'S REPORT:** No Report.

**REPORT FROM COUNCIL MEMBERS:**

Councilor Bane: Councilor Bane stated that when he ran for First Ward for Council one of the big issues was deer. Councilor Bane commented that the City needs both sides of the story on the committee and possibly Mr. Swager would be willing to serve on the committee. Councilor Bane requested that the Warners and Sunnyside-Up attend the COW

Councilor Gaddis: Councilor Gaddis also stated that the public always has a comment, and I can be contacted by phone or e-mail and am there to listen. Councilor Gaddis said that even though we may not always agree we must understand all sides and view points of an issue. Councilor Gaddis wished everyone Happy New Year and looking forward to working together with an open dialogue of communication. Councilor Gaddis reported that the next NHA South Park meeting is on 4th Wed of the month and Greenmont NHA is the last Monday of the month and are always open to the public.

Councilor Byrer: Councilor Byrer stated we always need public input. Councilor Byrer said the issue of the deer problem is long over due as it has been a health and safety issue in our neighborhoods. Councilor Byrer also mentioned the passing of Coach Gene Corum who was well know in the Community and always referred to as Gentlemen Gene and offered condolences to his family and his former players. Councilor Byrer reminded everyone that the NHA meeting is the third Wednesday of each month and encouraged new members to join and that all meetings are open to the public.

Councilor Selin: Councilor Selin reminded everyone of the Farmers Market being held at the Marilla Center on January 9, February 6, and March 6, from 12-3pm; Evansdale NHA meeting on January 11, and Suncrest NHA on January 28th. Councilor Selin reported that the next Youth Commission meeting is on January 10th at 2:30 pm at the Public Safety Building. Councilor Selin stated that there is a real need for a crosswalk at Pleasant Street and Westover Bridge. Councilor Selin then mentioned the Urban Deer Hunt and thanked Mr. Swager for coming this evening, and that Council always needs public input on all issues. Councilor Selin agrees that there should be a committee to look at this and as for her opinion thinks the City should consider an urban deer hunt.

Councilor Shamberger: Councilor Shamberger thanked Mr. Swager for coming to Council this evening and sharing his information, I also share as with my fellow Councilors the same concerns on the deer problems. Councilor Shamberger informed everyone that on January 18, there will be a Martin Luther King breakfast at the Mt. Lair and also the Coalition for Social Justice will have a program from 12:30 to 2pm at MHS. Councilor Shamberger complimented the Street Department for their cleaning of the streets during snows. After hearing Bill Rumble speak at the last

Neighborhood of Coordinating Councils and explain the protocol for snow removal, our Street Department does do a great job and they have a plan. Councilor Shamberger had a call concerning the zoning signs the Planning Department puts out, and commented that the signs are a great tool for it is peaking citizens interests.

Councilor Spencer: Councilor Spencer commented that the crosswalk that is needed at University Avenue and Westover bridge is a State issue and mentioned to Mr. Gallagher that he should attend the next MPO meeting to tell them of his concerns of this intersection on 1-21 at 7pm. Councilor Spencer spoke strongly of the deer hunt and how his neighbors have been support of this all along and this is this first time he has heard of any one against the hunt. Councilor Spencer continued by saying he welcomed Mr. Swager's input on this issue and City Council always encourages the citizens to come to Council to give their opinions. Councilor Spencer mentioned two national awards that were presented by The Governing Journal (one was bidding and the other was asking different departments to set goals for upcoming year). Councilor Spencer requested that both these processes be considered to help improve the City. Councilor Spencer congratulated the Public Works Department and the 6 Morgantown schools (North Elementary, Woodburn, South Middle, Suncrest Middle,Trinity, and MHS) for the snow plow blade painting program. Councilor Spencer asked the City Manager for a road salt update? City Manager Dan Boroff responded saying that this year road salt was $68 dollars a ton and we have used 1000 tons and have 1300 tons for the rest of the winter. Councilor Spencer closed his report in mentioning the passing of Gene Corum who was Head Football Coach at WVU from 1960-1965, but he also supported the construction of the Marilla Pool; served on Council from 1966-68; and he and his wife Lucille were loyal Mountaineers and important contributors to life in Morgantown. We are thankful for both of their lives. Councilor Spencer also complimented City Administration on job well done on The Annual Report.

Mayor Byrne: Mayor Byrne commented in keeping on the theme of Coach Corum, the MLK Celebration will be coming up soon and Coach Corum was the one that integrated our WVU Football Team and it would be fitting to honor him during this celebration. Mayor Byrne then commended the City Street Department for keeping our streets clear during this snowy weather and explained the process in which the streets are cleared. Mayor Byrne suggested to the City Manager that Mr. Swager be added to the Deer Hunt Committee, and we appreciated not only his input but all public comments. Mayor Byrne requested a walking tour be done of the Gateway Areas of each Ward when the weather breaks. Mayor Byrne complimented the work done on the Annual Report on a very modest budget.

Councilor Gadddis asked that at the University Avenue/Westover Bridge crosswalk area, can the State Highway place better signage there?

Mayor Byrne stated that this is an MPO issue.

Councilor Selin asked Mayor Byrne can this body make a recommendation to the MPO.

Mayor Byrne responded in saying that the process is that issues go to the MPO Director; then he forwards them to proper committees; then if issue is approved by MPO, then Council can talk to the State.

**ADJOURNMENT:** There being no further business, the meeting adjourned by unanimous consent at 8:55 p.m.

_____ _____

City Clerk Mayor

***A FULL TRANSCRIPT OF ALL COUNCIL MEETINGS IS AVAILABLE ON CD AT THE MORGANTOWN CITY LIBRARY.**

# PUBLISHER'S CERTIFICATE

_____

vs.

_____

016409

August 20, 27

THE CITY OF MORGANTOWN
NOTICE OF PUBLIC HEARING
ON BOND ORDINANCE

A public hearing will be held on the following entitled Ordinance at a regular meeting of the Council of The City of Morgantown (the "City") to be held on **TUESDAY, SEPTEMBER 1, 2009**, at **7:30 p.m.**, in Council chambers at the Morgantown City Hall, 389 Spruce Street, Morgantown, West Virginia, and at such hearing any person interested may appear before the Council and present protests, comments or suggestions, and all protests, comments and suggestions shall be heard by the Council and it shall then take such actions as it shall deem proper in the premises upon an Ordinance entitled:

**ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WASTEWATER PORTION OF THE EXISTING PUBLIC COMBINED WATERWORKS, SEWERAGE AND STORMWATER SYSTEM OF THE CITY OF MORGANTOWN AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $22,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA SRF PROGRAM) IN ONE OR MORE SERIES; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.**

The above-entitled Ordinance was adopted by the Council of the City on August 18, 2009.

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 said Ordinance. The proceeds of the Bonds will be used to provide permanent financing of the costs of acquisition and construction of additions, betterments and improvements to the sanitary sewer portion of the existing public waterworks, sewerage and stormwater system of the City. The Bonds are payable solely from revenues to be derived from the ownership and operation of the waterworks, sewerage and stormwater system of the City. No taxes may at any time be levied for the payment of the Bonds or the interest thereon.

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

Following said public hearing, the Council intends to enact said Ordinance upon final reading.

Dated: August 20, 2009.

Linda Little
Clerk

**STATE OF WEST VIRGINIA**
**COUNTY OF MONONGALIA**

I **Eric Wilson** Advertising Director of

THE DOMINION POST, a newspaper of general circulation

published in the City of Morgantown, County and State

aforesaid, do hereby certify that the annexed

Legal Notice

was published in the said THE DOMINION POST once a week

for **2** successive weeks commencing on the

**20th** day of **August**, **2009** and ending on the

**27th** day of **August**, **2009**

The publisher's fee for said publication is **$162.67**

Given under my hand this **27th** day of

**August**, **2009.**

(SEAL)

Advertising Director of THE DOMINION POST

Subscribed and sworn to before me this **27th**

day of **August**, **2009.**

Kathy J. Custer

Notary Public of Monongalia County, W. Va.

