



The City of Morgantown

389 Spruce Street
Morgantown, West Virginia 26505
(304) 284-7439 Fax: (304) 284-7525
www.morgantownwv.gov

Office of the City Clerk

AGENDA REGULAR MEETING

April 20, 2021
7:00 p.m.

To protect public health during the COVID-19 pandemic, personal attendance at the meeting is not permitted. This meeting will take place via WebEx at <https://cityofmorgantown.my.webex.com/meet/cityofmorgantown> using the meeting number 793 734 477. The meeting will be broadcast live on Morgantown 15 and live streamed via the City of Morgantown website at <https://morgantownwv.viebit.com/>. The public can also listen live by calling 415-655-0001 and using the access code 793 734 477. If members of the public wish to comment on a particular issue or public hearing, they should fill out the public comment sign-up form on our website, prior to the start of the meeting which can be found at: <http://bit.ly/MCC042021>. Additionally, the public can submit written comments via email to the City Clerk at cwade@morgantownwv.gov.

1. **CALL TO ORDER:**

2. **ROLL CALL:**

3. **PLEDGE:**

4. **APPROVAL OF MINUTES:** March 16, 2021, Regular Meeting minutes; April 4, 2021, Special Meeting minutes.

5. **CORRESPONDENCE:**

- A. Sexual Assault Awareness Month Proclamation
- B. Fire Marshal Aaron Brandstetter Retirement Proclamation
- C. Municipal Clerk's Week Proclamation

6. **PUBLIC HEARINGS:**

A. **ORDINANCE AMENDING ARTICLE 153 GOVERNING THE HUMAN RIGHTS COMMISSION TO PROHIBIT DISCRIMINATION BASED ON HAIR STYLE OR TEXTURE**

B. **AN ORDINANCE AMENDING ARTICLE 909 GOVERNING ADOPTION AND MODIFICATION OF THE CITY OF MORGANTOWN STREET DESIGN AND CLASSIFICATION MANUAL**

C. **AN ORDINANCE AMENDING ARTICLE 913 OF THE CITY CODE REGULATING CONSTRUCTION OF SIDEWALKS AND AMENDING DEVELOPMENT STANDARDS WITHIN THE PLANNING AND ZONING CODE RELATING TO THE CONSTRUCTION OF SIDEWALKS**

D. **AN ORDINANCE AMENDING THE FY 2020-2021 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND**

MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND

7. UNFINISHED BUSINESS:

- A. Consideration of **APPROVAL** of (**SECOND READING**) of **ORDINANCE AMENDING ARTICLE 153 GOVERNING THE HUMAN RIGHTS COMMISSION TO PROHIBIT DISCRIMINATION BASED ON HAIR STYLE OR TEXTURE** (*First reading 4/2/2021*)

B. BOARDS & COMMISSIONS:

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

9. SPECIAL COMMITTEE REPORTS:

- A. **COMMUNITY POLICING & CITIZENS REVIEW BOARD** – *Deputy Mayor Fetty, Chair; Mayor Dulaney, Vice-Chair*

- B. **SPECIAL COMMITTEE ON UNSHELTERED HOMELESSNESS** – *Mayor Dulaney, Chair; Deputy Mayor Fetty, Vice-Chair; Members; Councilor Selin, and Councilor Harshbarger.*

10. CONSENT AGENDA: *Reminder: Matters on the Consent Agenda are voted on collectively without any debate. If any member objects, an item is removed and considered under New Business.*

- A. Consideration of **APPROVAL** of (**SECOND READING**) of **AN ORDINANCE AMENDING ARTICLE 909 GOVERNING ADOPTION AND MODIFICATION OF THE CITY OF MORGANTOWN STREET DESIGN AND CLASSIFICATION MANUAL** (*First reading 4/2/2021*)

- B. Consideration of **APPROVAL** of (**SECOND READING**) of **AN ORDINANCE AMENDING ARTICLE 913 OF THE CITY CODE REGULATING CONSTRUCTION OF SIDEWALKS AND AMENDING DEVELOPMENT STANDARDS WITHIN THE PLANNING AND ZONING CODE RELATING TO THE CONSTRUCTION OF SIDEWALKS** (*First reading 4/2/2021*)

- C. Consideration of **APPROVAL** of (**SECOND READING**) of **AN ORDINANCE AMENDING THE FY 2020-2021 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND** (*First reading 4/2/2021*)

11. NEW BUSINESS:

- A. Consideration of **APPROVAL** of (**FIRST READING**) of **AN ORDINANCE AUTHORIZING A LEASE AGREEMENT FOR WANDERLUST TRAVEL, LLC AT THE MORGANTOWN MUNICIPAL AIRPORT**

- B. Consideration of **APPROVAL** of **THE RATES OF LEVY LAID BY THE CITY OF MORGANTOWN AND APPROVED BY THE STATE AUDITOR FOR THE FISCAL YEAR BEGINNING JULY 1, 2021 IN ACCORDANCE WITH CHAPTER 11 ARTICLE 8 OF THE WEST VIRGINIA STATE CODE**

C. Consideration of **APPROVAL of A SUPPLEMENTAL PARAMETERS RESOLUTION OF CITY COUNCIL WHICH WOULD (I) APPROVE THE BOND TERM PARAMETERS AND THE EXECUTION AND DELIVERY OF SUCH DOCUMENTS AS ARE NECESSARY IN CONNECTION WITH THE ISSUANCE OF THE CITY’S PARKING SYSTEM REVENUE BONDS, SERIES 2021 (THE “SERIES 2021 BONDS”); (II) APPROVE THE FORMS OF CERTAIN DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE SERIES 2021 BONDS; (III) DESIGNATE A REGISTRAR, DEPOSITORY BANK AND PAYING AGENT FOR THE SERIES 2021 BONDS; AND (IV) MAKE OTHER PROVISIONS AS TO THE SERIES 2021 BONDS**

D. Consideration of **APPROVAL of A RESOLUTION APPROVING THE REVISED FY 2020-2021 BUDGET FOR THE MORGANTOWN CAPITAL ESCROW FUND**

E. Consideration of **APPROVAL of A FESTIVAL PERMIT FOR THE 2021 JIM DUNN MEMORIAL SCHOLARSHIP TWILIGHT 5-MILER**

F. **CITY MANAGER’S REPORT:**

13. **REPORT FROM CITY CLERK:**

14. **REPORT FROM CITY ATTORNEY:**

15. **REPORT FROM COUNCIL MEMBERS:**

16. **EXECUTIVE SESSION:**

A. Pursuant to West Virginia Code Section 6-9A-4(b)(12) to discuss potential or pending litigation

B. Pursuant to West Virginia Code Section 6-9a-4(b)(2)(a) to discuss personnel matters.

17. **ADJOURNMENT:**

***For accommodations, please contact us at 304-288-7072.**

City of Morgantown
389 Spruce Street, Morgantown, WV 26505

MINUTES
REGULAR MEETING
March 16, 2021

The Regular Meeting of the Common Council of the City of Morgantown was held via Webex on Tuesday, March 16, 2021, at 7:16 p.m.

To protect public health during the COVID-19 pandemic, personal attendance at the meeting was not permitted. The meeting took place via WebEx at <https://cityofmorgantown.my.webex.com/meet/cityofmorgantown> using the meeting number 793 734 477. The meeting was broadcast live on Morgantown 15 and live-streamed via the City of Morgantown website at <https://morgantownwv.viebit.com/>. The public could listen live by calling 415-655-0001 and using the access code 793 734 477. If members of the public wished to comment on a particular issue or public hearing, they were asked to complete a public comment sign-up form on our website, prior to the start of the meeting, which could be found at: <http://bit.ly/MCC031621>. Additionally, the public could submit written comments via email to the City Clerk at cwade@morgantownwv.gov.

PRESENT: Via Webex City Manager Kim Haws, Assistant City Manager Emily Muzzarelli, City Attorney Ryan Simonton, City Clerk Christine Wade, Mayor Ron Dulaney, Jr., Deputy Mayor Rachel Fetty, and Council Members Bill Kawecki, Jenny Selin, Dave Harshbarger and Barry Wendell.

The meeting was called to order by Mayor Dulaney.

APPROVAL OF MINUTES: March 2, 2021, Special Meeting minutes were approved as printed. March 2, 2021, Regular Meeting minutes were approved after edit.

CORRESPONDENCE: Mayor Dulaney presented a proclamation to Pamela Ball for her 30 years of service to the City of Morgantown; Presented a proclamation proclaiming April 6, 2021, as Municipal Voter Registration Day; Presented a proclamation proclaiming March 2021, as Women's History Month. Vicki Conner was present to accept this proclamation.

PUBLIC HEARING: AN ORDINANCE ESTABLISHING A CULTURAL ARTS COMMISSION AND DISSOLVING THE METROPOLITAN THEATRE COMMISSION AND THE MUSEUM COMMISSION

Mayor Dulaney declared this Public Hearing open

There being no appearances, Mayor Dulaney declared the Public Hearing closed.

PUBLIC HEARING: AN ORDINANCE AMENDING SECTION 917.03 OF THE CITY CODE ESTABLISHING THE MEMBERSHIP OF THE THE CITY TREE BOARD

Mayor Dulaney declared this Public Hearing open

There being no appearances, Mayor Dulaney declared the Public Hearing closed.

PUBLIC HEARING: AN ORDINANCE AMENDING ARTICLE 160 ESTABLISHING THE HOUSING ADVISORY COMMISSION

Mayor Dulaney declared this Public Hearing open

There being no appearances, Mayor Dulaney declared the Public Hearing closed.

PUBLIC HEARING: AN ORDINANCE ADOPTING THE ANNUAL BUDGET OF THE CITY OF MORANTOWN FOR THE FISCAL YEAR 2021-2022

Mayor Dulaney declared this Public Hearing open

There being no appearances, Mayor Dulaney declared the Public Hearing closed.

City of Morgantown

UNFINISHED BUSINESS:

AN ORDINANCE ESTABLISHING A CULTURAL ARTS COMMISSION AND DISSOLVING THE METROPOLITAN THEATRE COMMISSION AND THE MUSEUM COMMISSION: The below entitled Ordinance was presented for second reading.

AN ORDINANCE ESTABLISHING A CULTURAL ARTS COMMISSION AND DISSOLVING THE METROPOLITAN THEATRE COMMISSION AND THE MUSEUM COMMISSION

Vincent Kitch Director of Cultural Arts explained. After discussion, motion by Councilor Kawecki, second by Councilor Harshbarger, to approve the above entitled Ordinance. Motion carried 6-0.

AN ORDINANCE ADOPTING THE ANNUAL BUDGET OF THE CITY OF MORGANTOWN FOR THE FISCAL YEAR 2021-2022: The below entitled Ordinance was presented for second reading.

AN ORDINANCE ADOPTING THE ANNUAL BUDGET OF THE CITY OF MORANTOWN FOR THE FISCAL YEAR 2021-2022

City Manager Kim Haws explained. Motion Councilor Selin, second by Deputy Mayor Fetty, to approve the above entitled Ordinance. Motion carried 6-0.

BOARDS & COMMISSIONS:

PUBLIC PORTION:

Mayor Dulaney declared the Public Portion open.

Mollie Kennedy spoke in support of the Special Committee - Community Police Review and Policy Board.

There being no individuals to speak, Mayor Dulaney declared the public portion closed.

SPECIAL COMMITTEE REPORTS:

Special Committee - Community Police Review and Policy Board –Deputy Mayor Fetty spoke on the proposed ordinance and shared that the next meeting will be March 22, 2021, at 3:00 pm.

Special Committee on Unsheltered Homelessness – Mayor Dulaney shared information related to this Special Committee. He shared that the group has identified nine areas of work and have established work groups and group goals. The meetings have been used as a venue to report progress of the groups. The next meeting is Thursday, April 1, 2021, at 2:30 pm. He welcomed all to participate.

CONSENT AGENDA:

AN ORDINANCE AMENDING SECTION 917.03 OF THE CITY CODE ESTABLISHING THE MEMBERSHIP OF THE THE CITY TREE BOARD: The below entitled Ordinance was presented for second reading.

AN ORDINANCE AMENDING SECTION 917.03 OF THE CITY CODE ESTABLISHING THE MEMBERSHIP OF THE THE CITY TREE BOARD

AN ORDINANCE AMENDING ARTICLE 160 ESTABLISHING THE HOUSING ADVISORY COMMISSION:
The below entitled Ordinance was presented for second reading.

AN ORDINANCE AMENDING ARTICLE 160 ESTABLISHING THE HOUSING ADVISORY COMMISSION

Motion by Deputy Mayor Fetty, second by Councilor Wendell, to approve the above entitled Ordinances. Motion carried 6-0.

City of Morgantown

NEW BUSINESS:

A RESOLUTION APPROVING FISCAL YEAR 2021-2022 BUDGETS FOR THE MORGANTOWN CAPITAL ESCROW FUND, THE MORGANTOWN MUNICIPAL AIRPORT FUND, THE MUNICIPAL SALES AND USE TAX FUND, AND THE ARTS & CULTURAL DEVELOPMENT FUND: The above entitled Resolution was presented for first reading

City Manager Kim Haws explained. After discussion, motion by Councilor Kawecki, second by Councilor Selin, to approve the above entitled Resolution. Motion carried 6-0.

A RESOLUTION APPROVING THE 2021-2026 CAPITAL IMPROVEMENT PLAN: The above entitled Resolution was presented for first reading.

City Manager Kim Haws explained. Interim Finance Director Lori Livengood explained. After discussion, motion by Councilor Harshbarger, second by Councilor Wendell, to approve the above entitled Resolution. Motion carried 6-0.

A RESOLUTION APPROVING A GRANT FROM THE WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS, FOR PLEASANT STREET STREETScape: The above entitled Resolution was presented for first reading.

Assistant City Manager Emily Muzzarelli explained. After discussion, motion by Deputy Mayor Fetty, second by Councilor Selin, to approve the above entitled Resolution. Motion carried 6-0.

A RESOLUTION APPROVING A GRANT FROM THE WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS, FOR WALNUT STREET STREETScape: The above entitled Resolution was presented for first reading.

Assistant City Manager Emily Muzzarelli explained. After discussion, motion by Deputy Mayor Fetty, second by Councilor Kawecki, to approve the above entitled Resolution. Motion carried 6-0.

CITY MANAGER'S REPORT: shared that the construction of the parklets at 430 Spruce Street is set to begin later this week. The city will be replacing the Met Theatre roof as soon as they hear back from the State Fire Marshal's Office. The City's Grant Write Robin Hess became aware of a grant that was available through Bloomberg Philanthropies. It's a competitive product process whereby cities can submit applications for improving the quality of life of their community particularly in the downtown areas. If we are one of the 50 cities selected we will be able to receive all of the technical and other resources available through this philanthropy that will help us develop a cohesive plan for the improvements of the revitalization of the downtown. A survey was sent out asking for feedback from the community. I believe that having input from the community is essential in this whole process. There will be a groundbreaking ceremony for the construction of the Airport runway. This groundbreaking will occur at 11 a.m. on March 24th at the airport and all are invited to participate. We are looking at this as a step as a phase and looking down the road 10 15 even 20 years or so that as the city continues to grow and prosper we will be able to address the the air transportation needs of the city for years to come.

REPORT FROM CITY CLERK: Clerk Wade shared information related to the resignation of Third Ward City Councilor Zack Cruze and City Council's process for appointing a replacement to serve the remainder of his term, as well as how to apply. She shared information related to absentee voting, provided the current list of candidates, information on the upcoming poll worker training, election deadlines such as the Municipal Voter Registration Day Drive on April 6, the last day to register to vote – April 6, the last day to file as a write-in April 13, the dates of Early Voting 04-14 to 04-24, and election day 04-27. She shared that 10 Firefighters were sworn in as Firefighter First Class on March 10 – Matthew Chisler, Tanner Dalton, Douglas Daniels, Bryan Davis, Larry Hagedorn, Jason Hatfield, William Lyons, Shaine Morris, Roman Olszewski, and Sean Whiten.

REPORT FROM CITY ATTORNEY: shared that the city has received an application for a cable franchise from Atlantic Broadband. It looks like the city will have a competitive cable franchise carrier coming in the near future. City council at its last meeting adopted a resolution supporting the crown act and directing the presentation of an ordinance amending article 153 of the city code, the code establishing the Human Rights Commission to specifically include the protections from the crown act in that code. He

City of Morgantown

received inquiries from Charleston and Huntington about council's action on that resolution and its consideration of the ordinance. Last meeting he updated Council on the status of work on some ordinance updates to the sidewalk code and the street manual code and noted that we had several comments from boards and commissions working on those issues that the staff are working their way through. The next day the traffic commission met and made a recommendation that those documents as drafted be presented to council promptly. He plans to have that back in front of council with the recommendation of the Traffic Commission to move forward. Council adopted the new ordinance for the cultural arts commission and as a reminder that will sunset the other two commission's involved in that. Council will need to provide for new board member appointment. He previously notified staff to coordinate their operations and make sure duties are assigned to the new commission as it's created.

REPORT FROM COUNCIL MEMBERS:

DEPUTY MAYOR FETTY: shared that she has been vigorously encouraging everybody to wear their masks, continue social distancing. She is excited to say that she knows many people who have been vaccinated and is thrilled about it. Sharing how to sign up she shared to go to the West Virginia vaccination website and pre-register. WVU will send you a nice little email that says if you meet these criteria, you can go ahead and sign up now. She has been spending a lot of time helping folks register. There are other ways to sign up for appointments such as through Walgreens. She is super excited that we are doing so well as a state and feels that we have to give Governor Justice some credit for this, as well as Dr. Marsh.

COUNCILOR KAWECKI: shared that he is pleased that we are going after this Bloomberg Grant. From what he has seen in the way it's being approached even if we don't get it, the material and the data that we're gathering is going to help us on other grants. We do pursue these things frequently and vigorously in order to accommodate our goals, the idea of moving this community forward in an appropriate manner and taking advantage of everything we can. The monies that we have coming to us through the American Relief Act is going to be somewhat restricted as to what can be done but we're still constantly looking to put forth anything that we can that will improve our economic condition in this area. We look for every advantage that we can and he is pleased with the way our Administration pursues that, and particularly the efforts that we make with the pursuit of the grants. He shared that the survey pops up the moment you reach the city's website. It is a very short and very thorough survey that will tell us what you think about this or that, and it is your chance to express your concerns for our downtown.

COUNCILOR SELIN: shared that the state Municipal League was looking at federal relief funds, the covid funds, and how that money would be spent and one of the main points of discussion was infrastructure, which is expensive but also provides jobs and tends to be something that people hesitate to spend money on. However, another thought within the bounds of whatever the rules are that are promulgated is what's going to make an impact in your community. She shared that that's something as we're approving budgets and thinking about our community, what is going to make an impact in our community? Is it different types of services for people who are in need? Is it something for our downtown? Is it something that's broken and under the crown that needs repair? As far as the upcoming city election, the thing that she has noticed in previous city elections is that people become informed as the city election moves forward, but the thing that can happen that we want to avoid is having people who are educated voters to when it comes down to the day to early vote, or apply for their absentee ballot, or the day of actual voting at the very end is that people do not know when, where, or how to vote, end up not voting. She asks that we encourage our neighbors and families to vote and remind folks where and how to vote.

COUNCILOR HARSHBARGER: shared an update on the Mon River Conservancy that there were bids today for a section on the Deckers Creek Trail in the city limits near Kroger that has had an undercut occur. This was a grant awarded in 2012 that for various reasons is just now coming to fruition and bids were put out. The low bid came in a little bit over so we're still optimistic that we can get the DOH to be able to cover with the Federal Grant. The trail would be temporarily closed to repair the needed section from about 2 ½ mile to 2 ¾. He echos some of the comments regarding the bills in our legislature right now that really are an attempt to take away opportunities for the cities to raise monies. He hopes that the legislature sees differently and for our sake to be successful we need our cities to be successful and we need that support.

COUNCILOR WENDELL: provided the following report.

"Congratulations and welcome to Ricky Yeager, our new Planning Director. I hope you have a long and productive tenure with our city.

I'm happy that there is a Federal program that will bring money directly to our city. Governor Justice has been sitting on millions of dollars in CARES money that we could have used to help businesses and individuals in need here.

City of Morgantown

The state Legislature seems intent on destroying everything good in our city and state. They have eliminated inspections for many tanks containing toxic chemicals near water intakes and made war on public schools and unions. Delegates from districts nowhere near a state university are demanding that guns be allowed on WVU's campus, despite opposition from President Gordon Gee, the Student Government Association and the faculty senate. I can name a dozen people in Morgantown who are planning to leave the state over these shenanigans. Personally, after seeing what delegates are passing, I don't feel comfortable more than ten miles out of our city limits.

This has been a hard week for me. My father died March 17 thirty years ago, and my mother died March 18 twelve years later. Last week, I had a basal cell carcinoma removed from my face, and my cat visited the vet yesterday and hasn't moved from under the bed all day. I'm hoping for better days soon."

MAYOR DULANEY: shared that he sat in recently a meeting associated with the Marshall Plan for Middle America and one of the focuses of that initiative is on infrastructure and thinking long-term about how current investment in infrastructure can lead to economic development of our entire region. The funding that has been announced for our city and he is aware that there is a lot of uncertainty about how that can be spent. He hopes that we will think in terms of innovation and in terms of impacts over the longer term as we think about how we can use that money. He appreciates Councilor Seline and Councilor Kawecki participating in that initiative, as well as the Green Team. He participated in a workshop by Reimagine Appalachia, which is associated loosely with the Marshall Plan for Middle America. They spoke about a number of different policies and the policy implementation possibilities or opportunities associated with moving our region forward. He mentioned the Bloomberg Grant, and really appreciates city administration for recognizing this opportunity, especially Robin Hess who is our Grant Writer. He shared the two things that they're looking is innovation and transferability. He is looking forward to the runway extension groundbreaking. That project has been a long time in the works and it's going to be great to begin to see some clearing and some other activities going on. He has been invited to represent Council in the interviews of all the finalists for the Police Chief position. He attended the promotion's of our Fire Department at the Met Theater when they took the First Class Oath of office and shared that one of the things that really made an impact on him was that when Chief Caravasos kicked the whole thing off he acknowledged that those firefighters that were standing on that stage where the direct result of the city accepting that Safer Grant. It was pretty amazing to see in very concrete terms a large part of what that Grant and that commitment that we made as a city went towards. He recognized and thanked the City Clerk for helping to facilitate that event. The Met theater was perfect for the event because there were probably no more than maybe three or four dozen people in the whole theater, and it was just great to be there to celebrate the achievements of some of our team here with the City of Morgantown.

EXECUTIVE SESSION: Pursuant to West Virginia State Code Section 6-9A-4(2)(B)(12) to discuss potential or pending litigation. Motion by Councilor Kawecki, second by Councilor Harshbarger, to go into executive session. Motion carried by acclamation. Present: Interim City Manager, City Attorney, and City Council. Time: 9:22 p.m.

ADJOURNMENT: There being no further business, motion by Councilor Kawecki, second by Deputy Mayor Fetty, to adjourn the meeting. Time: 10:55 p.m.

City Clerk

Mayor

City of Morgantown

SPECIAL MEETING

April 6, 2021

The Special Meeting of the Common Council of the City of Morgantown was held via Webex on Tuesday, April 6, 2021, at 6:02 p.m. To protect public health during the COVID-19 pandemic, personal attendance at the meeting was not permitted. This meeting took place via WebEx at <https://cityofmorgantown.my.webex.com/meet/cityofmorgantown> using the meeting number 793 734 477, or by calling 415-655-0001 and using the access code 793 734 477.

PRESENT: Via Webex Mayor Ron Dulaney, Deputy Mayor Rachel Fetty, Council Members Bill Kawecki, Deb Bergen, Jenny Selin, and Barry Wendell. Dave Harshbarger was absent.

The meeting was called to order by Mayor Dulaney.

EXECUTIVE SESSION: Pursuant to West Virginia Code Section 6-9a-4(b)(2)(a) to discuss Personnel Matters in considering new appointments for Board and Commissions. Motion by Councilor Kawecki, second by Councilor Bergen, to go into executive session. Motion carried by acclamation. Present: City Council. Time: 6:04 p.m.

CULTURAL ARTS COMMISSION

6:00 p.m. – Rickard McEwuen

HISTORIC LANDMARKS COMMISSION

6:20 p.m. – Mark Lambert

ADJOURNMENT:

There being no further business, motion by Councilor Wendell, second by Councilor Selin, to adjourn the meeting. Time: 7:10 p.m.

City Clerk

Mayor



The City of Morgantown

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Office of the Mayor

PROCLAMATION

- Whereas,** Sexual Assault Awareness Month is intended to draw attention to the fact that sexual violence is widespread and has public health implications for every community member of Monongalia County; and
- Whereas,** rape, sexual assault, and sexual harassment impact our community as seen by statistics indicating that one of five women will have experienced sexual assault by the time they complete college (Fisher, Cullen & Turner, 200); and
- Whereas,** we must work together to educate our community about what can be done to prevent sexual assault and how to support survivors; and
- Whereas,** staff and volunteers of West Virginia sexual assault programs and other professionals have come together as the West Virginia Foundation for Rape Information Services (WV FRIS) to support each other in their work and provide the State of West Virginia and its citizens with a central source of information on sexual assault; and
- Whereas,** with leadership, dedication, and encouragement, there is compelling evidence that we can be successful in reducing sexual violence in Monongalia County through prevention education, increased awareness and holding perpetrators who commit acts of violence responsible for their actions; and
- Whereas,** the Rape and Domestic Violence Information Center (RDVIC) strongly supports the efforts of national, state and local partners, and of every citizen to actively engage in public and private efforts, including conversations about what sexual violence is, how to prevent it, how to help survivors connect with services, and how every segment of our society can work together to better address sexual violence.

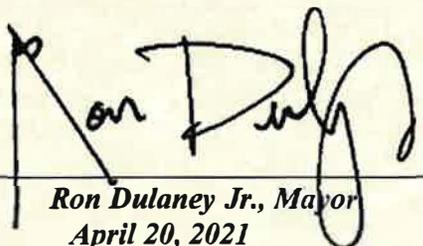
Now therefore be it resolved, that I, Ron Dulaney Jr., Mayor of the City of Morgantown, West Virginia, on behalf of the City Council, join anti-sexual violence advocates and support service programs in the belief that all community members must be part of the solution to end sexual violence. Along with the United States government and the State of West Virginia, the Council does hereby proclaim April 2021 as

Sexual Assault Awareness Month

in Monongalia County and applauds the efforts of the many victim service providers, police officers, prosecutors, national and community organizations, and private sector supporters for their efforts in promoting awareness about sexual assault.

Seal:





Ron Dulaney Jr., Mayor
April 20, 2021



The City of Morgantown

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Office of the Mayor

PROCLAMATION

- Whereas,** Aaron Brandstetter began his service with the Morgantown Fire Department on July 3, 1995; and
- Whereas,** his first promotion was as a Firefighter, serving two years in this role; and
- Whereas,** he was next promoted to a Firefighter First Class, serving eighteen years in that capacity; and
- Whereas,** Mr. Brandstetter served the first 20 years of his career with the Morgantown Fire Department in the Suppression Division, holding numerous positions, and later becoming the most senior Firefighter First class; and
- Whereas,** he also served as a Fire Apparatus Engineer, driving and operating fire engines, ladder trucks and rescue apparatus; and
- Whereas,** Mr. Brandstetter occasionally served as a Station Officer, supervising other Firefighters, taking pride in serving and protecting the citizens of the City of Morgantown and beyond; and
- Whereas,** Mr. Brandstetter's final assignment was as a Deputy Fire Marshal and Law Enforcement Officer in the Fire Marshal's Division, conducting fire scene investigations and handling arson cases, applying his vast experience and knowledge, and providing selfless service to the City of Morgantown; and
- Whereas,** for 26 years Mr. Brandstetter has performed quality service in an exceptional manner while on duty or in the performance of duties related to the City of Morgantown. He is truly deserving of this Proclamation for his extraordinary individual contributions on behalf of the Morgantown Fire Department toward the overall mission of the City of Morgantown.

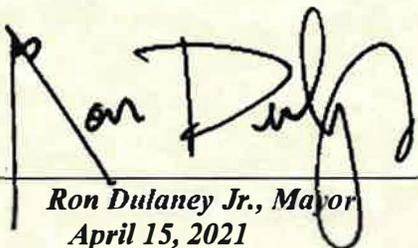
Now therefore be it resolved, that I, Ron Dulaney Jr., Mayor of the City of Morgantown, West Virginia, on behalf of the City Council, express our sincere appreciation to:

Aaron Brandstetter

and hereby take this opportunity to publicly thank and honor him for his great service to the City of Morgantown.

Seal:





Ron Dulaney Jr., Mayor
April 15, 2021



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Office of the Mayor

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
- Whereas,** Municipal Clerks have 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
- 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
- Whereas,** it is most appropriate that we recognize the accomplishments of the Office of the Municipal Clerk.

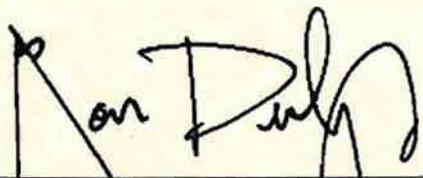
Now, therefore be it resolved that I, Ron Dulaney Jr., Mayor of the City of Morgantown, West Virginia, on behalf of the City Council on this 21st day of April, do hereby recognize the week of May 2 through May 8, 2021, as:

Municipal Clerks Week

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

Seal:





Ron Dulaney Jr., Mayor
April 20, 2021

**AN ORDINANCE AMENDING ARTICLE 153 GOVERNING
THE HUMAN RIGHTS COMMISSION
TO PROHIBIT DISCRIMINATION BASED ON HAIR STYLE OR TEXTURE**

WHEREAS, on March 2, 2021, the City Council of The City of Morgantown adopted its Resolution affirming support for the CROWN Act, which is intended to create a respectful and open world for natural hair; and

WHEREAS, the resolution supporting the CROWN Act directed that the City Code be amended to provide specific protection for natural and protective hairstyles in connection with the City's prohibition on discrimination based on race; and

WHEREAS, there is currently pending before the West Virginia House of Delegates legislation adding protection for natural and protective hairstyles to the West Virginia Human Rights Act, codified at *W. Va. Code* § 5-11-1 *et seq.*; and

WHEREAS, this ordinance will add language from Senate Bill 108 and House Bill 4508 to the City Human Rights Commission authorizing ordinance with the intention to establish a consistent protection against discrimination based on natural and protective hairstyles;

NOW, THEREFORE, the City of Morgantown hereby ordains that Section 153.02 of the City Code is amended as follows:

Discriminate or discrimination means to exclude from, or fail or refuse to extend to, a person equal opportunities because of race, religion, color, national origin, ancestry, sex, age, blindness, disability, sexual orientation, gender identity, familial status or veteran status and includes to separate or segregate. For the purposes of this article, discrimination based on race includes, but is not limited to, discrimination based on hair textures and protective hairstyles historically associated with a particular race.

