AGENDA
MORGANTOWN CITY COUNCIL
REGULAR MEETING
May 7, 2019
7:00 p.m.

1. CALL TO ORDER:

2. ROLL CALL:

3. PLEDGE TO THE FLAG:

4. APPROVAL OF MINUTES: April 16, 2019, Special Meeting minutes


6. PUBLIC HEARINGS:
   A. BOND ORDINANCE – ASSUMPTION, AND RE-DESIGNATION, OF THE RIVER ROAD PUBLIC SERVICE DISTRICT’S WATER REVENUE BOND

7. UNFINISHED BUSINESS:
   A. Consideration of APPROVAL of (THIRD READING) of BOND ORDINANCE – ASSUMPTION, AND RE-DESIGNATION, OF THE RIVER ROAD PUBLIC SERVICE DISTRICT’S WATER REVENUE BOND (First reading April 2, 2019 and Second reading April 16, 2019)

B. BOARDS & COMMISSIONS

8. PUBLIC PORTION WHICH SHALL BE SUBJECT TO RULES ESTABLISHED BY COUNCIL AND ADOPTED BY RESOLUTION:

9. SPECIAL COMMITTEE REPORTS:

10. CONSENT AGENDA:

11. NEW BUSINESS:
   A. Consideration of APPROVAL of (FIRST READING) of AN ORDINANCE ESTABLISHING A SALES AND USE TAX AND REDUCING BUSINESS AND OCCUPATION TAX RATES

B. PROPOSED ANNEXATION PLAN INFORMATION

12. CITY MANAGER’S REPORT:
    New Business:
    1. AWARD PUBLIC SAFETY BUILDING RENOVATIONS – BID CALL 2019-11

13. REPORT FROM CITY CLERK:

14. REPORT FROM CITY ATTORNEY:
15. **REPORT FROM COUNCIL MEMBERS:**

16. **ADJOURNMENT:**

*If you need an accommodation contact us at (304) 284-7439*
SPECIAL MEETING April 16, 2019

The Special Meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Tuesday, April 16, 2019 at 5:12 p.m.

PRESENT: Mayor William Kawecki, Council Members, Rachel Fetty, Mark Brazaitis, and Barry Wendell. Ryan Wallace, Deputy Mayor Jenny Selin, and Ron Dulaney were absent.

The meeting was called to order by the Mayor.

EXECUTIVE SESSION: Pursuant to WV State Code Section 6-9A-4(b) (2) (A) motion by Brazaitis, second by Wendell, to go into Executive Session to discuss personnel matters in considering appointments for Boards and Commissions. Motion carried by acclamation. Mayor, and City Council Members present. Time: 5:13 p.m.

INTERVIEWS FOR FIRE CODE BOARD OF APPEALS – TREE BOARD – HUMAN RIGHTS – SISTER CITIES COMMISSION

5:00 p.m. – Noel Hoffman – Fire Civil Service Commission
5:20 p.m. – Matthew Cummons – Tree Board
5:40 p.m. – Pat Esposito – Fire Code Board of Appeals
6:00 p.m. – Drew Bucy – Human Rights
6:20 p.m. – George Lies – Sister Cities Commission

ADJOURNMENT:

There being no further business, motion by Brazaitis, second by Fetty, to adjourn the Special Meeting at 7:03 pm.

____________________________________  ______________________________________
City Clerk                                           Mayor
Proclamation

Whereas, President John F. Kennedy signed into law the bill proclaiming May 15th of each year to be known as "Peace Officers Memorial Day" and the week it falls to be known as "Police Week" which is a time for mourning for police officers killed in the line of duty and recognition of those others who were injured protecting our citizen from harm; and

Whereas, our professional and dedicated officers work with courage and dedication protecting us against crime, violence and terrorism and this observance will help us honor the memory of the fallen and recognize those who devote their lives to enforcing our laws; and

Whereas, there were 210 Officers killed in the line of duty in the State of West Virginia; and

Whereas, throughout the nation, more than 740,000 sworn law enforcement officers will participate in this official period of mourning; and

Whereas, this day of mourning will be officially held in Morgantown on Wednesday, May 15, 2019.

Now therefore, I, William Kawecki, Mayor of the City of Morgantown, West Virginia by the authority vested in me, do hereby proclaim May 15th, 2019 as

Law Enforcement Officers' Memorial Day

in the City of Morgantown and urge all citizens to join me in honoring the memory of these fallen officers and recognizing the members of the Morgantown Police Department and the Law Enforcement Community for their continued commitment to enforcing our laws, bring criminals to justice and making Morgantown safe for everyone.

Seal:

[Signature]
William Kawecki, Mayor
The City of Morgantown  
389 Spruce Street  
Morgantown, West Virginia 26505  
(304) 284-7439  Fax: (304) 284-7525  
www.morgantownwv.gov

Office of the Mayor

Proclamation

Whereas, every year on the second Saturday in May, letter carriers across the country collect non-perishable food as part of the nation’s largest one-day food drive, distributing the donations to local food bank; and

Whereas, the Letter Carriers’ Stamp Out Hunger Food Drive is just one example of how letter carriers work to make a difference in the lives of those they serve. Since pilot drive was held in 1991, more than a 1.67 billion pounds of food have been collected; and

Whereas, we would like to recognize all letter carriers for their hard work and their commitment to their communities. All the food collected last year over 12 tons and total since we started is 3/4 million pounds in our community. We support the carriers’ efforts to help those in need in our community. All donations go to local food banks.

Now, Therefore, We, the City Council of Morgantown, WV, by the authority vested in us, do hereby proclaim Saturday, May 11, 2019 as

National Association of Letter Carriers  
Food Drive Day

in the City of Morgantown, and encourage the citizens of our community to support the food drive by placing non-perishable food items in or near your mailbox on food drive day. Your letter carrier will pick it up while delivering the mail – and together, we can all help to feed our hungry.

In Witness, Thereof, we have hereunto set our hands and caused the Seals of the City of Morgantown, to be affixed this 7th day of May 2019.

Seal:

[Signature]

William Kawecki, Mayor
The City of Morgantown
389 Spruce Street
Morgantown, West Virginia 26505
(304) 284-7439  Fax: (304) 284-7525
www.morgantownwv.gov

Proclamation

Whereas, The Office of the Municipal Clerk, a time honored and vital part of local government exists throughout the world and is the oldest among public servants; and

Whereas, The Office of the Municipal Clerk provides the professional link between the citizens, the local governing bodies and agencies of government at other levels and pledged to be ever mindful of their neutrality and impartiality, rendering equal service to all; and

Whereas, The Municipal Clerk serves as the information center on functions of local government and community and most appropriate that we recognize the accomplishments; and

Whereas, Municipal Clerks continually strive to improve the administration of the affairs of the Office of the Municipal Clerk through participation in education programs, seminars, workshops and the annual meetings of their state, province, county and international professional organizations; and

Now, Therefore, I, William A. Kawecki, Mayor of the City of Morgantown, do recognize the week of May 5th through May 11th, 2019, as:

Municipal Clerks Week

and further extend appreciation to our Municipal Clerk, Christine Wade and to all Municipal Clerks for the vital services they perform and their exemplary dedication to the communities they represent.

Dated this 7th day of May 2019

Seal:

William A. Kawecki, Mayor
Proclamation

Whereas, the 8th Annual Gene Vance Jr. Day will be observed in Morgantown, WV on the 19th Day of May in honor and support of the brave service members of the United States Armed Forces leading Overseas Contingency Operations previously known as the Global War on Terror. Those who boldly serve, those who have fallen, and those who have been traumatically injured while safeguarding the nation; and

Whereas, the 8th Annual day recognizes the United States of America’s leadership of the longest continuing armed global conflict in its history in memory of SSG Gene A. Vance Jr.’s heroic and selfless actions in the US response to events of 9/11, as the first National Guardsman to be killed in direct action since Vietnam and the first WV National Guardsman to die in direct action since WWII; and

Whereas, the 8th Annual day symbolizes honor, care, hope and healing for thousands of returning as well as severely wounded veterans, their allies, respective families and communities facing challenges never experienced before in history; and

Whereas, 2019 is the 18th anniversary year of the tragic 9/11 attacks on our nation. The remarkable sacrifices and commitment the Armed Forces and First Responders make to and for this nation and the unyielding dedication of the Gene Vance Jr. Foundation for the Catastrophically Injured are worthy of recognition and, it is fitting therefore that Vance, the foundation in his honor and all the servicemen and servicewomen be honored today, and every day.

Now therefore, I, William Kawecki, Mayor of the City of Morgantown, West Virginia do hereby proclaim the 18th day of May 2019 as

Gene Vance Jr. Day

In the City of Morgantown and encourage all citizens to join in remembrance and appreciation of the brave members of the Armed Forces of the United States -who have served, and who continue to serve-in order to protect our freedoms.

Seal:

William Kawecki, Mayor
The City of Morgantown
389 Spruce Street
Morgantown, West Virginia 26505
(304) 284-7439 Fax: (304) 284-7525
www.morgantownwv.gov

Office of the Mayor

Proclamation

Whereas, our City of Morgantown is committed in recognizing our growth and strength depends on the safety and economic value of the homes, buildings and infrastructure that serve our citizens, both in everyday life and in times of natural disaster, and;

Whereas, our confidence in the structural integrity of these buildings that make up our community is achieved through the devotion of vigilant guardians – building safety and fire prevention officials, architects, engineers, builders, tradespeople, design professionals, laborers, plumbers and others in the construction industry – who work year-round to ensure safe construction of buildings; and

Whereas, these guardians are dedicated members of the International Code Council, a U.S. based organization, that brings together local, state and federal officials that are experts in the built environment to create and implement the highest-quality codes to protect us in the buildings where we live, learn, work, play,

Whereas, our nation benefits economically and technologically from using the International Codes that are developed by a national, voluntary consensus codes and standards developing organization, our government is able to avoid the high cost and complexity of developing and maintaining these codes, which are the most widely adopted building safety and fire prevention codes in the world;

Whereas, these modern building codes include safeguards to protect the public from natural disasters such as hurricanes, snowstorms, tornadoes, wildland fires, floods and earthquake; which, according to a FEMA-commissioned study by the National Institute of Building Sciences, provide $111 in future mitigation benefits for every dollar invested, and;

Whereas, Building Safety Month is sponsored by the International Code Council to remind the public about the critical role of our communities’ largely unknown protestors of public safety – our local code officials – who assure us of safe, efficient and livable buildings that are essential to America’s prosperity, and;

Whereas, “No Code. No Confidence.” the theme for Building Safety Month 2019, encourages all Americans to raise awareness of the importance of safe and resilient construction; fire prevention; disaster mitigation, and new technologies in the construction industry. Building Safety Month 2019 encourages appropriate steps everyone can take to ensure the safety of our built environment, and recognizes that the implementation of safety codes by local and state agencies has saved lives and protected homes and businesses, and,

Whereas, each year, in observance of Building Safety Month, Americans are asked to consider the commitment to improve building safety and economic investment at home and in the community, and to acknowledge the essential service provided to all of us by local and state building departments, fire prevention bureaus and federal agencies in protecting lives and property.

