



Office of the City Clerk

The City of Morgantown

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**AGENDA
MORGANTOWN CITY COUNCIL
REGULAR MEETING
July 2, 2013
7:00 p.m.**

1. **CALL TO ORDER**
2. **CITY CLERK ADMINISTER OATH OF OFFICE TO COUNCIL**
3. **ELECTION OF MAYOR AND DEPUTY MAYOR**
4. **OATH OF OFFICE FOR MAYOR AND DEPUTY MAYOR**
5. **ROLL CALL BY MAYOR**
6. **PLEDGE TO THE FLAG**
7. **APPROVAL OF MINUTES: Regular Meeting – June 18, 2013**
8. **CORRESPONDENCE:**
 - A. **Convention and Visitors Bureau Presentation on Relocation.**
9. **PUBLIC HEARING:**
 - A. **PUBLIC HEARING on AN ORDINANCE AMENDING TABLE 1331.05.01 “PERMITTED LAND USES” OF THE PLANNING AND ZONING CODE AS IT PERTAINS TO “LODGING OR ROOMING HOUSE” USES.**
 - B. **PUBLIC HEARING on AN ORDINANCE AMENDING ARTICLE 1365.09 OF THE PLANNING AND ZONING CODE AS IT PERTAINS TO PARKING DEVELOPMENT STANDARDS.**

- C. **PUBLIC HEARING on AN ORDINANCE AMENDING ARTICLE 1363.04 “SPECIAL REQUIREMENTS” OF THE PLANNING AND ZONING CODE AS IT PERTAINS TO THE NUMBER OF PRINCIPAL STRUCTURES PERMITTED ON A LOT.**
- D. **PUBLIC HEARING on AN ORDINANCE AMENDING SECTION 925.03 OF THE CITY OF MORGANTOWN’S STREETS, UTILITIES AND PUBLIC SERVICES CODE BY SETTING FORTH THE RATES, FEES AND CHARGES FOR SERVICE TO CUSTOMERS OF THE SEWERAGE SYSTEM OF THE CITY OF MORGANTOWN, INCLUDING THE ADDITION OF A NEW SCHEDULE FOR THE SCOTTS RUN PUBLIC SERVICE DISTRICT TERRITORY.**
- E. **PUBLIC HEARING on AN ORDINANCE AUTHORIZING THE ACQUISITION OF THE SEWERAGE COLLECTION AND TRANSPORTATION SYSTEM OF SCOTTS RUN PUBLIC SERVICE DISTRICT AND APPROVING AN ACQUISITION AGREEMENT BY AND AMONG SCOTTS RUN PUBLIC SERVICE DISTRICT, THE CITY OF MORGANTOWN AND MORGANTOWN UTILITY BOARD.**

10. **UNFINISHED BUSINESS:**

- A. **Consideration of APPROVAL of SECOND READING (ADOPTION) of AN ORDINANCE AMENDING TABLE 1331.05.01 “PERMITTED LAND USES” OF THE PLANNING AND ZONING CODE AS IT PERTAINS TO “LODGING OR ROOMING HOUSE” USES. (First Reading June 4, 2013)**
- B. **Consideration of APPROVAL of SECOND READING (ADOPTION) of AN ORDINANCE AMENDING ARTICLE 1365.09 OF THE PLANNING AND ZONING CODE AS IT PERTAINS TO PARKING DEVELOPMENT STANDARDS. (First Reading June 4, 2013)**
- C. **Consideration of APPROVAL of SECOND READING (ADOPTION) of AN ORDINANCE AMENDING ARTICLE 1363.04 “SPECIAL REQUIREMENTS” OF THE PLANNING AND ZONING CODE AS IT PERTAINS TO THE NUMBER OF PRINCIPAL STRUCTURES PERMITTED ON A LOT. (First Reading June 4, 2013)**

- D. Consideration of **APPROVAL** of **SECOND READING (ADOPTION)** of **AN ORDINANCE AMENDING SECTION 925.03 OF THE CITY OF MORGANTOWN'S STREETS, UTILITIES AND PUBLIC SERVICES CODE BY SETTING FORTH THE RATES, FEES AND CHARGES FOR SERVICE TO CUSTOMERS OF THE SEWERAGE SYSTEM OF THE CITY OF MORGANTOWN, INCLUDING THE ADDITION OF A NEW SCHEDULE FOR THE SCOTTS RUN PUBLIC SERVICE DISTRICT TERRITORY.** (First Reading June 18, 2013)