Race means a social construct grouping humans based on shared physical or social qualities into categories generally viewed as distinct, including but not limited to, hair texture and protective hairstyles.

Protective hairstyles means hairstyles historically associated with a particular race and includes, but is not limited to, hairstyles such as braids, locks, and twists.

This ordinance is effective upon adoption.

FIRST READING

Mayor

SECOND READING

City Clerk

ADOPTED

FILED

AN ORDINANCE AMENDING ARTICLE 909 GOVERNING ADOPTION AND MODIFICATION OF THE CITY OF MORGANTOWN STREET DESIGN AND CLASSIFICATION MANUAL

909.01 ADOPTION OF STANDARDS; APPEAL.

(a) The "City of Morgantown Street Design and Classification Manual" dated March 1, 1981, and the contents therein, is hereby adopted by reference. The City Engineer is authorized and directed to modify, revise, and update the City of Morgantown Street Design and Classification Manual (hereinafter, the "Manual") in accordance with this Section, in accordance with the following procedures:

(i) Each revision to the Manual shall be made in writing and shall be dated and signed by the City Engineer.

(ii) Before becoming effective, each revision to the Manual shall be provided to City Council in writing and made available to the public for comment. City Council and members of the public shall have at least 14 days from publication of the revision to offer comments before the revision becomes effective. Notice of the public comment period may be accomplished by publication of the revision and request for comment on the City website, or by holding a public hearing, or by any other measure or combination of measures reasonably designed to notify the public of the revision and receive input.

(iii) City Council may direct that the revision shall not be adopted, or may direct that an adopted revision be removed or modified. Any Council action taken under this subsection (a)(iii) shall be accomplished by adoption of a resolution. In the event that Council directs a revision not to be adopted, or to be removed or modified, the revision shall not be made thereafter unless authorized by a resolution of Council.

(iv) Each revision shall be retained by the City Engineer and catalogued to reflect the effective dates of each version of the Manual.

(v) The City Engineer shall keep a complete current Manual reflecting all revisions thereto, which shall be available to the public.

(b) Any person, firm or corporation desiring to have a street, roadway or alley right of way opened for public use has a right to appeal the minimum design recommended by the Engineering Department by submitting to the Engineering Department design criteria data prepared by a registered professional engineer of soil support values, traffic counts or vehicular load factors using accepted engineering procedures. After review of such additional data, the City Engineer shall again recommend the minimum design for the street desired to be opened. If the person, firm or corporation appealing is therefor dissatisfied with the City Engineer's recommended minimum design he shall submit a request to Council within thirty days of the City Engineer's second recommendation. Council shall promptly hold a public hearing, consider all the data and the City Engineer's recommendation and by resolution adopt that design in the City Street Design and Classification Manual that it finds appropriate.

(c) When a street is to be opened for development, the person opening the street may delay the placement of permanent pavement until the construction associated with the development is completed. The person making the request shall arrange to place in an escrow account, the amount necessary to cover the cost of placing the permanent pavement. The drainage, utility and

base requirements should be completed before development begins. The asphalt or concrete pavement, sidewalks and curb, should be placed lastly, using the escrow funds to pay for the construction.

(d) The "West Virginia Department of Highways Standard Specifications Roads and Bridges, adopted 1978," as it may be amended or superseded, is hereby adopted by reference as the specifications governing materials and methods of construction for all street work.

(e) The City Engineer shall classify the ~~make a recommendation to Council of the classification of specific~~ City streets according to the street classification definitions contained in the City Street Design and Classification Manual. Such classification list shall be reviewed by the City Engineer periodically and updated in accordance with procedures for updating the Manual. ~~recommendations for changes submitted to Council for approval.~~

This ordinance shall be effective upon adoption.

FIRST READING: _____

Mayor

SECOND READING: _____

ADOPTED: _____

City Clerk

FILED: _____

AN ORDINANCE AMENDING ARTICLE 913 OF THE CITY CODE REGULATING CONSTRUCTION OF SIDEWALKS AND AMENDING DEVELOPMENT STANDARDS WITHIN THE PLANNING AND ZONING CODE RELATING TO THE CONSTRUCTION OF SIDEWALKS

WHEREAS, West Virginia Code Chapter 8, Article 12, Section 5, paragraphs 1 through 5 authorize the City to construct sidewalks, to permit or require the construction of such sidewalks by the public and property owners, to regulate the construction of such sidewalks, to prescribe the maintenance thereof, and to require adjacent property owners to keep the sidewalks in good order; and

WHEREAS, the City provides general standards for the construction and maintenance of sidewalks within Article 913 of the City Code (the “Sidewalk Code”); and

WHEREAS, the City’s Planning and Zoning Code currently provides development standards for sidewalks in certain zoning districts, and these requirements exist in addition to the general provisions governing sidewalks within the Sidewalk Code; and

WHEREAS, City Code Section 913.16 requires construction of sidewalks when a building is constructed or a street is paved; and

WHEREAS, the Sidewalk Code and the Planning and Zoning Code both provide waiver provisions with different standards; and

WHEREAS, the purpose of both Codes to promote access to sidewalks and a safe walking environment within the City will be promoted by coordinating these provisions; and

WHEREAS, it appears prudent to revise both Codes to ensure clear, consistent, and efficient administration;

NOW, THEREFORE, the City of Morgantown hereby ordains that Articles 913, 1333, 1335, 1337, 1339, 1341, 1343, 1345, 1347, 1351, 1353, 1355, and 1361 of the City Code are amended as follows:

**ARTICLE 913
Sidewalks and Paths**

913.01 DEFINITIONS.

For purposes of this Article 913, the following terms have the meanings given:

Curb or Curbline means a constructed physical barrier within the public right-of-way designed to control stormwater and/or separate automobile traffic from other right-of-way

uses.

Path, Shared Use Path, or Mixed Use Path means any public right-of-way, whether or not adjoining a Street, improved or unimproved, that is designed for travel by pedestrians, bicycles, other nonmotorized transport, electric bicycles, electric scooters, or any one or combinations of these modes of transport.

Sidewalk means the surface between the curblineline and the adjacent property line intended for pedestrian use.

Sidewalk pavement means that part of the sidewalk improved, or required to be improved, with pavement or other material, and may include less than the entire Sidewalk.

Street means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel, and the term shall have the same meaning as in City Code § 301.40.

~~The term "sidewalk" includes all of the ground between the face of the curb of any public street or alley and the property line of the abutting property owner. The term "sidewalk pavement" means that part of the sidewalk paved or required to be paved, and may be only a portion of the full width of the sidewalk as defined above.~~

913.02 ~~WIDTH OF SIDEWALKS AND PATH DIMENSIONS.~~

~~The sidewalks, paths, and sidewalk pavement of the streets and alleys of the City shall have the dimensions required by the current Street Design and Classification Manual adopted pursuant to Article 909 of this Code. be of such width as Council may, upon recommendation of the City Engineer, establish by orders duly made; and, unless otherwise ordered by Council, the sidewalks on the opposite sides of any street or alley shall be of equal width.~~

913.03. DUTIES OF OWNERS AND OCCUPANTS.

~~(a) The owners and occupants of property adjoining a Sidewalk shall keep the sidewalk free of obstructions and debris, snow, and ice. The City Manager may issue a written order to any owner or occupant of a property to comply with this obligation. The order shall be delivered by posting at the property and by first-class mail to the property. The addressee of the order shall have 1 day from the date of posting of the notice to comply with the requirements of the order, or to appeal the order as provided in this Article. In all cases where there has been heretofore established, or where there is hereafter established, one or more sidewalks along any street or alley or part thereof within the City, it shall be the duty of the owners or occupants of any ground fronting or abutting on such sidewalks to pave and repave the same, whenever required by an order of Council to do so, and to keep such sidewalks in repair and to keep the same clean. The property owners shall be responsible for any such sidewalk being out of repair.~~

~~(b) The owners and occupants of property adjoining a Sidewalk shall maintain and repair~~

the Sidewalk to keep the Sidewalk in safe and adequate conditions for public uses.

(c) The City Engineer may order the owners or occupants of a property to repair the Sidewalk to comply with applicable standards governing sidewalks or sidewalk pavements within the City by issuing a written order. The order shall be delivered by posting at the property or by certified mail to the property, or both. The addressee of the order shall have 30 days from the date notice is posted at the property or received by certified mail to comply with the requirements of the order, or to appeal the order as provided in this Article.

(d) If the City orders owners or occupants to repair a sidewalk pursuant to this Article, and the City has adopted cost-sharing regulations pursuant to Section 913.08(c) of this Article, the City and owners or occupants shall share in the cost of repair as provided by the cost-sharing regulations.

(e) If the addressee of a written order issued under Section 913.03(a) or 913.03(c) fails to comply with the order within the time prescribed by the order, or, if appealed, within the time prescribed by any decision on the appeal which requires work, repair, or repaving, the City Engineer may cause the work or repairs to be made either by the City employees or by an independent contractor and assess the cost thereof as a lien against the property as provided in Section 913.09.

913.04 GRADING AND PAVING.

Sidewalks, paths, and sidewalk pavement shall be graded and paved, and repaved or repaired, in the manner and with the materials and according to the specifications in the current Street Design and Classification Manual adopted pursuant to Article 909 of this Code as provided in this article.

913.05 PLACING SIDEWALK PAVEMENT ABOVE OR BELOW CURB ELEVATION.

The paved portion of all sidewalks or the sidewalk pavement where there is a grass plot between it and the curb, may, at the direction of the City Engineer ~~with the approval of Council~~, be placed above or below the elevation of the curb in order to conform as nearly as practicable to the topography of the abutting land and street; provided, that the slope of such grass plot shall not be steeper than one and one-half horizontal to one vertical. Where the sidewalk pavement is placed above or below the elevation of the curb, the owner of the corner lot shall provide concrete steps from such sidewalk pavement to the curb, such steps to be of similar materials and workmanship as the sidewalk pavement and the design thereof to be approved by the City Engineer.

913.06 SIDEWALK AND PATH CONSTRUCTION SPECIFICATIONS.

All sidewalks, sidewalk pavement, and paths shall be constructed according to the specifications in the current Street Design and Classification Manual adopted pursuant to

Article 909 of this Code, including any specification particular to a certain classification of streets, of concrete pavement according to the following specifications:

~~—(a) Width and Location. Council shall be order prescribe the width of all concrete sidewalk pavements hereafter paved or repaved, taking into consideration the nature and class of traffic on such street and sidewalk. Such sidewalk pavements shall not be less than three feet in width in R1, R2 and R3 Zoning Districts and within the public right of way as designated by the City administration, so that the grass plot, if any, shall be between the sidewalk pavement and the curb line of the street. (Ord. 7-18-78.)~~

~~—(b) Subgrade. When the subgrade is composed of a fill it shall be laid in layers, not exceeding twelve inches, and the same shall be thoroughly wetted and tamped or rolled. The tops of all fills shall extend at least twelve inches beyond the sidewalk pavement, and in cases where there are no curbs the slope shall not be steeper than one and one half to one.~~

~~—(c) Drainage Course. The drainage course shall consist of coarse aggregate, as hereinafter defined, of a depth of not less than six inches, except where solid rock is encountered, and shall be thoroughly compacted by tamping or rolling.~~

~~—(d) Concrete. The concrete shall consist of a mixture of one part of cement, as hereinafter defined, and three parts of fine aggregate, as hereinafter defined, and three parts of coarse aggregate, as hereinafter defined, to a depth of not less than four inches. It shall be worked to an approximately true surface and shall be roughened. The concrete pavement shall be monolithic and no mortar course shall be permissible for surface.~~

~~—(e) Water Used. All water used in mixing materials for sidewalk pavements shall be clean and free from oil, acid, strong alkalies or vegetable matter.~~

~~—(f) Forms. All forms used for setting sidewalk pavements shall be free from warp, and of sufficient strength to resist springing out of shape. All mortar and dirt shall be carefully removed from forms that have been previously used. All forms shall be well staked to the established lines and grades, as indicated by the stakes set by the City Engineer, and all forms shall be so set as to provide for the specified slope of one fourth of an inch to the foot toward the curb.~~

~~—(g) Expansion Joints. Expansion joints shall be made three fourths of an inch wide for the whole of all sidewalk pavements, and shall be spaced at intervals of not more than forty feet, and shall be filled with sand, felt, tar or other suitable material. The wearing surface at all expansion joints shall be cut clear through with a jointing tool.~~

~~—(h) Drainage. Where the drainage course is at the same elevation as, or above the drainage course of the curb, a blind drain or ditch of suitable size and filled with broken stone shall be laid with a proper degree of fall from the bottom of the drainage course of all sidewalk pavements at such points as will properly drain the water from the drainage course to the curb. Where the drainage course of the sidewalk pavement is below that of the curb, a three inch agricultural tile drain shall be laid in the lower part of the drainage course, and vitrified tile drainage connection made from it to the storm sewer in the street.~~

~~—(i) Precautions Against Freezing. Concrete shall not be mixed or deposited at a freezing temperature, unless special precautions are taken to avoid the use of materials that are frozen or covered with ice crystals, and adequate means are provided to prevent the concrete from freezing after being placed in position and until it is thoroughly hardened; and no such concrete shall be mixed or deposited in freezing weather, without the written consent of the City Engineer.~~

~~(j) "Cement", "Fine Aggregate" and "Coarse Aggregate" Defined. "Cement", as used in this article, shall meet the requirements of the specifications for Portland cement, adopted by the American Society for Testing Materials, as set forth in its bulletins and other publications. "Fine aggregate", as used in this article, shall consist of clean sharp sand, crushed stone or gravel screenings, free from all vegetable loam or other deleterious matter. "Coarse aggregate", as used in this article, shall consist of inert matter, such as crushed stone, brickbats, gravel or cold crushed slag. All such materials shall be hard and durable and free from all deleterious matter.~~

913.07. PERMIT TO LAY SIDEWALK PAVEMENT.

~~(a) The owner of any property abutting on a public street shall, before laying any sidewalk pavement on the part of such street intended to be used for sidewalk purposes, apply to the City Manager Engineer for a permit therefor (a "Sidewalk Permit"), and such permit when granted shall show the location and width of such sidewalk pavement and shall recite the specifications required therefor. If such application is to lay a sidewalk pavement on a street within the fire limits on which the width between the curbs of such street shall be paved has not been determined, Council shall, before a permit is granted, specify by order, resolution or ordinance the width of sidewalk pavements on each side thereof, and the location and width of grass plots, if any; and if a grade has not been established on such street, Council shall not grant such permit until a grade is established on such street by the City Engineer and adopted by Council. In no case where a permit is granted to lay a sidewalk pavement shall the work be commenced until the City Engineer shall have first set stakes or had the same done under his direction, showing the exact location of the same. The City Manager shall have the power and authority to grant such permits, without referring the same to Council, and to report the same at the next meeting of Council when it shall be made a matter of record.~~

~~(b) The application for a Sidewalk Permit shall be accompanied by the fee required by the current "Plan Review and Permitting Fee Schedule" adopted by the City, if any.~~

~~(c) The City Engineer may grant the Sidewalk Permit only if the application demonstrates compliance with the current Street Design and Classification Manual adopted pursuant to Article 909 of this Code and upon payment of any applicable fee. The Sidewalk Permit may be made subject to such conditions as the City Engineer reasonably determines appropriate, including a requirement to post a bond or other security to ensure the full and proper completion of the work. A denial of any application will be made in writing stating the reasons therefor.~~

913.08 ORDER TO OWNER TO GRADE AND PAVE. PAVING OR REPAVING

~~Council may order the owner of any property abutting on any public street or alley within this City to grade that part of the sidewalk of such street abutting on such property, if not then already graded, and to construct thereon a sidewalk pavement, the same to be constructed according to the specifications therefor. Such grade shall conform to the adopted grade of such street. Such order shall designate the width of such sidewalk pavement so ordered to be constructed. The City Manager shall cause notice of such order to be served upon the owner of such property, such notice to be served in the manner provided by the laws~~

~~of the State for the service of notices generally, or by publication in a newspaper of general circulation published in the County in the manner provided by the laws of the State for the publication of notices generally.~~

(a) The owners of property adjoining a public right-of-way may be directed to construct or reconstruct sidewalks and sidewalk pavement on such right-of-way and be responsible for the cost thereof in accordance with West Virginia Code Chapter 8, Article 18, as it may be amended. By agreement of the property owner, approved by City Council, a path outside the established public right-of-way may be substituted for the obligation to construct or reconstruct sidewalks and sidewalk pavement.

(b) The City may construct or reconstruct sidewalks within the public right-of-way without assessing the cost thereof against the adjoining property owners upon the following conditions:

- (i) the Pedestrian Safety Plan then in effect designates the area for Connective Network Sidewalks; or
- (ii) the area where the sidewalk will be constructed is entirely within 1,000 feet of a public school, public park, or government building; or
- (iii) The City Engineer makes a prior written determination that the construction of the sidewalk is necessary to establishment or maintenance of a connecting sidewalk network throughout the City. In the event this determination is made, the written determination shall be provided to City Council and the City Clerk upon its preparation by the City Engineer and shall be retained by the City Clerk with the official records of the City.

(c) The City may establish a cost-sharing program to construct or reconstruct sidewalks within the public right-of-way, pursuant to which property owners and/or residents of an area may be required to pay a defined percentage of the total cost of a sidewalk project. The City Engineer shall prepare regulations implementing such cost-sharing program for adoption by Council.

913.09. WORK TO BE DONE BY CITY; ASSESSMENT OF COSTS; LIEN.

If any property owner shall have failed or refused to comply with an order issued pursuant to this Article by the date compliance is required ~~the order provided for by the preceding section within fifteen days after the service or publication thereof~~, then the City Manager may cause such work to be done, and the cost thereof, including a commission of not exceeding twenty percent (20%) of the ~~net~~ cost thereof to the City for the time of City employees in supervising such construction, laying the assessment therefor, and collecting the same, over and above the actual cost to the City of such work, shall be assessed against such property. Such assessment shall bear interest at six percent (6%) per annum and shall be immediately due and payable and may be collected in the same manner provided by law for the collection of City taxes. If such assessment is not paid within thirty days after the same is made, the City Clerk may certify the amount of any such assessment with a description of the property chargeable therewith, and the name of the owner thereof, to the Clerk of the County Court to be recorded in the trust deed books of such Clerk's office; and such assessment shall be and constitute from and after the date

of such recordation the first lien against such property, subject only to State, County and Municipal taxes and prior assessments.

913.10 REPAIRING AND REPAVING. [RESERVED]

~~All owners of property abutting upon a public street where there is a sidewalk shall keep the sidewalk in good repair so as to minimize public or private liability. Any concrete sidewalk which is broken or deteriorated to the extent of needing repair shall be repaired by replacing the entire block or section thereof and not by surface patching.~~

~~—The City Manager on his own initiative may or upon direction of Council shall require any such property owner to make needed repairs by having served upon such owner a notice as provided by Section 913.08. Each thirty day period during which the owner fails to comply with the provisions hereof shall constitute a separate violation.~~

~~—When deemed proper by the City Manager, he may cause the repairs to be made either by the City employees or by an independent contractor and assess the cost thereof as a lien against the property as provided in Section 913.09.~~

913.11 MAINTENANCE; REMOVAL OF SNOW, ICE AND DIRT. [RESERVED]

~~—The owner, lessee, or occupant of property abutting on any street shall keep the sidewalk adjacent thereto in a clean and sanitary condition and free from snow, ice, dirt or refuse. In the event the owner, lessee or occupant of any property shall fail to keep the sidewalk adjacent to such property in a clean and sanitary condition and free from snow, ice, dirt or refuse the City Manager is hereby empowered and authorized to give notice to such property owner, lessee or occupant to clean such sidewalk of snow, ice, dirt or refuse and to put such sidewalk in a clean and sanitary condition, such notice to be served as provided by Section 913.08, and upon the failure or neglect of such property owner, lessee or occupant to put such sidewalk in a clean and sanitary condition and to remove snow, ice, dirt or refuse therefrom within twenty four hours, excluding Sunday, after such notice has been given, the City Manager may cause the same to be done and the cost thereof shall be assessed against such property and become a lien upon such property in the manner provided by Section 913.09.~~

913.12 CONDEMNATION OF SIDEWALK PAVEMENT; ORDER TO RELAY; WORK BY CITY. [RESERVED]

~~—When, in the judgment of Council, the public necessity may require it, any sidewalk pavement may be condemned because of its unsafe condition, or because it is not laid out of suitable materials or in the manner and according to the specifications provided therefor; and the owner of the abutting property may be required to relay the same, after notice of the order of Council, in the same manner as provided by Section 913.08; and upon the refusal or failure of such property owner to do so, the City Manager may cause the same to be done and the cost thereof assessed against such property owner in the manner provided by Section 913.09, and such assessment shall become a lien against such property in the manner provided _____ by _____ Section _____ 913.09.~~

913.13. REPAIR OR REPAVING WHEN PAVEMENT BROKEN.

~~When a~~Any person ~~who shall break or injure~~ damages any sidewalk, sidewalk pavement, or path by driving a truck or vehicle upon or over the same, or in any other manner, ~~he~~ shall be required to pay the cost of repair, including the reasonable cost for work by employees of the City. The City Engineer shall deliver an order requiring payment of the cost to any such person in the manner provided by Section 913.03(c), and, if payment is not received within 30 days it may be collected by any method provided by law. ~~repair it, or if necessary to relay the same and put it in as good condition as it was before such injury occurred; and in the event of his failure to do so, after being served with an order of Council requiring him to do so, the City Manager may have such sidewalk repaired or relaid and the cost of the same shall be charged against such person, and collected by legal process; and where, in order to properly repair such broken or injured sidewalk pavement, it is necessary to repave the same, such repaving shall be with the materials and in the manner and according to the specifications set forth in this article.~~

913.14. SUPERVISION AND INSPECTION OF PAVEMENT CONSTRUCTION; POWER TO STOP IMPROPER WORK.

All sidewalk pavements and paths laid, constructed, or repaired under the provisions of this article shall be under the direct and immediate supervision and inspection of the City Engineer, or ~~his~~ an authorized representative. Any owner of property who may desire to lay a sidewalk pavement or path or repair the same shall, upon being granted permission therefor, notify the City Engineer of the time work is expected to begin ~~he expects to begin such work;~~ and when, in the judgment of the City Engineer such work is not being done with the materials and in the manner and according to the specifications required by this article, ~~he~~ the City Engineer or an authorized representative shall have the power and authority to stop such work until such owner agrees to perform the work as required and provides such assurance as the City Engineer or authorized representative reasonably requires, which may include the requirement to post a bond securing the proper performance of the work. ~~indicates his willingness to do such work with the materials and in the manner and according to the specifications required by this article.~~

913.15. ROOMS OR SPACES UNDER SIDEWALKS.

(a) No person shall excavate or construct any room or space or use the space in and under any sidewalk until and unless the owner of the property adjacent thereto shall have first obtained a permit therefor from the City, such permit to be granted by the City Manager ~~and confirmed by Council;~~ and the City Manager ~~and Council~~ shall have full and absolute discretion in granting or refusing such permit and establishing appropriate conditions for the permit.

(b) In applying for such permit, the applicant shall furnish the design, plans and specifications for the construction of such room or space intended to be used under such sidewalk, and such design, plans and specifications shall be subject to the approval of the

City Engineer.

(c) The space between the surface of the sidewalk and the ceiling of any room constructed thereunder shall be not less than eighteen inches in thickness, unless otherwise specified in the current Street Design and Classification Manual published pursuant to Article 909.

(d) Such property owner shall be responsible for the construction and maintenance and safety of any such room under any sidewalk and of the sidewalk over the same, and if any person or his property is injured or damaged as a result of the construction or improper maintenance of any such space under any sidewalk or the sidewalk thereover, the owner of the property adjacent thereto shall protect and save harmless the City from any liability therefor.

(e) Where there now exists a space or room underneath any sidewalk used or intended to be used in connection with the property adjacent thereto, it shall be the duty of the owner of such adjacent property to maintain safely and to keep in good repair such room or space under such sidewalk and the sidewalk thereover, and to protect and save harmless the City from any and all liability to any person who is injured or his property damaged by reason of the failure of such property owner to maintain safely and keep in good repair any such room or space under such sidewalk or the sidewalk thereover.

(f) No openings, chutes or ways shall be made from the surface of the sidewalk or street to any room or space under such sidewalk now or hereafter constructed unless and until a permit therefor shall have been obtained from the City as provided in this Section 913.15.; ~~such permit to be granted by the City Manager and confirmed by Council.~~ The design, plans and specifications therefor shall be subject to approval by the City Engineer. The doors or coverings to such openings, chutes or ways shall be of design and constructed according to the approval of the City Engineer, and the same shall be maintained safely and kept in good repair by the property owner, who shall be responsible for any injuries or damages to persons or property for failure to do so and who shall protect and save harmless the City from any and all liability therefor. Such openings, chutes and ways shall not be left open and unguarded and it shall be the duty of the property owner in connection with whose property the same are being used to protect persons and property from injury or damage while such openings, chutes and ways are being used.

(g) If, upon inspection, any room or space heretofore or hereafter constructed under any sidewalk shall be found to be in an unsafe or unsanitary condition, ~~Council~~ the City Engineer may order the same to be repaired or put in a sanitary condition at the expense of the owner of the adjacent property. If such property owner shall fail to do so, ~~Council~~ the City Engineer may cause the same to be done and the cost thereof charged against and collected from such property owner.

(h) The granting of any permit heretofore or hereafter for the construction and maintenance of any space or room under any sidewalk or street in the City shall not be construed as vesting or granting any permanent or perpetual right, interest or title thereto in

or to the owner of the adjacent property, but the same is only a temporary privilege. ~~Council~~ The City Manager may at any time without notice and without the payment of any compensation or damages to the property owner annul and revoke any permit theretofore granted therefor and take exclusive possession of such space or room under such sidewalk and convert the same to public use or cause the same to be abandoned, and, where necessary, cause the same to be filled at the expense of the owner of the adjacent property. In such event the adjacent property owner shall have no further right or privilege to use such space or room.

913.16. SIDEWALKS REQUIRED WHEN BUILDING CONSTRUCTED OR STREET PAVED.

(a) Findings of Council. Council finds ~~as a fact~~ that sidewalks and paths within the City are deficient as to quantity and quality, which contributes to the hazards confronting pedestrians and in order to initiate a program of providing more sidewalks, it is declared to be the policy of the City to require, unless otherwise directed, the construction or replacement of sidewalks for the use of pedestrians within the City and to require a deposit of funds in the Sidewalk Fund established by this Article when a waiver of sidewalk construction is granted.

(b) Order When Street or Alley Paved; Exception. In furtherance of the stated policy concerning sidewalks, Council shall order the construction or reconstruction of a sidewalk or sidewalks at the same time that it orders the paving or repaving of any street or alley as provided for by Article 911, unless Council makes a special finding in such paving ordinance that existing sidewalk or sidewalks are adequate or the physical characteristics of the terrain, neighborhood or pedestrian traffic would not warrant the construction or reconstruction of sidewalks, in which event the construction or reconstruction of sidewalks in conjunction with the paving of the street or alley shall be waived.

(c) Required When Dwelling or Building Constructed; Exception. In addition to the requirements of this article, any person who applies for ~~obtains~~ a permit to construct a dwelling or building in any manner that requires issuance of a Certificate of Occupancy for new construction or for renovations that equal fifty percent or more of the value of the building in one construction project pursuant to the provisions of Part Seventeen - Building and Housing Code; ~~the plans shall include plans for the construction or replacement of a sidewalk or sidewalks along the entire frontage on the public right-of-way of the premises or lot where the building or dwelling will be constructed. Should there be an existing adequate sidewalk adjacent to the property on which construction is to take place and it is so deemed by the City Manager, then this section shall be inapplicable. In all other cases, a sidewalk shall be constructed or replaced unless on appeal to the City Manager such requirement is waived by appropriate order.~~ A sidewalk in compliance with all regulations of the City Code, including any applicable regulation in the Planning and Zoning Code, shall be constructed along with the construction of the building or dwelling unless a waiver or modification is granted. Such modification may include construction of a path on an alternate location, if agreed by the property owner and approved by City Council.

(d) Waiver.

(i) Upon application, the City Engineer may waive these sidewalk construction requirements for one of the following reasons: (A) the Pedestrian Safety Plan, or any plan or regulation that succeeds or replaces the Pedestrian Safety Plan, then in effect designates the area as one where sidewalks are not preferred; or (B) the City Engineer determines, after consultation with the Pedestrian Safety Board, or, if there is no Pedestrian Safety Board, another committee or group designated by City Council for the purpose of such consultation, that pedestrian traffic to and through the area is adequately served by existing infrastructure.

(ii) No waiver shall be granted in the following instances, unless the City Engineer determines that there is an existing adequate sidewalk already adjoining the entire street frontage of the property:

(A) property adjoining a part of the State Road System established pursuant to West Virginia Code Chapter 17, Article 4, as it may be amended, other than a controlled access highway;

(B) property adjoining a roadway classified as an “Arterial” way pursuant to Article 909 of the City Code, unless there is a preexisting sidewalk on the opposite side of the roadway

(e) Deposit in Sidewalk Fund.

(i) If the City Engineer determines the requirement to construct a sidewalk should be waived, the applicant shall deposit with the City an amount equal to fifty percent (50%) of the ordinary cost of constructing a sidewalk of the dimensions required to cover the frontage of the subject premises or lot, as determined by the City Engineer; except that, if the waiver is granted due to the presence of an existing adequate sidewalk adjoining the entire street frontage of the property, no such deposit shall be required.