Now therefore, I, William A. Kawecki, Mayor of the City of Morgantown, West Virginia do hereby proclaim the month of May 2019 as

Building Safety Month

Accordingly, I encourage our citizens to join with their communities in participation in Building Safety Month activities.

Seal:

[Signature]

William A. Kawecki, Mayor
BOND ORDINANCE

THE CITY OF MORGANTOWN

ASSUMPTION OF THE
RIVER ROAD PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2001
(WEST VIRGINIA DWTRF PROGRAM); AND
WATER REVENUE BONDS, SERIES 2016 A
(WEST VIRGINIA DWTRF PROGRAM)

AND

RE-DESIGNATED AND REPLACED AS

THE CITY OF MORGANTOWN
COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2019 A
(WEST VIRGINIA DWTRF PROGRAM); AND
COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2019 B
(WEST VIRGINIA DWTRF PROGRAM)

ORDINANCE AUTHORIZING THE ACQUISITION OF THE PUBLIC WATERWORKS SYSTEM OF RIVER ROAD PUBLIC SERVICE DISTRICT;
AUTHORIZING THE ASSUMPTION AND RE-DESIGNATION OF THE RIVER ROAD PUBLIC SERVICE DISTRICT’S WATER REVENUE BONDS, SERIES 2001 (WEST VIRGINIA DWTRF PROGRAM); AND WATER REVENUE BONDS, SERIES 2016 A (WEST VIRGINIA DWTRF PROGRAM) IN CONNECTION WITH THE ACQUISITION OF THE WATER SYSTEM AND THE RE-DESIGNATION BY THE CITY OF MORGANTOWN OF THE RIVER ROAD PUBLIC SERVICE DISTRICT WATER REVENUE BONDS, SERIES 2001 (WEST VIRGINIA DWTRF PROGRAM); AND WATER REVENUE BONDS, SERIES 2016 A (WEST VIRGINIA DWTRF PROGRAM) AS THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2019 A (WEST VIRGINIA DWTRF PROGRAM); AND COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2019 B (WEST VIRGINIA DWTRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ASSUMPTION AND RE-DESIGNATION OF SUCH BONDS; ASSUMING, APPROVING, RATIFYING AND CONFIRMING LOAN AGREEMENTS; RELATING TO SUCH BONDS; AUTHORIZING THE ASSUMPTION AND RE-DESIGNATION 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 16, Article 13C of the
West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable
provisions of law.

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

A. The City of 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 that
there be acquired from the River Road Public Service District (the “District”) the existing public
waterworks system of the District (collectively, the “District Assets”) from the District, which
District Assets constitute the public waterworks system (the existing combined waterworks,
sewerage and stormwater system of the Issuer, the District Assets and any further additions,
betterments and improvements thereto are herein called the "System"), pursuant to an
Acquisition Agreement by and among the Issuer, the Board and the District, which Acquisition
Agreement shall be approved by Supplemental Resolution (the “Acquisition Agreement”).

C. The District has heretofore financed the acquisition and construction of
public waterworks facilities to provide water service to approximately 781 customers in
Monongalia County, by the issuance of its (i) Water Revenue Bonds, Series 2001 (West Virginia
DWTRF Program), dated October 25, 2001, issued in the original aggregate principal amount of
$1,068,500 (the “District Series 2001 Bonds”); and (ii) Water Revenue Bonds, Series 2016 A
(West Virginia DWTRF Program), dated August 11, 2016, issued in the original aggregate
principal amount of $2,546,600 (the “District 2016 A Bonds”), (collectively, the “District
Bonds”).

D. The District Bonds were issued pursuant to Resolutions of the District
previously enacted for such purpose (such resolutions, as amended and supplemented, are herein
called the “District Resolutions”).

E. It is deemed necessary and desirable for the Issuer to provide for the
acquisition of the District Assets and the assumption and re-designation of the District Bonds.

F. The District permanently financed the acquisition of the District Assets
through the issuance of the District Bonds to the West Virginia Water Development Authority
(the “Authority”).

2

H. The period of usefulness of the System is not less than 30 years.

I. It is in the best interests of the Issuer that the Series 2019 A Bonds and Series 2019 B Bonds continue to be held by the Authority pursuant to the terms and provisions of the District 2001 Loan Agreement and the District 2016 A Loan Agreement (herein defined) by and between the District and the Authority on behalf of the West Virginia Bureau for Public Health (the “BPH”) the forms or which are satisfactory to the respective parties (collectively, the “Loan Agreements”), which Loan Agreements shall be assumed by the Issuer contemporaneously with the acquisition of the District Assets and assumption of the District Bonds, and which assumption is specifically approved hereby.

J. There are outstanding obligations of the Issuer which will rank on a parity with the Series 2019 Bonds as to liens, pledge, source of and security for payment, being the Issuer’s:

1. Combined Utility System Revenue Bond, 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 Bond, 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”);

5. Combined Utility System Revenue Bonds, Series 2010 A (Direct Payment Build America Bonds), dated January 28, 2010, issued in the original aggregate principal amount of $37,950,000 (the “Series 2010 A Bonds”);

aggregate principal amount of $15,380,227 (the "Series 2010 C Bonds");


(8) Combined Utility System Revenue Bond, Series 2010 E (West Virginia DWTRF Program/ARRA), dated January 28, 2010, issued in the original aggregate principal amount of $100,000 (the "Series 2010 E Bonds");

(9) Combined Utility System Revenue Bonds, Series 2012 A (West Virginia DWTRF Program), dated August 24, 2012, issued in the original aggregate principal amount of $570,000 (the "Series 2012 A Bonds");

(10) Combined Utility System Revenue Bonds, Series 2013 A (West Virginia Infrastructure Fund), dated August 22, 2013, issued in the original aggregate principal amount of $4,605,260 (the "Series 2013 A Bonds");


(13) Combined Utility System Revenue Bonds, Series 2015 B (West Virginia Water Development Authority), of the Issuer, dated March 31, 2015, issued in the original aggregate principal amount of $4,586 (the "Series 2015 B Bonds");

(14) Combined Utility System Revenue Bonds, Series 2015 C (West Virginia SRF Program), of the Issuer, dated March 31, 2015 issued in the original aggregate principal amount of $8,111,813 (the "Series 2015 C Bonds");

(15) Combined Utility System Revenue Bonds, Series 2015 D (West Virginia SRF Program), of the Issuer, dated March 31, 2015 issued in the original aggregate principal amount of $1,688,394 (the "Series 2015 D Bonds");

original aggregate principal amount of $662,300 (the “Series 2015 E Bonds”);

(17) Combined Utility System Revenue Bonds, Series 2016 A, of the Issuer, dated December 1, 2016 issued in the original aggregate principal amount of $69,755,000 (the “Series 2016 A Bonds”);

(18) Combined Utility System Revenue Bonds, Series 2016 B-1 (West Virginia SRF Program), of the Issuer, dated December 15, 2016 issued in the original aggregate principal amount of $25,000,000 (the “Series 2016 B-1 Bonds”);

(19) Combined Utility System Revenue Bonds, Series 2017 A (Bank Qualified), dated December 21, 2017, issued in the original aggregate principal amount of $2,695,000 (the “Series 2017 A Bonds”);

(20) Combined Utility System Revenue Bonds, Series 2018 A (West Virginia Infrastructure Fund), of the Issuer, dated January 31, 2018, issued in the original aggregate principal amount of $394,074 (the “Series 2018 A Bonds”);

(21) Combined Utility System Revenue Bonds, Series 2018 B (Tax-Exempt), of the Issuer, dated June 28, 2018, issued in the original aggregate principal amount of $44,260,000 (the “Series 2018 B Bonds”); and

(22) Combined Utility System Revenue Bonds, Series 2018 A-2 (West Virginia Infrastructure Fund), of the Issuer, dated July 10, 2018, issued in the original aggregate principal amount of $140,715 (the “Series 2018 A-2 Bonds” and collectively with the Bonds listed above, the “Prior Bonds”).

K. Prior to the assumption and re-designation of the District 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, if required, of the Holders of the Prior Bonds to the assumption and re-designation of the District Bonds on a parity with the Prior Bonds. The Series 2010 A Bonds, Series 2014 B Bonds, Series 2016 A Bonds, Series 2017 A Bonds and Series 2018 B Bonds do not require written consent. 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.

L. The estimated revenues to be derived in each year after completion of the acquisition of the District Assets and assumption and re-designation of the District Bonds 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 2019 Bonds and the Prior Bonds and to make payments into all funds and accounts and other payments provided for therein.

M. The Issuer has complied with all requirements of West Virginia law and the Loan Agreements relating to authorization of the acquisition of the District Assets and the
assumption and re-designation of the District Bonds, or will have so complied prior to the assumption and re-designation of the District Bonds or any thereof, including, among other things, the approval of the acquisition of the District Assets and the assumption and re-designation of the District Bonds by the Public Service Commission of West Virginia.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2019 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 2019 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 16, Article 13C of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

"Administrative Fee" or "administrative Fees" means the Administrative Fees required to be paid pursuant to the Loan Agreements.

"Authority" means the West Virginia Water Development Authority, which is the original purchaser and Registered Owner of the Series 2019 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 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.

"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 2019 Bonds, the Prior Bonds and, where appropriate, any bonds on a parity therewith subsequently authorized to be issued hereunder or by another ordinance of the Issuer.
“Bond Year” means the 12-month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year, except that the first Bond Year shall begin on the Closing Date.

“BPH” means the West Virginia Bureau for Public Health, a division of the West Virginia Department of Health and Human Resources, or any successor thereto.

“City Clerk” means the City Clerk of the Issuer.

“City Manager” means the City Manager of the Issuer.

“Closing Date” means the date upon which the District Assets are transferred to the Issuer and the Series 2019 Bonds are assumed and re-designated by the Issuer.


“Commission” means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia that succeeds to the functions of the Commission.

“Consulting 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.

“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.

"District" means the River Road Public Service District.

“District Assets” means all assets of the District, including all property, real or personal, tangible or intangible, which is part of the public waterworks system of the District.