My commission expires on the 13th day of

April, 2014

OFFICIAL SEAL
NOTARY PUBLIC, STATE OF WEST VIRGINIA
KATHY J. CUSTER
469 WESTWOOD STREET
STAR CITY, WV 26505
MY COMMISSION EXPIRES APRIL 13, 2014

**WV MUNICIPAL BOND COMMISSION**
1207 Quarrier Street
Suite 401
Charleston, WV 25301
(304) 558-3971

**NEW ISSUE REPORT FORM**

Date of Report: 1/28/2010

ISSUE: The City of Morgantown
Combined Utility System Revenue Bonds, Series 2010 B (West Virginia SRF Program/ARRA)

ADDRESS: 389 Spruce Street, Morgantown, WV 26505 COUNTY: Monongalia

PURPOSE OF ISSUE:
New Money: X
Refunding: ____

REFUNDS ISSUE(S) DATED: NA

ISSUE DATE: 1/28/2010 CLOSING DATE: 1/28/2010

ISSUE AMOUNT: $81,600 RATE: n/a

1ST DEBT SERVICE DUE: 100% forgivable 1ST PRINCIPAL DUE 100% forgivable

1ST DEBT SERVICE AMOUNT 100% forgivable PAYING AGENT: Municipal Bond Commission

BOND COUNSEL:
Firm: Steptoe & Johnson PLLC
Contact John Stump, Esquire
Phone: (304) 353.8196

UNDERWRITERS COUNSEL
Firm: Jackson Kelly, PLLC
Contact: Samme Gee, Esquire
Phone: (304) 340-1318

CLOSING BANK:
Bank: United Bank, Inc.
Contact: Jacquie Stanley
Phone: 304.598.3001

ESCROW TRUSTEE:
Firm: ____
Contact: ____
Phone: ____

KNOWLEDGEABLE ISSUER CONTACT
Contact: William Byrne
Position: Mayor
Phone: 304.284.7405

OTHER:
Agency: W.V. Department of Environmental Protection
Contact: Rosalie Brodersen
Position: Program Manager
Phone: (304) 926.0499 (ext. 1608)

DEPOSITS TO MBC AT CLOSE
By: ____ Wire ____ Check

____ Accrued Interest: $ ____
____ Capitalized Interest: $ ____
____ Reserve Account: $ ____
____ Other: $ ____

REFUNDS & TRANSFERS BY MBC AT CLOSE
By: ____ Wire ____ Check ____ IGT

____ To Escrow Trustee $ ____
____ To Issuer $ ____
____ To Cons. Invest. Fun $ ____
____ To Other: ____ $ ____

NOTES: The Series 2010 B Bonds are 100% forgivable. The Series 2010 B Bonds Reserve Account will not be funded.

FOR MUNICIPAL BOND COMMISSION USE ONLY:
DOCUMENTS REQUIRED: ____
TRANSFERS REQUIRED: ____

**WV MUNICIPAL BOND COMMISSION**
1207 Quarrier Street
Suite 401
Charleston, WV 25301
(304) 558-3971

**NEW ISSUE REPORT FORM**

Date of Report: 1/28/2010

ISSUE: The City of Morgantown
Combined Utility System Revenue Bonds, Series 2010 C (West Virginia SRF Program)

ADDRESS: 389 Spruce Street, Morgantown, WV 26505 COUNTY: Monongalia

PURPOSE OF ISSUE:
New Money: X
Refunding:

REFUNDS ISSUE(S) DATED: NA

ISSUE DATE: 1/28/2010 CLOSING DATE: 1/28/2010

ISSUE AMOUNT: $15,380,227 RATE: 2%, 1% admin fee

1ST DEBT SERVICE DUE: 1-Dec-12 1ST PRINCIPAL DUE 1-Dec-12

1ST DEBT SERVICE AMOUNT $233,734.14 PAYING AGENT: Municipal Bond Commission

BOND COUNSEL:
Firm: Steptoe & Johnson PLLC
Contact John Stump, Esquire
Phone: (304) 353.8196

UNDERWRITERS COUNSEL
Firm: Jackson Kelly, PLLC
Contact: Samme Gee, Esquire
Phone: (304) 340-1318

CLOSING BANK:
Bank: United Bank, Inc.
Contact: Jacquie Stanley
Phone: 304.598.3001

ESCROW TRUSTEE:
Firm:
Contact:
Phone:

KNOWLEDGEABLE ISSUER CONTACT
Contact: William Byrne
Position: Mayor
Phone: 304.284.7405

OTHER:
Agency: W.V. Department of Environmental Protection
Contact: Rosalie Brodersen
Position: Program Manager
Phone: (304) 926.0499 (ext. 1608)

DEPOSITS TO MBC AT CLOSE

| By: | | | | |
|---|---|---|---|---|
| x | Wire | | Accrued Interest: | $ |
| | Check | | Capitalized Interest: | $ |
| | | x | Reserve Account: | $ 934,937.00 |
| | | | Other: | $ |

REFUNDS & TRANSFERS BY MBC AT CLOSE

| By: | | | | |
|---|---|---|---|---|
| | Wire | | To Escrow Trustee | $ |
| | Check | | To Issuer | $ |
| | IGT | | To Cons. Invest. Fun | $ |
| | | | To Other: | $ |

NOTES: The Series 2010 C Bonds Reserve Account will be funded with bond proceeds.

FOR MUNICIPAL BOND COMMISSION USE ONLY:
DOCUMENTS REQUIRED:
TRANSFERS REQUIRED:

THE CITY OF MORGANTOWN

Combined Utility System Revenue Bonds, Series 2010 B
(West Virginia SRF Program/ARRA); and
Combined Utility System Revenue Bonds, Series 2010 C
(West Virginia SRF Program)

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

United Bank, Inc., Morgantown, West Virginia, hereby accepts appointment as Depository Bank in connection with a Bond Ordinance of The City of Morgantown (the "Issuer") enacted by the Issuer on September 1, 2009, and a Supplemental Resolution and Conformed Ordinance adopted by the Issuer on January 5, 2010 (collectively, the "Bond Legislation"), authorizing issuance of the Issuer's Combined Utility System Revenue Bonds, Series 2010 B (West Virginia SRF Program/ARRA), dated January 28, 2010, in the aggregate principal amount of $81,600; and Combined Utility System Revenue Bonds, Series 2010 C (West Virginia SRF Program), dated January 28, 2010, in the aggregate principal amount of $15,380,227 (collectively, the "Bonds"), and agrees to serve as Depository Bank in connection with the Bonds, all as set forth in the Bond Legislation.

WITNESS my signature on this 28th day of January, 2010.

UNITED BANK, INC.

By: Jacquie Stanley
Its: Authorized Officer

01.02.10
627490.00039

THE CITY OF MORGANTOWN

Combined Utility System Revenue Bonds, Series 2010 B
(West Virginia SRF Program/ARRA); and
Combined Utility System Revenue Bonds, Series 2010 C
(West Virginia SRF Program)

ACCEPTANCE OF DUTIES AS REGISTRAR

The Huntington National Bank, Charleston, West Virginia, hereby accepts appointment as Registrar in connection with The City of Morgantown Combined Utility System Revenue Bonds, Series 2010 B (West Virginia SRF Program/ARRA), dated January 28, 2010, in the aggregate principal amount of $81,600; and Combined Utility System Revenue Bonds, Series 2010 C (West Virginia SRF Program), dated January 28, 2010, in the aggregate principal amount of $15,380,227 (collectively, the "Bonds"), and agrees to perform all duties of Registrar in connection with the Bonds, all as set forth in the Bond Legislation authorizing issuance of the Bonds.

WITNESS my signature on this 28th day of January, 2010.

THE HUNTINGTON NATIONAL BANK

By: _____
Its: Authorized Officer

01.02.10
627490.00039

THE CITY OF MORGANTOWN

Combined Utility System Revenue Bonds, Series 2010 B
(West Virginia SRF Program/ARRA); and
Combined Utility System Revenue Bonds, Series 2010 C
(West Virginia SRF Program)

CERTIFICATE OF REGISTRATION OF BONDS

The Huntington National Bank, Charleston, West Virginia, as Registrar under the Bond Legislation and Registrar's Agreement providing for the above-captioned Bonds of The City of Morgantown (the "Issuer"), hereby certifies that on the date hereof, the single, fully registered Combined Utility System Revenue Bonds, Series 2010 B (West Virginia SRF Program/ARRA), of the Issuer, dated January 28, 2010, in the principal amount of $81,600, numbered BR-1, and Combined Utility System Revenue Bonds, Series 2010 C (West Virginia SRF Program), of the Issuer, dated January 28, 2010, in the principal amount of $15,380,227, numbered CR-1 were registered as to principal and interest in the name of "West Virginia Water Development Authority" in the books of the Issuer kept for that purpose at our office, by a duly authorized officer on behalf of the Registrar.