(ii) The City Engineer may adopt regulations establishing the ordinary cost of construction of sidewalks for purposes of determining the required deposit amount. If no such regulations are in effect, the City Engineer shall determine the ordinary cost of construction upon each waiver request in accordance with the ordinary practices of the engineering profession.

(iii) The waiver shall not be effective until the deposit required by this Section is made, and any waiver granted shall be void if the deposit is not made within ninety days of the determination.

(iv) All such deposits shall be maintained by the City in a fund designated for use in connection with the construction, reconstruction, maintenance, and repair of sidewalks, sidewalk pavements, or paths on the public rights-of-way within the City.

(v) If the City adopts a cost-sharing plan as authorized by this Article, and a sidewalk is constructed under that cost-sharing plan at property that received a waiver pursuant to this Section within 10 years of the waiver being issued, the property owner who contributed the waiver deposit shall be credited with the amount of that deposit as a portion of the property's cost share obligated under the cost-sharing plan.

913.17. ADMINISTRATION OF ARTICLE.

The City Engineer shall administer the provisions of this Article and is authorized to adopt written regulations, not inconsistent with the provisions of this Article, implementing the provisions of this Article. The regulations shall describe the process for appeal of any order issued under this Article, if an appeal is permitted. All such regulations shall be filed with the City Clerk upon adoption, and the City Clerk shall keep the regulations as a public record.

1333.07. PERFORMANCE STANDARDS.

~~(G) Sidewalks shall be constructed in accordance with the requirements of Article 913 of the City Code along the frontage of a at each lot upon which a use is to be constructed unless waived by the City Engineer for single and two family infill development on practicability merits. New sidewalks shall be at least five (5) feet wide. The City Engineer shall have the discretion to reduce this minimum standard to four (4) feet based on site constraints, or to conform to an existing but incomplete sidewalk along the same side of the street.~~

1335.07. PERFORMANCE STANDARDS.

~~(F) Sidewalks shall be constructed in accordance with the requirements of Article 913 of the City Code along the frontage of a at each lot upon which a use is to be constructed unless waived by the City Engineer for single and two family infill development on practicability merits. New sidewalks shall be at least five (5) feet wide. The City Engineer shall have the discretion to reduce this minimum standard to four (4) feet based on site constraints, or to conform to an existing but incomplete sidewalk along the same side of the street.~~

1337.07. PERFORMANCE STANDARDS.

~~(F) Sidewalks shall be constructed in accordance with the requirements of Article 913 of the City Code along the frontage of a at each lot upon which a use is to be constructed unless waived by the City Engineer for single and two family infill development on practicability merits. New sidewalks shall be at least five (5) feet wide. The City Engineer shall have the discretion to reduce this minimum standard to four (4) feet based on site constraints, or to conform to an existing but incomplete sidewalk along the same side of the street.~~

1339.07. PERFORMANCE STANDARDS.

(F) Sidewalks shall be constructed in accordance with the requirements of Article 913 of the City Code ~~along the frontage of a~~ at each lot upon which a use is to be constructed. ~~New sidewalks shall be at least six (6) feet wide, or the same width as an existing but incomplete sidewalk along the same side of the street.~~

1341.07. PERFORMANCE STANDARDS.

(I) Sidewalks shall be constructed in accordance with the requirements of Article 913 of the City Code ~~along the frontage of a~~ at each lot upon which a use is to be constructed. ~~New sidewalks shall be at least six (6) feet wide, or the same width as an existing but incomplete sidewalk along the same side of the street.~~

1343.07. PERFORMANCE STANDARDS.

(G) Sidewalks shall be constructed in accordance with the requirements of Article 913 of the City Code ~~along the frontage of a~~ at each lot upon which a use is to be constructed. ~~New sidewalks shall be at least six (6) feet wide, or the same width as an existing but incomplete sidewalk along the same side of the street.~~

1345.07. PERFORMANCE STANDARDS.

(F) Sidewalks:

(1) Sidewalks shall be constructed in accordance with the requirements of Article 913 of the City Code ~~along the frontage of a~~ at each lot upon which a B-1 use is to be constructed. ~~New sidewalks shall be at least six (6) feet wide, or the same width as an existing but incomplete sidewalk along the same side of the street.~~

(2) A canvas or fabric awning may be placed extending from a building over the sidewalk and into the public right-of-way. Such awning must be placed no lower than nine (9) feet above the sidewalk and extend no closer than three (3) feet from the curb line. An encroachment permit is required.

1347.07. PERFORMANCE STANDARDS.

(F) Sidewalks shall be constructed in accordance with the requirements of Article 913 of the City Code ~~along the frontage of a~~ at each lot upon which a use is to be constructed. ~~New sidewalks shall be at least six (6) feet wide, or the same width as an existing but incomplete sidewalk along the same side of the street.~~

1351.01. STANDARDS.

(N) Sidewalks and Paths.

Sidewalks and Paths, as defined in Article 913 of the City Code, shall be constructed in accordance with the requirements of Article 913 of the City Code at each lot upon which a use is to be constructed. Where any sidewalk is required by the terms of this Part Thirteen, entitled “Planning and Zoning,” excepting private walkways as governed by Section 1351.01(B), the sidewalk shall be constructed upon, or dedicated as, a public right-of-way. A path may be substituted for a sidewalk upon agreement of the property owner and City Council as provided in Article 913.

1353.07. PERFORMANCE STANDARDS.

(E) Sidewalks shall be constructed in accordance with the requirements of Article 913 of the City Code ~~along the frontage (where feasible) of a~~ at each lot upon which a use is to be constructed. ~~New sidewalks shall be at least six (6) feet wide, or the same width as an existing but incomplete sidewalk along the same side of the street.~~

1355.08. PERFORMANCE STANDARDS.

(E) Supplementary Regulations.

(1) There shall be one principal entrance to the industrial site from any major thoroughfare bordering the tract, which shall be designed so that traffic at its intersection with the major thoroughfare may be controlled and so that there will be adequate storage space for traffic destined to enter the thoroughfare or to leave the industrial site.

(2) There shall be direct entrances or exits from parking areas or structures onto the adjoining major thoroughfare, but a service drive parallel to the main traffic-way may be provided for such access. Traffic on the service drive shall enter the main traffic-way via the principal entry.

(3) The owner or owners shall provide a plan for the installation of adequate facilities for the disposal of human and industrial wastes meeting the approval of the State Department of Health.

(4) The owner or owners of the site shall establish in the restrictions, which are a part of the plot for the subdivision, a perpetuating organization for the maintenance of the industrial site, such as roads and planting areas, the approval of building plans and other improvements, and the future maintenance of the site.

(5) Sidewalks shall be constructed in accordance with the requirements of Article 913 of the City Code at each lot upon which a use is to be constructed.

1361.03. DESIGN AND PERFORMANCE STANDARDS COMMON TO ALL SUNNYSIDE OVERLAY DISTRICTS.

The following design and performance standards are held in common and shall apply to the SCOD, SSOD, and BCOD overlay districts.

(A) Buildings shall be oriented with the front facing the lot’s primary street, or the Monongahela River if the parcel has frontage on the river.

(B) Buildings should be designed to overlook streets and public open spaces so as to create a “self-policing” environment.

(C) Buildings shall not be oriented with the front facing parking or service areas.

(D) On primary streets, street trees shall be provided at a minimum of thirty-five (35) feet on center.

(E) Building facades that are adjacent to public streets and/or open spaces shall have a high degree of ground floor transparency (at least sixty (60) percent).

(F) The siting of buildings should avoid the creation of unusable open spaces and should respect and complement view corridors to and from the hillside and the riverfront.

(G) Building massing should be the tallest at street corners. In order to achieve this, buildings constructed on a corner of two primary streets should be at least five (5) stories in height, provided that all other requirements of the zoning ordinance are adhered to.

(H) Ground floor retail and service-type uses located within mixed-use buildings along primary streets shall not be included in height calculations.

(I) For buildings taller than four (4) stories or seventy-five (75) feet in height, any additional floors in excess of four (4) stories shall be recessed or set back at least twelve (12) feet from the build-to line.

(J) A minimum of seventy-five (75) percent of the length of a building face shall be constructed at the build-to line, if established herein, along a primary street. The remaining twenty-five (25) percent may be set back a maximum of ten (10) feet from the build-to line.

(K) Land between the front facade of a building and a public street shall be landscaped to integrate with the neighborhood’s sidewalk system. In any area or setback between a building and sidewalk, one or a combination of the following shall be provided:

(1) Landscaping/planting beds consisting of shrubbery and /or trees, or

(2) Special paving areas designed as plaza space. No grass or sod areas shall be allowed in this space.

(L) ~~On primary streets, sidewalks shall be a minimum of eight (8) feet in width.~~ Sidewalks shall be constructed in accordance with the requirements of Article 913 of the City Code at each lot upon which a use is to be constructed. The requirements of this Article 1361 with respect to the appearance and constituent materials of sidewalks shall prevail over conflicting requirements of Article 913.

(M) Front yard setbacks along secondary streets shall be a minimum of five (5) feet, and a maximum of fifteen (15) feet.

(N) Within areas of single family and two family dwellings, front yard setbacks of in- fill development shall not deviate by more than five (5) feet from the average front yard setbacks of the neighboring residences.

(O) Building Form and Scale:

(1) Total fenestration shall be at least fifty (50) percent for building facades facing primary streets and/or public open spaces. For the ground floor, the ratio shall be at least sixty (60) percent.

(2) All ground floor retail areas along primary streets and/or public open spaces shall have awnings over entrances and ground floor windows, extending out at least four (4) feet from the facade. Such awnings may be extended to cover public sidewalks, provided they are set back at least eighteen (18) inches from the curb line of the street.

(3) Overall building widths along primary streets may vary, but building facades shall be designed in ten (10) to twenty (20) foot increments, so as to achieve the appearance of a series of distinct, adjoining buildings.

(4) The articulation of buildings, and window proportions, shall be vertical for buildings constructed along primary streets.

(5) The minimum building height for a parcel on a primary street, shall be three (3) stories. On secondary streets, the minimum building height shall be two (2) stories.

(6) The majority of window openings shall be slightly recessed (4-8 inches) from the exterior building wall to create a distinct and uniform shadow line for the building's primary facade.

(7) Unless no feasible alternative exists, fire escapes shall not be constructed on or attached to the front facade of any building or structure. The City of Morgantown Fire Department shall be the determining authority as to whether a feasible alternative exists.

(P) Building Materials:

(1) Except for single and two family dwellings, the first two (2) floors of a building shall be constructed of natural materials. Natural materials include stone, brick, and wood siding, but do not include materials such as, or similar to, wood roof shingles, reflective glass, split faced concrete block, imitation stone, and imitation stucco or Drivit. Thirty-five (35) percent of the remaining building facade(s) on the public right-of-way or any facade(s) facing a single-family residence shall also be constructed of natural materials.

(2) Vinyl siding or other composite materials shall not exceed thirty-five (35) percent of a building face that abuts a right-of-way.

(3) In general, brick and a recessed window vocabulary should predominate along the northern end of Beechurst and along University Avenue. Materials should transition into a mixed palette of brick, metal and glass toward the southern end of Beechurst. The Riverfront should utilize more contemporary materials such as metal and glass.

(4) Building materials which promote energy efficiency and sustainability should constitute a minimum of thirty-five (35) percent of the total materials used to construct a building.

(Q) Street Hierarchies and Land Use:

(1) Except for single and two family dwellings, buildings constructed along primary streets shall have sixty (60) percent or more of their ground floor space dedicated to retail, restaurant, office or personal service uses. Residential uses shall be permitted on the ground floor in the remaining space, but shall not enfront the primary street.

(2) The minimum number of off-street parking spaces for multi-family dwellings shall be one-half a space (0.5) per occupant as determined by the West Virginia State Building Code and adopted and implemented by the City. The minimum number of off-street parking spaces for mixed- use and over-store dwellings shall be one-half a space (0.5) per occupant as determined by the West Virginia State Building Code and adopted and implemented by the City plus required spaces for commercial use(s).

(3) Surface parking lots between buildings shall be designed as interior landscaped courtyards where cars are screened from the right-of-way; surface lots shall not be constructed where two (2) public rights-of-way intersect.

(4) Parking structures abutting open spaces or fronting on primary streets shall be designed with building-like facades.

(5) Parking garages three (3) stories or higher shall provide ground floor retail or service uses in an amount not less than thirty-five (35) percent of the ground floor area, located along the frontage of the garage.

(6) Private parking areas shall be accessed from secondary streets and/or alleys. Access from primary streets shall only be utilized when other options are not available.

(7) To minimize curb cuts along primary and secondary streets, residential garages or car ports or driveways shall be located at the rear of the property and accessed from an alley, when available.

(8) Parking areas and properties containing multifamily or commercial buildings shall provide linkages of similar design and quality to adjacent off-site pedestrian amenities such as sidewalks, bike paths, etc.

(9) Parking areas containing ten (10) or more stalls shall be lighted to create safe, attractive nighttime environments. Such lighting shall not be designed or situated in such a manner as to cause spillover glare onto adjoining properties. Building entrances and significant architectural or landscape features should be illuminated with low-intensity, indirect lighting sources directed toward the feature.

This ordinance shall be effective 30 days from adoption.

First Reading: _____

Mayor

Second Reading: _____

City Clerk

Adopted: _____

Filed: _____

AN ORDINANCE AMENDING THE FY 2020-2021 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND.

The City of Morgantown hereby ordains:

That the FY 2020-2021 Annual Budget of the General Fund of the City of Morgantown is amended as shown in the revised budget (Revision 05) attached hereto and made a part of this ordinance.

First Reading:

Adopted:

Mayor

Filed:

Recorded:

City Clerk

CITY OF MORGANTOWN					
GENERAL FUND - REVISION 5					
FY 2020-2021					
ACCT		BUDGET	PROPOSED	PROPOSED	
NO	REVENUES	FY21	REV 05	AMENDED	EXPLANATION OF PROPOSED ADJUSTMENTS
				BUDGET	
301-07	Tax Loss Restoration	-	12,401	12,401	Increase for revenue received
305	Business & Occupation Tax	14,561,000	2,200,000	16,761,000	Increase for B&O project construction
306	Wine & Liquor Tax	469,000	228,000	697,000	Increase for current overage and estimated for remaining quarter
328	Franchise Agreement Fees-Telephone	-	250	250	Revenue received but not budgeted
329	Inspection Fees	-	150	150	Revenue received but not budgeted
365	Federal Government Grants	5,028,590	1,900,990	6,929,580	To increase for CARES Act reimbursements received from the State of WV for COVID-19 response and related expenditures
366	State Government Grants	-	11,036	11,036	To increase for REAP Grant
370	Charges to Other Funds	75,300	(48,500)	26,800	Reduced Parking Authority fees due to COVID-19
380	Interest Earned On Investments	40,000	84,000	124,000	Increase for interest revenue
383	Sale of Fixed Assets	10,000	35,986	45,986	Increase for vehicles sold from fleet
399	Miscellaneous Revenues	10,000	75,895	85,895	Increase due to various Miscellaneous revenue items
				-	
			4,500,208		
ACCT		BUDGET	PROPOSED	PROPOSED	
NO	EXPENDITURES	FY21	REV 05	AMENDED	EXPLANATION OF PROPOSED ADJUSTMENTS
				BUDGET	
412	City Manager	933,567	11,835	945,402	Contracted Services, capital outlay, personnel
414	Finance	1,123,025	4,000	1,127,025	Increase for advertising costs related to the publishing of the Annual reports and budget
417	City Attorney	460,000	131,445	591,445	Contracted Services
420	Engineering	437,689	7,970	445,659	Contracted Services, Capital outlay
422	Human Resources	431,779	12,850	444,629	Contracted Services, Capital Outlay
439	Information Technology	445,809	2,000	447,809	Increase for overtime costs due to reduced personnel
440	City Hall	786,025	9,000	795,025	Increase for overtime costs due to snow removal
444	Contribution-Transfers to Other funds	9,858,004	3,770,993	13,628,997	Increase FSF by \$2,239,767, MET allocation by \$75,000, \$1M to capital escrow, OPEB fund \$200,000, Retirement Fund \$250,000
699	Contingency	4,055,674	250,000	4,305,674	To increase to 10% of the General Fund budget maximum allowed by State Code
700	Police	9,007,151	216,000	9,223,151	Increase to cover necessary equipment upgrades and new hire equipment
750	Street	2,707,857	58,000	2,765,857	Increase for overtime costs due to snow removal and uniforms
752	Signs & Signals	729,113	2,500	731,613	Increase for overtime costs due to snow removal
754	Equipment Maintenance	665,191	18,000	683,191	Increase for overtime costs due to snow removal
802	Recycling	17,200	5,615	22,815	Contracted Services
			4,500,208		

**AN ORDINANCE AUTHORIZING A LEASE AGREEMENT
WITH WANDERLUST TRAVEL, LLC AT THE AIRPORT**

The City of Morgantown hereby ordains that the City Manager is authorized to execute the attached lease agreement with Wanderlust Travel, LLC, and such additional documents as necessary to effectuate the lease.

This ordinance is effective upon adoption.

FIRST READING: _____

Mayor

SECOND READING: _____

ADOPTED: _____

City Clerk

FILED: _____

City of Morgantown

AND

**Lisa Weese
Wanderlust Travel LLC**

Office Lease Agreement

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**City of Morgantown
and
Lisa Weese
Wanderlust Travel LLC**

Office Lease Summary

TYPE OF AGREEMENT	Office Space
TENANT	Wanderlust Travel LLC
REPRESENTATIVE(S)	Lisa Weese
NOTICE ADDRESS	100 Hart Field Rd, Suite 241 Morgantown, WV 26505 lisa@gowanderlust.net
COMMENCEMENT DATE	April 1, 2021
TERM	Three (3) years
RENEWAL OPTIONS	Two (2) – One (1) year options
TERMINATION DATE	March 31, 2024
LEASEHOLD/ASSIGNED PREMISES	Office Space, South end of Terminal (See Exhibit A)
INITIAL RENTAL RATE	\$3,600 annually or \$300 monthly for 240ft ² @ \$15/ft ²
RENTAL ADJUSTMENT	CPI-U
OTHER FEES, RATES AND CHARGES	None
AUTHORIZED USE(S)	Travel Agency

Note: This summary is presented as a reference of the agreement information at the time of execution. If there is a discrepancy between the information contained in this summary and the requirements contained in the remainder of the Lease, the requirements as stated in the remainder of the Lease will prevail.

City of Morgantown

AND

Lisa Weese
Wanderlust

Office Space Lease Agreement

THIS LEASE AGREEMENT for office space (hereinafter referred to as the "Lease", is entered into this 15th day of March 2021, A.D., by and between the **CITY OF MORGANTOWN**, c/o Morgantown Municipal Airport, Morgantown, West Virginia, (hereinafter referred to as the "City"), and **Wanderlust Travel LLC** (hereinafter referred to as the "Tenant").

WITNESSETH:

In consideration of the lease of certain real property and the covenants and agreements contained herein, the parties agree as follows:

ARTICLE 1 PREMISES

The City hereby leases to Tenant, for its exclusive use as specifically authorized herein, and for no other use except as agreed to, and authorized herein, that space in the building commonly known as the Morgantown Municipal Airport Terminal Building [hereinafter the "**Terminal**"], described below and as shown on Exhibit A, attached hereto and incorporated herein by reference [hereinafter the "**demised premises**"].

Section 1.01 Demised Premises

1. Office Space: Office Space of approximately 240 square feet of space.

Section 1.02 Acceptance of Demised Premises

Tenant accepts the office space "AS IS" in its present condition. Tenant has had the right to inspect the space for suitability for the purposes it intends. Tenant acknowledges that neither the City nor its agents have made any representation or warranty as to the condition and/or suitability of the premises.

Section 1.03 Use of Demised Premises

1. The Tenant's use of the demised premises is limited to the general operation of a professional travel agency. Any future expansion, or change in use, of the demised premises will require the prior written approval of the City.
2. The Tenant, in addition to the use of the demised premises, shall be entitled to the general use, in common with others, of all non-aviation airport facilities made available for use to the general public except as otherwise hereinafter provided.
3. For the purpose of this Agreement, "airport facilities" available to the Tenant and its employees shall include automobile parking areas, roadways, sidewalks, or other areas of the Airport, that have been constructed at City expense for the benefit of Airport tenants and the general public.
4. The use of the above-mentioned airport facilities by Tenant shall be subject to their full compliance with such rules and regulations as now exist or may hereafter be enacted by the City. Approved uses of airport facilities are also subject to the payment of such fees and charges, as may be non-discriminatorily established from time to time by the City for the maintenance, operation or replacement of these facilities.

Section 1.04 Prohibited Uses

The following activities are expressly prohibited.

1. The Tenant may not use any part of the demised premises for any activity or purpose, other than as expressly set forth and authorized in Section 1.03, unless such use is approved, in writing, by the City.

2. The Tenant, and its employees, is prohibited access to, or use of, areas and facilities in the Air Operations Areas of the Airport.
3. Tenant is prohibited from using or permitting the demised premises to be used for the sale to its employees, or to the public, of any goods or services not directly related to those activities authorized in this Agreement.

ARTICLE 2 GENERAL REQUIREMENTS

Section 2.01 Conduct of Operations on Demised Premises

In its exercise and carrying out of the rights, privileges, duties, and obligations granted herein, and in its use of the demised premises, Tenant hereby obligates itself, and agrees to obligate all of its sub-lessees and/or occupants, to the following requirements and regulations:

1. Tenant shall not consent to any unlawful use of the demised premises, nor permit any such unlawful use thereof.
2. Tenant agrees that all local, federal and state ordinances and laws will be observed in its use and occupancy of the demised premises, including the rules and regulations of the federal and state aeronautical authorities and the local governing authorities.
3. Tenant shall comply with all City rules, regulations and ordinances as they now exist or may hereafter be amended or adopted.
4. The operations of Tenant, its sub-lessees, employees, invitees and those doing business with it, shall conduct all activities in an orderly and proper manner so as not to annoy, disturb or to be offensive to others at the Morgantown Municipal Airport. The City shall have the right to complain to Tenant as to the demeanor, conduct and appearance of Tenant's employees, sub-lessees, invitees and those doing business with it, and as to its and/or their failure to utilize said facilities at times, and in the manner, and according to the standards, mandated by the City, whereupon Tenant will take all steps reasonably necessary to remove the cause of the complaint and bring the operations and services into compliance with such standards.
5. The Tenant shall comply with all rules and regulations of the State Fire Marshall in the conduct of its operations on the demised premises.
6. Tenant shall not cause or permit the use, generation, storage, or disposal in or about the demised premises or elsewhere at the Airport of any Hazardous Materials except in strict compliance with State and Federal environmental laws and regulations.
7. Tenant agrees to return the demised premises to the City at the expiration of this Agreement in the same condition as when taken, reasonable wear and tear excepted unless other arrangements are made with the City.

The City reserves the right to further develop its building structures and to lease the same for any lawful purpose whatsoever or to provide any services it deems necessary or desirable in its sole and absolute discretion, for the public, regardless of the desires or views of Tenant, and without interference or hindrance.

ARTICLE 3 TERM AND COMPENSATION

Section 3.01 Initial Term

The initial term of this Agreement shall be for a three-year period, commencing **April 1, 2021, A.D.** and terminating on **March 31, 2024, A.D.**

Section 3.02 Options to Renew

At the end of the initial three-year term of this Lease, the Tenant shall have the first option to renew this Agreement for the Premises, referred to in Article 1; **Provided**, that Tenant is not then in default.

1. Tenant shall have the option to renew this Agreement for two (2) additional one (1) year periods.
2. Prior to the conclusion of the initial and all renewal terms, The Tenant and City may initiate discussions regarding a new lease. The Tenant may declare its intention to begin negotiations on a new lease Agreement, in writing, on or before, the 180th day prior to the expiration of this Agreement. Such 180-day period shall expire at midnight of the last day of the Agreement.
3. During said 180-day period, all of the terms and conditions including the amount of rent and other fees to be paid under a new Agreement shall be negotiated in good faith by both parties and

reduced to writing and executed. If a written lease Agreement is not executed by the Tenant prior to the end of this negotiation period, this Agreement shall terminate in accordance with Article 11.

Section 3.03 Termination

This agreement shall be considered terminated by the Tenant on the terminating of the agreement unless the Tenant provides the City written notice of Tenant's intent to renew the lease one hundred eighty (180) days prior to the expiration of the then current term.

Section 3.04 Rent

1. **Office Rent.** The Tenant shall pay an annual office rent of **\$3,600.00**, which is equal to **\$15.00** per square foot for **240** square feet of office space. Said agreed rent shall be paid monthly in twelve (12) equal installments of **\$300.00** due in advance on the first day of each month.
2. **Payments:** All payments are to be made at the administrative office of the Morgantown Municipal Airport, 100 Hart Field Road, Morgantown, West Virginia 26505.
3. **Security Deposit:** Operator agrees, with the execution of this agreement to deposit one month's rent with the Airport as a security deposit. The security deposit is made by Operator to secure the faithful performance of all the terms, covenants and conditions of this Agreement to be performed by Operator. If Operator shall default with respect to any covenant or provision hereof, the City may use, apply or retain all or any portion of the security deposit to cure such default or to compensate City for any loss or damage which City may suffer thereby. If the City so uses or applies all or any portion of the security deposit, Operator shall immediately upon written demand deposit cash with City in an amount sufficient to restore the security deposit to the full amount hereinabove stated. City shall not be required to keep the security deposit separate from its general accounts and Operator shall not be entitled to interest on the Security Deposit. Within thirty (30) days after the expiration of the Agreement Term and the vacation of the demised premises by Operator, the security deposit, or such part as has not been applied to cure the default, shall be returned to Operator. In the event of any bankruptcy or other proceeding initiated by or against Operator, it is agreed that all such security deposit held hereunder shall be deemed to be applied by City to rent, sales tax and all other charges due from Operator to City for the last month of the Term and each preceding month until such security deposit is fully applied.
4. **Lease Guarantee:** In the absence of a good business credit history of at least five (5) years prior to the commencement of this Agreement, Operator agrees to arrange for a Lease Guaranty (personal or established business) that shall remain in full force and effect until all monthly installments of rent and charges due during the first 60 months of the Term of the Agreement have been paid, without regard to the security deposit noted above, construction bonds or other collateral held by or for the City for the performance of the terms or conditions of the Agreement, or the receipt, disposition, application, or release of any security deposit, construction bonds or other collateral, now or hereafter held by or for the City.

Section 3.05 Future Adjustments of Rents and Fees

The City reserves the right to adjust, or modify existing Airport fees and charges, or to establish additional fees and charges as necessary to maintain the financial integrity of the Airport through cost recovery and to make the Airport as self-sustaining as possible. Except for CPI adjustment of the annual ground site rent as noted below, all fees, rents and charges are subject to adjustment as a part of the City's annual budget approval process. Airport Tenants and the general public are provided the opportunity to comment on proposed fees, rents and charges changes during the budget approval process.

Commencing on the first anniversary date of this agreement, and for each one (1) year period thereafter, the annual rental payment shall be adjusted by dividing the initial rental rate by the U.S. City Average of the Consumer Price Index for All Urban Consumers (CPI-U) published immediately preceding the Effective Date of this Lease, **April 2, 2021**, and multiplying the quotient thereof by the last Index (CPI-U) published immediately preceding each such one (1) year lease period $\left(\left(\frac{\text{initial rental rate}}{\text{initial CPI-U}} \right) \times (\text{current CPI} - U) = \text{new rental rate} \right)$. At no time, however, shall said rental be less than the rental paid during the previous year period of this Agreement.

For purposes of this Agreement, the Consumers Price Index means the Index for "All Goods and Services" for Urban areas for the U.S. City Average as determined by the United States Department of Labor, Bureau of Statistics.

Should the United States Government revise its price index at any time, the parties hereto will follow such suggestions as the Government may issue for making an arithmetical changeover from one Index to another. Should the price index be wholly discontinued, then its successor or the most nearly comparable successor index thereof, adjusted back to the anniversary date, shall be used.

Section 3.06 Late Charges

The Tenant shall pay to the City a late charge equal to 1.5% per month on all rent and fee charges which are 30 days past due. Said late charge shall commence on the past due amount from the date said payment was due and shall be computed to the date the past due amount is paid. This shall be in addition to, and in no way alters, any other rights reserved to the City, or existing in the City by virtue of the laws of the State of West Virginia, or by the terms of the Agreement.

Section 3.07 Surrender of Possession

At the expiration of the term of this Agreement, including any renewal term(s), whether by lapse of time or otherwise, Tenant shall promptly and peacefully surrender the demised premises to the City.

Section 3.08 Holding Over

If Tenant shall, with the written consent of the City, hold over after the expiration of the term of this Agreement, including any renewal term(s), tenancy shall be on a month-to-month basis, which may be terminated as provided for by the laws of the State of West Virginia.

Section 3.09 Chronic Late Payment

City may also terminate this Agreement for the reason that Tenant is chronically late with rental payments. Chronic late payments are defined as making a rental payment more than five (5) days after the due date on three (3) or more occasions during any consecutive 12-month period during the term of this Agreement.

Section 3.10 Returned/Dishonored Checks

If Tenant makes a payment due under this Agreement with a check that has been returned/dishonored by the bank, pursuant to West Virginia law, Tenant shall pay a \$25.00 service fee in addition to the amount of the returned/dishonored check, payable within ten (10) days of receipt of City's written demand for such payment. If not paid in full within ten (10) days, it will be sent to Magistrate Court for collection. This amount is in addition to the late fee incurred.

Section 3.11 Application of Payment

Money paid by Tenant to City for late fees and/or litigation settlements shall be applied first to interest, second to Court Costs legally chargeable to Tenant, third to attorney fees chargeable to Tenant, fourth to outstanding repair bills that are the responsibility of the Tenant, and fifth toward rent.