"District Bonds" means the River Road Public Service District's: (i) Water Revenue Bonds, Series 2001 (West Virginia DWTRF Program), dated October 25, 2001, issued in the original aggregate principal amount of $1,068,500; and (ii) Water Revenue Bonds, Series 2016 A (West Virginia DWTRF Program), dated August 11, 2016, issued in the original aggregate principal amount of $2,546,000.

“District Resolutions” means the resolutions of the District authorizing the District Bonds.
"District Series 2001 Bonds" means the River Road Public Service District Water Revenue Bonds, Series 2001 (West Virginia DWTRF Program), dated October 25, 2001, issued in the original aggregate principal amount of $1,068,500.

“District Series 2001 Loan Agreement” means the Loan Agreement by and between the District and the Authority dated October 25, 2001 providing for the purchase of the District Series 2001 Bonds from the District by the Authority, which shall be assumed by the Issuer contemporaneously with the acquisition of the District Assets and the assumption of and re-designation of the District Bonds by the Issuer, the content of which is hereby approved (with any amendments or modifications required by the Authority as a result of the assumption of and re-designation of the District Bonds), and the assumption by the Issuer authorized and directed.

"District Series 2016 A Bonds" means River Road Public Service District Water Revenue Bonds, Series 2016 A (West Virginia DWTRF Program), dated August 11, 2016, issued in the original aggregate principal amount of $2,546,000.

“District Series 2016 A Loan Agreement” means the Loan Agreement by and between the District and the Authority dated August 11, 2016 providing for the purchase of the District Series 2016 A Bonds from the District by the Authority, which shall be assumed by the Issuer contemporaneously with the acquisition of the District Assets and the assumption of and re-designation of the District Bonds by the Issuer, the content of which is hereby approved (with any amendments or modifications required by the Authority as a result of the assumption of and re-designation of the District Bonds), and the assumption by the Issuer authorized and directed.

“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.

"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 Agreements" means collectively, the District 2001 Loan Agreement and the District 2016 A Loan Agreement.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 2019 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Reserve Accounts.

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

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

"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 2019 Bonds in the Supplemental Resolution.


“Prior Ordinances” means, collectively, the ordinances authorizing the Prior Bonds.

“Qualified Investments” means and includes any investment permitted to be made by a municipality, public service district or public corporation of the State pursuant to State Law, specifically including but not limited to Chapter 8, Article 13, Section 22 of the Code of West Virginia and the West Virginia “consolidated fund” managed by the West Virginia Board of Treasury Investments pursuant to Chapter 12, Article 6C of the Code of West Virginia.

“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 2019 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 2019 Bonds.

“Revenue Fund” means the Revenue Fund created by the Prior Ordinances and continued hereby.


“Series 2016 B-1 Bonds” means the Combined Utility System Revenue Bonds, Series 2016 B-1 (West Virginia SRF Program), of the Issuer, dated December 14, 2016, issued in the aggregate principal amount of $25,000,000.

“Series 2017 A Bonds” means the Issuer’s Combined Utility Revenue Bonds, Series 2017 A (Bank Qualified), dated December 21, 2017, issued in the original aggregate principal amount of $2,695,000.


“Series 2019 A Bonds Reserve Account” means the District Series 2001 Bonds Reserve Account which is authorized to be assumed and re-designated by the Issuer as Series 2019 A Bonds Reserve Account pursuant to Section 5.02 hereof.

“Series 2019 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 2019 A Bonds in the then current or any succeeding year.

“Series 2019 A Bonds Sinking Fund” means the District Series 2001 Bonds Sinking Fund which is authorized to be assumed and re-designated by the Issuer as Series 2019 A Bonds Sinking Fund pursuant to Section 5.02 hereof.

“Series 2019 B Bonds Reserve Account” means the District Series 2016 A Bonds Reserve Account which is authorized to be assumed and re-designated by the Issuer as Series 2019 B Bonds Reserve Account pursuant to Section 5.02 hereof.

“Series 2019 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 2019 B Bonds in the then current or any succeeding year.

“Series 2019 B Bonds Sinking Fund” means the District Series 2016 A Bonds Sinking Fund which is authorized to be assumed and re-designated by the Issuer as Series 2019 B Bonds Sinking Fund pursuant to Section 5.02 hereof.

“Sinking Funds” means, collectively, the respective Sinking Funds established for the Series 2019 Bonds and the Prior Bonds.

“State” means the State of West Virginia.

“Supplemental Resolution” means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article “the,” refers specifically to the supplemental resolution authorizing the sale of the Series 2019 Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2019 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 2019 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 District Assets 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.

“West Virginia DWTRF Program” means the West Virginia Drinking Water Treatment Revolving Fund Program established by the State, administered by BPH and funded by capitalized grants awarded to the State pursuant to the Federal Safe Drinking Water Act, as amended, for the purpose of establishing and maintaining a permanent perpetual fund for the acquisition, construction and improvement of drinking water projects.
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 OF THE DISTRICT ASSETS AND THE ASSUMPTION AND RE-DESIGNATION OF THE DISTRICT BONDS

Section 2.01. Authorization of Acquisition of the District Assets. There is hereby authorized and ordered the acquisition of the District Assets pursuant to the terms of an Acquisition Agreement by and between the Issuer and the District.

Section 2.02. Authorization of Assumption and Re-designation of the District Bonds. There is hereby authorized and ordered the assumption by the Issuer in full of the entire outstanding principal of and the interest on the District Bonds on the Closing Date.


ARTICLE III
AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND ASSUMPTION OF DISTRICT BONDS; ASSUMPTION OF LOAN AGREEMENTS

Section 3.01. Authorization of Assumption of District Bonds. For the purposes of serving as consideration for the acquisition of the District Assets, the Issuer hereby authorizes the assumption of the indebtedness evidenced by the District Bonds, and the substitution of a new bond of the Issuer for each of the District Bonds.

The District Bonds shall be assumed as two series of bonds and re-designated as (i) “The City of Morgantown Combined Utility System Revenue Bonds, Series 2019 A (West Virginia DWTRF Program)”; and (ii) “The City of Morgantown Combined Utility System Revenue Bonds, Series 2019 B (West Virginia DWTRF Program)” and shall have such terms as set forth hereinafter and in the Supplemental Resolution.

Section 3.02. Terms of Bonds. The Series 2019 Bonds shall be assumed in such principal amounts; 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 exists on the Closing Date and as the Issuer shall prescribe in a Supplemental Resolution. The Series 2019 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 2019 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 2019 Bonds shall initially be issued in two 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 2019 Bonds. The Series 2019 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.

Section 3.03. Execution of Bonds. The Series 2019 Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the City Clerk. In case any one or more of the officers who shall have signed or sealed the Series 2019 Bonds shall cease to be such officer of the Issuer before the Series 2019 Bonds so signed and sealed have been actually assumed, re-designated and delivered, such Bonds may nevertheless be assumed, re-designated 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 2019 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 2019 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 2019 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 2019 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 2019 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 2019 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 2019 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 the Series 2019 Bonds or transferring the registered Series 2019 Bonds are exercised, all Series 2019 Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 2019 Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Bond Registrar. For every such exchange or transfer of Series 2019 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 2019 Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 2019 Bonds or, in the case of any proposed redemption of Series 2019 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 2019 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 2019 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 2019 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2019 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 2019 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, if any, on the Series 2019 Bonds and the Prior Bonds and to make all other payments provided for in the Bond Legislation and Prior Ordinances are hereby irrevocably pledged to such payments as they become due.
Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver as substitute for the District Bonds, the Series 2019 Bonds to the Registrar, and the Registrar shall authenticate, register and deliver the Series 2019 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 2019 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 2019 Bonds to the original purchasers;

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

D. Executed copies of the Loan Agreements; and


Section 3.10. Form of Bonds. The text of the Series 2019 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 assumption and re-designation thereof:

[Remainder of Page Intentionally Blank]
(FORM OF SERIES 2019 A BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF MORGANTOWN
COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2019 A
(WEST VIRGINIA DWTRF PROGRAM)

Replacement Bond
for
River Road Public Service District
Water Revenue Bonds, Series 2001
(West Virginia DWTRF Program)

No. AR-1

$_________

KNOW ALL PERSONS BY THESE PRESENTS: That on this the ______ day of ________, 2019, 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 ($______) in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing ___________ 1, 20__, to and including June 1, 2022 as set forth on the “Debt Service Schedule” attached as EXHIBIT B hereto and incorporated herein by reference with interest of 2.0% per annum payable quarterly on March 1, June 1, September 1 and December 1 of each year commencing ______1, 20______, to and including June 1, 2022, as set forth on the “Debt Service Schedule” attached as EXHIBIT B hereto and incorporated herein by reference. The Administrative Fee of 1.0% (as defined in the hereinafter described Bond Legislation) shall be payable quarterly on March 1, June 1, September 1, and December 1 of each year, commencing _______________ 1, 20__, as set forth on EXHIBIT B attached hereto.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the “Paying Agent”). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the Registered Owner hereof at the address as it appears on the books of United Bank, Charleston, West Virginia, as registrar (the “Registrar”), on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions
prescribed by, and otherwise in compliance with, the District 2001 Loan Agreement by and between the River Road Public Service District (the "District") and the Authority, dated October 25, 2001, and assumed by the Issuer on _____, 2019.