WITNESS my signature on this 28th day of January, 2010.

THE HUNTINGTON NATIONAL BANK

By: _____
Its: Authorized Officer

01.02.10
627490.00039

THE CITY OF MORGANTOWN

Combined Utility System Revenue Bonds, Series 2010 B
(West Virginia SRF Program/ARRA); and
Combined Utility System Revenue Bonds, Series 2010 C
(West Virginia SRF Program)

# REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 28th day of January, 2010, by and between The City of Morgantown, a municipal corporation and political subdivision of the State of West Virginia (the "Issuer"), and THE HUNTINGTON NATIONAL BANK, Charleston, West Virginia (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its $81,600 principal amount of Combined Utility System Revenue Bonds, Series 2010 B (West Virginia SRF Program/ARRA), in fully registered form, and its $15,380,227 principal amount of Combined Utility System Revenue Bonds, Series 2010 C (West Virginia SRF Program), in fully registered form (collectively, the "Bonds") pursuant to a Bond Ordinance of the Issuer duly enacted September 1, 2009, and a Supplemental Resolution and Conformed Ordinance of the Issuer duly adopted January 5, 2010 (collectively, the "Bond Legislation");

WHEREAS, capitalized words and terms used in this Registrar's Agreement and not otherwise defined herein shall have the respective meanings given them in the Bond Legislation, a copy of which is attached as EXHIBIT A hereto and incorporated herein by reference;

WHEREAS, the Bond Legislation provides for an appointment by the Issuer of a Registrar for the Bonds; and

WHEREAS, the Issuer desires to appoint, and by the Bond Legislation and this Registrar's Agreement does appoint, the Registrar to act as Registrar under the Bond Legislation and to take certain other actions hereinafter set forth;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Upon the execution of this Registrar's Agreement by the Issuer and the Registrar and during the term hereof, the Registrar does accept and shall have and carry out the powers and duties of Registrar for the Bonds, all as set forth in the Bond Legislation, such duties including, among other things, the duties to authenticate, register and deliver the Bonds upon original issuance and when properly presented for exchange or transfer, and shall do so with the intention of maintaining the exemption of interest, if any, on the Bonds from federal income taxation, in accordance with any rules and regulations promulgated by the United States Treasury Department or by the Municipal Securities Rulemaking Board or similar regulatory bodies as the Issuer advises it of and with generally accepted industry standards.

2. The Registrar agrees to furnish the Issuer with appropriate records of all transactions carried out by it as Registrar and to furnish the Issuer with the names and specimen signatures of the Registrar's authorized officers for the purposes of acting as the Registrar and with such other information and reports as the Issuer may from time to time reasonably require.

3. The Registrar shall have no responsibility or liability for any action taken by it at the specific direction of the Issuer.

4. As compensation for acting as Registrar pursuant to this Registrar's Agreement, the Issuer hereby agrees to pay to the Registrar the compensation for services rendered as provided in the annexed schedule.

5. It is intended that this Registrar's Agreement shall carry out and implement provisions of the Bond Legislation with respect to the Registrar. In the event of any conflict between the terms of this Registrar's Agreement and the Bond Legislation, the terms of the Bond Legislation shall govern.

6. The Issuer and the Registrar each warrants and represents that it is duly authorized and empowered to execute and enter into this Registrar's Agreement and that neither such execution nor the performance of its duties hereunder or under the Bond Legislation will violate any order, decree or agreement to which it is a party or by which it is bound.

7. This Registrar's Agreement may be terminated by either party upon 60 days' written notice sent by registered or certified mail to the other party, at the following respective addresses:

ISSUER:
The City of Morgantown
389 Spruce Street
Morgantown, West Virginia 26505
Attention: Mayor

REGISTRAR:
The Huntington National Bank
One Huntington Square
Charleston, West Virginia 25301

8. The Registrar shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. The registrar shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the Registrar to carry out these requirements is a material breach of this Agreement which may result in the termination of this Agreement or other legal available remedies.

9. The Registrar is hereby requested and authorized to authenticate and deliver the Bonds in accordance with the Bond Legislation.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have respectively caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the day and year first above-written.

THE CITY OF MORGANTOWN

By: _____
Its: Mayor

THE HUNTINGTON NATIONAL BANK

By: _____
Its: Authorized Officer

01.02.10
627490.00039

EXHIBIT A

Bond Legislation included in bond transcript as Documents No. 1 and No. 2

SCHEDULE OF COMPENSATION

(See Attached)

**Private Financial Group**
P.O. Box 633 - WE3013
Charleston, West Virginia 25322-0633

Huntington

STATEMENT OF REGISTRAR'S FEES
Invoice Date January 28, 2010

**The City of Morgantown**
**Account Number 6089001809**

The City of Morgantown
Combined Utility System
Revenue Bond, Series 2010 B
C/o John C. Stump
Steptoe & Johnson, PLLC
P.O. Box 1588
Charleston, WV 25326-1588

SUMMARY OF ACCOUNT
**********
FEE CALCULATION FOR January, 2010
**********

| | |
|---|---|
| TOTAL AMOUNT | $ 500.00 |
| **TOTAL DUE** | **$ 500.00** |

**MAIL CHECK TO:**
**THE HUNTINGTON NATIONAL BANK**
**ATTN: BARRY GRIFFITH – WE3013**
**PO BOX 633**
**CHARLESTON, WV 25322-0633**

**PLEASE INCLUDE A COPY OF THIS INVOICE WITH YOUR PAYMENT**

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT
Barry Morgan Griffith at (304) 348-5035

**Private Financial Group**
P.O. Box 633 - WE3013
Charleston, West Virginia 25322-0633

Huntington

STATEMENT OF REGISTRAR'S FEES
Invoice Date January 28, 2010

**The City of Morgantown**
**Account Number 6089001809**

The City of Morgantown
Combined Utility System
Revenue Bond, Series 2010 C
C/o John C. Stump
Steptoe & Johnson, PLLC
P.O. Box 1588
Charleston, WV 25326-1588

SUMMARY OF ACCOUNT
**********
FEE CALCULATION FOR January, 2010
**********

| | |
|---|---|
| TOTAL AMOUNT | $ 500.00 |
| **TOTAL DUE** | **$ 500.00** |

**MAIL CHECK TO:**
**THE HUNTINGTON NATIONAL BANK**
**ATTN: BARRY GRIFFITH – WE3013**
**PO BOX 633**
**CHARLESTON, WV 25322-0633**

**PLEASE INCLUDE A COPY OF THIS INVOICE WITH YOUR PAYMENT**

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT
Barry Morgan Griffith at (304) 348-5035

PRIOR BONDS INCLUDED WITH HARD COPY AS VOLUME 2

WEST VIRGINIA
**Water Development Authority**
*Celebrating 34 Years of Service 1974 - 2008*

THE CITY OF MORGANTOWN

Combined Utility System Revenue Bonds, Series 2010 A
(Direct Payment Build America Bonds);
Combined Utility System Revenue Bonds, Series 2010 B
(West Virginia SRF Program/ARRA);
Combined Utility System Revenue Bonds, Series 2010 C
(West Virginia SRF Program);
Combined Utility System Revenue Bonds, Series 2010 D
(West Virginia DWTRF Program);
Combined Utility System Revenue Bonds, Series 2010 E
(West Virginia DWTRF Program/ARRA); and
Combined Utility System Revenue Bonds, Series 2010 F
(Bank Qualified)