**ARTICLE 4
TENANT'S FUTURE CONSTRUCTION REQUIREMENTS**

Section 4.01 Requirements for Improvements on Demised Premises

The Tenant shall, at its sole expense, construct on the demised premises, as provided in Sections of this Article 4, additions, and improvements as necessary in furtherance of the purposes set forth in Article 2, and the Tenant shall install herein and thereon such equipment and facilities as the Tenant or the City may deem necessary or desirable. Provided, however, that no improvement of any nature shall be made or installed by the Tenant without the prior written consent of the City as herein provided. The Tenant may also be required to provide the City with proof that funds necessary to complete construction of the improvements have been irrevocably dedicated to such construction. All improvements constructed under this Agreement shall be in accordance with the Airport's Tenant Improvement Manual as well as all other applicable laws, rules, regulations and ordinance.

Section 4.02 Future Construction Dates

1. **Additional Construction:** The construction of any additional improvement, occurring during the remaining term of this agreement, shall be substantially completed within 12 months of the date of the City's written approval of the Plans therefore in accordance with the construction schedule approved by the City. In the event of a failure to complete the additional construction within the 12-month period, the City shall have the right to terminate this Agreement pursuant to Article 9 hereof and make appropriate claims against required performance bonds to complete construction, unless it is determined at sole discretion of the City that there were delays beyond the control of the Tenant.

2. **Construction Period Extensions:** The Tenant may request an extension of the construction period for causes or conditions of delay that are beyond the control of the Tenant (hereinafter referred to as "Force Majeure"). Such conditions of delay may be, by way of example, but not limited to, strikes, acts of God, inability to obtain labor or materials, governmental restrictions, enemy action, civil commotion, fire or other casualty, or failure of the City to carry out its obligations. Accordingly, at the sole discretion of the City, the period for completion of construction shall be extended by the number of days of delay resulting from the Force Majeure.

Section 4.03 Approvals of Future Construction Plans

The Tenant covenants and agrees that prior to the preparation of detailed construction plans, specifications, and architectural renderings of any such addition or improvement, it shall first submit plans showing the general site plan, design and character of improvements and their locations, to the City for approval. The City agrees to review such plans within 30 days of receipt from the Tenant. The Tenant covenants and agrees that prior to the installation or construction of any present and future addition or improvement on the demised premises, it shall first submit to the City for approval, final detailed construction plans and specifications and architectural renderings prepared by registered architects and engineers, and that all construction will be in accordance with such plans and specifications and the Tenant Improvement Manual and all other applicable rules, regulations, laws and ordinances.

Section 4.04 Future Extension of Utilities or Special Facilities

The Tenant shall contract, and extend, at its sole expense, all necessary utility, electrical, communication lines needed to service any improvements constructed in the future by the Tenant on the demised premises. All utility extensions and other construction shall be in accordance with all applicable Codes, ordinances, and the Tenant Improvement Manual.

Section 4.05 Alterations or Repairs to Premises

The Tenant shall not construct, install, remove and/or modify internal, external or structural portions of the buildings constructed upon the demised premises without the prior written approval of the City. The Tenant shall submit for approval by the City, its plans and specifications for any proposed project as well as complying with all applicable code requirements and such other conditions considered by the City to be necessary.

Section 4.06 Lien Indemnification

Tenant shall keep the premises free from liens arising out of any work performed and/or materials ordered, or from any obligations incurred by Tenant. In the event any person or corporation shall, as a result of construction work being performed by or for the Tenant, attempt to assess a lien against the demised premises, the Tenant shall hold the City harmless from such claim, including the cost of defense.

Section 4.07 Cost of Construction and Alterations

Within thirty (30) days of completion of the construction or alterations, the Tenant shall present to the City for examination and approval a sworn statement of the construction and/or alteration costs. Construction and/or alteration costs for the purpose of this Section are hereby defined as all money paid by the Tenant for actual site preparation, construction, or alteration, including architectural and engineering costs plus pertinent fees in connection therewith. In the event that the Tenant makes further improvements or alterations on the demised premises, the use thereof shall be enjoyed by the Tenant during the term hereof without the additional rental therefore.

Section 4.08 As-built Drawings

Within ninety (90) days following completion of any future construction by the Tenant and any subsequent additions, alterations or improvements, the Tenant shall present to the City a complete set of "as-built" drawings including, but not limited to, architectural renderings, specifications, plumbing, and electrical plans.

Section 4.09 Security Interest on Leasehold Improvements for Construction

Tenant shall have no right to place a security interest, or "mortgage", upon demised premises, for improvements financed by the Tenant.

Section 4.10 Ownership of Improvements

The building and associated site improvements constructed and paid for by the City, as well as any approved improvements to demised premises, constructed during the term of this agreement, whether paid for by the Tenant or the City, excluding Tenant's personal property, shall remain the property of the City.

Section 4.11 Performance Bonds

Tenant shall cause a surety bond to be issued in the amount of 100% of the building(s) and site development construction costs, prior to the beginning of any construction financed by Tenant, or another form of security acceptable to the City that assures that the funds to cover the cost of the project are irrevocably set aside and available to the City to complete the improvement to City owned property should the Tenant fail to do so.

**ARTICLE 5
OBLIGATION OF TENANT**

Section 5.01 Net Lease

The use and occupancy of the demised premises by the Tenant will be without cost or expense to the City. It shall be the sole responsibility of the Tenant to maintain, repair and operate the entirety of the demised premises, and any approved improvements and facilities constructed thereon, at the Tenant's sole cost and expense.

Section 5.02 Maintenance and Operation

The Tenant shall maintain the demised premises at all times in a safe, neat and clean condition free of weeds, rubbish, or any unsightly accumulations of any nature whatsoever. The Tenant shall repair all damage to the demised premises caused by its employees, patrons, or its operation thereon.

1. The City remains responsible for the structural integrity of the building structure.
2. Upon occupancy, the Tenant shall be responsible for and perform all maintenance, including but not limited to:
 - a. Janitorial services, providing janitorial supplies, window washing, rubbish, and trash removal.
 - b. Supply and replacement of light bulbs and replacement of all glass in building, including plate glass.
 - c. Replacement of floor coverings.
 - d. Building interior maintenance, including painting, repairing and replacement.
 - e. Repair or replacement of equipment and utilities to include electrical, mechanical, and plumbing. All repairs to electrical and mechanical equipment are to be made by licensed personnel. Other repairs are to be made by craftsmen skilled in work done and performing such work regularly as trade.
 - f. The Tenant shall advise the City and obtain City's consent in writing before making changes involving structural changes to the premises, modifications, or additions to plumbing, electrical or other utilities
 - g. The Tenant is responsible for maintaining electric loads within the designed capacity of the system. Prior to any change desired by the Tenant in the electrical loading which would exceed such capacity, written consent shall be obtained from the City.
 - h. The Tenant shall provide and maintain hand fire extinguishers for the demised premises in accordance with applicable fire and safety codes.
3. The City's Airport Director, at his discretion, shall be the sole judge of the quality of maintenance; and the Tenant, upon written notice by the City to the Tenant, shall be required to perform whatever maintenance the City deems necessary. If said maintenance is not undertaken by the Tenant within fifteen (15) days after receipt of written notice, the City shall have the right to enter upon the demised premises and improvements constructed thereon, and perform the necessary maintenance, the cost of which shall be borne by the Tenant as additional rent which shall be paid by the Tenant to the City in full within ten (10) days after the same has been billed.

Section 5.03 Utilities

The Tenant shall assume and pay for all costs or charges for utility services, including electrical, gas, telephone, and other such utilities furnished to the Tenant during the term hereof.

Section 5.04 Signs

The Tenant shall not erect, maintain, or display upon the outside of any improvements on the demised premises any billboards or advertising signs without prior written approval by the City.

Section 5.05 Nondiscrimination

The Tenant, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that (A) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the demised premises; (B) that in the construction of any improvements on, over, or under such land and the furnishing of services thereof no persons the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination; (C) that the Tenant shall use the demised premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and Transportation, and said Regulations may be amended, to the extent that said requirements are applicable, as a matter of law, to the Tenant.

With respect to the demised premises, the Tenant agrees to furnish services on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, that the Tenant may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

Section 5.06 Observance of Statutes and Regulations

The granting of this Agreement and its acceptance by the Tenant is conditioned upon the right to use the Airport facilities in common with others authorized to do so, provided however, that the Tenant shall observe and comply with any and all requirements of the constituted public authorities and with all federal, state, or local statutes, ordinances, regulations and standards applicable to the Tenant for its use of the demised premises, including but not limited to, rules and regulations or standards promulgated from time to time by the City for the administration of the Airport.

Section 5.07 Airport Security

The Tenant recognizes the City's required compliance with Federal Aviation Regulations concerning airport security and agrees to comply with the Airport's Security Plan as it relates to its use of the demised premises and the Airport's public facilities.

**ARTICLE 6
OBLIGATIONS OF THE CITY**

Section 6.01 Operation as a Public Airport

The City covenants and agrees that it will operate and maintain the Airport facilities at all times as a public airport consistent with, and pursuant to, the "Sponsor's Assurances" given by the City to the United States Government under Federal Airport Act.

Section 6.02 Ingress and Egress

Upon paying the rental prescribed herein, and performing the covenants of this Agreement, the Tenant shall have the right of ingress to, and egress from, the demised premises for the Tenant, its officers, employees, agents, servants, customers, vendors, suppliers, patrons, and invitee over the roadway serving the area of the demised premises. Airport roadways shall be used jointly with other tenants of the Airport, and the Tenant shall not interfere with the rights and privileges of other persons or firms using said facilities and shall be subject to such weight and type use restrictions as the City deems necessary.

**ARTICLE 7
CITY'S RESERVATIONS**

Section 7.01 Improvement, Relocation or Removal of Structure

In the event the City requires the demised premises for expansion, improvements, development of the airport, the City reserves the right, on a twelve (12) month notice, at no cost to the Tenant, to relocate or replace the Tenant's improvements, in substantially similar form at another generally comparable location

on the Airport. All other Agreement terms shall remain in full force and effect. In the event of such relocation or replacement, the City agrees to suspend rental during any period such improvements are unusable.

Section 7.02 Inspection of Demised Premises

The City, through its duly authorized agent, shall have at any reasonable time with prior notice, the full and unrestricted right to enter the demised premises for the purpose of periodic inspection for fire protection, maintenance and to investigate compliance with the terms of this Agreement.

**ARTICLE 8
INDEMNITY AND INSURANCE**

Section 8.01 Indemnification

1. The Tenant agrees to indemnify, save, hold harmless and defend the City, its agents and employees, its successors and assigns, individually or collectively, from and against all liability for any claims and actions and all reasonable expenses incidental to the investigation and defense thereof, in any way arising out of or resulting from any acts, omissions or negligence of the Tenant, its agents, employees, licensees, successors and assigns, or those under its control; in, on or about demised premises or upon demised premises; or in connection with its use and occupancy of demised premises or use of Airport; PROVIDED, HOWEVER, that the Tenant shall not be liable for any injury, damage, or loss to the extent occasioned by the negligence or willful misconduct of the City, its agents or employees. When knowledge of any action becomes known by the Tenant or the City, they shall give prompt written notice to the other party.
2. The Tenant shall indemnify, save, hold harmless, and defend the City, its agents and employees, its successors and assigns, individually or collectively, from and against all liability for any claims and actions and all expenses or fines incidental to the investigation and defense thereof, in any way arising from or based upon the violation of any federal, state, or municipal laws, statutes, ordinances or regulations by the Tenant's agents, employees, licensees, successors and assigns, or those under its control. The Tenant shall not be liable for any claims, actions and expenses or fines, incidental to the investigation and defense thereof, in any way arising from or based upon violation of any federal, state, or municipal laws, statutes, ordinances, or regulations by the City, its agents, employees, licensees, successors and assigns, or those under its control.

Section 8.02 Insurance

1. Without limiting the Tenant's obligation to indemnify the City, the Tenant shall provide, pay for, and maintain in force at all times during the term of this Agreement a policy of comprehensive general liability insurance to protect against bodily injury liability and property damage in an aggregate amount of not less than \$1,000,000.00 per occurrence; a policy of comprehensive automobile liability insurance in a combined single limit of not less than \$1,000,000.00; and statutory Workman's Compensation insurance.

The Tenant shall furnish the City, as evidence that such insurance is in force, a certified copy of the insurance Certificate including the City as an additional insured within thirty (30) days after the policy(s) is issued. Said policies shall be in a form and content satisfactory to the City and shall provide for thirty (30) days written notice to the City prior to the cancellation of or any material change in such policies.

2. Neither the City nor its agents shall be responsible for the theft of or damage to any personal property of Tenant or its guests or invitees, for damage, loss, or destruction of personal property of Tenant or of Tenant's guests or invitees because of fire, water, acts or omissions of third parties or any cause whatsoever unless caused by the negligent acts of City of its agents.

Tenant shall procure and maintain, at its own expense, insurance covering Tenant's personal property and to the fullest extent possible without violating any such insurance coverage, Tenant waives all claims and subrogation rights against City arising out of any loss of or damage to any personal property owned by or in the possession or control of Tenant.

Each party also releases the other party from any other liability for loss, damage or injury caused by fire or other casualty for which insurance is carried by the insured party to the extent of any recovery by the insured policy under such insurance policy, other than as set forth in Section 8.04 and 8.05 below.

Section 8.03 Environmental Impairment

The Tenant will comply with any environmental regulations affecting its operations throughout the term of this Agreement.

Section 8.04 Fire and Extended Coverage Insurance

The Tenant shall, at its expense, procure and keep in force at all times during the term of this Agreement with a company suitable to the City, insurance on the demised property, including all improvements, against loss and damage by fire, and extended coverage perils. The Tenant shall furnish evidence of insurance. Insurance shall name the City as an additional insured.

Section 8.05 Application of Insurance Proceeds

If the demised premises shall be partially or totally destroyed or damaged, the Tenant and the City, within thirty (30) days of the damage shall decide whether or not to proceed with restoration. If the City and the Tenant elect not to restore the same to their previous condition, the proceeds of insurance payable by reason of such loss the City shall be entitled to receive and apply the entire proceeds of any insurance covering such loss to the cleanup of the leased site, except those proceeds identified to cover the loss of Tenants personal property contained within demised premises. The Agreement shall then be canceled. If the damage results from an insurable cause and if the City elects to have the Tenant restore demised premises with reasonable promptness, the Tenant shall be entitled to receive and apply the entire proceeds of any insurance covering such loss to said restoration, including applicable site clean-up, in which event this Agreement shall be appropriately amended as necessary and continue in full force and effect.

Section 8.06 Performance Bonds

The Tenant shall cause a surety bond to be issued in the amount of 100% of the demised premises restoration costs, prior to the beginning of any construction financed by the Tenant or for the restoration of demised premises that is over and above insurance proceeds, in accordance with Section 8.05 above, or another form of security acceptable to the City that assures that the funds to cover the cost of the project are irrevocably set aside and available to the City to complete the improvement to City owned property should the Tenant fail to do so.

Section 8.07 Destruction of Premises (Uninsured Cause)

In the event of damage to or destruction of the demised property by an uninsured cause, Tenant and the City shall decide, within thirty (30) days of the event, whether it will repair, restore, or rebuild the demised premises. Within sixty (60) days of the event, Tenant shall initiate restoration or raising activities and complete those activities within one hundred twenty (120) days of the event unless otherwise agreed by the City. In the event Tenant fails to take action as noted above, City shall have the right to restore the premises to its original condition. Tenant shall be liable for reimbursing the City for all costs incurred.

ARTICLE 9 CANCELLATION BY THE CITY

Section 9.01 Events of Default by Tenants

Each of the following events shall constitute an "Event of Default by Tenant":

1. Tenant fails to pay rentals, fees and charges when due, and such default continues for a period of ten (10) days after receipt of written notice from the City that such non-payment constitutes an event of default.
2. Tenant fails after receipt of written notice from the City to keep, perform or observe any term, covenant or condition of this Agreement, other than as set forth in paragraph 1 (above) and such failure continues for thirty (30) days after such receipt, or if by its nature such event of default by Tenants cannot be cured within such thirty (30) day period, Tenant fails to commence to cure or remove such event of default by the Tenant within said thirty (30) days and to cure or remove same as promptly as reasonably practicable.
3. Tenant abandons the premises. Tenant's intent not to re-occupy the premises may be presumed upon expiration of ten (10) days after receipt of written notice from the City that it believes in good faith that Tenant has abandoned the premises.
4. Tenant shall become insolvent, shall take the benefit of any present or future insolvency statute, shall make a general assignment for the benefit of creditors, shall file a voluntary petition in bankruptcy or a petition or answer seeking a reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under and other law or statute of the United States or of any

state thereof, or shall consent to the appointment of a receiver, trustee, or liquidation of all or substantially all of its property.

5. An Order for Relief shall be entered at the request of Tenant or any of its creditors under the federal bankruptcy or reorganization laws or under any law or statute of the United States or any state thereof.
6. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Tenant and shall not be dismissed within thirty (30) days after the filing thereof. Tenant shall pay to the City all reasonable costs and fees, including attorney and accounting fees and expenses, incurred by the City in the exercise of any remedy in the event of any default by the Tenant.
7. By or pursuant to, or under, any legislative act, resolution or rule, or any order of decree of any court or governmental board or agency, an officer, receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of Tenant and such possession or control shall continue in effect for a period of fifteen (15) days.
8. Tenant shall become a corporation in dissolution, or voluntarily or involuntarily forfeit their corporate charter, other than through merger with a successor corporation.
9. The rights of the Tenant hereunder shall be transferred to, pass to, or devolve upon, by operation of law or otherwise, any other person, firm, corporation, or other entity, as a result of any bankruptcy, insolvency, trusteeship, liquidation or other proceedings or occurrence described in Paragraphs 3 through 7 above.

Section 9.02 Remedies for Tenants' Default

1. Upon the occurrence of an "Event of Default by the Tenant", Tenant shall remain liable to the City for all arrearages of rentals, fees or charges payable hereunder and for all preceding breach (es) of any covenant herein contained. The City, in addition to the right of termination, and to any other rights or remedies it may have at law or in equity, shall have the right of re-entry and may remove all Tenant's persons and property from the demised premises. Upon any such removal, Tenant's property may be stored in a public warehouse or elsewhere at the cost of, and for the account of, the Tenant. Should the City elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided by law, it may, at any time subsequent to an "Event of Default by the Tenant", either terminate this Agreement or re-let the demised premises and any improvements thereon, or any part thereof, for such term or terms (which may be for a term extending beyond the term of this Agreement) at such rentals, fees and charges, and upon such other terms and conditions, as the City, in its sole discretion, may deem advisable, with the right to make alterations repairs or improvements on said demised premises. No re-entry or re-letting of the demised premises by the City shall be construed as an election on the City's part to terminate this Agreement, unless a written notice of such intention is given to the Tenant. In re-letting the demised premises, the City shall make a good faith effort to obtain terms and conditions no less favorable to itself than those contained herein and otherwise seek to mitigate any damage it may suffer as a result of the "Event of Default by the Tenant".
2. Unless the City elects to terminate this Agreement, the Tenant shall remain liable for and promptly pay all rentals, fees and charges accruing hereunder until termination of this Agreement at the expiration date set forth herein.
3. In the event that the City re-lets the demised premises, rentals, fees and charges received by the City from such re-letting shall be applied: first, to the payment of any indebtedness other than rentals, fees and charges due hereunder from the Tenant to the City; second, to the payment of any cost of such re-letting; third, to the payment of rentals, fees and charges due and unpaid hereunder; and, the residue, if any, shall be held by the City and applied in payment of future rentals, fees and charges as the same may become due and payable hereunder. Should that portion of such rentals, fees and charges received from such re-letting applied to the payment of rentals, fees and charges due hereunder be less than the rentals, fees and charges payable during the applicable period, Tenant shall pay such deficiency to the City. The Tenant shall also pay to the City, as soon as ascertained, any costs and expenses incurred by such re-letting not covered by the rentals, fees and charges received from such re-letting.
4. Notwithstanding anything to the contrary in this Agreement, if a dispute arises between the City and Tenant with respect to any obligation or alleged obligation of the Tenant to make payment(s) to the City, the payment(s) under protest by the Tenant of the amount claimed by the Tenant to be due shall not waive any of the Tenants' rights, and if any court or other body having jurisdiction determines all, or any part, of the protested payment was not due, then the City shall as promptly

as reasonably practicable reimburse the Tenant any amount determined as not due plus interest on such amount at the highest rate allowable under West Virginia law.

5. Tenant shall pay to the City all reasonable costs, fees (including attorneys and accountants) and expenses incurred by the City in the exercise of any remedy upon an event of default by the Tenant.

ARTICLE 10 CANCELLATION BY TENANT FOR EVENTS OF DEFAULT BY CITY

Section 10.01 Event of Default by City

Each of the following events shall constitute an "Event of Default by City":

1. The City fails, after receipt of written notice from Tenant, to keep, perform or observe any term, covenant or condition herein contained to be kept, performed or observed by the City and such failure continues for thirty (30) days; or, if, by its nature, such "Event of Default by City" cannot be cured within such thirty (30) day period, the City fails to commence to cure or remove such "Event of Default by City" within said thirty (30) days and to cure or remove the same as promptly as reasonably practicable.
2. The City closes the Airport to flights in general or to the flights of the Tenant, for reasons other than weather, acts of God or other reasons beyond its control, and fails to reopen the Airport to such flights within sixty (60) days of such closure, and such closure negatively affects the Tenant's use of demised premises.
3. The Airport is permanently closed by act of any federal, state or local government agency having competent jurisdiction.
4. The City is unable to use the Airport for a period of at least sixty (60) days due to any law or any order, rule or regulation of any appropriate governmental authority having jurisdiction over the operations of the airport, or any court of competent jurisdiction issues an injunction in any way preventing or restraining the use of the Airport, or any part thereof, for airport purposes, and such injunction remains in force for a period of at least sixty (60) days and such situation negatively affects the Tenant's use of demised premises.
5. The United States Government or any authorized agency of the same (by executive order or otherwise) assumes the operation, control or use of the Airport and its facilities in such a manner as to substantially restrict Tenant from conducting its operations, and such restrictions shall continue for a period of at least sixty (60) days.

Section 10.02 Remedies for City's Defaults

Upon the occurrence of an "Event of Default by City", the Tenant shall have the right to suspend or terminate this Agreement and all rentals, fees and charges payable by Tenant under this Agreement shall abate during a period of suspension or shall terminate, as the case may be. In the event that Tenant's operations at Airport should be substantially restricted by action of any governmental agency having jurisdiction thereof, then Tenant shall, in addition to the rights of termination herein granted, have the right to a suspension of this Agreement, or part thereof, and abatement of an equitable proportion of the payments due hereunder, from the time of giving written notice of such election until such restrictions shall have been remedied and normal operations restored. In addition to its remedy of termination, the Tenant shall be entitled to all other remedies available to it by law or equity.

ARTICLE 11 RIGHTS UNDER TERMINATION

Section 11.01 Fixed Improvements

It is the intent of this Agreement that the leasehold improvements, alterations and items affixed thereto shall be and remain the property of the City during the entire term of this Agreement. Upon termination of this Agreement, the Tenant shall have no further rights under this Agreement, nor shall it have any interest in the demised premises, buildings or improvements, constructed thereon.

Section 11.02 Personal Property

Upon termination of this Agreement, the Tenant shall remove all personal property, and items not affixed, from the demised premises within sixty (60) days after said termination and restore the demised premises to its original condition. If the Tenant fails to remove said personal property, said property shall revert to City ownership and may thereafter be removed by the City at Tenant's expense.

**ARTICLE 12
ASSIGNMENT AND SUBLETTING**

The Tenant shall not assign this Agreement or sublease, or any part hereof, in any manner whatsoever, or assign any of the privileges recited herein without the prior written consent of the City. Provided however:

1. Tenant may assign privileges of this agreement, and/or sublease space, in the Demised Premises directly to a parent, subsidiary or affiliate of Tenant, in the furtherance of its approved use of City / Airport facilities as detailed in 2.01, without City approval. However, Tenant remains obligated to notify City in writing of such assignment or sublease. Under such assignment or sublease, the Tenant remains fully responsible for the payment of all rents, fees and charges in accordance with the Agreement.
2. Any assignment of the privileges in this agreement, or sublease of Demised Premises, wherein the assignee/sub-lessee is responsible for the payment of rents, fees and charges directly to the City, must receive the prior approval of the City. In such assignment or sublease, Tenant shall remain liable to the City for the remainder of the term of this Agreement to pay to the City any portion of the rental and fees provided for herein upon failure of the assignee or sub-lessee to pay the same when due.
3. Said assignee or sub-lessee in either case above, shall not further assign or sublease said Agreement or leased space except with the prior written approval of the City and the Tenant herein, and any assignment or sublease agreement initiated by the Tenant to any third party shall contain a clause to this effect.

**ARTICLE 13
QUIET ENJOYMENT**

The City covenants that the Tenant, upon payment of the rentals reserved herein and the performance of each and every one of the covenants, agreements and conditions on the part of the Tenant to be observed and performed, shall and may, peaceably and quietly, have, hold and enjoy the demised premises for the term of this Agreement, free from molestation, or disturbance.

**ARTICLE 14
GENERAL PROVISIONS**

Section 14.01 Non-Interference with Operations of Airport

The Tenant, by accepting this Agreement, expressly agrees for itself, its successors and assigns, that it will not make use of the demised premises in any manner which might interfere with the operations of the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the City reserves the right to enter upon the premises hereby leased and cause the abatement of such interference at the expense of the Tenant.

Section 14.02 Attorney's Fees

In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover interest and its reasonable attorney's fees.

Section 14.03 Taxes and Special Assessments

The Tenant shall pay any and all leasehold interest tax assessed on said demised premises and all personal property taxes which may be assessed against equipment, merchandise, or other personal property belonging to the Tenant located on the demised premises, or other permitted portions of the Airport. The Tenant shall pay all real estate taxes attributed to the Tenant's leasehold interest and all other real estate taxes which may be levied and assessed which are attributed to the Tenant's leasehold interest in the demised premises. The Tenant shall pay all sales or use taxes and assessments, license fees or other charges of any kind or nature, without exception, levied or assessed, arising out of the activities conducted on, and/or the occupancy of, the demised premises.

Section 14.04 Right to Contest

The Tenant shall have the right to contest the validity or amount of any tax, assessment or charge, lien or claim of any kind in with respect to the demised premises. Tenant shall, if the City requires the same in writing and if the taxes or other assessments have not been paid under protest or otherwise escrowed or provided for, furnish reasonable security for the payment of all liability, costs and expenses at the end of the litigation, and Tenant, so long as the matter shall remain undetermined by final judgment, shall not be

considered in default hereunder by the nonpayment thereof; provided however, that Tenant shall not, under these provisions, permit the premises or any buildings or improvements situated thereon, to be sold or forfeited, and failure by the Tenant to do what is necessary to prevent any such sale or forfeiture within ten (10) days from the publication or receipt of notice for sale or forfeiture, shall be deemed to be a default hereunder, and the City may, at its option, pay any such sum as may be required to avoid the sale or forfeiture and seek reimbursement for its cost from the Tenant or ownership of the buildings or improvements involved.

Section 14.05 License Fees and Permits

The Tenant shall obtain and pay for all licenses, permits, fees or other authorization or charges as required under federal, state or local laws and regulations insofar as they are necessary to comply with the requirements of this Agreement and the privileges extended hereunder.

Section 14.06 Non-Exclusive Rights

It is hereby specifically understood and agreed between the parties that nothing herein contained shall be construed as granting or authorizing the granting of exclusive rights to the Tenant or others, as defined in Section 308 of the Federal Aviation Act of 1958, as amended.

Section 14.07 Paragraph Headings

The Section paragraph headings contained herein are for convenience in reference only and are not intended to define or limit the scope of any of the provision of this Agreement.

Section 14.08 Interpretations

This Agreement shall be interpreted in accordance with the laws of the State of West Virginia.

Section 14.09 Non-Waiver

No waiver by City of any agreement, condition or provision contained in this Agreement will be valid or binding unless expressed in writing and signed by the City. The waiver by City of any agreement, condition or provision contained in this Agreement will not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition or provision contained in this Agreement, nor will any custom or practice that may grow up between the parties in the administration of the terms of this Agreement be construed to waive or to lessen the right of City to insist upon the performance by Tenant in strict accordance with the terms of this Agreement. The subsequent acceptance of rent by City will not be needed to be a waiver of any preceding breach by Tenant of any agreement, condition or provision of this Agreement, other than the failure of Tenant to pay the particular rent so accepted, regardless of City's knowledge of such preceding breach at the time of acceptance of such rent.

Section 14.10 Severability

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

Section 14.11 Binding Effect

This Agreement, including all of its covenants, terms, provisions and conditions, shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, successors and assigns.

Section 14.12 No Partnership

Nothing contained in this Agreement shall be deemed to create the relationship of principal and agent or of a partnership or joint venture or any relationship between the City and Tenant other than the relationship of the City and Tenant.

Section 14.13 Duty to be Reasonable

Wherever in this Agreement the City is to give its consent, approval or otherwise exercise discretion in judgment, such consent, approval or judgment discretion shall not be unreasonably exercised or unreasonably withheld. When the City is called upon to give its consent or approval, or otherwise exercise its discretion and judgment as to financial matters which affect the City and the continuing operations of the Airport, the exercise of its judgment as to any such matters shall be solely and completely within the discretion of the City.

Section 14.14 Notices

Whenever any notice or payment is required by this Agreement to be made, given, or transmitted to the parties hereto, such notices or payments shall be enclosed in an envelope with sufficient postage attached to ensure delivery and deposited in the United States Mail, addressed to:

**Airport Director
City of Morgantown
Morgantown Municipal Airport
100 Hart Field Road
Morgantown, West Virginia 26505**

And notices, consents and approvals to the Tenant addressed to:

<p>Wanderlust Travel LLC c/o Lisa Weese 100 Hart Field Rd, Suite 241 Morgantown, WV 26505</p>
--

Or such other place as either party shall, by written directive, designate in the manner herein provided.

Section 14.15 Entire Agreement

This Office Lease Agreement constitutes the entire agreement between the parties. There are no verbal or written agreements between the parties that are to be considered a part of this Agreement unless they have been specifically enumerated herein and this Agreement supersedes all prior or other agreements, understandings, and representations. This Agreement may be amended solely by a written instrument, signed by all parties.