This Bond has been assumed from the District by the Issuer in consideration for the acquisition of the assets of the District comprising the District’s public waterworks system (the “District Assets”) from the District. The existing public combined waterworks, sewerage, and stormwater system of the Issuer, the District Assets, and any further extensions, additions, betterments or improvements thereto are herein called the “System.” The Issuer has re-designated the District Bonds as “The City of Morgantown Combined Utility System Revenue Bonds, Series 2019 A (West Virginia DWTRF Program)”. This Bond is assumed and re-designated 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 16, Article 13C of the West Virginia Code of 1931, as amended (collectively, the “Act”), a Bond Ordinance duly enacted by the Issuer on _____, 2019, and a Supplemental Resolution duly adopted by the Issuer on _____, 2019 (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 ASSUMED 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 BOND, 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”);

(2) COMBINED UTILITY SYSTEM REVENUE BOND, 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”);

(3) 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”);

(4) COMBINED UTILITY SYSTEM REVENUE BOND, 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”);

(5) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 A (DIRECT PAYMENT BUILD AMERICA BONDS), DATED JANUARY 28, 2010, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $37,950,000 (THE “SERIES 2010 A BONDS”);
(6) COMBINED UTILITY SYSTEM REVENUE BOND, SERIES 2010 C (WEST VIRGINIA SRF PROGRAM), DATED JANUARY 28, 2010, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $15,380,227 (THE "SERIES 2010 C BONDS");

(7) COMBINED UTILITY SYSTEM REVENUE BOND, SERIES 2010 D (WEST VIRGINIA DWTRF PROGRAM), DATED JANUARY 28, 2010, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $9,317,286 (THE "SERIES 2010 D BONDS");

(8) COMBINED UTILITY SYSTEM REVENUE BOND, SERIES 2010 E (WEST VIRGINIA DWTRF PROGRAM/ARRA), DATED JANUARY 28, 2010, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $100,000 (THE "SERIES 2010 E BONDS");

(9) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012 A (WEST VIRGINIA DWTRF PROGRAM), DATED AUGUST 24, 2012, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $570,000 (THE "SERIES 2012 A BONDS");

(10) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED AUGUST 22, 2013, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $4,605,260 (THE "SERIES 2013 A BONDS");


(12) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2015 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), OF THE ISSUER, DATED MARCH 31, 2015 ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $137,568 (THE "SERIES 2015 A BONDS");

(13) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2015 B (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), OF THE ISSUER, DATED MARCH 31, 2015, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $4,586 (THE "SERIES 2015 B BONDS");

(14) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2015 C (WEST VIRGINIA SRF PROGRAM), OF THE ISSUER, DATED MARCH 31, 2015 ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $8,111,813 (THE "SERIES 2015 C BONDS");

(15) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2015 D (WEST VIRGINIA SRF PROGRAM), OF THE ISSUER, DATED MARCH 31, 2015 ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $1,688,394 (THE "SERIES 2015 D BONDS");

(17) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2016 A, OF THE ISSUER, DATED DECEMBER 1, 2016 ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $69,755,000 (THE “SERIES 2016 A BONDS”);

(18) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2016 B-1 (WEST VIRGINIA SRF PROGRAM), OF THE ISSUER, DATED DECEMBER 15, 2016 ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $25,000,000 (THE “SERIES 2016 B-1 BONDS”);

(19) COMBINED UTILITY REVENUE BONDS, SERIES 2017 A (BANK QUALIFIED), DATED DECEMBER 21, 2017, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $2,695,000 (THE “SERIES 2017 A BONDS”);

(20) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2018 A (WEST VIRGINIA INFRASTRUCTURE FUND), OF THE ISSUER, DATED JANUARY 31, 2018, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $394,074 (THE “SERIES 2018 A BONDS”);

(21) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2018 B (TAX-EXEMPT), OF THE ISSUER, DATED JUNE 28, 2018, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $44,260,000 (THE “SERIES 2018 B BONDS”); AND


(23) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2019 B (WEST VIRGINIA DWTFR PROGRAM), DATED ____, 2019, ISSUED SIMULTANEOUSLY HEREWITH IN THE AGGREGATE PRINCIPAL AMOUNT OF $__________ (THE "SERIES 2019 B 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 2019 B Bonds and the Prior Bonds, and from moneys in the reserve account created under the Bond Legislation for the Bonds (the “Series 2019 A Bonds Reserve Account”). 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 thereon, except from said special fund provided from the Gross Revenues, the moneys in the Series 2019 A Bonds Reserve Account and unexpended proceeds of the Bonds, if any. 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 2019 B Bonds, and the Prior Bonds; provided however, that so long as there exists in the Series 2019 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 Series 2019 B Bonds and 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.

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 assumption and re-designation 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 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

ATTEST:

By: ____________________________

City Clerk
CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2019 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: __________________, 2019.

UNITED BANK,

as Registrar

By: ________________________

Its: Authorized Officer
EXHIBIT A

DEBT SERVICE SCHEDULE.
(Form of)

ASSIGNMENT

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

_______________________________. Attorney to transfer the said Bond on

the within Bond and does hereby irrevocably constitute and appoint

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 2019 B BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF MORGANTOWN
COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2019 B
(WEST VIRGINIA DWTRF PROGRAM)

Replacement Bond
for
River Road Public Service District
Water Revenue Bonds, Series 2016 A
(West Virginia DWTRF Program)

No. BR-1 $_______

KNOW ALL PERSONS BY THESE PRESENTS: That on this the _____ day of _______, 2019, 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, the principal of this Bond, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing _________ 1, 20__, to and including December 1, 2047 as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference with interest of 0.50% per annum payable quarterly on March 1, June 1, September 1 and December 1 of each year commencing _________ 1, 20__, to and including December 1, 2047, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. The Administrative Fee of 0.50% (as defined in the hereinafter described Bond Legislation) shall be payable quarterly on March 1, June 1, September 1, and December 1 of each year, commencing _________ 1, 20__, as set forth on EXHIBIT B attached hereto.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of United Bank, Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the registered owner hereof.
This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with, the District 2016 A Loan Agreement by and between the River Road Public Service District (the "District") and the Authority, dated August 11, 2016 and assumed by the Issuer on __________, 2019.

This Bond has been assumed from the District by the Issuer in consideration for the acquisition of the assets of the District comprising the District's public waterworks system (the "District Assets") from the District. The existing public combined waterworks, sewerage, and stormwater system of the Issuer, the District Assets, and any further extensions, additions, betterments or improvements thereto are herein called the "System." The Issuer has redesignated the District Bonds as "The City of Morgantown Combined Utility System Revenue Bonds, Series 2019 B (West Virginia DWTRF Program)." This Bond is assumed and redesignated 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 16, Article 13C of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on __________, 2019 and a Supplemental Resolution duly adopted by the Issuer on __________, 2019 (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 ASSUMED 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 BOND, 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");

(2) COMBINED UTILITY SYSTEM REVENUE BOND, 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");

(3) 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");

(4) COMBINED UTILITY SYSTEM REVENUE BOND, 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");

(5) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 A (DIRECT PAYMENT BUILD AMERICA BONDS), DATED JANUARY 28, 2010, ISSUED
IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $37,950,000 (THE “SERIES 2010 A BONDS”);


(8) COMBINED UTILITY SYSTEM REVENUE BOND, SERIES 2010 E (WEST VIRGINIA DWTRF PROGRAM/ARRA), DATED JANUARY 28, 2010, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $100,000 (THE “SERIES 2010 E BONDS”);

(9) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012 A (WEST VIRGINIA DWTRF PROGRAM), DATED AUGUST 24, 2012, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $570,000 (THE "SERIES 2012 A BONDS”);

(10) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED AUGUST 22, 2013, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $4,605,260 (THE “SERIES 2013 A BONDS”);


(14) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2015 C (WEST VIRGINIA SRF PROGRAM), OF THE ISSUER, DATED MARCH 31, 2015 ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $8,111,813 (THE “SERIES 2015 C BONDS”);

(15) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2015 D (WEST VIRGINIA SRF PROGRAM), OF THE ISSUER, DATED MARCH 31, 2015 ISSUED
IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $1,688,394 (THE “SERIES 2015 D BONDS”);


(17) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2016 A, OF THE ISSUER, DATED DECEMBER 1, 2016 ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $69,755,000 (THE “SERIES 2016 A BONDS”);

(18) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2016 B-1 (WEST VIRGINIA SRF PROGRAM), OF THE ISSUER, DATED DECEMBER 15, 2016 ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $25,000,000 (THE “SERIES 2016 B-1 BONDS”);

(19) COMBINED UTILITY REVENUE BONDS, SERIES 2017 A (BANK QUALIFIED), DATED DECEMBER 21, 2017, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $2,695,000 (THE “SERIES 2017 A BONDS”);

(20) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2018 A (WEST VIRGINIA INFRASTRUCTURE FUND), OF THE ISSUER, DATED JANUARY 31, 2018, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $394,074 (THE “SERIES 2018 A BONDS”);

(21) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2018 B (TAX-EXEMPT), OF THE ISSUER, DATED JUNE 28, 2018, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $44,260,000 (THE “SERIES 2018 B BONDS”); AND


(23) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2019 A (WEST VIRGINIA DWTRF PROGRAM), DATED ____________, 2019, ISSUED SIMULTANEUSLY HEREWITH IN THE AGGREGATE PRINCIPAL AMOUNT OF $___________ (THE "SERIES 2019 A 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 2019 A Bonds and the Prior Bonds, and from moneys in the reserve account created under the Bond Legislation for the Bonds (the "Series 2019 B Bonds Reserve Account"). 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 2019 B Bonds Reserve Account and unexpended proceeds of the Bonds, if any. 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 2019 A Bonds and the Prior Bonds; provided however, that so long as there exists in the Series 2019 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 2019 A Bonds and 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.

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 assumption and re-designation 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 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 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

ATTEST:

By: _______________________________________

City Clerk
CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2019 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: _________________, 2019.

UNITED BANK,
as Registrar

By: ______________________
    Its: Authorized Officer
EXHIBIT A

DEBT SERVICE SCHEDULE
ASSIGNMENT

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

the within Bond and does hereby irrevocably constitute and appoint

, Attorney to transfer the said Bond on

the books kept for registration of the within Bond of the said Issuer with full power of

substitution in the premises.

Dated: , 20__

In the presence of:

__________________________________________
Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Loan Agreements. The District Bonds were sold to the Authority, pursuant to the terms and conditions of the Loan Agreements. The Loan Agreements including all schedules and exhibits attached thereto, and as assumed by the Issuer are hereby approved and incorporated into this Bond Legislation.

ARTICLE IV
[RESERVED]

ARTICLE V
FUNDS AND ACCOUNTS; SYSTEM REVENUES
AND APPLICATION THEREOF

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created 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); and
3. Operation and Maintenance Fund (established by the Prior Ordinances).