CONSENT

In reliance upon the certificate of Perry & Associates, independent certified public accountants, and an opinion of Steptoe & Johnson PLLC, as bond counsel, stating that the coverage and parity tests have been met and that the respective reserve accounts for the Prior Bonds are funded in accordance with the Prior Ordinances (copies attached) the undersigned duly authorized representative of the West Virginia Water Development Authority (the "Authority"), registered owner of the Prior Bonds as hereinafter defined, hereby consents to the issuance of the (1) Combined Utility System Revenue Bonds, Series 2010 A (Direct Payment Build America Bonds), in the original aggregate principal amount of $37,950,000; (2) Combined Utility System Revenue Bonds, Series 2010 B (West Virginia SRF Program) in the original aggregate principal amount of $81,600; (3) Combined Utility System Revenue Bonds, Series 2010 C (West Virginia SRF Program/ARRA), in the original aggregate principal amount of $15,380,227; (4) Combined Utility System Revenue Bonds, Series 2010 D (West Virginia DWTRF Program), in the original aggregate principal amount of $9,317,286, (5) Combined Utility System Revenue Bonds, Series 2010 E (West Virginia DWTRF Program/ARRA), in the original aggregate principal amount of $100,000, and (6) Combined Utility System Revenue Bonds, Series 2010 F (Bank Qualified) in the original aggregate principal amount of $7,250,000, (collectively the "Series 2010 Bonds") by The City of Morgantown (the "Issuer"), under the terms of the Bond Legislation authorizing the Series 2010 Bonds, on a parity with respect to liens, pledge and source of and security for payment with the Issuer's: (1) Combined Utility System Revenue Bonds, Series 1992 (West Virginia SRF Program), dated September 8, 1992, issued in the original aggregate principal amount of $11,900,000 (the "Series 1992 Bonds"); (2) Combined Utility System Revenue Bonds, Series 1995 (West Virginia SRF Program), dated April 27, 1995, issued in the original aggregate principal amount of $1,601,477 (the "Series 1995 Bonds"); (3) Combined Utility System Revenue Bonds, Series 2000 A (West Virginia SRF Program), dated February 29, 2000, issued in the original aggregate principal amount of $7,842,000 (the "Series 2000 A Bonds"); (4) Combined Utility System Revenue Bonds, Series 2000 B (West Virginia Infrastructure Fund), dated February 29, 2000, issued in the original aggregate principal amount of $2,488,000 (the "Series 2000 B Bonds"); (5) Combined Utility System Revenue Bonds, Series 2001 A

180 Association Drive, Charleston, WV 25311-1217
phone (304) 558-3612 / fax (304) 558-0299
www.wwda.org

(West Virginia Infrastructure Fund), dated February 8, 2001, issued in the original aggregate principal amount of $3,812,470 (the "Series 2001 A Bonds"); (6) Combined Utility System Revenue Bonds, Series 2006 A (West Virginia SRF Program), dated June 30, 2006, issued in the original aggregate principal amount of $6,410,191 (the "Series 2006 A Bonds"); and (7) Combined Utility System Revenue Bonds, Series 2007 A (West Virginia SRF Program), dated August 14, 2007, issued in the original aggregate principal amount of $8,500,000 (the "Series 2007 A Bonds"). The Series 1992 Bonds, Series 1995 Bonds, Series 2000 A Bonds, Series 2000 B Bonds, Series 2001 A Bonds, Series 2006 A Bonds and Series 2007 A Bonds are collectively known herein as the "Prior Bonds".

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

Carol A. Cummings

Authorized Representative

627490.00040

# CERTIFICATE OF LIABILITY INSURANCE

OP ID AH
MORGA-6

DATE (MM/DD/YYYY): 01/15/10

PRODUCER

Commercial Insurance Services
340 MacCorkle Ave. Ste #200
Charleston WV 25314
Phone: 304-345-8000 Fax: 304-345-8014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

| INSURERS AFFORDING COVERAGE | NAIC # |
|---|---|
| INSURER A: Argonaut Great Central Ins. Co | |
| INSURER B: | |
| INSURER C: | |
| INSURER D: | |
| INSURER E: | |

INSURED

Morgantown Utility Board
Jim Green, Gen. Mgr.
P. O. Box 852
Morgantown WV 26507-0852

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | ADD'L INSRD | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YYYY) | POLICY EXPIRATION DATE (MM/DD/YYYY) | LIMITS | |
|---|---|---|---|---|---|---|---|
| A | | GENERAL LIABILITY<br>X COMMERCIAL GENERAL LIABILITY<br>CLAIMS MADE / X OCCUR<br>X PO/EPLI/EL<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br>POLICY / PRO-JECT / LOC | PE-4618506-00 | 07/01/09 | 07/01/10 | EACH OCCURRENCE | $ 2,000,000 |
| | | | | | | DAMAGE TO RENTED PREMISES (Ea occurence) | $ 500,000 |
| | | | | | | MED EXP (Any one person) | $ N/A |
| | | | | | | PERSONAL & ADV INJURY | $ 2,000,000 |
| | | | | | | GENERAL AGGREGATE | $ 6,000,000 |
| | | | | | | PRODUCTS - COMP/OP AGG | $ 6,000,000 |
| | | | | | | Emp Ben. | 2,000,000 |
| A | | AUTOMOBILE LIABILITY<br>X ANY AUTO<br>ALL OWNED AUTOS<br>SCHEDULED AUTOS<br>X HIRED AUTOS<br>X NON-OWNED AUTOS | PE-4618506-00 | 07/01/09 | 07/01/10 | COMBINED SINGLE LIMIT (Ea accident) | $ 2,000,000 |
| | | | | | | BODILY INJURY (Per person) | $ |
| | | | | | | BODILY INJURY (Per accident) | $ |
| | | | | | | PROPERTY DAMAGE (Per accident) | $ |
| | | GARAGE LIABILITY<br>ANY AUTO | | | | AUTO ONLY - EA ACCIDENT | $ |
| | | | | | | OTHER THAN AUTO ONLY: EA ACC | $ |
| | | | | | | AGG | $ |
| A | | EXCESS / UMBRELLA LIABILITY<br>X OCCUR / CLAIMS MADE<br>DEDUCTIBLE<br>X RETENTION $ 0 | PE-4618506-00 | 07/01/09 | 07/01/10 | EACH OCCURRENCE | $ 3,000,000 |
| | | | | | | AGGREGATE | $ |
| | | | | | | | $ |
| | | | | | | | $ |
| | | | | | | | $ |
| A | | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y / N<br>If yes, describe under SPECIAL PROVISIONS below | PE-4618506-00 | 07/01/09 | 07/01/10 | WC STATU-TORY LIMITS / OTH-ER | |
| | | | | | | E.L. EACH ACCIDENT | $ 1,000,000 |
| | | | | | | E.L. DISEASE - EA EMPLOYEE | $ 1,000,000 |
| | | | | | | E.L. DISEASE - POLICY LIMIT | $ 1,000,000 |
| A | | OTHER<br>Property Section | PE-4618506-00 | 07/01/09 | 07/01/10 | Blanket | 106,587,470 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Certificate holder is named as additional insured as respects Water Project.

## CERTIFICATE HOLDER

WVWDCHA

WV Water Development Authority
180 Association Drive
Charleston WV 25311

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE



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# IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## DISCLAIMER

This Certificate of Insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

STEPTOE & JOHNSON PLLC
ATTORNEYS AT LAW

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

Writer's Contact Information

# CLOSING MEMORANDUM

**To:** **Financing Team**

**From:** **John C. Stump, Esquire**

**Date:** **January 28, 2010**

**Re:** **The City of Morgantown Combined Utility System Revenue Bonds, Series 2010 B (West Virginia SRF Program/ARRA); and Combined Utility System Revenue Bonds, Series 2010 C (West Virginia SRF Program)**

---

## 1. DISBURSEMENTS TO THE CITY OF MORGANTOWN

A.
Payor: West Virginia Department of Environmental Protection
Source: Series 2010 B Bonds Proceeds
Amount: $-0-
Form: Wire Transfer
Payee: The City of Morgantown, 389 Spruce Street, Morgantown, WV 26505
Bank: United Bank
Routing #: 051900395
Account #: 006223-4943
Contact: Jacquie Stanley, 304.598.3001
Account: Series 2010 Bonds Construction Trust Fund

B.
Payor: West Virginia Department of Environmental Protection
Source: Series 2010 C Bonds Proceeds
Amount: $41,000
Form: Wire Transfer
Payee: The City of Morgantown, 389 Spruce Street, Morgantown, WV 26505
Bank: United Bank
Routing #: 051900395
Account #: 006223-4943
Contact: Jacquie Stanley, 304.598.3001
Account: Series 2010 Bonds Construction Trust Fund