Section 14.16 No Construction Against Drafting Party

City and Tenant acknowledge that each of them and their counsel have had an opportunity to review this Agreement and that this Agreement will not be construed against City merely because City has prepared it.

Section 14.17 Third Party Beneficiaries

It is specifically understood and agreed that no person shall be a third-party beneficiary hereunder, and that none of the provisions of this Agreement shall be for the benefit of, or be enforceable by, anyone other than the parties hereto, and that only the parties hereto and their permitted assignees shall have rights hereunder.

Section 14.18 Authorization and Execution

By its execution hereof, Tenant and the City warrant that all necessary corporate action has been taken with regard to the authorization and execution of this Agreement and that the individual(s) executing this Lease Agreement on behalf of Tenant is/are duly authorized to do so. Whoever signs this Agreement on behalf of Tenant and the City hereby confirms that they have the appropriate authority and have been so authorized to execute this Agreement on behalf of Tenant and City, respectively.

IN WITNESS WHEREOF, the parties have caused this **Office Lease Agreement** to be executed on their behalf by their duly authorized officers.

CITY OF MORGANTOWN

WANDERLUST TRAVEL LLC

By: _____

A. Kim Haws
City Manager

Date: _____

Witness:

By: _____

Name, Title

Date: _____

By: *Lisa Weese* _____

Lisa Weese
Owner

Date: 3-15-21 _____

Witness:

By: *Amy W Colosky* *Financial*
Name, Title *Manager*

Date: 3/15/21 _____

*City of Morgantown
Finance Department*

*389 Spruce Street
Morgantown, WV 26505
Phone (304) 284-7443/Fax 7418
llivengood@morgantownwv.gov*

Memo

DATE: April 12, 2021
TO: Christine Wade, City Clerk
FROM: Lori Livengood, Interim Finance Director
RE: Agenda Item

Please include on the agenda for April 20, 2021 under New Business:

Consideration of the APPROVAL OF THE RATES OF LEVY LAID BY THE CITY OF MORGANTOWN AND APPROVED BY THE STATE AUDITOR FOR THE FISCAL YEAR BEGINNING JULY 1, 2021 IN ACCORDANCE WITH CHAPTER 11 ARTICLE 8 OF THE WEST VIRGINIA CODE.

Attached is the *Levy Order and Rate Sheet* to be included in the Council packets.

After approval, please sign the *Levy Order and Rate Sheet* and return to me for submission to the State Auditor's Office.

Thank you.

**MUNICIPALITY OF MORGANTOWN, WEST VIRGINIA
LEVY ORDER AND RATE SHEET
2021 - 2022**

The following is a true copy from the record of orders entered by this entity
on the 20 day of April, 2021.

SIGNATURE: _____

Municipal Clerk or Recorder

	Column E Certificate of Valuation Assessed Value for Tax Purposes	Levy Rate/\$100	Taxes Levied
Current Year			
Class I			
Personal Property	\$ 0	12.500	\$ 0
Public Utility	0		0
Total Class I	\$ 0		\$ 0
Class II			
Real Estate	\$ 472,560,190	25.000	\$ 1,181,400
Personal Property	1,467,250		3,668
Total Class II	\$ 474,027,440		\$ 1,185,068
Class IV			
Real Estate	\$ 553,890,980	50.000	\$ 2,769,455
Personal Property	171,059,841		855,299
Public Utility	57,570,412		287,852
Total Class IV	\$ 782,521,233		\$ 3,912,606
Total Value & Projected Revenue	\$ 1,256,548,673		\$ 5,097,674
Less Delinquencies, Exonerations & Uncollectable Taxes		4.00%	203,907
Less Tax Discounts		1.00%	48,938
Less Allowance for Tax Increment Financing - see worksheet (Subtracted from regular current expense taxes levied only)			441,679
Total Projected Property Tax Collection			4,403,150
Less Assessor Valuation Fund (Subtracted from regular current expense taxes levied only)		2.00%	88,063
Net Amount to be Raised by Levy of Property Taxes For Budget Purposes			\$ 4,315,087

Clear Mountain Bank
COMMITMENT LETTER

April 13, 2021

The City of Morgantown (West Virginia)
Parking System Revenue Bonds, Series 2021

Please accept this letter as the commitment of the undersigned to purchase all of The City of Morgantown Parking System Revenue Bonds, Series 2021 (the "Bonds") upon the terms and conditions outlined below:

Issuer and Par Amount*: \$2,350,918.37* estimated principal amount of the Bonds offered for sale by The City of Morgantown (the "Issuer").

The Project: The Bonds will finance renovations and improvements to existing motor vehicle parking facilities of the Issuer consisting generally of structural repairs to and elevator replacement in the existing multilevel parking building located between University Avenue and Chestnut Street and replacement of a retaining wall in the existing surface parking lot known as the "Armory Lot" located adjacent to 300 Spruce Street (collectively, the "Project").

Authority for Issue: Chapter 8, Article 16 of the Code of West Virginia, 1931, as amended (the "Act"), authorizes and empowers the Issuer to issue revenue bonds to finance all or a portion of the costs of renovation and improvement of existing public works, including motor vehicle parking facilities. The Issuer has authorized the issuance of the Bonds pursuant to a Bond Ordinance enacted following a public hearing on March 2, 2021, as supplemented by a Supplemental Resolution planned to be adopted on April 20, 2021 (collectively, the "Ordinance").

Method of Offering: Private placement with the Purchaser pursuant to an executed Bond Purchase Agreement and Investor Letter. There will be no secondary market for the Bonds.

Authorized Denominations: The Bonds shall be issued in authorized denominations of \$100,000 and any increment of \$.01 in excess thereof.

Dated Date/Delivery Date*: On or about April 30, 2021

Source of Repayment: The net revenues of the on-street and off-street public motor vehicle parking facilities of the Issuer within the City of Morgantown owned and/or operated through the Morgantown Parking Authority (the "Authority") consisting of parking lots, buildings, ramps, curb line parking meters and other facilities necessary, appropriate, useful, convenient or incidental to the regulation and control and parking of motor vehicles (the "System"), including all revenues, fees and fines derived from all on street metered parking spaces and all off street metered or unmetered parking lots, parking garages and other off street public parking facilities owned, leased or otherwise operated by or for the Issuer or the Authority, now existing or hereafter acquired.

Security: The Bonds will be special, limited obligations of the Issuer payable and secured by the net revenues of the System, the funds on deposit from time to time in the Series 2021 Bonds Sinking Fund established with the West Virginia Municipal Bond Commission (the "Paying Agent") for the Bonds and unexpended proceeds of the Bonds. The repayment of the Bonds shall also be secured by a statutory mortgage lien upon the components of the System improved with the proceeds of the Bonds as provided pursuant to Section 22 of the Act. The net revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Bonds, and all other payments provided for in the Ordinance, are irrevocably pledged in the manner provided in the Ordinance to the payment of the principal of and interest on the Bonds as the same become due and for the other purposes provided in the Ordinance. The Bonds shall not be or constitute an indebtedness of the Issuer or the Authority within the meaning of any constitutional, statutory or charter limitation of indebtedness, nor a charge, lien or encumbrance, legal or equitable, upon any property of the Issuer or the Authority (except the statutory mortgage lien herein described), but shall be payable solely from the net revenues of the System. No holder or holders of any Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Bonds or the interest thereon.

Form of Bond: To be substantially in the form approved by the Issuer pursuant to the Bond Ordinance. Single fully registered Bond No. R-1 to be registered in the name of Purchaser.

Interest Rate*: 1.79% fixed rate for 15-year repayment term.
1.94% fixed rate for 20-year repayment term.

Expenses: [The Issuer anticipates that no origination fees/expenses will be required for this transaction. However, if there are any origination fees/expenses, please disclose them in addition to your interest rate quote.]

Interest Payment Dates*: Payable each June 1 and December 1, beginning December 1, 2021. Assuming continuing compliance by the Issuer following the closing with applicable provisions of the Internal Revenue Code of 1986, and the Regulations promulgated thereto, as amended from time to time (the "Code"), the Bonds will be issued on the basis that the interest thereon will be excludable from gross income for federal income tax purposes under the Code. The Bonds shall be exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision or agency thereof.

Principal Payment Dates*: Payable each June 1 and December 1, beginning December 1, 2021. The estimated amortization schedule for the principal of and interest on the Bonds is set forth in the table below:

Bond Year	Scenario A	Scenario B
6/1/2022	120,530.24	78,818.82
6/1/2023	130,337.57	88,087.46
6/1/2024	134,277.02	90,973.57
6/1/2025	138,335.55	93,954.23
6/1/2026	142,516.74	97,032.56
6/1/2027	146,824.30	100,211.74
6/1/2028	151,262.06	103,495.08
6/1/2029	155,833.97	106,886.00
6/1/2030	160,544.04	110,388.02
6/1/2031	165,396.50	114,004.78
6/1/2032	170,395.60	117,740.04
6/1/2033	175,545.81	121,597.68
6/1/2034	180,851.67	125,581.71
6/1/2035	186,317.92	129,696.29
6/1/2036	191,949.38	133,945.66
6/1/2037	-	138,334.27
6/1/2038	-	142,866.66
6/1/2039	-	147,547.54
6/1/2040	-	152,381.80
6/1/2041	-	157,374.46
Total	\$ 2,350,918.37	\$ 2,350,918.37
Average Life (Yrs)	8.412	11.432

*Preliminary. Subject to Change.

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Final Maturity*: The scheduled date in which all principal of the Bonds not theretofore repaid pursuant to scheduled semi-annual payments or optional redemption, together with all interest accrued thereon and not theretofore repaid shall be due and payable, which date shall be June 1, 20[36][41].

Prepayment Provisions*: Bonds will be pre-payable, in full or in part, at any time at par without penalty or premium.

Paying Agent: West Virginia Municipal Bond Commission

Depository Bank and Registrar: To be appointed by the Issuer pursuant to the Supplemental Resolution

Legal Opinion: Legal Opinion of Steptoe & Johnson, PLLC regarding the tax-exempt status, authorization and validity of the Bonds.

Tax Status: The Bonds will be issued on the basis that the interest thereon will be excludable from gross income for federal income tax purposes under the Code. The Bonds and the interest thereon shall be exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision or agency thereof.

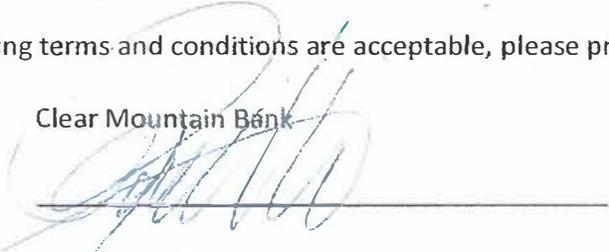
CUSIP/DTC: The Purchaser acknowledges that there will be no CUSIP identifier assigned to the Bonds and that the Bonds will not be registered with DTC.

Investor Letter: The Purchaser will be required to execute an investor letter indicating, among other things, that it has conducted a full review of the security for the Bonds, has not relied upon or requested that any disclosure document be prepared by or on behalf of the Issuer, and that the Purchaser is an entity which is qualified to purchase the Bonds under applicable federal securities laws and regulations.

Continuing Disclosure: It is understood that, with respect to the Bonds, the Issuer will not be required to comply with the continuing disclosure requirements of SEC Rule 15c2-12(b). However, the Issuer may, in its sole discretion, voluntarily file information with the Municipal Securities Rule Making Board (MSRB) via the Electronic Municipal Market Access (EMMA) website.

If the foregoing terms and conditions are acceptable, please provide your signature below.

Purchaser: Clear Mountain Bank

Signature: 

Print Name: Randall N. Underwood

Title: Chief Banking Officer

Date: April 13, 2021

THE CITY OF MORGANTOWN
PARKING SYSTEM REVENUE BONDS,
SERIES 2021

SUPPLEMENTAL PARAMETERS RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING PARAMETERS AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES AND OTHER TERMS OF THE PARKING SYSTEM REVENUE BONDS, SERIES 2021 OF THE CITY OF MORGANTOWN; AUTHORIZING AND APPROVING THE SALE AND DELIVERY OF SUCH BONDS TO THE ORIGINAL PURCHASER; APPOINTING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK FOR SUCH BONDS; APPROVING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; AUTHORIZING THE REPAYMENT AND REDEMPTION IN FULL OF THE PARKING SYSTEM REFUNDING REVENUE BONDS, SERIES 2012 OF THE CITY OF MORGANTOWN; APPROVING A CONFORMED ORDINANCE; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

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

WHEREAS, the Governing Body has duly and officially enacted on March 2, 2021, an Ordinance (the “Original Ordinance”) entitled:

AN ORDINANCE AUTHORIZING THE RENOVATION AND IMPROVEMENT OF EXISTING MOTOR VEHICLE PARKING FACILITIES, AND FINANCING OF THE COSTS THEREOF NOT OTHERWISE PROVIDED, AND PAYING COSTS OF ISSUANCE AND RELATED COSTS, THROUGH THE ISSUANCE OF PARKING SYSTEM REVENUE BONDS, SERIES 2021, OF THE CITY OF MORGANTOWN IN

THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$3,250,000; PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TAX CERTIFICATE, A BOND PURCHASE AGREEMENT AND OTHER DOCUMENTS IN CONNECTION THEREWITH; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ENACTING OTHER PROVISIONS WITH RESPECT THERETO.

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Series 2021 Ordinance (as hereinafter defined) when used herein;

WHEREAS, the Original Ordinance provides for the issuance by the Issuer of its Parking System Revenue Bonds, Series 2021 in an aggregate principal amount not to exceed \$3,250,000 (the “Series 2021 Bonds”) in accordance with Chapter 8, Article 16 of the Code of West Virginia, 1931, as amended (the “Act”) on a parity with the Issuer’s then outstanding Parking System Refunding Revenue Bonds, Series 2012 (the “Series 2012 Bonds”);

WHEREAS, the Issuer has determined that it is in its best interests to repay and redeem in full the Series 2012 Bonds prior to the issuance of the Series 2021 Bonds;

WHEREAS, the Issuer hereby authorizes and approves all amendments and modifications to the Original Ordinance to reflect that the Series 2012 Bonds will no longer be outstanding as of the date of issuance of the Series 2021 Bonds, as reflected in the Conformed Ordinance attached hereto as **EXHIBIT A** (the Original Ordinance as so amended and modified is hereinafter referred to as the “Series 2021 Ordinance”);

WHEREAS, the Issuer has determined that the System is not adequate to serve the present and future anticipated needs of the City, and it is therefore deemed necessary and desirable for the health, welfare and safety of the inhabitants of the City that renovations and improvements be made to existing motor vehicle parking facilities of the Issuer consisting generally of structural repairs to and elevator replacement in the existing multilevel parking building located between University Avenue and Chestnut Street and replacement of a retaining wall in the existing surface parking lot known as the “Armory Lot” located adjacent to 300 Spruce Street (collectively, the “Project”);

WHEREAS, the Series 2021 Ordinance further provided that the exact dates, amounts, maturities, interest rates, redemption provisions, purchase price and other terms of the Series 2021 Bonds should be established by Supplemental Resolution or by a Certificate of Determinations, that a Registrar,

Paying Agent and Depository Bank be designated, that a Registrar Agreement, Tax and Non-Arbitrage Certificate, Bond Purchase Agreement and other documents relating to the issuance of the Series 2021 Bonds be approved and that other matters pertaining to the Series 2021 Bonds be provided for by a Supplemental Resolution of the Governing Body or by a Certificate of Determinations, that additional covenants and provisions relating to the Series 2021 Bonds be provided therein, and that other matters pertaining to the Bonds be provided for by a Supplemental Resolution of this Governing Body or by a Certificate of Determinations;

WHEREAS, the Series 2021 Bonds are proposed to be purchased by Clear Mountain Bank (the “Original Purchaser”), pursuant to the terms of the Commitment Letter of the Original Purchaser attached hereto and made a part hereof as **EXHIBIT D** (the “Commitment Letter”); and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental parameters resolution (the “Supplemental Parameters Resolution”) be adopted, that the Tax and Non-Arbitrage Certificate, the Bond Purchase Agreement and the Registrar Agreement hereinafter provided for be entered into by the Issuer, that the Mayor and City Manager be authorized to execute and deliver such other documents as may be necessary in connection with the issuance of the Series 2021 Bonds and the undertaking of the Project, and that other matters relating to the Series 2021 Bonds be herein provided for all in accordance with the Series 2021 Ordinance;

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

SECTION 1. The Conformed Ordinance attached hereto as **EXHIBIT A** is approved.

SECTION 2. The Morgantown Parking Authority (the “Authority”) is authorized to utilize funds available to it from a source other than the proceeds of the Series 2021 Bonds to repay and redeem in full the Series 2012 Bonds at the earliest practicable date.

SECTION 3. For the purposes of (i) paying costs of the design, acquisition, construction and equipping of the Project and (ii) paying costs of issuance of the Series 2021 Bonds and related costs, the Governing Body of the Issuer hereby authorizes and orders the issuance of the Series 2021 Bonds in an aggregate principal amount not to exceed \$3,250,000.

SECTION 4. Pursuant to the Series 2021 Ordinance and the Act, this Supplemental Parameters Resolution is adopted and there are hereby authorized and ordered to be issued the Series 2021 Bonds. The Series 2021 Bonds shall be issued in the aggregate principal amount not to exceed \$3,250,000, bear interest at a rate not to exceed 5.0% per annum, with interest and principal being repaid in semiannual amortizing installment payments on June 1 and December 1 of each year, maturing not later than December 1, 2041, shall be dated such date, upon

original issuance, shall be subject to such redemption provisions, all as shall subsequently be approved by the Mayor and City Manager pursuant to the execution and delivery by the Mayor and City Manager of a Certificate of Determinations with respect to the Bonds, in the form attached hereto as **EXHIBIT B**, with such changes, insertions, modifications and omissions as may be approved by the Mayor and City Manager of the Issuer, the execution and delivery of such Certificate of Determinations by the Mayor and City Manager being conclusive proof of the approval of such modifications (the “Certificate of Determinations”).

SECTION 5. The form of the Series 2021 Bonds shall be substantially in the form set forth in **EXHIBIT A – BOND FORM** attached to the Series 2021 Ordinance, with such amendments, insertions, deletions and modifications as shall be approved by the Mayor and City Manager of the Issuer which approval may be established by the execution and delivery of such Series 2021 Bonds by the Mayor and City Manager of the Issuer. The final terms of the Series 2021 Bonds shall be approved by the Mayor and City Manager pursuant to their execution and delivery of the Certificate of Determinations, which final terms shall be within the parameters set forth in Section 2 hereof. All other provisions relating to the Series 2021 Bonds shall be as provided in the Ordinance, as the same may be modified hereby.

SECTION 6. The proceeds of the Series 2021 Bonds shall be expended solely for the purposes set forth in the Series 2021 Ordinance.

SECTION 7. The Series 2021 Bonds shall be issued in Authorized Denominations of \$100,000 and any increment of \$0.01 in excess thereof.

SECTION 8. A. The Tax and Non-Arbitrage Certificate, to be dated the date of execution and delivery of the Series 2021 Bonds (the “Tax Certificate”), and executed and delivered by the Issuer, substantially in the form as shall be approved pursuant to the Certificate of Determinations, and the execution and delivery (in multiple counterparts) by the Mayor and City Manager thereof shall be and the same are hereby authorized, approved and directed. The Mayor and City Manager shall execute and deliver the Tax Certificate in the form to be approved pursuant to the Certificate of Determinations with such changes, insertions and omissions as may be approved by the Mayor and City Manager. The execution of the Tax Certificate by the Mayor and City Manager shall be conclusive evidence of any approval required by this Section.

B. The Issuer hereby approves the Tax Compliance Policy attached hereto as **EXHIBIT C** and the implementation and utilization of such Policy by the Issuer in order to maintain the tax-exempt status of the Series 2021 Bonds.

SECTION 9. The Bond Purchase Agreement, by and between the Original Purchaser and the Issuer, and agreed to by the Authority, substantially in the form to be approved pursuant to the Certificate of Determinations, and the execution and delivery (in multiple counterparts) by the Mayor and City Manager thereof, shall be and the same are hereby authorized, approved and directed. The Mayor and City

Manager shall execute and deliver the Bond Purchase Agreement with such changes, insertions and omissions as may be approved by the Mayor and City Manager. The execution of the Bond Purchase Agreement by the Mayor and City Manager shall be conclusive evidence of any approval required by this Section.

SECTION 10. The Registrar Agreement, to be dated the date of execution and delivery of the Series 2021 Bonds, by and between the Issuer and the Registrar named herein (the “Registrar Agreement”), substantially in the form as shall be approved pursuant to the Certificate of Determinations, and the execution and delivery (in multiple counterparts) by the Mayor and City Manager thereof shall be and the same are hereby authorized, approved and directed. The Mayor and City Manager shall execute and deliver the Registrar Agreement in the form to be approved pursuant to the Certificate of Determinations with such changes, insertions and omissions as may be approved by the Mayor and City Manager. The execution of the Registrar Agreement by the Mayor and City Manger shall be conclusive evidence of any approval required by this Section.

SECTION 11. The firm of Steptoe & Johnson PLLC, Bridgeport, West Virginia, is hereby appointed bond counsel to the Issuer in connection with the issuance of the Series 2021 Bonds.

SECTION 12. The Issuer hereby appoints and designates the West Virginia Municipal Bond Commission, Charleston, West Virginia, as the Paying Agent for the Series 2021 Bonds.

SECTION 13. The Issuer hereby appoints and designates United Bank, as the Depository Bank and Registrar for the Series 2021 Bonds.

SECTION 14. The Mayor, City Manager and City Clerk are hereby authorized and directed to execute and deliver such other documents and certificates, required or desirable in connection with the Series 2021 Bonds to the end that the Series 2021 Bonds may be delivered on a timely basis to the Original Purchaser.

SECTION 15. The notice addresses for the Depository Bank, Paying Agent, Registrar and Original Purchaser shall be set forth and provided in the Certificate of Determinations.

SECTION 16. The issuance of the Series 2021 Bonds is in the public interest, serves a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

SECTION 17. The Issuer hereby covenants and agrees that it will not permit at any time or times any of the proceeds of the Series 2021 Bonds or any other funds of the Issuer to be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause any of the Series 2021 Bonds to be an “arbitrage bond” as defined in Section 148 of the Code, and the regulations promulgated pursuant thereto. The Mayor and City Manager of the Issuer are authorized and directed to execute and deliver such further instruments or

agreements as shall be required to provide further assurances of the Issuer's compliance with this covenant.

SECTION 18. The Mayor, City Manager and City Clerk, and all other appropriate officers and employees of the Issuer are hereby authorized, empowered and directed to do any and all things proper and necessary to cause the Series 2021 Bonds to be duly and properly issued by the Issuer and delivered to the Original Purchaser as herein authorized and to otherwise facilitate the transaction contemplated by this Supplemental Parameters Resolution, and no further authority shall be necessary to authorize any such officers or employees to give such further assurance and do such further acts as may be legally required.

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

[Remainder of Page Intentionally Blank]

Adopted this 20th day of April, 2021.

THE CITY OF MORGANTOWN

[SEAL]

By: _____
Its: Mayor

By: _____
Its: City Manager

Attest:

City Clerk

CERTIFICATION

Certified a true copy of a Supplemental Parameters Resolution duly adopted by the City Council of THE CITY OF MORGANTOWN on April 20, 2021, which Supplemental Parameters Resolution has not been repealed, rescinded, modified, amended or revoked, and is in full force and effect as of the date hereof.

Dated this ___ day of _____, 2021.

By: _____
City Clerk

EXHIBIT A – SERIES 2021 SUPPLEMENTAL PARAMETERS
RESOLUTION

CONFORMED ORDINANCE

**EXHIBIT B – SERIES 2021 SUPPLEMENTAL PARAMETERS
RESOLUTION**

FORM OF CERTIFICATE OF DETERMINATIONS

THE CITY OF MORGANTOWN
PARKING SYSTEM REVENUE BONDS,
SERIES 2021

CERTIFICATE OF DETERMINATIONS

The undersigned, Ron Dulaney, Mayor, and the undersigned Kim Haws, City Manager, of The City of Morgantown (the “Issuer”), in accordance with the Supplemental Parameters Resolution adopted by the Governing Body of the Issuer on April 20, 2021 (the “Supplemental Parameters Resolution”), with respect to the Issuer’s Parking System Revenue Bonds, Series 2021 (the “Series 2021 Bonds”), hereby finds and determines as follows:

1. The Series 2021 Bonds shall be issued in the original aggregate principal amount of \$ _____, shall be dated _____, 2021, shall bear interest at the fixed annual percentage rate of ____%, and the principal of and interest on the Series 2021 Bonds shall be payable in _____ equal amortizing semi- annual installment payments in the amount of \$ _____, commencing on _____ 1, 2021, and continuing on each June 1 and December 1 to and including _____ 1, 20____, which shall be the maturity date of the Series 2021 Bonds (the “Maturity Date”), at which time all principal of and interest on the Series 2021 Bonds not theretofore paid shall become due and payable.
2. The interest rate on the Series 2021 Bonds does not exceed 5.0%, being the maximum interest rate authorized by the Supplemental Parameters Resolution.
3. The Series 2021 Bonds shall [not] be subject to [optional and/or mandatory] redemption as set forth on Schedule 1 attached hereto and incorporated herein.
4. The Series 2021 Bonds shall be sold to _____ (the “Original Purchaser”), pursuant to the terms of a Commitment Letter which has been delivered by the Original Purchaser to the Issuer.
5. The Series 2021 Bonds shall be initially issued in the form of one bond, numbered R-1, in the original aggregate principal amount of \$ _____, the entire principal amount of which shall initially

be registered in the Bond Register maintained by the Registrar in the name of the Original Purchaser.

6. The Series 2021 Bonds shall be issued in authorized denominations of \$100,000 and increments of \$0.01 in excess thereof.
7. The Record Dates for the Series 2021 Bonds shall be May 15 and November 15 each year during the term of the Series 2021 Bonds.
8. Proceeds of the Series 2021 Bonds in the amount of \$ _____ shall be transferred on the issue date to the Paying Agent in payment of the fees and costs of the Paying Agent in connection with the issuance of the Series 2021 Bonds.
9. Proceeds of the Series 2021 Bonds in the amount of \$ _____ shall be transferred on the issue date to the Depository Bank for deposit in the Costs of Issuance Fund for subsequent application by the Issuer to the payment of the Costs of Issuance of the Series 2021 Bonds.
10. The forms of the Tax and Non-Arbitrage Certificate, Bond Purchase Agreement and Registrar's Agreement attached hereto are hereby approved.
11. The notice addresses for the Depository Bank, Registrar, Original Purchaser and Paying Agent for the Series 2021 Bonds shall be as set forth below or as shall hereafter be designated in writing by such party to the Issuer:

REGISTRAR/DEPOSITORY BANK

ORIGINAL PURCHASER

PAYING AGENT

West Virginia Municipal Bond Commission
900 Pennsylvania Avenue, Suite 1117
Charleston, West Virginia 25302
Attn: Executive Director

12. The undersigned hereby certifies that the foregoing terms and conditions of the Series 2021 Bonds are within the parameters prescribed by the Supplemental Parameters Resolution, and the Series 2021 Bonds may be issued with such terms and conditions as authorized by the Supplemental Parameters Resolution.

WITNESS my signature this _____ day of _____, 2021.

THE CITY OF MORGANTOWN

By: _____
Its: Mayor

By: _____
Its: City Manger

SCHEDULE 1 – CERTIFICATE OF DETERMINATIONS

SERIES 2021 BOND TERMS

Redemption Provisions

[Insert]

SCHEDULE 2 – CERTIFICATE OF DETERMINATIONS

FORM OF TAX AND NON-ARBITRAGE CERTIFICATE

[Attached Hereto]

SCHEDULE 3 – CERTIFICATE OF DETERMINATIONS

FORM OF BOND PURCHASE AGREEMENT

[Attached Hereto]

SCHEDULE 4 – CERTIFICATE OF DETERMINATIONS

FORM OF REGISTRAR AGREEMENT

[Attached Hereto]

EXHIBIT C – SERIES 2021 SUPPLEMENTAL PARAMETERS
RESOLUTION

TAX COMPLIANCE POLICY

THE CITY OF MORGANTOWN (WEST VIRGINIA)

Purpose

Governmental issuers of tax-exempt and tax-credit bonds must comply with certain federal tax rules pertaining to expenditure of proceeds for qualified costs, rate of expenditure, use of bond financed property, investment of proceeds in compliance with arbitrage rules, and retention of records. The following policies are intended to establish compliance by The City of Morgantown, West Virginia (the “*Issuer*”), as the issuer, with these rules in connection with the issuance of the Issuer’s Parking System Revenue Bonds, Series 2021 (the “*Bonds*”). It is understood and agreed by the Issuer, and the Issuer has covenanted to take all actions necessary to maintain the Bonds as tax-exempt state and local bonds.

Tax Requirements Associated with Sale and Issuance of Bonds

Review and retention of tax documents related to the sale and issuance of Bonds will be supervised by the City Manager or his or her designee (the “*Oversight Officer*”).

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

Expenditure of Proceeds for Governmental Costs

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

- Bond proceeds will be disbursed pursuant to the Bond Ordinance, and will be a written order of an Authorized Officer, stating the date, amount and purpose of the disbursement.
- Requisitions must identify the financed property in conformity with the Tax and Non-Arbitrage Certificate executed by the Issuer at closing, including any certifications as to the character and average economic life of the bond-financed property.
- Requisitions for costs that were paid prior to the issuance of the bonds are, in general, limited to costs paid subsequent to, or not more than 60 days prior to, the date a “declaration of intent” to reimburse the costs was adopted by the Issuer. If proceeds are used for

reimbursement, a copy of the declaration will be obtained and included in the records for the Bonds, if not already part of the bond transcript.