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created with (or continued if previously established by the Prior Ordinances) and shall be held by the Commission, separate and apart from all other funds or accounts of the Commission or the Issuer and from each other:

1. Series 2000 A Bonds Sinking Fund (established by Prior Ordinances);
2. Series 2000 A Bonds Reserve Account (established by Prior Ordinances);
3. Series 2000 B Bonds Sinking Fund (established by Prior Ordinances);
4. Series 2000 B Bonds Reserve Account (established by Prior Ordinances);
5. Series 2006 A Bonds Sinking Fund (established by Prior Ordinances);
6. Series 2006 A Bonds Reserve Account (established by Prior Ordinances);
(7) Series 2007 A Bonds Sinking Fund (established by Prior Ordinances);

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

(9) Series 2010 A Bonds Sinking Fund (established by Prior Ordinances);

(10) Series 2010 A Bonds Reserve Account (established by Prior Ordinances);

(11) Series 2010 C Bonds Sinking Fund (established by Prior Ordinances);

(12) Series 2010 C Bonds Reserve Account (established by Prior Ordinances);

(13) Series 2010 D Bonds Sinking Fund (established by Prior Ordinances);

(14) Series 2010 D Bonds Reserve Account (established by Prior Ordinances);

(15) Series 2010 E Bonds Sinking Fund (established by Prior Ordinances);

(16) Series 2010 E Bonds Reserve Account (established by Prior Ordinances);

(17) Series 2012 A Bonds Sinking Fund (established by Prior Ordinances);

(18) Series 2012 A Bonds Reserve Account (established by Prior Ordinances);

(19) Series 2013 A Bonds Sinking Fund (established by Prior Ordinances);

(20) Series 2013 A Bonds Reserve Account (established by Prior Ordinances);

(21) Series 2014 B Bonds Sinking Fund (established by Prior Ordinances);

(22) Series 2014 B Bonds Reserve Account (established by Prior Ordinances);
(23) Series 2015 A Bonds Sinking Fund (established by Prior Ordinances);

(24) Series 2015 A Bonds Reserve Account (established by Prior Ordinances);

(25) Series 2015 B Bonds Sinking Fund (established by Prior Ordinances);

(26) Series 2015 B Bonds Reserve Account (established by Prior Ordinances);

(27) Series 2015 C Bonds Sinking Fund (established by Prior Ordinances);

(28) Series 2015 C Bonds Reserve Account (established by Prior Ordinances);

(29) Series 2015 D Bonds Sinking Fund (established by Prior Ordinances);

(30) Series 2015 D Bonds Reserve Account (established by Prior Ordinances);

(31) Series 2015 E Bonds Sinking Fund (established by Prior Ordinances);

(32) Series 2015 E Bonds Reserve Account (established by Prior Ordinances);

(33) Series 2016 A Bonds Sinking Fund (established by Prior Ordinances);

(34) Series 2016 A Bonds Reserve Account (established by Prior Ordinances);

(35) Series 2016 B-1 Bonds Sinking Fund (established by Prior Ordinances);

(36) Series 2016 B-1 Bonds Reserve Account (established by Prior Ordinances);

(37) Series 2017 A Bonds Sinking Fund (established by Prior Ordinances);

(38) Series 2017 A Bonds Reserve Account (established by Prior Ordinances);
(39) Series 2018 A Bonds Sinking Fund (established by Prior Ordinances);

(40) Series 2018 A Bonds Reserve Account (established by Prior Ordinances);

(41) Series 2018 A-2 Bonds Sinking Fund (established by Prior Ordinances);

(42) Series 2018 A-2 Bonds Reserve Account (established by Prior Ordinances);

(43) Series 2018 B Bonds Sinking Fund (established by Prior Ordinances);

(44) Series 2018 B Bonds Reserve Account (established by Prior Ordinances);

(45) Series 2019 A Bonds Sinking Fund;

(46) Series 2019 A Bonds Reserve Account;

(47) Series 2019 B Bonds Sinking Fund; and


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) the amounts required by the respective Prior Ordinances to pay interest on the Series 2006 A Bonds, Series 2007 A Bonds, Series 2010 A Bonds, Series 2010 C Bonds, Series 2010 D Bonds, Series 2010 E Bonds, Series 2012 A Bonds, Series 2014 B Bonds, Series 2015 A Bonds, Series 2016 A Bonds, Series 2016 B-1 Bonds, Series 2017 A Bond, Series 2018 A Bonds, Series 2018 A-2 Bonds and Series 2018 B Bonds; (ii) for deposit in the Series 2019 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of interest which will become due on the Series 2019 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 2019 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; and (iii) for deposit in the
Series 2019 B Bonds Sinking Fund, an amount equal to 1/3rd of the
amount of interest which will become due on the Series 2019 B 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 2019 B 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; (ii) for deposit in the Series 2019 A Bonds Sinking
Fund, an amount equal to 1/3rd of the amount of principal which will
mature and become due on the Series 2019 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 2019 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; and (iii) for deposit in the Series 2019 B Bonds Sinking Fund, an
amount equal to 1/3rd of the amount of principal which will mature and
become due on the Series 2019 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 2019 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.

(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 Series 2019 A Bonds Reserve Account, an
amount equal to 1/120th of the Series 2019 A Bonds Reserve
Requirement; provided, that no further payments shall be made into the
Series 2019 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 2019 A Bonds Reserve Requirement; and
(iii) for deposit in the Series 2019 B Bonds Reserve Account, an amount
equal to 1/120th of the Series 2019 B Bonds Reserve Requirement;
provided, that no further payments shall be made into the Series 2019 B Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2019 B 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 2.5% 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 2019 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2019 A Bonds, as the same shall become due. Moneys in the Series 2019 A Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 2019 A Bonds, as the same shall come due, when other moneys in the Series 2019 A Bonds Sinking Fund are insufficient therefor, and for no other purpose.

Moneys in the Series 2019 B Bonds Sinking Fund shall be used only for the purposes of paying principal of the Series 2019 B Bonds, as the same shall become due. Moneys in the Series 2019 B Bonds Reserve Account shall be used only for the purpose of paying principal of the Series 2019 B Bonds, as the same shall come due, when other moneys in the Series 2019 B Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the Series 2019 A Bonds Sinking Fund and the Series 2019 A Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Series 2019 A Bonds, and then to the next ensuing principal payment due thereon.
All investment earnings on moneys in the Series 2019 B Bonds Sinking Fund and the Series 2019 B Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment, if any, due on the Series 2019 B Bonds, and then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 2019 A Bonds Reserve Account which results in a reduction in the balance therein to below the Series 2019 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.

Any withdrawals from the Series 2019 B Bonds Reserve Account which results in a reduction in the balance therein to below the Series 2019 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.

As and when additional Bonds ranking on a parity with the Series 2019 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 2019 A Bonds Sinking Fund or the Series 2019 A Bonds Reserve Account, when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2019 A 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 2019 B Bonds Sinking Fund or the Series 2019 B Bonds Reserve Account, when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2019 B Bonds issued pursuant to this Bond Legislation then Outstanding and all interest, if any, 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 2019 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 2019 A Bonds Sinking Fund, Series 2019 A Bonds Reserve Account, Series 2019 B Bonds Sinking Fund, and Series 2019 B 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 Series 2019 A Bonds Sinking Fund and the Series 2019 A Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2019 A Bonds under the conditions and restrictions set forth herein.

The Series 2019 B Bonds Sinking Fund and the Series 2019 B Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2019 B 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 2019 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 such day is not a business day, then the next succeeding business day), deposit with the Commission the Administrative Fees pursuant to the Loan Agreements.

C. 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.

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

E. The moneys in excess of the 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.

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

G. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited.
H. The Gross Revenues of the System shall only be used for purposes of the System.

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

ARTICLE VI
[RESERVED]

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 2019 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 2019 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 2019 Bonds or the interest thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2019 Bonds shall not be nor constitute a corporate indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of the Series 2019 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2019 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 2019 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 2019 Bonds and the Prior Bonds and to make all other payments provided for in this Bond Legislation and the Prior Ordinances 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 Agreements and the Issuer shall supply a certificate of certified public accountant to such effect. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the water rate ordinance of the Issuer enacted June 19, 2018, the sewer rate ordinance of the Issuer enacted February 2, 2016 and the stormwater rate ordinance of the Issuer enacted December 6, 2011, which rates are incorporated herein by reference as a part hereof.

So long as the Series 2019 Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such
actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and in compliance with the Loan Agreements. In the event the schedule of rates, fees and charges initially established for the System in connection with the Series 2019 Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreements, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreements.

Section 7.05. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, 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 2019 Bonds are outstanding and except as otherwise required by law or with the written consent of 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 2019 Bonds, immediately be remitted to the Commission and, with the written permission of the BPH 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 2019 Bonds. Any balance remaining after the payment of the Series 2019 Bonds and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of $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 that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then 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 Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of $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 Series 2019 Bonds then Outstanding. The Issuer shall prepare the form of such approval and
consent for execution by the then Holders of the Series 2019 Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System. 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 2019 Bonds and the Prior Bonds. All obligations issued by the Issuer after the assumption and re-designation of the Series 2019 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 2019 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 2019 Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Series 2019 Bonds and the interest thereon in this Bond Legislation, or upon the System or any part thereof.

The Issuer shall give the Authority and the BPH prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the System, or any other obligations related to the 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 assumption and re-designation of the Series 2019 Bonds pursuant to this Bond Legislation, without the prior written consent of the Authority 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 2019 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 hereinafore 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 the issuance of such Parity Bonds. For purposes of this test, the terms “Gross Revenues” and “Net Revenues” shall not include proceeds from the sale of capital assets.

All covenants and other provisions of this Bond Legislation (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Bonds and the Holders of any Parity Bonds 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 2019 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 2019 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 permit the Authority and the BPH, or their agents and representatives, to inspect all books, documents, papers and records relating to the System at all reasonable times for the purpose of audit and examination. The Board shall submit to the Authority and the BPH such documents and information as they may reasonably require in connection with the operation and maintenance of the System.

The Board shall permit the Authority and the BPH, or their agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times.

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 BPH, or any other original purchaser of the Series 2019 Bonds, and shall mail in each year to any Holder or Holders of the Series 2019 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 2 CFR200 Subpart F, 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 2019 Bonds and shall submit said report to the Authority and the BPH, or any other original purchaser of the Series 2019 Bonds.
Such audit report submitted to the Authority and the BPH shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if 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 Agreements and the Act, the Issuer has acquired, or shall do all things necessary to acquire the District Assets and shall do, is doing or has done all things necessary to acquire the District Assets. All real estate and interests in real estate and all personal property constituting the District Assets heretofore or hereafter acquired shall at all times be and remain the property of the Issuer.

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

**Section 7.09. Rates.** Prior to the assumption and re-designation of the Series 2019 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 and interest on the Series 2019 Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2019 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 respective Series 2019 Bonds Reserve Accounts and any reserve accounts for obligations on a parity with the Series 2019 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 and interest, if any, on the Series 2019 Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2019 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.

The Issuer hereby covenants to commence enactment of such ordinance or ordinances as shall be required to increase the rates and charges for the services and facilities of the System within 30 days following a determination of the Independent Certified Public Accountant that less than the above-required coverage exists or in the event that the annual audit report shows less than the above-required coverage, such increase to provide rates and charges sufficient to produce such required coverage.
Section 7.10. Operating Budget and Monthly Financial Report. The 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. 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 BPH and to any Holder of any Bonds who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Authority, the BPH and any Holder of any Bonds or anyone acting for and on behalf of such Holder of any Bonds.

Section 7.11. Operating Personnel. The Issuer shall employ qualified operating personnel properly certified by the State to operate the System during the entire term of the Loan Agreements.

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 sewerage portion of the System and any services and facilities of the waterworks portion of the System, to all users of the services of the sewerage system delinquent in payment of charges for the services of the sewerage system and will not restore such services of either the waterworks system or the sewerage system until all delinquent charges for the services of the sewerage 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. A. The Board hereby covenants and agrees that so long as the Series 2019 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.