## 2. DISBURSEMENTS TO MUNICIPAL BOND COMMISSION

A.

| | |
|---|---|
| Payor: | West Virginia Department of Environmental Protection |
| Source: | Series 2010 C Bonds Proceeds |
| Amount: | $934,937 |
| Form: | Wire |
| Payee: | The City of Morgantown |
| ABA No: | 051503394 |
| Account No: | 5270517317 |
| Bank: | BB&T for the benefit of Municipal Bond Commission |
| Contact: | Sara Boardman , 304.558.3971 |
| Account: | Series 2010 C Bonds Reserve Account |

# DEP PAYMENT REQUISITION FORM

Rev 04/07/09

1. LOAN RECIPIENT/VENDOR:

NAME: City of Morgantown

ADDRESS: 278 Greenbag Road

Morgantown, WV 26507-0852

FEIN: 55-0676214

DUNS: 139445811

2. SRF #: C-544 205

3. INVOICE NUMBER: 1

4. PERIOD COVERED BY THIS REQUEST (MO/DAY/YR)

FROM: (MO/DAY/YR) TO: (MO/DAY/YR)

5. % of PHYSICAL CONSTRUCTION COMPLETION 0%

| CLASSIFICATION | A) APPROVED BUDGET | B) PREVIOUS APPROVED | C) THIS REQUEST | D) TOTAL COLUMNS B&C | E) AGENCY USE ONLY SRF | E) AGENCY USE ONLY ARRA |
|---|---|---|---|---|---|---|
| 1) CONSTRUCTION | $ 10,995,018 | | | $ - | | |
| 2) Reimbursements | $ 1,207,500 | | | $ - | | |
| 3) ENGINEERING | | | | | | |
| a. Planning | $ 374,431 | | | $ - | | |
| b. Design | $ 294,400 | | | $ - | | |
| c. Const Basic | $ 303,812 | | | $ - | | |
| d. Inspection | $ 401,752 | | | $ - | | |
| e. Special Serv | $ 13,000 | | | $ - | | |
| 4) LEGAL/FISCAL | $ 10,000 | | | $ - | | |
| 5) Railroad Permit | $ 200,000 | | | $ - | | |
| 6) ADMINISTRATIVE | $ 30,000 | | | $ - | | |
| 7) CONTINGENCY | $ 655,977 | | $ - | $ - | | |
| 8) LOAN REPAYMENT | $ - | | | $ - | | |
| 9) RESERVE FUND | $ 934,937 | | $ 934,937 | $ 934,937 | | |
| 10) CLOSING COSTS | $ 41,000 | | $ 41,000 | $ 41,000 | | |
| 11) SUBTOTAL | $ 15,461,827 | $ - | $ 975,937 | $ 975,937 | | |
| 12) LESS PREVIOUSLY PAID | | | | $ - | | |
| 13) INVOICE AMOUNT | | | | $ 975,937 | | |

14) AUTHORIZED SIGNATURE DATE

TYPED OR PRINTED NAME AND TITLE

15) PERSON PREPARING FORM SIGNATURE DATE

TYPED OR PRINTED NAME AND TITLE

AGENCY USE ONLY:

THIS REQUEST APPROVED BY: **WV DEPARTMENT OF ENVIRONMENTAL PROTECTION**

PROJECT REVIEWER DATE

AUTHORIZED OFFICER DATE

west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Telephone: (304) 926-0495
Fax: (304) 926-0496

Joe Manchin III, Governor
Randy C. Huffman, Cabinet Secretary
www.wvdep.org

January 22, 2010

Jim Green, General Manager
Morgantown Utility Board
P.O. Box 852
Morgantown, WV 26505

CERTIFIED RETURN RECEIPT REQUESTED

Re: WV/NPDES Permit No. WV0023124
Modification No. 1-Monongalia County

Dear Mr. Green:

This letter serves as Modification No. 1 of your existing WV/NPDES Water Pollution Control Permit No. WV0023124 issued the 16th day of September 2009.

After reviewing your existing permit and your application for Modification No. WV0023124-E dated the 27th day of August 2009, the above referenced permit is hereby modified as follows:

**The project will expand and update the existing combined sewer collection system and the wastewater treatment plant including:**

- **Addition of a new 36 inch force main from the existing Deckers Creek Pumping Station (DCPS) to the existing wastewater treatment plant (WWTP).**
- **Interconnection of the existing 16 inch DCPS force main with the above described 36 inch force main.**
- **Yard piping improvement at the DCPS.**
- **Installation of a grit collection chamber at the DCPS.**
- **Replacement of the two (2) existing pumps at the DCPS.**
- **Addition of VFD's to all four pumps at the DCPS.**
- **Installation of odor control facilities at the DCPS.**
- **Removal of the existing mechanized bar screen at the DCPS.**
- **Installation of a new 18 inch force main from the proposed water treatment plant pumping station to the DCPS.**

- **Installation of a new sanitary lift station at the water treatment plant.**
- **Installation of a grit collection chamber at the Central Mon Interceptor.**
- **Installation of odor control facilities at the WWTP.**
- **Addition of a new junction box/flow splitter structure at the WWTP.**
- **Replacement and upgrading of the discharge piping at CSO Outfall No. 039 at the WWTP.**
- **Replacement and upgrading of piping on certain downstream portions of the North Mon Interceptor (NMI).**
- **Addition and upgrade of wiring, processors, transmitters, receivers, SCADA programming and other miscellaneous control systems and/or components.**
- **Upgrade and expansion of piping on certain portions of the NMI.**
- **Replacement and expansion of the Canyon Road Pumping Station and force main.**
- **Upgrade and expansion of pumps and controls for the West Run Pumping Station (WRPS).**
- **Addition of a new 16 inch force main from the existing WRPS to the upgraded NMI.**
- **Addition of a new 250,000 gallon equalization/surge tank at the WRPS.**
- **Upgrade and expansion of pumps and controls for the Cobun Creek Pumping Station.**
- **Upgrade and expansion of piping on North High, Willey, Chestnut, and Fayette Streets.**

The information submitted on and with Permit Modification Application No. WV0023124-E dated the 27th day of August 2009, along with the plans and specifications approved by the agency's Construction Assistance Program on the 7th day of October 2009, is all hereby made terms and conditions of this Permit with like effect as if all such permit modification application information was set forth herein.

PROPOSED SEWAGE COLLECTION AND TREATMENT FACILITY UPGRADES TO BE CONSTRUCTED IN ACCORDANCE WITH:

Plans, Specifications, and Reports:

Date Approved: October 7, 2009

Prepared by: Morgantown Utility Board
P.O. Box 852
Morgantown, WV 26507

| | | |
|---|---|---|
| Titles: | Contract 9-2009 | South Morgantown Water and Sewer Line Project |
| | Contract 10-2009 | North Morgantown Sanitary Sewer Project |
| | Contract 11-2009 | WWTP and Deckers Creek Pump Station Project |

The MUB shall complete these sewage collection and treatment system construction projects on or before January 31, 2012.

All other terms and conditions of the subject permit shall remain in effect and unchanged.

Sincerely,

Scott G. Mandirola
Acting Director

SGM / rb

west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street S.E.
Charleston, WV 25304
Phone: (304) 926-0495
Fax: (304) 926-0496

Joe Manchin III, Governor
Randy C. Huffman, Cabinet Secretary
www.wvdep.org

October 7, 2009

James Green, P.E., General Manager
Morgantown Utility Board
P.O.Box 852
Morgantown, WV 26507

RE: Morgantown Utility Board
Plans and Specifications Approval
SRF No. C-544205

Dear Mr. Green:

The plans and specifications for the above referenced project are hereby approved.

This approval DOES NOT constitute authority to advertise for bids. You will be advised by separate letter from this agency as to when such an advertisement can be initiated.

Please be advised it will be necessary to issue an addendum to the contract documents prior to opening of bids to include the current State and Federal Labor Wage Determinations. This and all addenda and revisions to the contract documents must be telefaxed to this office for approval and issued to plan holders five (5) days prior to bid opening. Failure to submit addenda in a timely manner will automatically nullify approval to open bids. Any addenda issued inside the five (5) day period prior to the bid opening must include an automatic extension to the bid opening date of a minimum of seven (7) days.