- Requisitions will be in accordance with expectations to spend or commit 5% of net sale proceeds within 6 months, to spend 85% of net sale proceeds within 3 years, and to proceed with due diligence to complete the project and fully spend the net sale proceeds. Expected expenditure schedules, project timelines, and plans and specifications will be maintained to support expectations. Reasons for failure to meet the expected schedule will be documented and retained in the records for the Bonds.
- If the 18-month spending exception to rebate applies, expenditure of gross proceeds will be monitored against the following schedule for the arbitrage rebate exception for the issue, if applicable:

15% within 6 months
60% within 12 months
100% within 18 months

- If the 2-year spending exception to rebate applies, expenditure of “available construction proceeds” will be monitored against the following schedule for the arbitrage rebate exception for construction issues if applicable:

10% within 6 months
45% within 12 months
75% within 18 months
100% within 24 months

Expenditure of Proceeds

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

- Reserve funds cannot exceed the least of 10% of bond proceeds, maximum annual debt service, or 125% of average annual debt service. The initial funding of any reserve fund will be measured against this limit.
- Investment earnings on sale proceeds of the Bonds will be tracked and will be requisitioned only for appropriate expenditures.

Use of Bond-Financed Property

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

- Average nonexempt use of bond-financed property over the life of the issue cannot exceed 10% of the proceeds.
- Agreements with business users or non-profit organizations for lease or management or services contracts, sponsored research, naming rights or any other potential nonexempt use of bond-financed property will be reviewed prior to execution of any contract to determine if property subject to the Bond Ordinance is bond-financed.
- Agreements with business users or other non-profit organizations for lease or management or services contracts or other private business use involving bond-financed property will be tracked and aggregated with other private business uses for compliance with the 10% limit, as set forth in the Tax Certificate.
- No item of bond-financed property will be sold or transferred to a nonexempt party without advance arrangement of a “remedial action” under the applicable Income Tax Regulations.

Investments and IRS Filings

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

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

Records

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

- Records will be retained for the life of the bonds plus any refunding bonds plus three years. Records may be in the form of documents or electronic copies of documents, appropriately indexed to specific bond issues and compliance functions.
- Retainable records pertaining to the Bonds include transcript of documents executed in connection with the issuance of the bonds (including authorizing resolutions, Bond Ordinance, Form 8038-G, and Tax Certificate) and any amendments, and copies of rebate calculations and records of payments, including Forms 8038-T.
- Retainable records pertaining to expenditures of bond proceeds include requisitions, accounting statements and final allocation of proceeds.
- Retainable records pertaining to use of property include all agreements reviewed for nonexempt use and any reviewed documents relating to unrelated business activity.
- Retainable records pertaining to investments include GIC documents under the Income Tax Regulations, records of purchase and sale of other investments, and records of investment activity sufficient to permit calculation of arbitrage rebate or demonstration that no rebate is due.

Amendment

This Tax Compliance Policy may be amended and/or modified by the Mayor and City Manager as required from time to time to ensure ongoing compliance by the Issuer with requirements related to tax-exempt bonds, such as the Bonds. Such amendments and/or modifications shall not require any action by City Council.

Overall Responsibility

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

THE CITY OF MORGANTOWN, WEST VIRGINIA

 By: Mayor
 Date:

 By: City Manager
 Date:

EXHIBIT D – SERIES 2021 SUPPLEMENTAL PARAMETERS
RESOLUTION

[Clear Mountain Bank Commitment Letter]

(Attached Hereto)

THE CITY OF MORGANTOWN

AN ORDINANCE AUTHORIZING THE RENOVATION AND IMPROVEMENT OF EXISTING MOTOR VEHICLE PARKING FACILITIES, AND FINANCING OF THE COSTS THEREOF NOT OTHERWISE PROVIDED, AND PAYING COSTS OF ISSUANCE AND RELATED COSTS, THROUGH THE ISSUANCE OF PARKING SYSTEM REVENUE BONDS, SERIES 2021, OF THE CITY OF MORGANTOWN IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$3,250,000; PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TAX CERTIFICATE, A BOND PURCHASE AGREEMENT AND OTHER DOCUMENTS IN CONNECTION THEREWITH; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ENACTING OTHER PROVISIONS WITH RESPECT THERETO.

WHEREAS, The City of Morgantown (the “Issuer” or the “City”) presently owns and/or operates through the Morgantown Parking Authority (the “Authority”) certain on-street and off-street public motor vehicle parking facilities within the City consisting of parking lots, buildings, ramps, curb-line parking meters and other facilities necessary, appropriate, useful, convenient or incidental to the regulation and control and parking of motor vehicles (the “System”);

WHEREAS, the Issuer has determined that the System is not adequate to serve the present and future anticipated needs of the City, and it is therefore deemed necessary and desirable for the health, welfare and safety of the inhabitants of the City that renovations and improvements be made to existing motor vehicle parking facilities of the Issuer consisting generally of structural repairs to and elevator replacement in the existing multilevel parking building located between University Avenue and Chestnut Street and replacement of a retaining wall in the existing surface parking lot known as the “Armory Lot” located adjacent to 300 Spruce Street (collectively, the “Project”);

WHEREAS, under the provisions of Chapter 8, Article 16 of the Code of West Virginia, 1931, as amended (the “Act”), the Issuer is authorized and empowered to issue revenue bonds to finance all or a portion of the costs of renovation and improvement of existing public works, including motor vehicle parking facilities;

WHEREAS, the Issuer has determined and hereby determines that it would therefore be to the benefit of the Issuer and its residents to design, acquire, construct and equip the Project with proceeds of the issuance of the Issuer’s Parking System Revenue Bonds, Series 2021, in the original aggregate principal amount of not more than \$3,250,000 (the “Series 2021 Bonds” and

together with any Additional Bonds hereafter issued, the “Bonds”), such Series 2021 Bonds to be secured by and payable from the Net Revenues (as hereinafter defined) of the System;

WHEREAS, the Original Purchaser and the terms, conditions and provisions of the Series 2021 Bonds shall be approved by the Issuer pursuant to a resolution of the Issuer which is supplemental to this Resolution (the “Supplemental Resolution”); and

WHEREAS, the Issuer has determined and hereby determines that it is in the best interests of the residents of the City that its Series 2021 Bonds be sold to the Original Purchaser (as hereinafter defined) thereof pursuant to the terms and provisions of a bond purchase agreement (the “Bond Purchase Agreement”) between the Issuer and the Original Purchaser, and agreed to by the Authority.

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

ARTICLE I

DEFINITIONS, STATUTORY AUTHORITY AND FINDINGS

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

“Act” means Chapter 8, Article 16 of the West Virginia Code of 1931, as amended and in effect on the date of delivery of the Series 2021 Bonds.

“Additional Bonds” means bonds which may be subsequently issued by the Issuer on a parity with respect to lien on and source of and security for payment from the Net Revenues of the System with the Series 2021 Bonds and any bonds subsequently issued on a parity therewith, subject to the conditions and restrictions set forth in Section 7.08 hereof.

“Authority” means the Morgantown Parking Authority and any successor to its functions.

“Authorized Officer” means the Mayor or City Manager of the City of Morgantown or any other officer of such City specifically designated by ordinance or resolution of the Council of the City as such.

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

“Bond Counsel” means an attorney or firm of attorneys nationally recognized as expert in matters relating to the issuance of tax-exempt bonds, and initially means Steptoe & Johnson PLLC, Bridgeport, West Virginia.

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

“Bond Purchase Agreement” means the Bond Purchase Agreement between the Issuer and the Original Purchaser, and agreed to by the Authority, relating to the sale and purchase of the Series 2021 Bonds.

“Bond Register” means the books of the Issuer maintained by the Registrar for the purpose of registering Bonds and the transfer of Bonds.

“Bonds” means, collectively, the Series 2021 Bonds and any Additional Bonds hereafter issued within the terms, restrictions and conditions contained herein.

“Bond Year” means the Fiscal Year, except that the first Bond Year shall begin on the Closing Date.

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

“Certificate of Authentication and Registration” means the Certificate of Authentication and Registration on the Series 2021 Bonds, in substantially the form set forth in EXHIBIT A - BOND FORM hereto.

“City” or “Issuer” means The City of Morgantown, a municipal corporation of the State of West Virginia, in Monongalia County thereof, and, where appropriate, the Council, the Authority and any successor thereto.

“City Clerk” or “Clerk” means the City Clerk of the Issuer duly appointed and serving from time to time.

“City Manager” means the City Manager of the Issuer duly appointed and serving from time to time.

“Closing Date” means the date upon which there is an exchange of the Series 2021 Bonds for the proceeds representing the original purchase price or the initial advance thereof.

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

“Construction Fund” means the Construction Fund created pursuant to Section 5.01 hereof.

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

“Costs” or similar terms means all those costs now or hereafter permitted by the Act to be financed with bonds issued pursuant hereto, including, without limitation, the costs of design, acquisition, construction and equipping of the Project (including reimbursement to the Issuer or the Authority for such costs previously paid), interest accruing or to accrue thereon, funding of a debt service reserve fund and/or a renewal and replacement fund, expenses for fiscal or other agents, legal expenses and any other costs or expenses necessary, incidental, desirable or convenient to the issuance of the Series 2021 Bonds and the design, acquisition, construction and equipping of the Project.

“Costs of Issuance Fund” means the Costs of Issuance Fund created pursuant to Section 5.01 hereof.

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

“County” means the County of Monongalia, State of West Virginia.

“Debt Service” means the scheduled amount of interest and amortization of principal payable on the Series 2021 Bonds during the period of computation, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period, assuming for purposes of any coverage requirement, that the interest rate on the Series 2021 Bonds is equal to the Initial Rate.

“Defeasance Obligations” means Government Obligations.

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

“Determination of Taxability” means the interest on the Series 2021 Bonds in whole or in part is included in the gross income of a holder (or former holder) for federal income tax purposes for any reason, the determination of which is manifested by (a) a statutory Notice of Deficiency (90-day letter) from the Internal Revenue Service proposing to include such interest in the income of a holder (or former holder), or (b) delivery to the Registrar or Issuer of an opinion of Bond Counsel acceptable to the Registrar to the effect that (i) as a result of a change in the federal tax laws after the date of the issuance of the Series 2021 Bonds such interest on obligations of the general character of the Series 2021 Bonds will be included in whole or in part in the gross income of the holders thereof (for the purposes of this paragraph, such interest becomes subject to federal income taxation when the President of the United States of America signs such legislation) or (ii) that for any other reason, interest on the Series 2021 Bonds, in whole or in part, is included in the gross income of a holder or former holder of the Series 2021 Bonds; provided, however, no Determination of Taxability shall be deemed to exist if the Issuer shall, within 30 days after such assertion of taxability, cause to be delivered to the Registrar an unqualified opinion of Bond Counsel reasonably acceptable to the holder or former holder to the effect that interest on the Series 2021 Bonds has been and continues to be excludable from gross income for federal income tax purposes, then such holder or former holder shall at the expense of the Issuer contest such assertion of taxability by appropriate administrative proceedings through the Internal Revenue Service Appeals Office, whose determination as to taxability shall be final and binding and upon such determination by the Internal Revenue Service Appeals Office a Determination of Taxability shall be deemed to exist. In any such contest the holder or former holder shall cooperate with the Issuer and toward that end shall (a) give prompt notice of any such assertion and (b) permit the Issuer or its representatives to meet with the representatives of the holder or former holder dealing with the Internal Revenue Service to discuss the issues involved.

“Event of Default” means any occurrence or event specified in Section 8.01 hereof.

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

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

“Government Obligations” means direct and general obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury), for the payment of which the full faith and credit of the United States of America is pledged.

“Gross Revenues” means the aggregate gross operating and non-operating revenues of the System, including all revenues, fees and fines derived from all on-street metered parking spaces and all off-street metered or unmetered parking lots, parking garages and other off-street public parking facilities owned, leased or otherwise operated by or for the City or the Authority, now existing or hereafter acquired, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that “Gross Revenues” does not include the revenues derived from any gains from the sale or other disposition of, or from any increase in the value of, capital assets or any fee or charge levied and collected for the furnishing by the Issuer of miscellaneous services.

“Independent 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 such System in the normal operation of its business and affairs.

“Initial Rate” means the rate of interest on the Series 2021 Bonds determined to be applicable on the Closing Date.

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

“Maximum Annual Debt Service” means, at the time of computation, the greatest amount of Debt Service required to be paid on the Series 2021 Bonds for the then current or any succeeding Fiscal Year, assuming that the interest rate on the Series 2021 Bonds is equal to the Initial Rate.

“Mayor” means the Mayor of the Issuer.

“Net Proceeds” means the face amount of the Series 2021 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds deposited in the Series 2021 Bonds Reserve Account, if any. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from investment of proceeds of the Series 2021 Bonds, without regard to whether or not such investment is made in tax exempt obligations.

“Net Revenues” means Gross Revenues less Operating Expenses, as hereinafter defined.

“Nonpurpose Investment” means any Investment Property which is acquired with the gross proceeds of the Bonds and is not acquired in order to carry out the governmental purpose of the Series 2021 Bonds.

“Operating Expenses,” unless qualified, means the current expenses, paid or accrued, of repair, operation and maintenance of the System, and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses (other than those capitalized as part of the costs of any project relating to the acquisition or construction of additions, betterments or improvements for the System), supplies, labor, wages, the cost of materials and supplies used for current operations, fees and expenses of fiscal agents and of the Depository Bank, Registrar and Paying Agent or Paying Agents, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that “Operating Expenses” does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds, charges for depreciation, losses from the sale or other disposition of or any decrease in the value of capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

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

“Original Purchaser” or “Purchaser” means the bank or banks or such other entity or entities as shall purchase the Series 2021 Bonds directly from the Issuer, as designated by the Supplemental Resolution.

“Outstanding,” when used with reference to Bonds and as of any particular date, describes all Bonds theretofore and thereupon being delivered except (a) any Bond for the payment of which moneys, equal to its principal amount, with interest to the date of maturity, shall be held in trust under this Ordinance and set aside for such payment (whether upon or prior to maturity); and (b) any Bond deemed to have been paid as provided in Article X hereof.

“Paying Agent” means the Bond Commission, or its successor.

“Person” means an individual, a corporation, a partnership, an association, a joint stock company, a trust, any unincorporated organization, a government body, any other political subdivision, municipality or any other group or entity.

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

“Qualified Investments” means and includes any investment permitted to be made by a municipality 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.

“Rebate Fund” means the Rebate Fund created by Section 5.01 hereof.

“Record Date” means the day of the month which shall be so stated in the Series 2021 Bonds, regardless of whether such day is a Saturday, Sunday or legal holiday.

“Redemption Date” means the date fixed for prepayment or redemption of any of the Series 2021 Bonds subject to prepayment or redemption in any notice of prepayment or redemption published or mailed in accordance herewith.

“Redemption Price” means the price at which the Series 2021 Bonds may be called for redemption and includes the principal amount of the Bonds to be redeemed, plus the premium, if any, required to be paid to affect such redemption.

“Registrar” or “Bond Registrar” means the bank so designated as registrar for the Series 2021 Bonds by the Supplemental Resolution.

“Regulations” means temporary and permanent regulations promulgated under the Code.

“Renewal and Replacement Fund” means the Renewal and Replacement Fund created pursuant to Section 5.01 hereof.

“Reserve Requirement” means an amount equal to the lesser of (i) 10% of the original principal amount of the Series 2021 Bonds, (ii) Maximum Annual Debt Service at the time of original issuance of the Series 2021 Bonds, or (iii) 125% of average annual Debt Service at the time of original issuance of the Series 2021 Bonds.

“Revenue Fund” means the Revenue Fund created by Section 5.01 hereof.

“Series 2021 Bonds” means the Parking System Revenue Bonds, Series 2021, of the Issuer, authorized to be issued in the aggregate principal amount of not more than \$3,250,000 pursuant to this Ordinance and the Supplemental Resolution.

“Series 2021 Bonds Reserve Account” means the Series 2021 Bonds Reserve Account authorized to be created, if required, pursuant to Section 5.02 hereof.

“Series 2021 Bonds Sinking Fund” means the Sinking Fund created by Section 5.02 hereof.

“State” means the State of West Virginia.

“Supplemental Resolution” means, collectively, any ordinance or resolution amendatory hereof or supplemental hereto and, when preceded by the article “the,” refers specifically to the Supplemental Parameters Resolution or Supplemental Resolutions to be adopted by the Issuer following enactment of this Ordinance, setting forth the final amounts, maturities, interest rates, redemption provisions and other terms of the Series 2021 Bonds and authorizing the sale of the Series 2021 Bonds to the Original Purchaser; provided, that any provision intended to be included in a Supplemental Resolution and not so included may be contained in any other Supplemental Resolution.

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

“System” means the complete properties, facilities and equipment owned, leased or operated by the Issuer or the Authority, available for the purpose of providing on-street and off-street public motor vehicle parking spaces and facilities within the boundaries of the City, in its entirety or any integral part thereof, and shall include the existing on-street metered parking spaces and off-street motor vehicle parking facilities of the Issuer, and any further additions, betterments and improvements thereto hereafter constructed or acquired for said System from any sources whatsoever.

“Term Bonds” means Series 2021 Bonds subject to mandatory sinking fund redemption, as described by Section 3.06 hereof.

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

Words importing singular number include the plural number in each case and vice versa; words importing the masculine gender include every other gender; and words importing persons include firms, partnerships, associations and corporations.

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

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

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

Section 1.03. Findings. It is hereby found, determined and declared as follows:

A. The Issuer is a municipal corporation of the State of West Virginia, in Monongalia County of said State.

B. The Issuer now owns and operates, through the Authority, the System, the acquisition and construction of which has been financed or refinanced pursuant to the issuance of bonds or refunding bonds.

C. The System is not adequate to serve the present and future anticipated needs of the City.

D. It is deemed necessary for the Issuer to issue its Parking System Revenue Bonds, Series 2021, in the original aggregate principal amount of not more than \$3,250,000, in order to finance the design, acquisition, construction and equipping of the Project. The proceeds of the Series 2021 Bonds may also be applied to funding the Series 2021 Bonds Reserve Account, if any; legal expenses; expenses for estimates of costs and revenues; administrative expense; commitment fees; premiums for municipal bond insurance, reserve account insurance or reserve account surety bonds; letter of credit fees; discount; initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2021 Bonds and such other expenses as may be necessary or incidental to the financing herein authorized; and the performance of the things herein required or permitted, in connection with any thereof, provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2021 Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall also be permitted.

E. It is in the best interest of the Issuer that the Series 2021 Bonds be sold to the Original Purchaser pursuant to the terms and provisions of a Bond Purchase Agreement to be entered into by and between the Issuer and the Original Purchaser, and agreed to by the Authority, as shall be approved by the Supplemental Resolution of the Issuer.

There are no other presently outstanding bonds or obligations of the Issuer which are secured by Net Revenues of the System.

F. The Issuer intends to issue the Series 2021 Bonds and to pledge for payment thereof, the Net Revenues of the System.

G. The period of usefulness of the System is not less than 25 years.

H. The estimated revenues to be derived in each year after the date hereof from the operation of the System will be sufficient to provide for the repair, maintenance and operation of the System, the payment of the principal of and interest on all Bonds issued hereunder and all payments into the Series 2021 Bonds Sinking Fund and the Renewal and Replacement Fund, as hereinafter provided, and to make all other payments provided for in this Ordinance.

I. It is in the best interest of the Issuer, and the residents thereof, that the Issuer issue the Series 2021 Bonds and secure the Series 2021 Bonds by a pledge of the Net Revenues derived from the operation of the System, and all the moneys in the Series 2021 Bonds Sinking Fund as further set forth herein.

J. The Series 2021 Bonds and the Certificate of Authentication and Registration to be endorsed thereon are to be in substantially the forms set forth in EXHIBIT A - BOND FORM attached hereto and incorporated herein by reference, with necessary and appropriate variations, omissions and insertions as permitted or required by this Ordinance, the Supplemental Resolution or as deemed necessary by the Registrar or the Issuer.

K. All things necessary to make the Series 2021 Bonds, when authenticated by the Registrar and issued as in this Ordinance provided, the valid, binding and legal special obligations of the Issuer according to the import thereof, to validly pledge those funds pledged hereby to the payment of the principal of and interest on the Series 2021 Bonds, and to comply with the provisions imposed by the Act upon the issuance of the Series 2021 Bonds have been timely met, done and duly performed.

L. The enactment of this Ordinance, and the execution and issuance of the Series 2021 Bonds, subject to the terms thereof, will not result in any breach of, or constitute a default under, any instrument to which the Issuer or the Authority is a party or by which either may be bound or affected.

Section 1.04. Ordinance Constitutes Contract. In consideration of the acceptance of the Series 2021 Bonds by those who shall own or hold the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the legal Holders of any and all of such Series 2021 Bonds, all of which shall be of equal rank and without preference, priority or distinction between any one Series 2021 Bond and any other Series 2021 Bond, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

ARTICLE II

AUTHORIZATION OF DESIGN, ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT

Section 2.01. Authorization of Design, Acquisition, Construction and Equipping of Project. There are hereby authorized (i) the design, acquisition, construction and equipping of the Project, at an estimated cost of approximately \$2,216,400, in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications shall be maintained at the Clerk's office and available for public inspection during normal office hours, and (ii) the expenditure of proceeds of the Series 2021 Bonds to pay the Costs thereof and to pay costs of issuance of the Series 2021 Bonds and related costs, including funding the Series 2021 Bonds Reserve Account, if required. The Issuer has completed the design, has received bids and will enter into contracts for the acquisition, construction and equipping of the Project following the date of issuance of the Series 2021 Bonds.

ARTICLE III

THE SERIES 2021 BONDS

Section 3.01. Form and Payment of Bonds. No Series 2021 Bond shall be issued pursuant to this Ordinance except as provided in this Article III. Any Series 2021 Bonds issued pursuant to this Ordinance may be issued only as fully registered Series 2021 Bonds without coupons, in the denomination of \$100,000 and any increment of \$0.01 in excess thereof for any year of maturity (or such other denominations as may be set forth in the Supplemental Resolution). All Series 2021 Bonds shall be dated as of the date provided in the Bond Purchase Agreement applicable to such series. All Series 2021 Bonds shall bear interest from the interest payment date next preceding the date of authentication or, if authenticated after the Record Date but prior to the applicable interest payment date or on such interest payment date, from such interest payment date or, if no interest on such Series 2021 Bonds has been paid, from the date thereof; provided however, that, if, as shown by the records of the Registrar, interest on such Series 2021 Bonds shall be in default, Series 2021 Bonds issued in exchange for Series 2021 Bonds surrendered for transfer or exchange shall bear interest from the date to which interest has been paid in full on the initial Series 2021 Bonds surrendered.

The principal of and interest on the Series 2021 Bonds shall be payable in any coin or currency which, on the respective date of such payment, is legal tender for the payment of public and private debts under the laws of the United States of America. Such payments of principal and interest on the Series 2021 Bonds shall be paid by check or draft of the Paying Agent made payable and mailed to the Registered Owner thereof at its address as it appears in the Bond Register at the close of business on the Record Date, or, if requested, in the case of a Registered Owner of \$1,000,000 or more of the Series 2021 Bonds, by wire transfer to a domestic bank account specified in writing at least 5 days prior to such interest payment date by such Registered Owner; provided, however, that the final payment of the principal of and interest on the Series 2021 Bonds shall be made by the Paying Agent to such Registered Owner upon presentation of such Series 2021 Bonds to the Paying Agent for cancellation or destruction.

In the event any Series 2021 Bond is redeemed in part, such bond shall be surrendered to and canceled by the Registrar, and the Issuer shall execute, and the Registrar shall authenticate and deliver to the Registered Owner thereof, another Series 2021 Bond in the principal amount of said Series 2021 Bond then Outstanding.

Section 3.02. Execution of Bonds. The Series 2021 Bonds shall be executed in the name of the Issuer by the Mayor and City Manager, by his or her manual or facsimile signatures, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Clerk by his or her manual or facsimile signature; provided, that, all such signatures and the seal may be by facsimile. In case any one or more of the officers who shall have signed or sealed any of the Series 2021 Bonds shall cease to be such officer of the Issuer before the Series 2021 Bonds so signed and sealed have been actually sold and delivered, such Series 2021 Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Series 2021 Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Series 2021

Bonds shall hold the proper office in the Issuer, although at the date of such Series 2021 Bonds such person may not have held such office or may not have been so authorized.

Section 3.03. Authentication and Registration. No Series 2021 Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until the Certificate of Authentication and Registration on such Series 2021 Bond, substantially in the form set forth in EXHIBIT A – BOND FORM attached hereto and incorporated herein by reference with respect to such respective Series 2021 Bond, shall have been duly manually executed by the Registrar. Any such manually executed Certificate of Authentication and Registration upon any such Series 2021 Bond shall be conclusive evidence that such Series 2021 Bond has been authenticated, registered and delivered under this Ordinance. The Certificate of Authentication and Registration on any Series 2021 Bond shall be deemed to have been executed by the Registrar if signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Series 2021 Bonds issued hereunder.

Section 3.04. Negotiability and Registration. Subject to the requirements for transfer set forth below, the Series 2021 Bonds shall be, and have all of the qualities and incidents of, negotiable instruments under the Uniform Commercial Code of the State, and each successive Registered Owner, in accepting any of said Series 2021 Bonds, shall be conclusively deemed to have agreed that such Series 2021 Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State, and each successive Holder shall further be conclusively deemed to have agreed that said Series 2021 Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as any of the Series 2021 Bonds remain Outstanding, the Registrar shall keep and maintain books for the registration and transfer of the Series 2021 Bonds. The Series 2021 Bonds shall be transferable only by transfer of registration upon the Bond Register by the registered owner thereof in person or by his attorney or legal representative duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or such duly authorized attorney or legal representative. Upon transfer of a Series 2021 Bond, there shall be issued at the option of the Holder or the transferee another Series 2021 Bond or Bonds of the aggregate principal amount equal to the unpaid amount of the transferred Series 2021 Bond and of the same series, interest rate and maturity of said transferred Series 2021 Bond.

Upon surrender thereof at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar and duly executed by the registered owner or his attorney or legal representative duly authorized in writing, Series 2021 Bonds may at the option of the Holder thereof be exchanged for an equal aggregate principal amount of Series 2021 Bonds of the same series, maturity and interest rate, in any authorized denominations.

In all cases in which the privilege of transferring or exchanging a Series 2021 Bond is exercised, Series 2021 Bonds shall be delivered in accordance with the provisions of this Ordinance. All Series 2021 Bonds surrendered in any such transfer or exchange shall forthwith be canceled by the Registrar. Transfers of Series 2021 Bonds, the initial exchange of Series 2021

Bonds and exchanges of such Series 2021 Bonds in the event of partial redemption of fully registered Series 2021 Bonds shall be made by the Registrar without charge to the Holder or the transferee thereof, except as provided below. For other exchanges of Series 2021 Bonds, the Registrar may impose a service charge. For every such transfer or exchange of such Series 2021 Bonds, the Registrar may make a charge sufficient to reimburse its office for any tax or other governmental charge required to be paid with respect to such transfer or exchange, and such tax or governmental charge, and such service charge for exchange other than the initial exchange or in the event of partial redemption, shall be paid by the person requesting such transfer or exchange as a condition precedent to the exercise of the privilege of making such transfer or exchange. The Registrar shall not be obliged to make any such transfer or exchange of Series 2021 Bonds that have been called for redemption.

Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2021 Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may execute, in its discretion, and the Registrar shall authenticate, register and deliver any new Series 2021 Bond of like series, maturity and principal amount as the Series 2021 Bond so mutilated, destroyed, stolen or lost, in exchange and upon surrender and cancellation of, such mutilated Series 2021 Bond, or in lieu of and substitution for the Series 2021 Bond so destroyed, stolen or lost, and upon the Registered Owner furnishing the Issuer and the Registrar proof of his ownership thereof and that said Series 2021 Bond has been destroyed, stolen or lost and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer or the Registrar may prescribe and paying such expenses as the Issuer or the Registrar may incur. The name of the Registered Owner listed in the Bond Register shall constitute proof of ownership. All Series 2021 Bonds so surrendered shall be submitted to and canceled by the Registrar, and evidence of such cancellation shall be given to the Issuer. If such Series 2021 Bond shall have matured or be about to mature, instead of issuing a substitute Series 2021 Bond the Issuer, by and through the Registrar, may pay the same, upon being indemnified as aforesaid, and, if such Series 2021 Bond be lost, stolen or destroyed, without surrender thereof.

Any such duplicate Series 2021 Bonds issued pursuant to this section shall constitute original, additional contractual obligations on the part of the Issuer, whether or not the lost, stolen or destroyed Series 2021 Bonds be at any time found by any one, and such duplicate Series 2021 Bonds shall be entitled to equal and proportionate benefits and rights as to lien and source of and security for payment from the revenues pledged herein with all other Series 2021 Bonds issued hereunder.

Section 3.06. Term Bonds. In the event Term Bonds are issued as part of the Series 2021 Bonds issued pursuant to this Ordinance, the following provisions shall apply:

A. The amounts to be deposited, apportioned and set apart by the Issuer from the Revenue Fund and into the Series 2021 Bonds Redemption Account in accordance with Subsection 5.03(A)(3) shall include (after credit as provided below) on the first of each month, beginning on the first day of that month which is 13 months prior to the first mandatory redemption date of said Term Bonds, a sum equal to 1/12th of the amount required to redeem the principal amount of such Term Bonds which are to be redeemed as of the next ensuing mandatory

redemption date, which amounts and dates, if any, with respect to the Series 2021 Bonds shall be set forth in the Bond Purchase Agreement relating thereto.

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

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

D. After said 60th day but prior to the date on which the Registrar selects the Term Bonds to be redeemed, the Bond Commission may use the moneys in the Series 2021 Bonds Redemption Account to purchase Term Bonds at a price less than the par value thereof and accrued interest thereon. The Bond Commission shall advise the Issuer and the Registrar of any Term Bonds so purchased, and they shall be credited by the Registrar at 100% of the principal amount thereof against the obligation of the Issuer on such mandatory redemption date, and any excess shall be credited against future mandatory redemption obligations in the order directed by the Issuer, and the principal amount of such Term Bonds to be redeemed pursuant to mandatory sinking fund redemption shall be accordingly reduced.