(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) WORKERS' 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.

Section 7.16. Mandatory Use. The mandatory use of the sewer 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 sewer portion of the System, and where sewer from real property affects or drains into the sewer portion of the System, shall be deemed to be a user served by the sewer portion of the System and it is declared that the mandatory use of the sewer 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 sewer portion of the System, pay the rates and charges established therefor.

Section 7.17. Operation and Maintenance; Permits and Orders. The Board shall 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 of the District Assets and assumption and re-designation of the District Bonds and all approvals for acquisition of the District Assets and assumption and re-designation of the District Bonds required by state law, with all requisite appeal periods having expired without successful appeal and the Issuer shall supply an opinion of counsel to such effect.

Section 7.18. Compliance with Loan Agreements and Law. The Issuer and the Board shall perform, satisfy and comply with all the terms and conditions of the Loan Agreements and the Act. Notwithstanding anything herein to the contrary, the Issuer and the Board shall provide the BPH 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 BPH or other state, federal or local bodies in regard to 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 in the manner prescribed by the guidelines established by the Authority and the Public Service Commission of West Virginia.

Section 7.19. Reserved.
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. Reserved.

Section 7.22. Statutory Mortgage Lien. For the further protection of the Holders of the Series 2019 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 2019 Bonds, and shall be on a parity with the statutory mortgage lien in favor of the Holders of the Prior Bonds.

ARTICLE VIII
INVESTMENT OF FUNDS

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

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

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year, or more often as reasonably requested by the Issuer, a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2019 Bonds are Outstanding and as long thereafter as necessary to assure the exclusion of interest, if any, on the Series 2019 Bonds from gross income for federal income tax purposes.
Section 8.02. Covenants as to Use of Proceeds. The Issuer covenants (i) to comply with the Code and all Regulations from time to time in effect and applicable to the Series 2019 Bonds as may be necessary in order to maintain the status of the Series 2019 Bonds as governmental bonds; (ii) that it shall not take, or permit or suffer to be taken, any action with respect to the Issuer’s use of the proceeds of the Series 2019 Bonds which would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Code, issued by the Authority or the BPH, as the case may be, from which the proceeds of the Series 2019 Bonds are derived, to lose their status as tax-exempt bonds; and (iii) to take such action, or refrain from taking such action, as shall be deemed necessary by the Issuer, or requested by the Authority or the BPH, to ensure compliance with the covenants and agreements set forth in this Section, regardless of whether such actions may be contrary to any of the provisions of this Ordinance.

The Issuer shall annually furnish to the Authority, information with respect to the Issuer’s use of the proceeds of the Series 2019 Bonds and any additional information requested by the Authority.

ARTICLE IX
DEFAULT AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an “Event of Default” with respect to the Series 2019 Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest on any Series 2019 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 2019 Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2019 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 2019 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, 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 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 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 2019 Bonds, the principal of and interest, if any, due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of 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 2019 Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest, if any, on the Series 2019 Bonds from gross income for federal income tax purposes.

ARTICLE XI
MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to the assumption and re-designation of the Series 2019 Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following assumption and re-designation of the Series 2019 Bonds, no material modification or amendment of this Ordinance, or of any ordinance, resolution or order amending or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2019 Bonds shall be made without the consent in writing of the Registered Owners of the Series 2019 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 2019 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 2019 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 2019 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, Bridgeport, West Virginia, as bond counsel to the Issuer and the Board in connection with the assumption and re-designation by the Issuer of the Series 2019 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 assumption and re-designation of the Series 2019 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:

Passed on Second Reading:

Passed on Final Reading
Following Public Hearing:

THE CITY OF MORGANTOWN

By: ________________________________

Mayor
CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of THE CITY OF MORGANTOWN on the ____ day of ____________, 2019.


[SEAL]

__________________________

City Clerk
BOND ORDINANCE

THE CITY OF MORGANTOWN

ASSUMPTION OF THE
RIVER ROAD PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2001
(WEST VIRGINIA DWTRF PROGRAM); AND
WATER REVENUE BONDS, SERIES 2016 A
(WEST VIRGINIA DWTRF PROGRAM)

AND

RE-DESIGNATED AND REPLACED AS

THE CITY OF MORGANTOWN
COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2019 A
(WEST VIRGINIA DWTRF PROGRAM); AND
COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2019 B
(WEST VIRGINIA DWTRF PROGRAM)

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SIGNATURES
CERTIFICATION
AN ORDINANCE ESTABLISHING A SALES AND USE TAX AND REDUCING BUSINESS AND OCCUPATION TAX RATES

The City of Morgantown hereby ordains that a new Article 733 entitled "Sales and Use Tax" is established within the City Code and that Article 735 is amended, all as follows:

733.01. Findings.

(a) On or about October 6, 2014, the Municipal Home Rule Board approved the City of Morgantown Municipal Home Rule Pilot Program Application and granted The City of Morgantown authority to adopt a municipal sales and service tax and a municipal use tax pursuant to West Virginia Code section 8-1-5a without such tax being subject to the restrictions imposed by West Virginia Code Chapter 8, Article 13C.

(b) The City finds and concludes that the sales and services tax and use tax set forth in this Article is adopted consistent with the City’s Home Rule Plan and incorporates the provisions of the Code of West Virginia, 1931, as amended, relating to the imposition, administration, collection, and enforcement of the State consumer sales and service tax codified in W. Va. Code §§ 11-15-1 et seq. and the State use tax codified in W. Va. Code §§ 11-15B-1 et seq. and that adoption of these provisions will (1) simplify collection of the City’s sales and use taxes, (2) simplify preparation of municipal sales and use tax returns by taxpayers, and (3) improve enforcement of the City’s sales and use taxes.

(c) The City finds and concludes that, in consideration of the foregoing findings, this Article shall be construed to accomplish the purposes stated in this Section.

733.02. Definitions.

(a) Terms used in this Article or in the administration, collection, and enforcement of the taxes imposed by this Article and not otherwise defined in this Article shall have the meanings ascribed to them in West Virginia Code Chapter 11, Articles 9, 10, 15, 15A, and 15B, as they may be amended.

(b) The followings terms have the meanings given for purposes of this Article:

(1) "Business" means all activities engaged in or caused to be engaged in by any person with the object of gain or economic benefit, direct or indirect, and all activities of the state and its political subdivision, which involve sales of tangible personal property or the rendering of services when those service activities compete with or may compete with the activities of other persons.

(2) "City" means The City of Morgantown, West Virginia.

(4) “Person” means any individual, partnership, association, corporation, limited liability company, limited liability partnership, or any other legal entity, including the State of West Virginia or its political subdivisions or an agency of either, or the guardian, trustee, committee, executor, or administrator of any person.

(5) “Purchase” means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

(6) “Purchase price” means the measure subject to the taxes imposed by this Article and has the same meaning as the term “Sale price.”

(7) “Purchaser” means a person who purchases tangible personal property, custom software or a service taxed by this Article.

(8) “Sale,” “sales,” or “selling” have the meaning ascribed to those terms in West Virginia Code Chapter 11, Article 15B.

(9) “Sales and use taxes” means the taxes imposed by Sections 733.03 and 733.04 of this Article.

(10) “Sales price” has the meaning ascribed to that term in West Virginia Code Chapter 11, Article 15B, and shall be construed in accordance with that article, as it may be amended.

(A) “Sales price” means the measure subject to the tax levied under West Virginia Code Chapter 11, Article 15 or 15A, or this Article, and includes the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) The seller's cost of the property sold;
(ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller and any other expense of the seller;
(iii) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
(iv) Delivery charges; and
(v) Installation charges.

(B) “Sales price” does not include:

(i) Discounts, including cash, term or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale.
(ii) Interest, financing and carrying charges from credit extended on the sale of personal property, goods or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; or
(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser.

(C) "Sales price" shall include consideration received by the seller from third parties if:

(i) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;
(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;
(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and
(iv) One of the following criteria is met:

(I) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

(II) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount (a preferred customer card that is available to any patron does not constitute membership in such a group); or

(III) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

(11) "Sales tax" means the tax levied by Section 733.03 of this Article.

(12) "Service" or "selected service" have the meaning ascribed to those terms in West Virginia Code Chapter 11, Article 15B.

(13) "State sales tax" means the tax levied by West Virginia Code Chapter 11, Article 15.

(14) "State use tax" means the tax levied by West Virginia Code Chapter 11, Article 15A.
(15) “Tax” means the taxes imposed by this Article and includes additions to tax, interest, and penalties levied under West Virginia Code Chapter 11, Article 10.

(16) “Tax Commissioner” means the Chief Executive Officer of the Tax Division of the Department of Revenue of the State of West Virginia, as provided in W. Va. Code § 11-1-1.

(17) “This state” means the State of West Virginia.

(18) “Ultimate consumer” or “consumer” means a person who uses or consumes services, tangible personal property, or custom software.

(19) “Use” for purposes of the tax imposed by Section 733.04 of this Article means and includes:

   (A) The exercise by any person of any right or power over tangible personal property or custom software incident to the ownership, possession, or enjoyment of the property, or by any transaction in which possession of or the exercise of any right or power over tangible personal property, custom software, or the result of a taxable service is acquired for a consideration, including any lease, rental, or conditional sale of tangible personal property or custom software; or

   (B) The use or enjoyment in this state of the result of a taxable service. As used in this definition, “enjoyment” includes a purchaser’s right to direct the disposition of the property or the use of the taxable service, whether or not the purchaser has possession of the property. The term “use” does not include the keeping, retaining, or exercising any right or power over tangible personal property, custom software, or the result of a taxable service for the purpose of subsequently transporting it outside the City for use thereafter solely outside the City.

(20) “Use tax” means the tax imposed by Section 733.04 of this Article.

(21) “Vendor” means any person engaged in this City in furnishing services taxed by this Article or making sales of tangible personal property or custom software. “Vendor” and “seller” are used interchangeably in this Article.

733.03. Imposition of Municipal Sales and Service Tax.

(a) For the privilege of selling tangible personal property or customer software and for the privilege of furnishing certain selected service, a vendor doing business in the City shall collect from the purchaser the taxes imposed by this Section and pay the amount of taxes collected to the Tax Commissioner at the same time and in the same manner as the consumer’s sales and service tax imposed by West Virginia Code Chapter 11, Article 15 are paid to the Tax Commissioner.
(b) The rate of the tax imposed by this Section shall be one percent of the Sales Price, as defined in this Article, of the tangible personal property, custom software, or taxable service purchased or leased.

733.04. Imposition of Municipal Use Tax.

(a) An excise tax is hereby levied and imposed on the use in the City of tangible personal property, custom software, and the results of taxable services, to be collected and paid to the Tax Commissioner as agent for the City in the same manner that state use tax is collected under West Virginia Code Chapter 11, Articles 15A and 15B, and remitted to the Tax Commissioner.