Should you have any questions, please do not hesitate to contact the project engineer, Mike Warwick, P.E., at (304) 926-0499 ext. 1597.

Sincerely,

Mike Johnson

Mike Johnson, P.E.
Program Manager
Clean Water SRF Program

MJ/mw

cc: Don Knorr, P.E., Strand Associates

## SWEEP RESOLUTION

**The City of Morgantown**

**WHEREAS**, The City of Morgantown (the "Issuer") is a governmental body and political subdivision of West Virginia;

**WHEREAS**, the Issuer has issued bonds, as more specifically set forth on Exhibit A, attached hereto and incorporated herein by reference (the "Bonds");

**WHEREAS**, the Issuer makes or will make monthly debt service payments on and transfers reserve funds for the Bonds by check to the West Virginia Municipal Bond Commission (the "MBC") which in turn pays the owners of the Bonds and deposits funds in the reserve accounts;

**WHEREAS**, the MBC may accept such monthly payments by electronic funds transfer, thereby eliminating delay in payments and lost checks;

**WHEREAS**, the Issuer finds and determines that it is in the best interest of the Issuer, its citizens and the owners of the Bonds that the monthly debt service and reserve fund payments be made by electronic funds transfer with the State Treasurer sweeping the Issuer's account.

**NOW THEREFORE BE IT RESOLVED AS FOLLOWS:**

1) The monthly debt service payments on and reserve funds for the Bonds, as set forth in Exhibit A, shall be made to the MBC by an electronic transfer by the State Treasurer from the accounts set forth in Exhibit A in such form and at such directions as are provided by the MBC.

2) The Mayor and Clerk are hereby authorized to sign and execute all such documents as are necessary to facilitate the electronic transfer of the Bond debt service and reserve fund payments.

3) This resolution shall be effective immediately upon adoption.

Adopted this 5th day of January, 2010.

Mayor

## American Recovery and Reinvestment Act of 2009 (ARRA)

**Project Certification**

**Program:** West Virginia Clean Water State Revolving Fund

**Project:** Morgantown, Monongalia County

**Description:**

Wastewater system wide improvements to the treatment plant, several pumping stations and conveyance system. The ARRA portion of this project which has been designated as a "green" component, consists of the installation of over 20 rain gardens along a paved rail trail. These rain gardens are part of the installation of a 36-inch force main from the Deckers Creek pump station to the treatment plant.

**Total Project Cost**

$15,461,827

**ARRA Assistance Provided**

$81,600

I hereby certify that the above project has received the full review and vetting required by federal law and that the investment of federal and state funds in this infrastructure project is an appropriate use of taxpayer dollars.

This certification will be posted on the Governor's website and linked to the federal ARRA website www.recovery.gov

Randy C. Huffman, Cabinet Secretary

1/7/10
Date

west virginia department of environmental protection

**PUBLIC SERVICE COMMISSION**
**OF WEST VIRGINIA**
**CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 16th day of April 2009

GENERAL ORDER NO. 182.09

Public Service Commission intended procedures concerning water and sewer projects that are funded with federal stimulus funds.

## COMMISSION ORDER

Earlier this year, Congress enacted and the President signed the *American Recovery and Reinvestment Act of 2009*. Under this legislation, the State of West Virginia is to receive certain stimulus funds, a portion of which will be dedicated to the construction of water and sewer infrastructure. The Public Service Commission ("Commission") has received information from various funding agencies. The State Bureau for Public Health through its drinking water treatment revolving fund will have approximately $19.5 million for water projects. In addition, the State Department of Environmental Protection through the clean water state revolving fund will have approximately $61 million for sewer projects. Both of these state agencies have indicated that they intend to have the projects bid by August 2009 and contracts awarded by October 2009. In addition, certain other stimulus funds for water and sewer projects will be administered by the U.S. Department of Agriculture, Rural Utilities Service.

Although the Commission is not a funding source for the stimulus funds, it will nonetheless be called upon to process utility applications for certificates of public convenience and necessity ("certificates") to authorize the construction of stimulus-funded water and sewer projects. Given the aggressive schedule planned by the funding agencies, and the requirement in the federal law that water and sewer projects be "shovel ready," meaning under construction within a quick time line, the Commission intends to expedite these applications to the greatest extent possible consistent with existing State Law.

As a preliminary observation, the Commission would stress that applications must be complete and the statutory thirty-day notice to the public must be given at the outset of the application. Failure to file complete applications or failure to provide timely public notice will lead to delays in processing projects and jeopardize the ability to receive federal stimulus funds. The Commission anticipates that it will receive (i) new applications for water and sewer projects using federal stimulus funds, (ii) amendments to pending applications

containing some measure of federal stimulus funds, and (iii) petitions to reopen certificates already issued seeking to amend funding by including federal stimulus funds. The Commission issues this General Order to inform the public, regulated utilities, attorneys who practice before the Commission, funding agencies, and the staff of the Commission of its intended procedures and processes.

With respect to new stimulus project applications, the Commission intends that applicants and Staff observe the following procedures. At the outset, the Commission again stresses that it is essential that a utility project sponsor file a complete application and provide timely public notice of its application.

1. Staff assigned to the case should immediately review the filing to determine if it is complete. The Initial Joint Staff Memorandum should be filed within ten days.[1]

2. If the filing is complete and does not require an increase in rates for the project, Staff should file its Final Joint Staff Memorandum in thirty-five days which allows for the protest period assuming the applicant has timely published notice.

3. If the filing is complete and includes a proposed increase in rates for the project, Staff may deem it necessary to file a data request for items needed to complete the review and make a final Staff recommendation. This data request should be filed within ten days. The applicant should expedite its response to Staff's requests and Staff should file its Final Joint Staff Memorandum within forty-five to sixty days

4. If the filing is not complete, irrespective of whether or not the application seeks an increase in rates, Staff should file a data request, if necessary, for the items needed to complete the review and make a final Staff recommendation. This data request should be filed within ten days. The applicant should expedite its responses to Staff's requests and Staff should file its Final Joint Staff Memorandum within forty-five to sixty days.

5. If rates are required for the project and a rate change has not been included with the application:

   A. For municipalities, the processing time is out of the Commission's ability to control. Staff needs to determine where the municipality is in the ordinance process and what else is needed to process the case. This should all be part of the Initial Joint Staff Memorandum to let the Commission know if the case can be processed or needs dismissed. (Certificates and rate ordinances need to be coordinated for a municipal appeal.) Data requests should still be filed within the ten-day period.

---

[1] Days in this Order are calendar days. Filings due on weekends or holidays are due the next working day.

B. Public service districts ("districts") that need rates for the project can follow steps 1 and 3 or 4 above.

C. Districts that require rates outside of the project and are in default on bonds cannot move forward. Staff must address this in its initial memorandum.

5. For newly-filed water or sewer applications for certificates of convenience and necessity where the funding is described at the time of the filing as Stimulus Funding the Commission shall designate the filings as "SCN." The Commission, its Staff and Administrative Law Judges, will process those designated filings as expeditiously as possible.

The stimulus funds may be used to replace existing funding for projects that are ready to proceed, allowing the State of West Virginia to fund more projects than planned and provide an enhanced investment in water and sewer infrastructure to unserved and under-served areas of the State. To expedite the processing of projects that have already received a certificate and are eligible to receive stimulus funds, the Commission plans the following process and procedures:

6. In instances where municipalities or municipal water or sewer boards ("municipal utilities") have already been granted certificates, and in the event the municipality is awarded a stimulus assistance funding package to replace either existing grant or loan funding from another source, the municipal utility shall only be required to file with the Commission a letter from the funding agency that describes the change in the project funding. The filing will be treated as a closed entry by the Executive Secretary and the Commission anticipates no further action by the Commission.

7. Similarly, for districts that are awarded a stimulus assistance funding package equivalent to the existing grant money from another source, that has no impact on rates, the district shall only be required to file with the Commission a letter from the funding agency that describes the change in the project funding. The filing will be treated as a closed entry by the Executive Secretary and the Commission anticipates no further action by the Commission.