E. The Registrar shall call for redemption, in the manner provided herein, an aggregate principal amount of such Term Bonds, at the principal amount thereof plus interest accrued to the redemption date (interest to be paid from the Sinking Fund), as will exhaust as nearly as practicable such Series 2021 Bonds Redemption Account payment designated to be made in accordance with paragraph (A) of this section. Such redemption shall be by random selection made on the 45th day preceding the mandatory redemption date, in such manner as may be determined by the Registrar. For purposes of this section, "Term Bonds" shall include any portion of a fully registered Term Bond, in integrals of \$5,000.

Section 3.07. Notice of Redemption. Unless waived by any Registered Owner of the Series 2021 Bonds to be redeemed, official notice of any redemption shall be given by the Registrar on behalf of the Issuer by mailing a copy of an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption

to the applicable bond insurer, if any, and the Registered Owner of the Series 2021 Bond or Bonds, as applicable, to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such registered owner to the Bond Registrar.

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

- (1) The Redemption Date,
- (2) The Redemption Price,
- (3) If less than all outstanding Series 2021 Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Series 2021 Bonds to be redeemed,
- (4) That on the Redemption Date the Redemption Price and interest accrued will become due and payable upon each such Series 2021 Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date,
- (5) The place where such Series 2021 Bonds are to be surrendered for payment of the Redemption Price, which place of payment shall be the principal office of the Registrar.

Prior to any redemption date, the Issuer shall deposit with the Registrar an amount of money sufficient to pay the redemption price of all the Series 2021 Bonds or portions of such Series 2021 Bonds which are to be redeemed on that date.

Official notice of redemption having been given as aforesaid, the Series 2021 Bonds or portions of such Series 2021 Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Issuer shall default in the payment of the redemption price) such Series 2021 Bonds or portions of such Series 2021 Bonds shall cease to bear interest. Upon surrender of such Series 2021 Bonds for redemption in accordance with said notice, such Series 2021 Bonds shall be paid by the Registrar at the Redemption Price. Installments of principal and/or interest due on or prior to the Redemption Date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Series 2021 Bond, there shall be prepared for the registered owner a new Series 2021 Bond or Bonds of the same maturity in the amount of the unpaid principal; provided, that any partial redemption shall at all times have an authorized denomination of the Series 2021 Bonds outstanding. All Series 2021 Bonds which have been redeemed shall be canceled and destroyed by the Bond Registrar and shall not be reissued.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of Series 2021 Bonds, and failure to mail such notice shall not affect the validity of proceedings for the redemption of any portion of Series 2021 Bonds for which there was no such failure.

Section 3.08. Persons Treated as Owners. The Issuer, the Registrar and any agent of the Issuer or the Registrar may treat the person in whose name any Series 2021 Bond is

registered as the owner of such Series 2021 Bond for the purpose of receiving payment of the principal of, and interest on, such Series 2021 Bond and for all other purposes, whether or not such Series 2021 Bond is overdue.

Section 3.09. Temporary Bonds. Until Series 2021 Bonds in definitive form are ready for delivery, the Issuer may execute and the Registrar shall authenticate, register, if applicable, and deliver, subject to the same provisions, limitations and conditions set forth in this Article III, one or more printed, lithographed or typewritten Series 2021 Bonds in temporary form, substantially in the form of the definitive Series 2021 Bonds, with appropriate omissions, variations and insertions, and in authorized denominations. Until exchanged for Series 2021 Bonds in definitive form, such Series 2021 Bonds in temporary form shall be entitled to the lien and benefit created under this Ordinance. Upon the presentation and surrender of any Series 2021 Bond in temporary form, the Issuer shall, without unreasonable delay, prepare, execute and deliver to the Registrar, and the Registrar shall authenticate, register, if applicable, and deliver, in exchange therefore, a Series 2021 Bond or Bonds in definitive form. Such exchange shall be made by the Registrar without making any charge therefore to the Holder of such Series 2021 Bond in temporary form.

Section 3.10. Authorization of Bonds. For the purposes of financing the costs of the design, acquisition, construction and equipping of the Project, funding the Series 2021 Bonds Reserve Account, if any, and paying costs of issuance of the Series 2021 Bonds and related costs, there shall be issued the Series 2021 Bonds of the Issuer, in an aggregate principal amount of not more than \$3,250,000. The Series 2021 Bonds shall be designated “The City of Morgantown (West Virginia) Parking System Revenue Bonds, Series 2021” and shall be issued in fully registered form, in denominations of \$100,000 or any increment of \$0.01 in excess thereof for any year of maturity (or such other denominations as may be set forth in the Supplemental Resolution), not exceeding the aggregate principal amount of Series 2021 Bonds maturing in the year of maturity for which the denomination is to be specified. The Series 2021 Bonds shall be numbered from R-1 consecutively upward. The Series 2021 Bonds shall be dated; shall be in such aggregate principal amount; shall bear interest at such rate or rates, not exceeding the then legally permissible rate, payable on such dates; shall mature on such dates not exceeding twenty (20) years from the issuance thereof and in such amounts; shall be subject to such scheduled principal payment and/or mandatory and optional redemption provisions; and shall have such other terms, all as the Issuer shall prescribe herein and in the Supplemental Resolution.

Section 3.11. [Reserved.]

Section 3.12. Delivery of Bonds. The Issuer shall execute and deliver the Series 2021 Bonds to the Registrar, and the Registrar shall authenticate, register and deliver the Series 2021 Bonds to the Original Purchaser upon receipt of the documents set forth below:

- (1) A list of the names in which the Series 2021 Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Registrar may reasonably require;

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

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

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

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

Section 3.13. Form of Bonds. The definitive Series 2021 Bonds shall be in substantially the form set forth in EXHIBIT A - BOND FORM attached hereto and incorporated herein by reference, with such necessary and appropriate omissions, insertions and variations as are approved by those officers executing such Series 2021 Bonds on behalf of the Issuer and execution thereof by such officers shall constitute conclusive evidence of such approval.

Section 3.14. Disposition of Proceeds of Bonds. Upon the issuance and delivery of the Series 2021 Bonds, the Issuer shall forthwith deposit the proceeds thereof as follows:

1. All interest accrued on Series 2021 Bonds, if any, from the date thereof to the date of delivery thereof shall be deposited in the Series 2021 Bonds Sinking Fund and applied to payment of interest on the Series 2021 Bonds at the first interest payment date.

2. An amount of the proceeds of the Series 2021 Bonds equal to the amount, if any, set forth in the Supplemental Resolution shall be remitted to the Bond Commission for deposit in the Series 2021 Bonds Reserve Account.

3. An amount of Series 2021 Bond proceeds which, together with other monies or securities deposited therein, shall be equal to the Costs of issuance of the Series 2021 Bonds shall be deposited with the Depository Bank in the Costs of Issuance Fund established in Section 5.01 hereof and shall be drawn out, used and applied by the Issuer solely to pay costs of issuance of the Series 2021 Bonds at the written direction of the Issuer. Monies not to be applied immediately to pay such Costs of issuance may be invested in accordance with this Ordinance, subject however, to applicable yield restrictions as may be in effect under the Code. If for any reason such proceeds, or any part thereof, are not necessary for, or are not applied to such purpose within 90 days following the Closing Date for the Series 2021 Bonds, such unapplied proceeds shall be transferred by the Issuer to the Series 2021 Bonds Sinking Fund established in Section 5.01 hereof and applied to the next ensuing payment of debt service (first to interest and then to principal) on the Series 2021 Bonds. All such proceeds shall constitute a trust fund for such purposes, and there hereby is created a lien upon such monies until so applied in favor of the Holders of the Series 2021 Bonds from which such proceeds are derived.

4. The balance of the proceeds of the Series 2021 Bonds shall be deposited with the Depository Bank in the Construction Fund established in Section 5.01 hereof and shall be drawn out, used and applied by the Issuer solely to pay Costs of the design, acquisition, construction and equipping of the Project (including reimbursement to the Issuer or the Authority for amounts previously paid for such purposes) at the written direction of the Issuer. Moneys not to be applied immediately to pay such Costs may be invested in accordance with this Ordinance, subject however, to applicable yield restrictions as may be in effect under the Code. All such proceeds shall constitute a trust fund for such purposes, and there hereby is created a lien upon such monies until so applied in favor of the Holders of the Series 2021 Bonds from which such proceeds are derived. In the event moneys remain in the Construction Fund following the final disbursement for Costs of the design, acquisition, construction and equipping of the Project, such moneys shall be transferred to the Series 2021 Bonds Sinking Fund established in Section 5.01 hereof and applied to the next ensuing payment of debt service (first to interest and then to principal) on the Series 2021 Bonds.

ARTICLE IV

[Reserved]

ARTICLE V

SYSTEM REVENUES; FUNDS AND ACCOUNTS

Section 5.01. Establishment of Funds and Accounts with Depository Bank.

Pursuant to this Article V, the following special funds are created with, and shall be held by, the Depository Bank, segregated from all other funds and accounts of the Depository Bank or the Issuer and from each other, (except as set forth in this Section 5.01) and used solely for the purposes provided herein:

- (1) Revenue Fund;
- (2) Renewal and Replacement Fund;
- (3) Cost of Issuance Fund;
- (4) Construction Fund; and
- (5) Rebate Fund.

Section 5.02. Establishment of Funds and Accounts with Bond Commission.

The following special funds and accounts are hereby created with, and shall be held by, the Bond Commission, separate and apart from all other funds and accounts of the Bond Commission or the Issuer and from each other:

- (1) Series 2021 Bonds Sinking Fund; and
- (2) Within the Series 2021 Bonds Sinking Fund, the Series 2021 Bonds Reserve Account, if required, and Series 2021 Bonds Redemption Account.

Section 5.03. System Revenues and Application Thereof. So long as any of the Series 2021 Bonds shall be Outstanding and unpaid, the Issuer covenants as follows:

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

- (1) The Issuer shall first, each month, pay from the Revenue Fund the current Operating Expenses of the System.
- (2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission commencing 7 months prior to the first interest

payment date of the Series 2021 Bonds, for deposit in the Series 2021 Bonds Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on the Series 2021 Bonds on the next ensuing semiannual interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2021 Bonds Sinking Fund and the next ensuing semiannual interest payment date is more or less than 7 months, then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date; provided further that, the initial amount required to be transferred from the Revenue Fund and deposited in the Series 2021 Bonds Sinking Fund shall be reduced by the amount of accrued interest, if any, on the Series 2021 Bonds deposited therein, and subsequent amounts required to be transferred from the Revenue Fund and deposited in the Series 2021 Bonds Sinking Fund shall be reduced by the amount of any earnings credited to the Series 2021 Bonds Sinking Fund.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission commencing 13 months prior to the first principal payment date or mandatory Redemption Date of the Series 2021 Bonds, for deposit in the Series 2021 Bonds Sinking Fund and in the Series 2021 Bonds Redemption Account therein in the case of the Term Bonds which are to be redeemed, a sum equal to 1/12th of the amount (or 1/6th of the amount if the Series 2021 Bonds mature semiannually rather than annually) of principal which will mature or be redeemed and become due on the Series 2021 Bonds on the next ensuing principal payment date or mandatory Redemption Date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2021 Bonds Sinking Fund and the next ensuing principal payment date or mandatory Redemption Date is more or less than 13 months (or 7 months if the Series 2021 Bonds mature semiannually rather than annually), then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next ensuing principal payment date or mandatory Redemption Date, the required amount of principal coming due on such date, and provided further, that the amount of such deposits shall be reduced by the amount of any earnings credited to the Series 2021 Bonds Sinking Fund and not previously credited pursuant to the preceding paragraph.

Moneys in the Series 2021 Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2021 Bonds, whether by maturity or redemption prior to maturity. Moneys on deposit in the Series 2021 Bonds Reserve Account, if any, shall be used

only for the purpose of paying principal of and interest on the Series 2021 Bonds when the funds on deposit in the Series 2021 Bonds Sinking Fund are insufficient therefore, and for no other purpose. Pending such use, such moneys shall be invested in accordance with Article VI.

The Issuer shall not be required to make any further payments into the Series 2021 Bonds Sinking Fund when the aggregate amount of funds therein, including the Series 2021 Bonds Reserve Account, if any, therein, is at least equal to the aggregate principal amount of Series 2021 Bonds then Outstanding, plus the amount of interest due or thereafter to become due on such Series 2021 Bonds then Outstanding.

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

The payments into the Series 2021 Bonds Sinking Fund shall be made on the first day of each month, except that, when the first day of any month shall be a Saturday, Sunday or legal holiday, then such payments shall be made on the next succeeding Business Day, and all such payments shall be remitted to the Bond Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Ordinance.

(4) If the Series 2021 Bonds Reserve Account is created for the Series 2021 Bonds, the Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission commencing 13 months prior to the first date of payment of principal of the Series 2021 Bonds, if not fully funded upon issuance of the Series 2021 Bonds, for deposit in the Series 2021 Bonds Reserve Account, an amount equal to 1/120th of the Reserve Requirement; provided that, no further payments shall be made into the Series 2021 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 Reserve Requirement, and thereafter the Issuer shall deposit in the Series 2021 Bonds Reserve Account, an amount sufficient to remedy any decrease in value of the Series 2021 Bonds Reserve Account below the Reserve Requirement or any withdrawal from the Series 2021 Bonds Reserve Account, beginning with the first full calendar month following the date on which (a) the valuation of investments in the Series 2021 Bonds Reserve Account results in a determination that the amount of moneys and the value of the Qualified Investments deposited to the credit of the Series 2021 Bonds Reserve Account is less than the Reserve Requirement, or (b) any amount is withdrawn from the Series 2021 Bonds Reserve Account for deposit into the Series 2021 Bonds Sinking Fund. To the extent Net Revenues and any other legally available funds are

available therefore, the amount so deposited shall be used to restore the amount of moneys on deposit in the Series 2021 Bonds Reserve Account to an amount equal to the Reserve Requirement to the full extent that such Net Revenues are available; provided however, that if the shortfall in the Series 2021 Bonds Reserve Account is due to a decrease in value of investments therein, such shortfall shall be replenished by not less than 6 equal monthly payments, and if such shortfall is due to a withdrawal from the Series 2021 Bonds Reserve Account, such shortfall shall be replenished by not less than 12 equal monthly payments, and provided further, that no payments shall be required to be made into the Series 2021 Bonds Reserve Account whenever and as long as the amount on deposit therein shall be equal to the Reserve Requirement.

If the Series 2021 Bonds Reserve Account is created for the Series 2021 Bonds, amounts in the Series 2021 Bonds Reserve Account shall be used only for the purpose of making payments of principal of and interest on the Series 2021 Bonds when due, when amounts in the Series 2021 Bonds Sinking Fund are insufficient therefore and for no other purpose.

(5) The Issuer shall next, on the first day of each month, transfer from the monies remaining in the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund, a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of any Series 2021 Bonds Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VI hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, or improvements or extensions to the System; provided, that any deficiency in the Series 2021 Bonds Reserve Account, if any, except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof, shall be promptly eliminated with monies from the Renewal and Replacement Fund.

(6) The Issuer may next, each month, after making the above required transfers of moneys from the Revenue Fund, apply any remaining revenues (“Surplus Revenues”) for any lawful purpose of the System.

B. The Bond Commission is hereby designated as the fiscal agent for the administration of the Series 2021 Bonds Sinking Fund created hereunder, and all amounts required for the Series 2021 Bonds Sinking Fund shall be remitted to the Bond Commission from the Revenue Fund and from the proceeds of the sale of the Series 2021 Bonds by the Issuer at the

times provided herein. All remittances made by the Issuer to the Bond Commission shall clearly identify the fund or account into which each amount is to be deposited. Notwithstanding the foregoing, however, the Bond Commission shall deposit all remittances in the fund or account in the priority established by this Ordinance.

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

D. Principal and interest payments, and any payments made for the purpose of funding the Series 2021 Bonds Reserve Account, if any, shall be made on a parity basis and pro-rata, with respect to the Bonds and any Additional Bonds hereinafter issued, in accordance with the respective principal amounts of each such series of Bonds then Outstanding, if less than the full amount required hereby.

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

ARTICLE VI

INVESTMENTS AND NON-ARBITRAGE; REBATES

Section 6.01. Investments. The Issuer shall invest and reinvest, and shall instruct the Bond Commission and the Depository Bank to invest and reinvest, any moneys held as a part of the funds and accounts created by this Ordinance in Qualified Investments to the fullest extent possible under applicable laws, this Ordinance, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this section.

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

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

(A) Qualified Investments acquired for the Renewal and Replacement Fund or any Series 2021 Bonds Reserve Account shall mature or be subject to retirement at the option of the holder within not more than 3 years from the date of such investment.

(B) The Issuer shall, or shall cause the Bond Commission to, semiannually transfer from the Series 2021 Bonds Reserve Account, if any, to the Series 2021 Bonds Sinking Fund any earnings on the moneys deposited therein and any other funds in excess of the applicable Reserve Requirement; provided, however, that there shall at all times remain on deposit in the Series 2021 Bonds Reserve Account an amount at least equal to the applicable Reserve Requirement.

(C) In computing the amount in any fund or account, Qualified Investments shall be valued at the lower of the cost or the market price thereof, exclusive of accrued interest. Valuation of all funds and accounts shall occur annually, except in the event of a withdrawal from any Series 2021 Bonds Reserve Account, whereupon it shall be valued immediately after such withdrawal. If amounts on deposit in the Series 2021 Bonds Reserve Account, if any, shall, at any time, be less than the applicable Reserve Requirement, the applicable bond insurer, if any, shall be notified immediately of such deficiency, and such deficiency shall be made up from the first available Net Revenues after required deposits to the Series 2021 Bonds Sinking Fund and otherwise in accordance with Section 5.03A(4).

(D) All amounts representing accrued interest shall be held by the Bond Commission, pledged solely to the payment of interest on the Bonds and invested only in

Government Obligations maturing at such times and in such amounts as are necessary to match the interest payments to which they are pledged.

(E) Notwithstanding the foregoing, all moneys deposited in the Series 2021 Bonds Sinking Fund may be invested by the Bond Commission in the West Virginia “consolidated fund” managed by the West Virginia Board of Treasury Investments pursuant to Chapter 12, Article 6C of the Code of West Virginia, 1931, as amended.

Section 6.02. Arbitrage. The Issuer covenants that (i) it will restrict the use of the proceeds of the Series 2021 Bonds in such manner and to such extent as may be necessary, so that such Series 2021 Bonds will not constitute “arbitrage bonds” under Section 148 of the Code and Regulations prescribed thereunder, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a Federal information return with respect to such Series 2021 Bonds) so that the interest on the Series 2021 Bonds will be and remain excluded from gross income for Federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 6.03. Tax Certificate, Rebates, and Rebate Fund. The Issuer shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of the Series 2021 Bonds. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Series 2021 Bonds as may be necessary in order to fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of this Ordinance.

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

expense, may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer may deem appropriate in order to assure compliance with this Section 6.03. The Issuer shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 6.03 in accordance with the requirements of Section 148(f) of the Code and such Regulations. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and other amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes.

ARTICLE VII

GENERAL COVENANTS AND PROVISIONS

Section 7.01. Covenants Binding and Irrevocable. All the covenants, agreements and provisions of this Ordinance shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 2021 Bonds, as prescribed by Article VII. In addition to the other covenants, agreements and provisions of this Ordinance, the Issuer hereby covenants and agrees with the Holders of the Series 2021 Bonds, as hereinafter provided in this Article VI. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2021 Bonds, or the interest thereon, are Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2021 Bonds shall not be or constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, nor a charge, lien or encumbrance, legal or equitable, upon any property of the Issuer or the Authority, but shall be payable solely from the Net Revenues of the System. No Holder or Holders of any Series 2021 Bonds issued hereunder shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2021 Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of all of the Series 2021 Bonds issued hereunder shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the ownership or operation of the System. The payment of the debt service on the Series 2021 Bonds shall also be secured by the monies in the Series 2021 Bonds Sinking Fund, including the Series 2021 Bonds Reserve Account therein, if any. The Net Revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Series 2021 Bonds herein authorized, and all other payments provided for in this Ordinance, and all monies and securities in the Series 2021 Bonds Sinking Fund, including the Series 2021 Bonds Reserve Account therein, are hereby irrevocably pledged in the manner provided in this Ordinance to the payment of the principal of and interest on the Series 2021 Bonds herein authorized as the same become due and for the other purposes provided in this Ordinance.

Section 7.04. Rates. Prior to the issuance of the Series 2021 Bonds, rates or charges for the use of the services and facilities of the System will be fixed and established, all in the manner and form required by law, and a copy of such rates and charges so fixed and established shall at all times be kept on file in the office of the Clerk of the Issuer, which copy will be open to inspection by all interested parties. The schedule or schedules of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to make the prescribed payments into the funds and accounts created hereunder. Such schedule or schedules of rates and charges shall be revised from time to time, whenever necessary, so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule or

schedules of rates or charges from time to time in effect shall be sufficient, 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 Annual Debt Service on the Bonds. All such rates and charges, if not paid when due, shall constitute a lien upon the premises served by the System.

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

Section 7.05. Operation and Maintenance. The Issuer will maintain the System in good condition and will operate the same as a revenue-producing enterprise in an efficient and economical manner, making such expenditures for equipment and for renewal, repair and replacement as may be proper for the economical operation and maintenance thereof from the Gross Revenues of said System in the manner provided in this Ordinance.

Section 7.06. Sale of the System; Removal of Parking Spaces. A. The System may be sold, mortgaged, leased or otherwise disposed of only as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to defease the pledge created by this Ordinance as provided by Section 11.01. The proceeds from such sale, mortgage, lease or other disposition of the System shall be immediately remitted to the Paying Agent for payment of the Bonds. Any balance remaining after such payment shall be remitted to the Issuer by the Paying Agent unless necessary for the payment of other obligations of the Issuer payable out of the Net Revenues of the System.

B. The foregoing provision notwithstanding, the Issuer or the Authority shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor is not in excess of \$50,000, the Issuer or the Authority shall, in writing, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Issuer may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Revenue Fund. If the amount to be received from such sale, lease or other disposition of said property shall be in excess of \$50,000 but not in excess of \$200,000, the Issuer shall first, in writing, determine with the written approval of the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Issuer may then, if it be so advised, by resolution duly adopted, approve and concur in such finding and authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds derived from any such sale, lease or other disposition of such property, in excess of \$50,000 and not in excess of \$200,000, shall be deposited by the Issuer into the Renewal and Replacement Fund. Such payments of such proceeds into the Renewal and

Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Ordinance.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom shall be in excess of \$200,000 and insufficient to defease the pledge created by this Ordinance, as provided by Section 10.01, without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of 60% in amount of Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

C. The Issuer or the Authority may at any time cease operation of any portion of the System and discontinue its use for public parking purposes, provided however, that if during any Fiscal Year, more than 200 parking spaces are discontinued or otherwise removed from the System, the Issuer shall first obtain from an Independent Accountant a certification to the effect that following such discontinuance or removal, the Net Revenues of the System shall be not less than 120% of Maximum Annual Debt Service.

Section 7.07. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. The Issuer shall not issue any other obligations whatsoever, except Additional Bonds provided for in Section 7.08 hereof, payable from the Gross Revenues or Net Revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from the Net Revenues with the Bonds; and all obligations hereafter issued by the Issuer payable from the Gross Revenues or Net Revenues of the System, except such Additional Bonds, shall contain an express statement that such obligations are junior and subordinate as to lien on and source of and security for payment from such Gross Revenues or Net Revenues and in all other respects to the Bonds.

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

Section 7.08. Additional Bonds. No Additional Bonds, as in this section defined, payable out of the Gross Revenues or Net Revenues of the System shall be issued after the issuance of any Bonds pursuant to this Ordinance, except under the conditions and in the manner herein provided.

No such Additional Bonds shall be issued except for the purpose of financing the costs of the construction of additions, betterments or improvements to the System, refunding all or a portion of one or more series of Bonds issued for the System, to pay claims which may exist against the revenues or facilities of the System or any combination of such purposes.

No such Additional Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Clerk of the Issuer a written statement by an Independent

Accountant, reciting the conclusion that the Net Revenues actually derived from the System during any 12 consecutive months in the 18 months immediately preceding the date of the actual issuance of such Additional Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such parity Bonds, if any, shall not be less than 115% of the Maximum Annual Debt Service on the following:

- (1) The Series 2021 Bonds then Outstanding;
- (2) Any Additional Bonds theretofore issued pursuant to the provisions contained in this Ordinance then Outstanding; and
- (3) The Additional Bonds then proposed to be issued.

Notwithstanding the foregoing, the Issuer shall be permitted to issue bonds which refund any Outstanding Bonds or any Additional Bonds hereafter issued if, prior to the issuance of such refunding bonds, the Issuer shall have filed with the Clerk: (i) a verification report of the Independent Accountants concluding that present value debt service savings shall be realized by the Issuer as a result of such refunding, after taking into account all costs of issuance of such refunding bonds, and (ii) a certificate of the Independent Accountants reciting the conclusion that the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the issuance of such refunding bonds shall not be less than 115% of the Maximum Annual Debt Service on the following:

- (1) The Series 2021 Bonds then Outstanding;
- (2) Any Additional Bonds theretofore issued pursuant to the provisions contained in this Ordinance which shall be Outstanding following such refunding; and
- (3) The refunding bonds then proposed to be issued as Additional Bonds.

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

The Net Revenues actually derived from the System during the 12-consecutive month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Accountants, as stated in a certificate, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to issuance of such Additional Bonds.

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

The term “Additional Bonds,” as used in this section, shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien on the Net Revenues of the System of which is subject to the prior and superior lien of the Bonds on such Net Revenues. Any such subordinate bonds, notes, certificates or other obligations shall be payable from the Net Revenues remaining after all payments required to be made pursuant to this Ordinance have first been paid. The Issuer shall not issue any obligations whatsoever payable from the Gross Revenues or Net Revenues of the System, or any part thereof, which rank prior to or equally, as to lien and source of and security for payment from such Gross Revenues or Net Revenues, with the Bonds except in the manner and under the conditions provided in this section.

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

Section 7.09. Insurance and Bonds. The Issuer hereby covenants and agrees, that so long as the Bonds remain Outstanding, the Issuer or the Authority will, as an Operating Expense, procure, carry and maintain insurance and bonds and worker’s compensation coverage with a reputable insurance carrier or carriers or bonding company or companies covering the following risks and in the following amounts:

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

B. PUBLIC LIABILITY INSURANCE, with limits of not less than \$1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than

\$500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

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

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

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

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

Section 7.10. No Free Services to be Rendered to the Authority or Issuer. Neither the Issuer nor the Authority will render or cause to be rendered any free services of any nature by the System; and, in the event the Authority, the Issuer or any department, agency, instrumentality, officer or employee thereof shall avail themselves of the facilities or services provided by the System or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Authority, the Issuer and any such department, agency, instrumentality, officer or employee. Such charges shall be paid as they accrue, and the Authority or the Issuer shall transfer from its general funds sufficient sums to pay such charges for service to any of its departments or properties. The revenues so received shall be deemed to be revenues derived from the operation of the System and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.11. Enforcement of Collections. The Issuer or the Authority 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 laws of the State of West Virginia.

Section 7.12. Books and Records. The Authority will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Authority or the City, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds shall have the right at all reasonable times to inspect the System, and all parts thereof, and all records, accounts and data of the Authority relating thereto.

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

Section 7.13. Operating Budget. The Authority shall annually, at least 30 days preceding the beginning of each Fiscal Year, or at such earlier date required by the charter of the Issuer, prepare and adopt by resolution a detailed budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year. The Authority shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to any Bondholder and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Bondholder or anyone acting for and in behalf of such Bondholder who requests the same.

Section 7.14. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 2021 Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or interest due on the Series 2021 Bonds during the term thereof is, under the terms of the Series 2021 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) in the event that both (A) in excess of 5% of the Net Proceeds of the Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 2021 Bonds during the term thereof is, under the terms of the Series 2021 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Series 2021 Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the System, or if the Series 2021 Bonds are for the purpose of financing more than one project, a portion of the System, and shall not exceed the proceeds used for the governmental use of that portion of the System to which such Private Business Use is related.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of the lesser of 5% of the Net Proceeds of the Series 2021 Bonds or \$5,000,000 are used, directly or indirectly, to make or finance a loan to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the

Series 2021 Bonds to be directly or indirectly “federally guaranteed” within the meaning of Section 149(b) of the Code and Regulations promulgated thereunder.

D. INFORMATION RETURN. The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 2021 Bonds and the interest thereon, including without limitation, the information return required under Section 149(e) of the Code.

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

Section 7.15. Statutory Mortgage Lien. For the further protection of the Holders of the Series 2021 Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding and shall take effect immediately upon delivery of the Bonds and shall be on a parity with the statutory mortgage lien in favor of the holders of any Additional Bonds.

Section 7.16. Designation of Bonds as “Qualified Tax-Exempt Obligations”. The Issuer hereby designates the Series 2021 Bonds as “Qualified Tax-Exempt Obligations” for purposes of Section 265(b)(3) of the Code and covenants that the Series 2021 Bonds do not constitute private activity bonds as defined in Section 141 of the Code, and that not more than \$10,000,000 aggregate principal amount of obligations the interest on which is excludable (under Section 103(a) of the Code) from gross income for federal income taxes (excluding, however, private activity bonds, as defined in Section 141 of the Code, other than qualified 501(c)(3) bonds as defined in Section 145 of the Code), including the Series 2021 Bonds, have been or shall be issued by the Issuer, including all subordinate entities of the Issuer, during the calendar year 2021.

ARTICLE VIII

DEFAULT AND REMEDIES

Section 8.01. Events of Default. Each of the following events shall constitute an “Event of Default” with respect to the Series 2021 Bonds:

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

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

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

Section 8.02. Remedies. Upon the happening and continuance of any Event of Default, any Holder of a Series 2021 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 the Holders of the Series 2021 Bonds including the right to require the Issuer to perform its duties under the Act and the Ordinance relating thereto, (iii) bring suit upon the Series 2021 Bonds, (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Holders of the Series 2021 Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Ordinance with respect to the Series 2021 Bonds, or the rights of the Holders of the Series 2021 Bonds.

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

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

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

Section 8.03. Appointment of Receiver. If there be any Event of Default existing and continuing, any Registered Owner shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System on behalf of the Issuer, with power to charge rates, rentals, fees, fines and other charges sufficient to provide for the payment of the principal of and interest on the Bonds, the deposits into the funds and accounts hereby established as herein provided and the payment of Operating Expenses of the System and to apply such rates, rentals, fees, fines, charges or other revenues in conformity with the provisions of this Ordinance and the laws of the State.