(b) The rate of tax shall be one percent of the Purchase Price, as defined in this Article, of the tangible personal property, custom software, or taxable service used within the City.

733.05. Calculation of Tax on Fractional Parts of a Dollar.

The tax computation under Sections 733.03 and 733.04 of this Article shall be carried to the third decimal place and the tax rounded up to the next whole cent whenever the third decimal place is greater than four and rounded down to the lower whole cent whenever the third decimal place is four or less. The vendor may elect to compute the tax due on a transaction on a per item basis or on an invoice basis provided the method used is consistently used during the reporting period but the method used shall be the same as that used for purposes of computing the state sales or use tax.

733.06. State and Local Tax Bases.

The taxable based of the taxes imposed by Sections 733.03 and 733.04 of this Article shall be identical to the sales and use tax based of this State except as provided in Section 733.07 of this Article, unless otherwise prohibited by federal law, as required by W. Va. Code § 11-15B-34.

733.07. Exceptions.

The taxes imposed by this Article do not apply in the following defined instances:
(1) the sale or use of motor fuel, as defined in West Virginia Code Chapter 11, Article 14C;
(2) the sale or use of motor vehicles upon which the tax imposed by West Virginia Code Chapter 11, Article 15, Section 3c;
(3) The purchase or use of any tangible personal property, custom software, or service that the City is prohibited from taxing under the laws of this state or of the United States;
(4) The sales tax imposed by Section 733.03 of this Article does not apply to any transaction that is exempt from the tax imposed by West Virginia Code Chapter 11, Article 15;
(5) The use tax imposed by Section 733.04 of this Article does not apply to any purchase upon which the sales tax imposed by Section 733.03 of this Article has been paid.
733.08. Credit Against Municipal Tax.

(a) A person is entitled to a credit against the use tax imposed by Section 733.04 of this Article on the use of a particular item of tangible personal property, custom software, or results of a taxable service equal to the amount, if any, of sales tax lawfully paid to another municipality for the acquisition of that property, custom software, or service; provided that the amount of credit allowed may not exceed the amount of use tax imposed by Section 733.04 on the use of the tangible personal property, custom software, or results of the taxable service in the City.

(b) For purposes of this Section 733.08, the following terms have the meanings given:

(1) “Sales tax” includes a sales tax or compensating use tax imposed on the sale or use of tangible personal property, custom software, or the results of a taxable service by the municipality in which the sale occurred; and

(2) “Municipality” includes municipalities of this state or of any other state of the United States.

(c) No credit is allowed under this Section for payment of any sales or use taxes imposed by this state or any other state. For purposes of this paragraph 733.08(e), “state” includes the fifty states of the United States and the District of Columbia but does not include any of the several territories organized by Congress.

733.09. Tax cumulative.

The taxes imposed by this Article are in addition to other taxes imposed on the sale or use of tangible personal property, custom software, or taxable services, including, but not limited to, the state consumers sales and service tax imposed by West Virginia Code Chapter 11, Article 15; the state use tax imposed by West Virginia Code Chapter 11, Article 15A; the public utility tax imposed by the City pursuant to West Virginia Code Chapter 8, Article 13, Section 5a; the amusement tax imposed by the City pursuant to West Virginia Code Chapter 8, Article 13, Section 6; the tax on sales of alcoholic liquors and wine imposed by the City pursuant to West Virginia Code Chapter 8, Article 13, Section 6; the hotel occupancy tax imposed by the City pursuant to West Virginia Code Chapter 7, Article 18; and the special district excise taxes imposed by a county pursuant to West Virginia Code Chapter 7, Article 22, or by a municipality pursuant to West Virginia Code Chapter 8, Article 38, if any.

733.10. Local Rate and Boundary Database; Changes.

(a) The Tax Commissioner is required by W. Va. Code § 11-15B-35 to maintain a database for all jurisdictions levying a sales or use tax in this State. The City Clerk shall furnish the Tax Commissioner with information the Tax Commissioner requires for that database that will allow the Tax commissioner to maintain a database that assigns each five-digit and nine-digit
zip code within the City to the proper rate of tax. If any nine-digit zip code area includes area outside the City, the single state and local rate assigned to that area in the Tax Commissioner’s database will be the lowest rate applicable to that area; provided that, when sales occur at and are sourced to a physical location of the Seller located in the City in that nine-digit zip code area, the Seller shall collect and remit the tax imposed by Section 733.03.

(b) Whenever the boundaries of the City change, the City Clerk shall promptly notify the Tax Commissioner of the change in a writing including the following: (i) the nine-digit zip code or codes for the area added or removed, (ii) any other information the Tax Commissioner may require to maintain the database. Solely for purposes of imposing the taxes established by this Article, an ordinance annexing property into the City or removing property from the City may not take effect any sooner than the first day of a calendar quarter that begins sixty days after the City provides written notice to the Tax Commissioner of a change in the municipal boundaries. This provision shall not be construed to affect the effective date of any ordinance, order, or other determination of a change in the City boundaries for any purpose other than the imposition of the taxes established by this Article.

(c) The nine-digit database shall be maintained by the City until such time as the Tax Commissioner allows use of a different system to determine whether a location is within or outside the corporate limits of the City.

733.11. State-level administration.

(a) The Tax Commissioner is responsible for administering, collecting, and enforcing the taxes imposed by this Article as provided in W. Va. Code §§8-13C-6 and 11-15B-33. The City may enter into a written agreement with the Tax Commissioner that will allow employees of the City auditing a vendor whose primary business location is in the City for compliance with the City’s business and occupation tax to also audit that business location for compliance with the sales and use tax laws of this state and the City and obligate the City to share that information with the Tax Commissioner.

(b) The Tax Commissioner may retain from collections of the taxes imposed by this Article the fee allowed by W. Va. Code § 11-10-11e or by any other state law or legislative rule.

(c) The Tax Commissioner shall deposit all the proceeds from collection of the taxes imposed by this Article, minus any fee authorized by law for collecting, enforcing, and administering taxes retained under this Article, in the subaccount for the City established in the “Municipal Sales and Service Tax and Use Tax Fund,” an interest-bearing account created in the state treasury pursuant to W. Va. Code § 8-13C-7. All funds collected and deposited in the subaccount for the City shall be remitted at least quarterly by the State Treasurer to the City’s Finance Director, as provided in W. Va. Code § 8-13C-7.

(a) The provisions of the West Virginia Tax Procedure and Administration Act set forth in West Virginia Code Chapter 11, Article 10, apply to the administration, collection, and enforcement of the taxes imposed pursuant to this Article, except as otherwise expressly provided in West Virginia Code Chapter 8, Article 13C, with like effect as if that article were applicable only to the taxes imposed by this Article and were fully set forth in this Article.

(b) The Finance Director shall have the authority to adopt and implement such other and additional regulations, not inconsistent with Paragraph (a), as are appropriate for the administration, interpretation, and enforcement of this Article.

733.13. Criminal penalties.

The provisions of the West Virginia Tax Crimes and Penalties Act, set forth in West Virginia Code Chapter 11, Article 9, applies to the administration, collection and enforcement of the taxes imposed by this Article with like effect as if that act were applicable only to the taxes imposed pursuant to this Article and were fully set forth in this Article; provided that the criminal penalties imposed upon conviction for a criminal violation of this Article may not exceed the maximum penalties allowed by law for a violation of the ordinances of the City.


Any amendments to the provisions of the West Virginia Code currently codified at Chapter 11, Articles 8, 10, 15, 15A, or 15B shall automatically apply to the taxes imposed by this Article, to the extent the amendments are applicable.

733.15. Deposit of Tax Collected in Special Revenue Fund and General Revenue Fund.

(a) There is hereby established a special revenue fund of the City which is designated the “City Sales and Use Tax Fund.” The City Sales and Use Tax Fund shall consist of the following:

(1) One half of every dollar of revenue received from collection of the taxes imposed by this Article, including any interest, additions to tax, and penalties deposited with the City’s Finance Director;

(2) All appropriations to the fund;

(3) All interest earned from investment of the fund; and
(4) Any gifts, grants, or contributions accepted by the City and deposited in the
fund.

(b) Funds in the City Sales and Use Tax Fund shall not be treated by any person as
general revenue of the City, except as provided herein. Revenues in the City Sales and Use Tax
Fund shall be disbursed in the manner, and consistent with the purposes, set forth in Paragraph (c)
of this Section.

(c) Funds in the City Sales and Use Tax Fund shall be used as follows:

(1) First, to satisfy the debt service requirements each fiscal year on any bonds
issued by, or other obligations incurred by, the City for which the fund is dedicated as the payment
source, including any refunding bonds; to pay for recreational facilities and services, including
without limitation the construction of capital improvements, construction of facilities, and
acquisition of property for recreational purposes, solely or jointly with other entities or agencies,
including without limitation associated retail and service facilities that are directly related to, and
used in conjunction with, recreational facilities; and to contribute to the funding of the City’s
obligations to retired employees, including without limitation pension plans for civil service
members and non-civil service members and other post-employment benefits.

(2) Second, to pay for capital improvement projects on a pay as you go basis;
and

(3) Third, after providing for payment of the priority items above, any
unencumbered funds in the City Sales and Use Tax Fund may periodically be transferred to the
City General Revenue Fund or Account.

(d) The remainder of revenue received from collection of the taxes imposed by this
Article after distribution of revenue allocated to the City Sales and Use Tax Fund shall be deposited
in the City General Revenue Fund or Account.

733.16. Issuance of revenue bonds.

The City shall have the power and authority to issue its revenue bonds or other obligations
or refunding revenue bonds or other obligations, as appropriate, under and pursuant to Chapter 8,
Article 15, or other appropriate provisions of the West Virginia Code as may be applicable from
time to time (hereinafter, the “Bond Act”) for the purposes of financing or refinancing costs of
infrastructure improvements or economic development activities and projects within the City, or
for any lawful purpose. The City may pledge or otherwise utilize the collections of the taxes
imposed by this Article and the funds on deposit from time to time in the City Sales and Use Tax
Fund to satisfy the debt service requirements and any prior debt service requirements each fiscal
year, and to fund or replenish any required reserves in accordance with the bond documents or
similar documents for any bonds or other obligations issued by the City from time to time.
including any refunding bonds, to finance or refinance infrastructure improvements or economic development activities and projects within the City, including the funding or replenishing of any reserve funds relating to any such bonds or other obligations, and/or to make lease payments which repay the debt service or otherwise secure bonds or other obligations issued to finance or refinance infrastructure improvements or economic development activities and projects, or issued for any other lawful purpose. The City may utilize the procedures established pursuant to the Bond Act in connection with the issuance of such bonds or other obligations and in connection therewith it is hereby clarified and directed that the taxes imposed by this Article shall not be considered taxes imposed solely for the purposes of, and as contemplated by, West Virginia Code Chapter 8, Article 16.