8. In the event that a district is awarded a stimulus assistance funding package and the benefit to the customers of such improved financing is lower project costs, the district will only be required to file a petition to reopen the original formal case granting the certificate in order that the Commission may review the rates established for the project.

The Commission will provide for such petitions to reopen to be handled in an expedited manner. To that end, the district will be required to file with its petition to reopen a letter from the funding agency that describes the change in project funding, specifically setting forth the newly-committed funding and an accompanying calculation by the district

of the impact to its rates together with supporting documentation. Upon the filing of this information, Staff will perform a review of the revised project funding and rate calculations and file a final recommendation with the Commission stating its recommended rates as soon as possible, but no later than ten days after receipt of the petition. The Commission will issue an order as soon thereafter as possible.

9. For districts that are awarded a stimulus assistance funding package to supplement funding to deal with a cost overrun in whole or part, that has no impact on rates, the district may utilize the enhanced funding to first fund any project alternatives that were reviewed as either deducts or adducts that were approved as a part of the original certificate, contingent upon funding, in order that all portions of the project can be constructed. In this event, the district shall be required to file with the Commission a letter from the funding agency that describes both the change in the project funding and also notes the deducts or adducts that will be funded for construction. The filing will be treated as a closed entry by the Executive Secretary and the Commission anticipates no further action on its part.

The issuance of these guidelines should expedite these projects and the continuing effort to provide quality water and sewer service throughout the State of West Virginia. The Commission understands that there will be instances and situations where events will disrupt these intended procedures; however, the Commission expects all parties to use their best efforts to process these cases in a timely manner. Finally, given the aggressive time frame contemplated by the funding agencies and the intent to have bids out by August 2009, project applications should be filed no later than June 1, 2009, to avoid jeopardizing the timely consideration of those applications.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission give public notice of this order in a manner deemed most efficient and appropriate.

A True Copy, Teste:

Sandra Squire
Executive Secretary

go18209c.wpd

STEPTOE & JOHNSON PLLC
ATTORNEYS AT LAW

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

Writer's Contact Information

304.353.8196 - Telephone
304.353.8181 - Fascimile
john.stump@steptoe-johnson.com

April 7, 2010

**VIA USPS CERTIFIED MAIL**

Department of Treasury
Internal Revenue Service
Ogden, Utah 84201

Re: Amended IRS Form 8038-G

To Whom It May Concern:

On January 28, 2010, the City of Morgantown (the "Issuer") issued its Combined Utility System Revenue Bonds, Series 2010 C (the "Series 2010 C Bonds") and Combined Utility System Revenue Bonds, Series 2010 F (the "Series 2010 F Bonds").

A separate IRS Form 8038-G was issued for the Series 2010 C Bonds and the Series 2010 F Bonds. A copy of the filed IRS Form 8038-G for the Series 2010 C Bonds and Series 2010 F Bonds is attached as Exhibit A and Exhibit B respectively.

After filing the aforementioned IRS Form 8038-Gs, we realized they were not consistent with our documents which reflect the Series 2010 C Bonds and the Series 2010 F Bonds as a single "issue" under Treasury Regulation Section 1.150-1(c)(1).

Therefore, attached to the front of this letter is the amended IRS Form 8038-G which properly reflects the Series 2010 C Bonds and the Series 2010 F Bonds as a single issue. The amended IRS Form 8038-G is being submitted to replace the previously filed IRS Form 8038-Gs for the Series 2010 C Bonds and Series 2010 F Bonds. 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, stamped envelope.

Please note, line 38 of amended IRS Form 8038-G, relating to the Issuer designating the issue under Section 265(b)(3)(B)(III) (small issuer exception) only applies to the Series 2010 F Bonds.

If you have any questions regarding the issues set forth herein, or if I can be of any other service, please do not hesitate to call.

Very truly yours,

John C. Stump

Enclosures

FILE COPY

Form **8038-G** (Rev. November 2000) Department of the Treasury Internal Revenue Service

# Information Return for Tax-Exempt Governmental Obligations

▶ Under Internal Revenue Code section 149(e)

▶ See separate Instructions.

**Caution:** *If the issue price is under $100,000, use Form 8038-GC.*

OMB No. 1545-0720

**Part I** Reporting Authority — If Amended Return, check here ▶ ☑

1 Issuer's name: City of Morgantown

2 Issuer's employer identification number: 55 6000215

3 Number and street (or P.O. box if mail is not delivered to street address): 398 Spruce Street — Room/suite

4 Report number: 3 03

5 City, town, or post office, state, and ZIP code: Morgantown, West Virginia 26506

6 Date of issue: 1/28/10

7 Name of issue: Combined Utility System Revenue Bonds, Series 2010 C and Series 2010 F

8 CUSIP number: 61759C AG3

9 Name and title of officer or legal representative whom the IRS may call for more information: Bill Byrne, Mayor

10 Telephone number of officer or legal representative: ( 304 ) 293-4605

**Part II** Type of Issue (check applicable box(es) and enter the issue price) See instructions and attach schedule

| | | | |
|---|---|---|---|
| 11 | ☐ Education | 11 | |
| 12 | ☐ Health and hospital | 12 | |
| 13 | ☐ Transportation | 13 | |
| 14 | ☐ Public safety | 14 | |
| 15 | ☑ Environment (including sewage bonds) | 15 | 22,652,332 |
| 16 | ☐ Housing | 16 | |
| 17 | ☐ Utilities | 17 | |
| 18 | ☐ Other. Describe ▶ | 18 | |

19 If obligations are TANs or RANs, check box ▶ ☐ If obligations are BANs, check box ▶ ☐

20 If obligations are in the form of a lease or installment sale, check box ▶ ☐

**Part III** Description of Obligations. Complete for the entire issue for which this form is being filed.

| | (a) Final maturity date | (b) Issue price | (c) Stated redemption price at maturity | (d) Weighted average maturity | (e) Yield |
|---|---|---|---|---|---|
| 21 | 9/1/2032 | $ 22,652,332 | $ 22,630,227 | 10.989 years | 1.8686 % |

**Part IV** Uses of Proceeds of Bond Issue (including underwriters' discount)

| | | | | | |
|---|---|---|---|---|---|
| 22 | Proceeds used for accrued interest | | | 22 | |
| 23 | Issue price of entire issue (enter amount from line 21, column (b)) | | | 23 | 22,652,332 |
| 24 | Proceeds used for bond issuance costs (including underwriters' discount) | 24 | 108,464 | | |
| 25 | Proceeds used for credit enhancement | 25 | | | |
| 26 | Proceeds allocated to reasonably required reserve or replacement fund | 26 | 934,937 | | |
| 27 | Proceeds used to currently refund prior issues | 27 | | | |
| 28 | Proceeds used to advance refund prior issues | 28 | | | |
| 29 | Total (add lines 24 through 28) | | | 29 | |
| 30 | Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here) | | | 30 | 22,543,868 |

**Part V** Description of Refunded Bonds (Complete this part only for refunding bonds.)

31 Enter the remaining weighted average maturity of the bonds to be currently refunded ▶ _____ years

32 Enter the remaining weighted average maturity of the bonds to be advance refunded ▶ _____ years

33 Enter the last date on which the refunded bonds will be called ▶ _____

34 Enter the date(s) the refunded bonds were issued ▶

**Part VI** Miscellaneous

| | | | |
|---|---|---|---|
| 35 | Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) | 35 | |
| 36a | Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions) | 36a | |
| b | Enter the final maturity date of the guaranteed investment contract ▶ | | |
| 37 | Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units | 37a | |

b If this issue is a loan made from the proceeds of another tax-exempt issue, check box ▶ ☐ and enter the name of the issuer ▶ _____ and the date of the issue ▶ _____

38 If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box ▶ ☑

39 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box ▶ ☐

40 If the issuer has identified a hedge, check box ▶ ☐

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**Sign Here**

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.

Bill Byrne 3/31/10

Signature of issuer's authorized representative — Date — Bill Byrne, Mayor — Type or print name and title

FILE COPY

Form **8038-G** (Rev. November 2000) Department of the Treasury Internal Revenue Service

# Information Return for Tax-Exempt Governmental Obligations

▶ Under Internal Revenue Code section 149(e)

▶ See separate Instructions.