- E. Consideration of **APPROVAL** of **SECOND READING (ADOPTION)** of **AN ORDINANCE AUTHORIZING THE ACQUISITION OF THE SEWERAGE COLLECTION AND TRANSPORTATION SYSTEM OF SCOTTS RUN PUBLIC SERVICE DISTRICT AND APPROVING AN ACQUISITION AGREEMENT BY AND AMONG SCOTTS RUN PUBLIC SERVICE DISTRICT, THE CITY OF MORGANTOWN AND MORGANTOWN UTILITY BOARD.** (First Reading June 18, 2013)

- F. Consideration of **APPROVAL** of **SECOND READING** of **A BOND ORDINANCE PROVIDING FOR THE ASSUMPTION OF THE SCOTTS RUN PUBLIC SERVICE DISTRICT SEWER SYSTEM AND ITS: (I) SEWER REVENUE BONDS, SERIES 1991 A, (II) SEWER REVENUE BONDS, SERIES 1991 B, (III) SEWER REVENUE BONDS, SERIES 2003 A AND (IV) SEWER REVENUE BONDS, SERIES 2009 A AND RE-DESIGNATING AND REPLACING WITH ITS: (I) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 B; (II) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 C; (III) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 D; AND (IV) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 E (COLLECTIVELY, THE "BONDS"). THE BONDS ARE PAYABLE SOLELY FROM REVENUES TO BE DERIVED FROM THE OWNERSHIP AND OPERATION OF THE COMBINED UTILITY SYSTEM OF THE CITY.**

- G. **BOARDS AND COMMISSIONS - Council to Appoint Vacancies and Council needs to review attached Memorandum from Tim Ball MUB in reference to the Board Vacancy.**

11. **PUBLIC PORTION WHICH SHALL BE SUBJECT TO RULES ESTABLISHED BY COUNCIL AND ADOPTED BY RESOLUTION**

12. **SPECIAL COMMITTEE REPORTS**

13. **NEW BUSINESS:**

- A. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING A TERMINABLE RIGHT-OF WAY AND EASEMENT AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN, GRANTOR, AND DEBRA F. BLANKENSHIP, GRANTEE, AS THE SAME APPLIES TO A STORMWATER LINE WITHIN THE CITY'S KREPPS PARK REALTY.**
- B. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTIONS 1751.06(b) AND 1751.07(d) OF ITS BUILDING AND HOUSING CODE, AS THE SAME APPLY TO INSPECTIONS AND LETTERS OF COMPLIANCE; AND ADDING A NEW SECTION 1751.18 TO ARTICLE 1751 ADDRESSING CARBON MONOXIDE DETECTORS.**
- C. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING A JANUARY 6, 2009, LEASE AGREEMENT BY AND BETWEEN IT, AS LESSOR, AND THE STATE OF WEST VIRGINIA, LESSEE, PERTAINING TO SPACE WITHIN THE AIRPORT TERMINAL BUILDING BEING UTILIZED BY THE WEST VIRGINIA ARMY NATIONAL GUARD BAND.**
- D. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE BY THE CITY OF MORGANTOWN, AUTHORIZING A LEASE AGREEMENT AMENDMENT BY IT, AS LESSOR, AND THE UNITED STATES OF AMERICA, AS LESSEE, ON BEHALF OF THE TRANSPORTATION SECURITY ADMINISTRATION (TSA), AS THE SAME APPLIES TO LEASE TERM AND RENTAL PAYMENT.**

14. **CITY MANAGER'S REPORT**

15. **REPORT FROM CITY CLERK**

16. **REPORT FROM CITY ATTORNEY**

17. **REPORT FROM COUNCIL MEMBERS**

18. **ADJOURNMENT**

If you need an accommodation contact us at (304) 284-7439

REGULAR MEETING, JUNE 18, 2013: The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers of City Hall on Tuesday, June 18, 2013 at 7:00P.M.

PRESENT: City Manager Jeff Mikorski, Assistant City Manager of Operations Glen Kelly, City Attorney Steve Fanok, City Clerk Linda Little, Mayor Jim Manilla and Council Members: Ron Bane, Wes Nugent, Jenny Selin, Marti Shamberger, Bill Byrne and Linda Herbst.

APPROVAL OF MINUTES: The minutes of the Regular Meeting of June 4, 2013, were approved as presented.

CORRESPONDENCE: Mayor Manilla presented a letter from a citizen commending the Police Department for the recovery of a stolen bike, and thanking them for their professionalism and dedication. The 2013 Corporate Cup Team for the City of Morgantown was also recognized for their efforts in the annual games.