733.17. Severability.

If any provision of this Article, or the application of this Article to any person or circumstance, is found invalid by a person or entity having jurisdiction to make such determination, such invalidity shall not affect the validity or application of other provisions of this Article which can be given effect without the inclusion of the provision invalidated. To this end, the provisions of this Article shall be construed as severable. The City Council finds and declares that it would have adopted this Article irrespective of the invalidity of any particular provision hereof and intends that any portion deemed invalid should be severed and the balance of the Article given effect and enforced without regard to the invalid provision.

733.18. Effective Date.

(a) This Article shall become effective upon adoption.

(b) The imposition and collection of the taxes imposed by this Article shall be suspended until July 1, 2020, or such later first day of January or July as required by the legislative rule codified in West Virginia Code of State Rules Title 110, Series 28.

733.19. Notification to Tax Commissioner.

Upon adoption of this Article by City Council, the City Clerk shall send to the Tax Commissioner (i) a certified copy of the ordinance adopting this Article, (ii) the rate and boundary database required by this Article, (iii) a description of the boundaries of the City, and (iv) other information reasonably required by the Tax Commissioner to administer, collect, and enforce the taxes imposed by this Article.
ARTICLE 735
Business and Occupation Tax

735.18. Selling tangible property at retail.

Upon every person engaging or continuing within this City in the business of selling any tangible property whatsoever, real or personal, at retail, including the sale of food, and the service incident to the sale of food in hotels, restaurants, cafeterias, confectionaries and other public eating houses, except sales by any person, engaging or continuing in the business of horticulture, agriculture, or grazing, or of selling stocks, bonds or other evidence of indebtedness, there shall be collected a tax equivalent to fifty cents (50 ¢) per one hundred dollars ($100.00) of value or gross income of the business; provided that, on and after July 1, 2020, the rate of tax collected shall be equivalent to forty-five cents (45¢) per one hundred dollars ($100.00) of value or gross income of the business.

735.24. Service Business or Calling Not Otherwise Specifically Taxed.

Upon every person engaging or continuing within this City in any service business or calling not otherwise specifically taxed under this article, there is likewise hereby levied and shall be collected a tax equal to one dollar ($1.00) per one hundred dollars ($100.00) of value or of the gross income of any such business service or calling; provided that, on and after July 1, 2020, the rate of tax collected shall be equivalent to ninety cents (90¢) per one hundred dollars ($100.00) of value or gross income of the business.

This ordinance is effective upon adoption.

First Reading: ____________________________

Mayor

Second Reading: ____________________________

City Clerk

Adopted: ____________________________

Filed: ____________________________
MEMORANDUM

TO: Mayor and City Council

FROM: Paul J. Brake, ICMA-CM, CEcD
       City Manager

DATE: May 3, 2019

RE: Proposed Annexation Plan

The purpose of the memorandum is to outline the process to begin the proposed annexation process and follow-up on the discussion from the Special Committee of the Whole meeting earlier this week. As stated previously, I am including timing of the upcoming events. So, the steps in the process look like this:

Wednesday, May 1, 2019  Special Committee of the Whole (Review of proposed annexation areas)

Tuesday, May 7, 2019  Regular City Council Meeting (Review of Draft Application)

Tuesday, May 21, 2019  Regular City Council Meeting (Resolution to Approve the Application)

June 1 to June 30, 2019  Open Written Comment Period (posted on the City’s website)

July 2, 2019  Review Comments and Make Adjustments (if necessary)

July/August, 2019  Present Application, Survey and Annexation Study to Monongalia County Commission

Once the resolution, required application plan, and land survey are completed, the documentation is then presented to the Monongalia County Commission. During the review of City Council and open written comment period, the City will be working with a land surveyor to conduct the required property survey. This may not be completed in two-months – once we have confirmed this with contract surveyor, we can finalize the parliamentary time frame.

A copy of the latest version of the annexation report will be emailed separately for your review. Barring no additional changes, a final report will be compiled and made available on the City’s website (on Monday, May 6). We will present you with information from the Grossman Yanak & Ford Report, and additional information compiled by staff, related to the seven factors included in annexation applications under W. Va. Code 8-6-5. At Tuesday’s meeting, Council members can
identify any additional data or issues that should be included. We would plan to collect that additional information and prepare a draft application for review by Council at its May 21 meeting, with the expectation that members of the public can review that application during the public comment period in June.

The latest addition does include Scott Avenue (the site of the Hazel Ruby McQuain consolidated non-profit human service center) referred informally as the “Ramada Inn” project. Also, we have incorporated information from the Suncrest Elementary Annexation request as well.

The application for annexation by minor boundary adjustment is adopted by a Resolution of Council and submitted to the County Commission. It includes the following information: (1) The number of businesses located in and persons residing in the additional territory; (2) An accurate map showing the metes and bounds of the additional territory; (3) A statement setting forth the municipality’s plan for providing the additional territory with all applicable public services such as police and fire protection, solid waste collection, public water and sewer services and street maintenance services, including to what extent the public services are or will be provided by a private solid waste collection service or a public service district; (4) A statement of the impact of the annexation on any private solid waste collection service or public service district currently doing business in the territory proposed for annexation in the event the municipality should choose not to utilize the current service providers; (5) A statement of the impact of the annexation on fire protection and fire insurance rates in the territory proposed for annexation; (6) A statement of how the proposed annexation will affect the municipality’s finances and services; and (7) A statement that the proposed annexation meets the requirements of W. Va. Code § 8-6-5.

Upon receipt of a completed application, the County Commission schedules a public hearing to consider input on the application. After the public hearing, the County Commission evaluates the following factors to decide the application: (1) Whether the territory proposed for annexation is contiguous to the corporate limits of the municipality. For purposes of this section, “contiguous” means that at the time the application for annexation is submitted, the territory proposed for annexation either abuts directly on the municipal boundary or is separated from the municipal boundary by an unincorporated street or highway, or street or highway right-of-way, a creek or river, or the right-of-way of a railroad or other public service corporation, or lands owned by the state or the federal government; (2) Whether the proposed annexation is limited solely to a division of highways right-of-way or whether the division of highways holds title to the property in fee; (3) Whether affected parties of the territory to be annexed oppose or support the proposed annexation. For purposes of this section, “affected parties” means freeholders, firms, corporations and qualified voters in the territory proposed for annexation and in the municipality and a freeholder whose property abuts a street or highway, as defined in section thirty-five, article one, chapter seventeen-c of this code, when: (i) The street or highway

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1 While the West Virginia Municipal League guide to annexation notes that opposition from those in the proposed annexation territory should lead to denial of the application, that guide is based on a prior version of the law and related court decisions occurring prior to the legislative update in 2001. While we recognize that some residents of an area may object to annexation, we believe proposing annexation in appropriate areas integral to the city serves the public and will be supported by the majority of residents of those areas, as well as residents of the city.
is being annexed to provide emergency services; or (ii) the annexation includes one or more
freeholders at the end of the street or highway proposed for annexation; (4) Whether the
proposed annexation consists of a street or highway as defined in section thirty-five, article one,
chapter seventeen-c of this code and one or more freeholders; (5) Whether the proposed
annexation consists of a street or highway as defined in section thirty-five, article one, chapter
seventeen-c of this code which does not include a freeholder but which is necessary for the
provision of emergency services in the territory being annexed; (6) Whether another
municipality has made application to annex the same or substantially the same territory; and
(7) Whether the proposed annexation is in the best interest of the county as a whole.

The Commission will enter an order stating the reasons for granting or denying the application
on those grounds. If the application is denied, the Commission may also offer options to modify
the application so it may be accepted. Any party affected by the Commission’s order may
appeal to the Circuit Court.

Annexations have been the subject of multiple Supreme Court rulings over the past several
years. The main holding of those decisions has been that the determination of whether territory
is of an appropriate size for annexation is within the County Commission’s discretion. The
Commission is not obligated to deny an application because the territory includes a large area.
One case providing an example involved Oak Hill’s annexation of the unincorporated Town of
Minden and ACE Adventure Resort, consisting of 2,484 acres of territory. The Supreme Court
upheld annexation by minor boundary adjustment. Morgantown has previously annexed large
areas by minor boundary adjustment, including the WVU farms property.

The information in the report demonstrates the City’s thorough review of the impacts of
annexation on both existing residents and the proposed areas to be included within the City.
The areas considered are generally within the City’s existing service footprint. They will require
additional services, as the report notes, but those services should become more efficient for all
residents through the inclusion of the new areas as formal parts of the City. Many areas already
rely on the professional police and fire services offered by Morgantown due to their larger
workforce and technical equipment, as well as quicker response times. Most or all of the areas
also receive water, sewer, and stormwater management services through the Morgantown
Utility Board. All areas receive solid waste services from the City’s current contractor, though
the added areas would benefit from curbside recycling, electronics recycling, and the potential
expansion of materials available for recycling and/or reduction in service rates.

The report specifically addresses factors the Monongalia County Commission identified as
important when denying an annexation application by the Town of Granville. The Commission
sought data on the impact of annexation to residents and businesses operating in the area to be
added. The detailed projections in the report provide that data to the best available measure.
On balance, these data show that annexation provides service benefits to the territory and
promote the continued provision of important public services such as road maintenance, police
protection, and fire prevention to all residents of the city and county. The expansion and
funding of city services proposed through annexation also relieves the burden on sheriff’s
deputies and volunteer firefighters in areas that are already urban and require additional
services.
I hope this summary and the report data provide a comprehensive overview of the annexation proposal, and I look forward to working with you to move this initiative forward.

Encl.
City Manager’s Report for City Council Meeting on May 7, 2019

New Business:

A. Award Public Safety Building Renovations – Bid Call 2019-11
The bid call is for the replacement and repair of the roof, generator replacement, HVAC replacement and VAC Box updates and electrical box upgrades. The condition of the current roof is forcing this project to be divided into two phases: Phase one will consist of a rooftop replacement and the removal of the generator and replacement of HVAC units; Phase two will consist of controls, electrical, and generator replacement. This will prevent further damage to the interior due to the leaking roof but will still give time for a thorough investigation and solution to the controls, electrical and generator replacement.

At the time of the memorandum being written, staff is still compiling and analyzing the construction bids. The final recommendation will be presented in a separate email by early next week.

Paul J. Brake, ICMA-CM, CEcD
City Manager, Morgantown, WV