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

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

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

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

Section 8.04. Restoration of Issuer and Bondholder. In case a majority of Registered Owners shall have proceeded to enforce any right under this Ordinance by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been

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

ARTICLE IX

REGISTRAR AND PAYING AGENT

Section 9.01. Appointment of Registrar. The Registrar, Paying Agent and Depository Bank (collectively, the “Fiduciaries”) for the Series 2021 Bonds shall be appointed and designated in the Supplemental Resolution. The Issuer is hereby authorized and directed to enter into an agreement or agreements with the Fiduciaries relating to the duties and responsibilities thereof.

Section 9.02. Responsibilities of Fiduciaries. The recitals of fact in the Series 2021 Bonds shall be taken as statements of the Issuer, and the Fiduciaries shall not be responsible for their accuracy. The Fiduciaries shall not be deemed to make any representation as to, and shall not incur any liability on account of, the validity of the execution of the Series 2021 Bonds by the Issuer. Notwithstanding the foregoing, the Registrar shall be responsible for any representation in its Certificate of Authentication on the Series 2021 Bonds. The Fiduciaries and any successor thereto shall agree to perform all the duties and responsibilities spelled out in this Ordinance and any other duties and responsibilities incident thereto, all as provided by said agreement described in this Section 9.02.

Section 9.03. Evidence on Which Fiduciaries May Act. Except as otherwise provided by Section 11.02, the Fiduciaries shall be protected in acting upon any notice, resolution, request, consent, order, certificate, opinion or other document believed by them to be genuine and to have been signed or presented by the proper party or parties. Whenever any Fiduciary shall deem it necessary or desirable that a fact or matter be proved or established prior to taking or suffering any action, such fact or matter, unless other evidence is specifically prescribed, may be deemed to be conclusively proved and established by a certificate of an Authorized Officer of the Issuer, but in its discretion such Fiduciary may instead accept other evidence of such fact or matter.

Section 9.04. Compensation and Expenses. The Issuer shall pay to the Fiduciaries from time to time reasonable compensation for all services, including the transfer of registration of Series 2021 Bonds, the first exchange of Series 2021 Bonds and the exchange of Series 2021 Bonds in the event of partial redemption, incurred in the performance of their duties hereunder.

Section 9.05. Certain Permitted Acts. The Registrar may become the owner of or may deal in Series 2021 Bonds as fully and with the same rights it would have if it were not Registrar. To the extent permitted by law, the Registrar may act as depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bondholders or effect or aid in any reorganization growing out of the enforcement of the Series 2021 Bonds or this Ordinance, whether or not any such committee shall represent the Holders of a majority in principal amount of the Bonds Outstanding.

Section 9.06. Resignation of Registrar. The Registrar may at any time resign and be discharged of its duties and obligations under this Ordinance by giving not less than

60 days' written notice to the Issuer and mailing such notice to each Bondholder, specifying the date when such resignation shall take effect, within 20 days after the giving of such written notice. A copy of such notice shall also be mailed to each owner of a fully registered Series 2021 Bond or a coupon Series 2021 Bond registered as to principal (other than to bearer). Such resignation shall take effect upon the day specified in such notice unless a successor shall have been previously appointed by the Issuer or Bondholders, in which event such resignation shall take effect immediately.

Section 9.07. Removal. The Registrar may be removed at any time by the Issuer or by the Holders of a majority in principal amount of the Series 2021 Bonds then Outstanding by an instrument or concurrent instruments in writing signed and duly acknowledged by the Issuer or by such Bondholders or their attorneys duly authorized in writing and delivered to the Issuer, as the case may be. Copies of each such instrument shall be delivered by the Issuer to the Registrar.

Section 9.08. Appointment of Successor. In case at any time the Registrar shall resign or shall be removed or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or if a receiver, liquidator or conservator of the Registrar or of its property shall be appointed, or if any public officer or court shall take charge or control of the Registrar or of its property or affairs, a successor may be appointed by the Holders of a majority in principal amount of the Series 2021 Bonds then Outstanding by an instrument or concurrent instruments in writing signed by such Bondholders or their attorneys duly authorized in writing and delivered to the Issuer and such successor Registrar, notification thereof being given to the predecessor Registrar. Pending such appointment, the Issuer shall forthwith appoint a Registrar to fill such vacancy until a successor Registrar shall be appointed by such Bondholders. The Issuer shall mail to each Bondholder notice of any such appointment within 20 days after the effective date of such appointment. A copy of such notice shall also be mailed to each owner of a fully registered Series 2021 Bond or a coupon Series 2021 Bond registered as to principal (other than to bearer). Any successor Registrar appointed by the Issuer shall, immediately and without further act, be superseded by a Registrar appointed by such Bondholders. If in a proper case no appointment of a successor Registrar shall be made within 45 days after the Registrar shall have given to the Issuer written notice of resignation or after the occurrence of any other event requiring such appointment, the Registrar or any Bondholder may apply to any court of competent jurisdiction to appoint a successor. Any Registrar appointed under the provisions of this section shall be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this Ordinance.

Section 9.09. Transfer of Rights and Property to Successor. Any predecessor Registrar or Paying Agent shall pay over, assign and deliver any moneys, books and records held by it to its successor.

Section 9.10. Merger or Consolidation. Any company into which the Registrar may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party, or any company to which the Registrar or any public officer or court may sell or transfer all or substantially all of its corporate trust business, shall be the successor to such Registrar without the execution or filing of any paper

or the performance of any further act; provided, however, that such company shall be a bank, trust company or national banking association meeting the requirements set forth in Section 9.08.

Section 9.11. Adoption of Authentication. In case any of the Series 2021 Bonds shall have been authenticated but not delivered, any successor Registrar may adopt a Certificate of Authentication and Registration executed by any predecessor Registrar and deliver such Series 2021 Bonds so authenticated, and, in case any Series 2021 Bonds shall have been prepared but not authenticated, any successor Registrar may authenticate such Series 2021 Bonds in the name of the predecessor Registrar or in its own name.

Section 9.12. Paying Agent and Depository Bank. The Registrar shall also serve as the Depository Bank. The Registrar's acceptance of the duties and responsibilities of the Registrar expressed in Section 9.02 shall also include the trusts and the duties of Depository Bank. The Bond Commission shall serve as the Paying Agent. Any alternate or Co-Paying Agent must be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this Ordinance. Such alternate or Co-Paying Agent shall signify its acceptance of the duties and obligations imposed upon it pursuant hereto by executing and delivering to the Issuer a written acceptance thereof.

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

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

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

Notice of the appointment of successor or additional Paying Agents or fiscal agents shall be given in the same manner as provided by Section 9.08 hereof with respect to the appointment of a successor Registrar.

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

ARTICLE X

DEFEASANCE; DISCHARGE OF PLEDGE OF ORDINANCE

Section 10.01. Defeasance; Discharge of Pledge of Ordinance. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Registered Owners of all Series 2021 Bonds, the principal of and interest due or to become due thereon, then this Ordinance and the pledges of the Net Revenues and other moneys and securities pledged hereunder, and all covenants, agreements and other obligations of the Issuer on behalf of the Registered Owners of the Series 2021 Bonds made hereunder, shall thereupon cease, terminate and become void and be discharged and satisfied.

Series 2021 Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due the respective principal of and interest on such Series 2021 Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Series 2021 Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Bond Commission or an escrow trustee either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Bond Commission or said escrow trustee at the same or earlier time shall be sufficient, to pay when due the principal of, any redemption premium on and interest due and to become due on the Series 2021 Bonds on and prior to the maturity date thereof, or if the Issuer irrevocably determines to redeem any of the Series 2021 Bonds prior to the maturity thereof, on and prior to said redemption date. Neither securities nor moneys deposited with the Bond Commission or an escrow trustee pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and interest on the Series 2021 Bonds; provided, that any cash received from such principal, redemption premium, if any, and interest payments on such securities deposited with the Bond Commission or said escrow trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal of and redemption premium, if any, and interest to become due on the Series 2021 Bonds on and prior to such maturity or redemption dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Bond Commission or said escrow trustee, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Amendment of Ordinance. This Ordinance and any supplemental resolution may be amended or modified without the consent of any Registered Owner or other person, solely for the purpose of maintaining the tax-exempt status of the Series 2021 Bonds, provided that, in the event any of the Series 2021 Bonds are insured, no such amendment or modification which adversely affects the security for the Series 2021 Bonds or the rights of the bond insurer for the Series 2021 Bonds may be effected without the written consent of such bond insurer. Otherwise, no materially adverse amendment or modification to this Ordinance, or of any supplemental resolution, may be made without the written consent of the Registered Owners of 60% in aggregate principal amount of the Series 2021 Bonds then Outstanding and affected thereby and the bond insurer, which must be filed with the Clerk of the Issuer before any such modification or amendment may be made. No such modification or amendment shall extend the maturity of or reduce the interest rate on, or otherwise alter the terms of payment of the principal of or interest on, any Series 2021 Bond without the express written consent of the Registered Owner of such Series 2021 Bond, nor reduce the percentage of Series 2021 Bonds required for consent to any such modification or amendment.

Section 11.02. Evidence of Signatures of Registered Owners and Ownership of Bonds. Any request, consent, revocation of consent or other instrument which this Ordinance may require or permit to be signed and executed by Registered Owners may be in one or more instruments of similar tenor, and shall be signed or executed by such Registered Owners in person or by their attorneys duly authorized in writing. Proof of the execution of any such instrument, or of an instrument appointing or authorizing any such attorney, shall be sufficient for any purpose of this Ordinance if made in the following manner, or in any other manner satisfactory to the Issuer or the Registrar, as the case may be, which may nevertheless in its discretion require further or other proof in cases where it deems the same desirable:

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

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

C. The amount of fully registered Series 2021 Bonds held by a person executing any instrument as a Registered Owner, the date of his holding such Series 2021 Bonds and the numbers and other identification thereof, shall be confirmed by the Bond Register.

Any request, consent or other instrument executed by the Registered Owner of any Series 2021 Bond shall bind all future Registered Owners of such Series 2021 Bond in respect of anything done or suffered to be done hereunder by the Issuer or the Registrar in accordance therewith.

Section 11.03. Preservation and Inspection of Documents. To the extent allowable under law, all reports, certificates, statements and other documents received by the Registrar under the provisions of this Ordinance shall be retained in its possession and shall be available at all reasonable times for the inspection of the Issuer or any Registered Owner, and their agents and their representatives, but any such reports, certificates, statements or other documents may, at the election of the Registrar, be destroyed or otherwise disposed of at any time after such date as the pledge created by this Ordinance shall be discharged as provided in Section 10.01.

Section 11.04. Cancellation of Bonds. All Series 2021 Bonds purchased or paid shall, if surrendered to the Issuer, be canceled and delivered to the Registrar, or, if surrendered to the Registrar, be canceled by it. No such Series 2021 Bonds shall be deemed Outstanding under this Ordinance and no Series 2021 Bonds shall be issued in lieu thereof. All such Series 2021 Bonds shall be canceled and upon order of the Issuer shall be destroyed, and a certificate evidencing such destruction shall be delivered to the Issuer.

Section 11.05. Failure to Present Bonds. Anything in this Ordinance to the contrary notwithstanding, any moneys held by the Bond Commission or a subsequent Paying Agent in trust for the payment and discharge of any of the Series 2021 Bonds which remain unclaimed for 1 year after the date on which such Series 2021 Bonds have become due and payable, whether by maturity or upon call for redemption, shall at the written request of the Issuer be paid by the Bond Commission or said Paying Agent to the Issuer as its absolute property and free from trust, and the Bond Commission or said Paying Agent shall thereupon be released and discharged with respect thereto, and the Registered Owners of such Series 2021 Bonds shall look only to the Issuer for the payment of such Series 2021 Bonds; provided, however, that, before making any such payment to the Issuer, the Registrar, if so advised by the Bond Commission, or said Paying Agent shall send to the Registered Owner, at the address listed on the Bond Register, by certified mail, a notice that such moneys remain unclaimed and that, after a date named in said notice, which date shall be not less than 30 days after the date of such notice is mailed, the balance of such moneys then unclaimed will be returned to the Issuer.

Section 11.06. Notices, Demands and Requests. Unless otherwise expressly provided, all notices, demands and requests to be given or made hereunder to or by the Issuer, the Registrar, the Depository Bank, or the Original Purchaser shall be in writing and shall be properly made if sent by United States mail, postage prepaid, and addressed as follows or if hand-delivered to the individual to whom such notice, demand or request is required to be directed as indicated below:

CITY:

The City of Morgantown
389 Spruce Street
Morgantown, West Virginia 26505
Attention: Mayor

REGISTRAR AND DEPOSITORY:

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

PAYING AGENT:

West Virginia Municipal Bond Commission
900 Pennsylvania Avenue
Suite 1117
Charleston, West Virginia 25302
Attention: Executive Director

ORIGINAL PURCHASER:

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

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

Section 11.07. No Personal Liability. No member of the Council or officer or employee of the Issuer shall be individually or personally liable for the payment of the principal of or the interest on any Series 2021 Bond, but nothing herein contained shall relieve any such member, official or employee from the performance of any official duty provided by law or this Ordinance.

Section 11.08. Law Applicable. The laws of the State shall govern the construction of this Ordinance and of all Bonds issued hereunder.

Section 11.09. Parties Interested Herein. Nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon, or give to, any person or corporation, other than the Issuer, the Registrar, the Paying Agent, the Registered Owners of the Series 2021 Bonds and the Original Purchaser, any right, remedy or claim under or by reason of this Ordinance. All the covenants, stipulations, promises and agreements contained in this Ordinance by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the Registrar, the Paying Agent, the Registered Owners of the Bonds.

Section 11.10. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Ordinance.

Section 11.11. Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 11.12. Conflicting Provisions Repealed. All ordinances, orders, resolutions or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 11.13. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, City Manager, City Clerk and members of the Council were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 11.14. Procedure on Enactment of Ordinance; Public Hearing. Upon adoption of this Ordinance, the Clerk is hereby authorized and directed to have an abstract of this Ordinance, which abstract has been determined by the Council to contain sufficient information to give notice of the contents of such Ordinance, published once each week for 2 successive weeks, with not less than six full days between each publication, the first such publication to be not less than 10 days before the date stated below for the public hearing, in the Dominion Post, a newspaper published and having a general circulation in the City of Morgantown, together with a notice to all persons concerned, stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Bonds described in this Ordinance and that any person interested may appear before the Council of the Issuer upon a date certain, not less than 10 days subsequent to the date of the first publication of the said abstract and notice, and present protests, and that a certified copy of this Ordinance is on file with the Clerk for review by interested parties during the office hours of the Clerk. At such hearing all protests and suggestions shall be heard by the Council and it shall then take such action as it shall deem proper in the premises.

First Reading: February 2, 2021

Second Reading: February 16, 2021

Passed on Final Reading
Following Public
Hearing: March 2, 2021

Section 11.15. Effective Date. This Ordinance shall take effect immediately upon enactment.

[Remainder of Page Intentionally Blank]

Enacted this 2nd day of March, 2021.

[SEAL]

By: _____
Mayor

By: _____
City Manager

ATTEST:

City Clerk

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of THE CITY OF MORGANTOWN on the 2nd day of March, 2021, pursuant to proper notice, at which meeting a quorum was present and acting throughout, and which Ordinance was enacted following a public hearing thereon, notice of which public hearing was published once a week for two successive weeks in a newspaper having a general circulation in the City of Morgantown, the first publication having been not less than 10 days prior to such public hearing.

Dated this ____ day of _____, 2021.

[SEAL]

City Clerk

EXHIBIT A - BOND FORM

THIS BOND IS REGISTERED WITH THE REGISTRAR, _____, AND IS NOT REGISTERED WITH THE DEPOSITORY TRUST COMPANY, AND ANY REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT SHOULD BE SUBMITTED TO THE REGISTRAR, _____.

THIS BOND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS OR ANY OTHER APPLICABLE SECURITIES LAWS. NEITHER THIS BOND NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. THE HOLDER OF THIS BOND BY ITS ACCEPTANCE HEREOF AGREES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY ONLY (A) TO THE ISSUER, (B) PURSUANT TO RULE 144A UNDER THE SECURITIES ACT ("RULE 144A"), TO A PERSON THE HOLDER REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT TO AN "ACCREDITED INVESTOR" WITHIN THE MEANING OF RULE 501 UNDER THE SECURITIES ACT THAT IS ACQUIRING THE BOND FOR ITS OWN ACCOUNT, OR FOR THE ACCOUNT OF SUCH AN "ACCREDITED INVESTOR," FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO, OR FOR OFFER OR SALE IN CONNECTION WITH, ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT, OR (D) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE ISSUER'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSES (C) OR (D) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO IT. THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF AGREES THAT IT WILL COMPLY WITH THE FOREGOING RESTRICTIONS.

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF MORGANTOWN (WEST VIRGINIA)
PARKING SYSTEM REVENUE BONDS, SERIES 2021
\$ _____

No. R- _____

Dated: _____, 2021

THE CITY OF MORGANTOWN, a municipal corporation organized and existing under the laws of the State of West Virginia (the "Issuer") for value received, hereby promises to pay, solely from the special fund provided therefore, as hereinafter set forth, to the order of

- _____ -

or registered assigns (the "Registered Owner"), the principal sum of _____ and 00/100 DOLLARS (\$ _____) in lawful money of the United States of America, together with interest thereon at the fixed annual percentage rate of ____ %, from the date of this Bond, in _____ equal amortizing semi-annual installments of principal and interest in the amount of \$ _____, commencing on _____ 1, 2021, and continuing on each _____ 1 and _____ 1 thereafter occurring to and including _____ 1, 20____, which shall be the maturity date of this Bond (the "Maturity Date"), at which time all principal of and interest on this Bond not theretofore paid shall become due and payable. Interest shall be computed on the basis of a year of 365 days and for the actual number of days elapsed during any month or portion thereof.

Notwithstanding any other provision of this Bond to the contrary, in the event of a Determination of Taxability, the rate of interest on this Bond shall be equal to ____% per annum (the "Taxable Rate"). Interest at the Taxable Rate shall commence to accrue on the Date of Taxability and such interest rate shall be charged retroactively and prospectively for all periods in which interest paid on this Bond is asserted, declared or determined to be subject to federal income taxation, and shall continue until the entire principal of and interest on this Bond is paid, notwithstanding that the entire principal amount of this Bond may have been paid in full prior to the Determination of Taxability. Any interest being past due on this Bond by reason of such increase shall become immediately due and payable. In addition, in the event of a Determination of Taxability, the Registered Owner shall be entitled to payment, on demand, of any Special Charges. Special Charges means (a) an amount equal to any penalties or interest paid to the Internal Revenue Service or to the State of West Virginia by the present and former Registered Owner resulting from the failure to include interest on this Bond in its gross income for purposes of determining its federal income tax or State income tax, plus any tax payable by them as a consequence of the receipt of such amount; plus (b) an amount equal to all reasonable administrative, out-of-pocket and other expenses incurred by the present and former Registered Owner which are directly or indirectly attributable to interest on this Bond becoming subject to federal or State income tax as a result of the failure to include interest on this Bond in its gross

income for purposes of determining its federal or state income tax, including without limitation, costs incurred by the present and former Registered Owner in amending its federal or State tax returns.

As used herein the term "Determination of Taxability" means the interest on the Bonds in whole or in part is included in the gross income of a holder (or former holder) for federal income tax purposes for any reason, the determination of which is manifested by (a) a statutory Notice of Deficiency (90-day letter) from the Internal Revenue Service proposing to include such interest in the income of a holder (or former holder), or (b) delivery to the Registrar or Issuer of an opinion of Bond Counsel acceptable to the Registrar to the effect that (i) as a result of a change in the federal tax laws after the date of the issuance of the Bonds such interest on obligations of the general character of the Bonds will be included in whole or in part in the gross income of the holders thereof (for the purposes of this paragraph, such interest becomes subject to federal income taxation when the President of the United States of America signs such legislation) or (ii) that for any other reason, interest on the Bonds, in whole or in part, is included in the gross income of a holder or former holder of the Bonds; provided, however, no Determination of Taxability shall be deemed to exist if the Issuer shall, within 30 days after such assertion of taxability, cause to be delivered to the Registrar an unqualified opinion of Bond Counsel reasonably acceptable to the holder or former holder to the effect that interest on the Bonds has been and continues to be excludable from gross income for federal income tax purposes, then such holder or former holder shall at the expense of the Issuer contest such assertion of taxability by appropriate administrative proceedings through the Internal Revenue Service Appeals Office, whose determination as to taxability shall be final and binding and upon such determination by the Internal Revenue Service Appeals Office a Determination of Taxability shall be deemed to exist. In any such contest the holder or former holder shall cooperate with the Issuer and toward that end shall (a) give prompt notice of any such assertion and (b) permit the Issuer or its representatives to meet with the representatives of the holder or former holder dealing with the Internal Revenue Service to discuss the issues involved. All other capitalized terms used in this Bond but not defined in this Bond shall have the meaning set forth in the Ordinance (hereinafter defined).

The principal of and interest on this Bond are payable in any coin or currency which on the date of payment thereof 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, as Paying Agent. The Record Dates for the Series 2021 Bonds shall be each _____ 15 and _____ 15 during the term of the Series 2021 Bonds (whether or not such date shall be a business day).

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of \$ _____ designated "The City of Morgantown (West Virginia) Parking System Revenue Bonds, Series 2021" (the "Bonds" or "Series 2021 Bonds") each being in substantially similar form and effect, except as to number and principal amount, dated _____, 2021, the proceeds of which are to be used (i) to finance the costs of renovations and improvements to existing motor vehicle parking facilities of the Issuer, (ii) to fund the Series 2021 Bonds Reserve Account, if any, and (iii) to pay certain costs of issuance of the Bonds and related costs. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 16 of the Code of West

Virginia, 1931, as amended (the “Act”), and an ordinance duly enacted by the Council of the Issuer on _____, 2021, as supplemented by a Supplemental Resolution adopted on _____, 2021 (together, the “Ordinance”), and is subject to all the terms and conditions of said Ordinance. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the Issuer, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the City Clerk in the City of Morgantown, West Virginia.

The principal of and interest on the Bonds are payable from, and secured by a first lien on the Net Revenues of the Issuer’s on-street and off-street motor vehicle parking facilities, together with all related facilities (the “System”), as more particularly described in the Ordinance, and all moneys in the Series 2021 Bonds Sinking Fund established under the Ordinance, including the Series 2021 Bonds Reserve Account, if any, and the Issuer hereby and in the Ordinance pledges such revenues and moneys to such payment.

The Bonds shall be subject to prepayment at the option of the Issuer, prior to the maturity thereof, in whole at any time, or in part on any semiannual installment payment date, at a prepayment price equal to 100% of the principal amount prepaid, without premium, plus accrued interest at the applicable rate to the date of any such prepayment, and other payments due hereunder. Any partial prepayment shall be in the minimum amount of \$ _____ and shall be applied in such manner so as to reduce the principal amount of Bonds Outstanding, shall be applied pro-rata as to each of the Series 2021 Bonds, in proportion to the outstanding principal amount of each such Series 2021 Bond so as to reduce the amount of the semi-annual installment payments in inverse order of payment due date, and the Paying Agent shall thereafter recalculate the installment payments then due on the Bonds. Notwithstanding the foregoing, partial prepayments shall not be made or applied in such a fashion so as to reduce the principal amount of any Series 2021 Bond to an amount less than an authorized denomination thereof.

Prepayment shall be made on the date selected by the Issuer, which date shall be not less than 15 days nor more than 45 days after receipt by the Paying Agent of a certificate of the Issuer (i) requesting that the Bonds or portion thereof be prepaid, and (ii) stating the principal amount of the Bonds to be so prepaid, and the date upon which the same will be prepaid.

Unless waived by any Registered Owner of the Series 2021 Bonds to be redeemed, official notice of any redemption shall be given by the Registrar on behalf of the Issuer by mailing a copy of an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Original Purchaser and the Registered Owner of the Series 2021 Bond or Bonds, as applicable, to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such registered owner to the Bond Registrar.

Notice of prepayment having been given in the manner hereinabove provided for, the Bonds or portion thereof shall on the date fixed for prepayment specified in such notice, become due and payable at the proper prepayment price as herein provided, and from and after the date fixed for prepayment (unless the Issuer shall default in the payment of the prepayment price) interest on such Bonds or portion thereof shall cease to accrue, and upon presentation and surrender of such Bonds at the office of any Paying Agent, such Bonds shall be paid at the prepayment price aforesaid (provided that in the event of a partial prepayment such payment shall be made by the Paying Agent without the need for the Registered Owner to tender such Bond to the Paying Agent for cancellation and issuance of a new Bond or Bonds in the amount of the remaining principal amount thereof).

This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional, statutory or charter provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon except from the Net Revenues of the System, the funds on deposit from time to time in the Series 2021 Bonds Sinking Fund and any unexpended proceeds of the Bonds. Under the Ordinance, the Issuer has entered into certain covenants with the Registered Owners, for the terms of which reference is made to said Ordinance. Remedies provided the Registered Owners are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

Subject to the requirements for transfer set forth below, this Bond is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia. This Bond is transferable, as provided in the Ordinance, only by transfer of registration upon the books of _____, _____, _____, as Registrar, to be made at the request of the Registered Owner hereof in person or by his attorney duly authorized in writing, and upon surrender hereof, together with a written instrument of transfer satisfactory to said registrar duly executed by the Registered Owner or his duly authorized attorney. Upon transfer hereof, there shall be issued another fully registered Bond or fully registered Bonds of the aggregate principal amount equal to the unpaid amount hereof.

This Bond shall only be transferable by transfer of registration upon the books of the Registrar as provided herein and in the Ordinance. This Bond shall be registered in the Bond Register and such registration shall be noted on this Bond. After such registration, no registration of transfer hereof shall be valid unless made on the Bond Register at the written request of the registered owner or his duly authorized attorney or legal representative and similarly noted on this Bond.

The Bond Registrar shall not be obligated to make any registration or transfer of (a) any Bonds during the 15 day period preceding (i) an interest payment date or (ii) the date of publication or mailing, whichever is earlier, of a notice of redemption, or (b) any Bonds called for redemption.

[This Bond is hereby and in the Ordinance designated a “qualified tax-exempt obligation” within the meaning of Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended.]

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in issuance of this Bond exist, have happened and have been performed in due time, form and manner as required by law, and that the Bonds, together with all other obligations of the Issuer, do not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia.

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

This Bond shall not be valid or obligatory unless authenticated by the Registrar by the execution of the Registrar's Certificate of Authentication endorsed hereon.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, THE CITY OF MORGANTOWN has caused this Bond to be signed by its Mayor and City Manager, and its corporate seal to be imprinted hereon and attested by its City Clerk, and has caused this Bond to be dated the date specified above.

THE CITY OF MORGANTOWN

[SEAL]

By: _____
Mayor

By: _____
City Manager

ATTEST:

By: _____
Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the fully registered Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below.

Dated: _____, 2021.

_____,
as Registrar

By _____
Its Authorized Officer

(FORM OF)
ASSIGNMENT

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

Dated: _____, _____

SIGNATURE GUARANTEED:

(Bank, Trust Company or Firm)

(Authorized Officer)

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

(No writing on this Bond except by the Registrar)

SCHEDULE OF REGISTERED OWNERS

<u>Date of Registration</u>	<u>In Whose Name Registered</u>	<u>Signature of Registrar</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

RESOLUTION

WHEREAS, City Administration has presented to Morgantown City Council a 2020-2021 budget revision for the Morgantown Capital Escrow Fund and has requested that City Council review and approve the same;

WHEREAS, the budget revision in question, copies of which are hereto attached, appear to not only be in proper form, but also, acceptable as to income and expenditures set forth therein;

WHEREAS, City Council is of the opinion that it should approve said budget revision.

NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown this _____ day of _____, 2021, that the 2020-2021 Morgantown Capital Escrow Fund Budget revision hereto attached is approved.

Mayor

City Clerk

**CITY OF MORGANTOWN
 CAPITAL ESCROW FUND - REVISION 01
 FY 2020-2021**

REVENUES	BUDGET FY21	PROPOSED REV 01	PROPOSED AMENDED BUDGET	EXPLANATION
		-		
		-		
		-		
EXPENDITURES	BUDGET FY21	PROPOSED REV 01	PROPOSED AMENDED BUDGET	EXPLANATION OF EXPENDITURES
Xuzhou Sister City Garden Design	-	15,000	15,000	Contribution to Sister Citites for the design of Xuzhou City Garden
Celebration of America	-	15,000	15,000	Contribution to Celebraton of America Firework Display
Contingencies	582,472	(30,000)	552,472	
		-		

March 23, 2021

Mr. Kim Haws
City of Morgantown
Via E-mail



Dear Kim:

In May, 2007, we created a scholarship fund to help our state's best and brightest track stars achieve their collegiate dreams. With the help of our volunteers and organizers, including Main Street Morgantown, this fund has provided 31 scholarships to date. In 2013, we added SteppingStones as a benefactor to our fundraiser.

The 2021 *Jim Dunn Memorial Scholarship Twilight 5-miler* will be held Friday, July 16th at 7 p.m. in the Historic Wharf District in Morgantown to continue to raise funds for this scholarship and SteppingStones.

We are requesting a festival permit to accommodate the awards ceremony and banquet, held at the Wharf parking garage and provided by Oliverio's Restaurant on the Wharf, with more than 500 participants and volunteers.

On behalf of the Jim Dunn Memorial Scholarship Committee and our past and future scholarship recipients, thank you for supporting our youth and for your commitment to a healthier West Virginia. We hope you will approve this year's request.

For additional information, please feel free to contact me at 304-282-2642 or visit jimdunnrun.com.

Sincerely,

Darlene Dunn

Darlene Dunn, Chair
Jim Dunn Memorial Scholarship Committee

Committee Members: Darlene Dunn, Riley Dunn, Mike Mosser, Terri Cutright, Barbara Alexander McKinney, Kim Palumbo, Mack King, Sheila Saab, Monica Marietta, Kim Walls