Caution: *If the issue price is under $100,000, use Form 8038-GC.*

OMB No. 1545-0720

**Part I** Reporting Authority — If Amended Return, check here ▶ ☐

1 Issuer's name: The City of Morgantown

2 Issuer's employer identification number: 55 : 6000215

3 Number and street (or P.O. box if mail is not delivered to street address): 389 Spruce Street — Room/suite:

4 Report number: 3 2010

5 City, town, or post office, state, and ZIP code: Morgantown, WV 26505

6 Date of issue: January 28, 2010

7 Name of issue: Combined Utility System Revenue Bonds, Series 2010 C

8 CUSIP number: NA

9 Name and title of officer or legal representative whom the IRS may call for more information: Bill Byrne, Mayor

10 Telephone number of officer or legal representative: ( 304 ) 293.4605

**Part II** Type of Issue (check applicable box(es) and enter the issue price) See instructions and attach schedule

| | | | |
|---|---|---|---|
| 11 | ☐ Education | 11 | |
| 12 | ☐ Health and hospital | 12 | |
| 13 | ☐ Transportation | 13 | |
| 14 | ☐ Public safety | 14 | |
| 15 | ☑ Environment (including sewage bonds) | 15 | 15,380,277 |
| 16 | ☐ Housing | 16 | |
| 17 | ☐ Utilities | 17 | |
| 18 | ☐ Other. Describe ▶ | 18 | |

19 If obligations are TANs or RANs, check box ▶ ☐ If obligations are BANs, check box ▶ ☐

20 If obligations are in the form of a lease or installment sale, check box ▶ ☐

**Part III** Description of Obligations. Complete for the entire issue for which this form is being filed.

| | (a) Final maturity date | (b) Issue price | (c) Stated redemption price at maturity | (d) Weighted average maturity | (e) Yield |
|---|---|---|---|---|---|
| 21 | September 1, 2038 | 15,380,227 | $ 15,380,227 | 13.3798 years | 1.5747 % |

**Part IV** Uses of Proceeds of Bond Issue (including underwriters' discount)

| | | | | |
|---|---|---|---|---|
| 22 | Proceeds used for accrued interest | | 22 | 0 |
| 23 | Issue price of entire issue (enter amount from line 21, column (b)) | | 23 | 15,380,227 |
| 24 | Proceeds used for bond issuance costs (including underwriters' discount) | 24 41,000 | | |
| 25 | Proceeds used for credit enhancement | 25 | | |
| 26 | Proceeds allocated to reasonably required reserve or replacement fund | 26 934,937 | | |
| 27 | Proceeds used to currently refund prior issues | 27 | | |
| 28 | Proceeds used to advance refund prior issues | 28 | | |
| 29 | Total (add lines 24 through 28) | | 29 | 975,937 |
| 30 | Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here) | | 30 | 14,404,290 |

**Part V** Description of Refunded Bonds (Complete this part only for refunding bonds.)

31 Enter the remaining weighted average maturity of the bonds to be currently refunded ▶ na years

32 Enter the remaining weighted average maturity of the bonds to be advance refunded ▶ na years

33 Enter the last date on which the refunded bonds will be called ▶ na

34 Enter the date(s) the refunded bonds were issued ▶ na

**Part VI** Miscellaneous

| | | | |
|---|---|---|---|
| 35 | Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) | 35 | 0 |
| 36a | Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions) | 36a | 0 |
| b | Enter the final maturity date of the guaranteed investment contract ▶ | | |
| 37 | Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units | 37a | 0 |

b If this issue is a loan made from the proceeds of another tax-exempt issue, check box ▶ ☐ and enter the name of the issuer ▶ _____ and the date of the issue ▶ _____

38 If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box ▶ ☐

39 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box ▶ ☐

40 If the issuer has identified a hedge, check box ▶ ☐

Sign Here

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.

▶ Bill Byrne — 1/28/2010 — ▶ Mayor, Bill Byrne

Signature of issuer's authorized representative — Date — Type or print name and title

For Paperwork Reduction Act Notice, see page 2 of the Instructions. Cat. No. 63773S Form 80

EXHIBIT A

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Form **8038-G** (Rev. November 2000) Department of the Treasury Internal Revenue Service

# Information Return for Tax-Exempt Governmental Obligations

► Under Internal Revenue Code section 149(e)

► See separate Instructions.

Caution: *If the issue price is under $100,000, use Form 8038-GC.*

OMB No. 1545-0720

**Part I** Reporting Authority — If Amended Return, check here ► ☐

| | | | |
|---|---|---|---|
| 1 Issuer's name: The City of Morgantown | | 2 Issuer's employer identification number: 55 6000215 | |
| 3 Number and street (or P.O. box if mail is not delivered to street address): 389 Spruce Street | Room/suite | 4 Report number: 3 02 | |
| 5 City, town, or post office, state, and ZIP code: Morgantown, WV 26505 | | 6 Date of issue: 01/28/10 | |
| 7 Name of issue: Combined Utility System Revenue Bonds, Series 2010 F | | 8 CUSIP number: 61759C AG3 | |
| 9 Name and title of officer or legal representative whom the IRS may call for more information: William Byrne, Mayor | | 10 Telephone number of officer or legal representative: ( 304 ) 293.4605 | |

**Part II** Type of Issue (check applicable box(es) and enter the issue price) See instructions and attach schedule

| | | | |
|---|---|---|---|
| 11 | ☐ Education | 11 | |
| 12 | ☐ Health and hospital | 12 | |
| 13 | ☐ Transportation | 13 | |
| 14 | ☐ Public safety | 14 | |
| 15 | ☑ Environment (including sewage bonds) | 15 | 7,272,105 |
| 16 | ☐ Housing | 16 | |
| 17 | ☐ Utilities | 17 | |
| 18 | ☐ Other. Describe ► | 18 | |
| 19 | If obligations are TANs or RANs, check box ► ☐ If obligations are BANs, check box ► ☐ | | |
| 20 | If obligations are in the form of a lease or installment sale, check box ► ☐ | | |

**Part III** Description of Obligations. Complete for the entire issue for which this form is being filed.

| | (a) Final maturity date | (b) Issue price | (c) Stated redemption price at maturity | (d) Weighted average maturity | (e) Yield |
|---|---|---|---|---|---|
| 21 | 12/1/18 | $ 7,272,105 | $ 7,250,000 | 5.931 years | 2.8494373 % |

**Part IV** Uses of Proceeds of Bond Issue (including underwriters' discount)

| | | | | | |
|---|---|---|---|---|---|
| 22 | Proceeds used for accrued interest | | | 22 | |
| 23 | Issue price of entire issue (enter amount from line 21, column (b)) | | | 23 | 7,272,105 |
| 24 | Proceeds used for bond issuance costs (including underwriters' discount) | 24 | 67,464 | | |
| 25 | Proceeds used for credit enhancement | 25 | | | |
| 26 | Proceeds allocated to reasonably required reserve or replacement fund | 26 | | | |
| 27 | Proceeds used to currently refund prior issues | 27 | | | |
| 28 | Proceeds used to advance refund prior issues | 28 | | | |
| 29 | Total (add lines 24 through 28) | | | 29 | |
| 30 | Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here) | | | 30 | 7,204,641 |

**Part V** Description of Refunded Bonds (Complete this part only for refunding bonds.)

31 Enter the remaining weighted average maturity of the bonds to be currently refunded ► years

32 Enter the remaining weighted average maturity of the bonds to be advance refunded ► years

33 Enter the last date on which the refunded bonds will be called ►

34 Enter the date(s) the refunded bonds were issued ►

**Part VI** Miscellaneous

| | | | |
|---|---|---|---|
| 35 | Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) | 35 | |
| 36a | Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions) | 36a | |
| b | Enter the final maturity date of the guaranteed investment contract ► | | |
| 37 | Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units | 37a | |

b If this issue is a loan made from the proceeds of another tax-exempt issue, check box ► ☐ and enter the name of the issuer ► and the date of the issue ►

38 If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box ► ☐

39 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box ► ☐

40 If the issuer has identified a hedge, check box ► ☐

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.

Sign Here ► Bill Byrne — Signature of issuer's authorized representative — Date ► William Byrne, Mayor — Type or print name and title

For Paperwork Reduction Act Notice, see page 2 of the Instructions. Cat. No. 63773S Form 8038-G

EXHIBIT B