PUBLIC HEARING – AN ORDINANCE AMENDING ARTICLE 1301 OF THE MORGANTOWN PLANNING AND ZONING CODE PERTAINING TO THE COMPREHENSIVE PLAN FOR THE PHYSICAL DEVELOPMENT OF THE CITY OF MORGANTOWN; TO DELETE REFERENCES TO THE 1998 COMPREHENSIVE PLAN; AND, TO ADOPT THE 2013 COMPREHENSIVE PLAN.

Richard Dumas, Wiles Hill resident, praised the Comprehensive Plan and all who worked on creating it. He stated that proper implementation will be key to the plan's success.

There being no other appearances, Mayor Manilla declared the public hearing closed.

PUBLIC HEARING – AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 365.01, AND REPEALING AND REENACTING SECTION 365.12 OF ITS TRAFFIC CODE AS THE SAME APPLY TO DEFINITIONS AND GATE AND PULL TICKET VIOLATIONS.

There being no appearances, Mayor Manilla declared the public hearing closed.

PUBLIC HEARING – AN ORDINANCE THE CITY OF MORGANTOWN AMENDING SECTIONS 363.07 AND 363.08 OF ITS TRAFFIC CODE, AS THE SAME APPLY TO PARKING METER ENFORCEMENT ON SUNDAY AND HOLIDAYS, AND PARKING TIME LIMITS AND FEES.

There being no appearances, Mayor Manilla declared the public hearing closed.

PUBLIC HEARING – AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 747.02(a) OF ITS FIRE PROTECTION SERVICE CHARGES CODE, AS THE SAME APPLIES TO THE LEVY AND IMPOSITION OF FIRE PROTECTION SERVICE.

There being no appearances, Mayor Manilla declared the public hearing closed.

PUBLIC HEARING – AN ORDINANCE VACATING, ABANDONING AND ANNULLING AND APPROXIMATE 50' RIGHT-OF-WAY EXTENDING ALONG A PORTION OF SIXTH STREET AND RUNNING A DISTANCE OF APPROXIMATELY ONE HUNDRED AND NINE FEET IN THE FOURTH WARD OF THE CITY OF MORGANTOWN, MONONGALIA COUNTY, WEST VIRGINIA, NOT USED NOR USEFUL FOR STREET PURPOSES.

There being no appearances, Mayor Manilla declared the public hearing closed.

PUBLIC HEARING – AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING THE EXECUTION OF AN INTER-GOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY AND THE BOARD OF EDUCATION OF THE COUNTY OF MONONGALIA, OUTLINING THE TERMS AND CONDITIONS OF THE CITY’S PURCHASE OF PROPERTY KNOWN AS THE WOODBURN ELEMENTARY SCHOOL.

There being no appearances, Mayor Manilla declared the public hearing closed.

PUBLIC HEARING – AN ORDINANCE ESTABLISHING THE RATES OF COMPENSATION FOR THE CITY OF MORGANTOWN EMPLOYEES FOR THE FISCAL YEAR 2013-2014.

There being no appearances, Mayor Manilla declared the public hearing closed.

UNFINISHED BUSINESS:

AN ORDINANCE ADOPTING THE 2013 COMPREHENSIVE PLAN: The below entitled Ordinance was presented for second reading:

AN ORDINANCE AMENDING ARTICLE 1301 OF THE MORGANTOWN PLANNING AND ZONING CODE PERTAINING TO THE COMPREHENSIVE PLAN FOR THE PHYSICAL DEVELOPMENT OF THE CITY OF MORGANTOWN; TO DELETE REFERENCES TO THE 1998 COMPREHENSIVE PLAN; AND, TO ADOPT THE 2013 COMPREHENSIVE PLAN.

Motion by Herbst, second by Shamberger to adopt the above entitled Ordinance. After explanation from the City Manager, further information from the Director of Development Services, and discussion by Council, motion carried 7-0.

AN ORDINANCE AMENDING THE TRAFFIC CODE, DEFINITIONS AND GATE AND PULL TICKET VIOLATIONS: The above entitled Ordinance was presented for second reading.

AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 365.01, AND REPEALING AND REENACTING SECTION 365.12 OF ITS TRAFFIC CODE AS THE SAME APPLY TO DEFINITIONS AND GATE AND PULL TICKET VIOLATIONS

Motion by Herbst, second by Nugent to adopt the above entitled Ordinance. After explanation from the City Manager, motion carried 7-0.

AN ORDINANCE AMENDING THE TRAFFIC CODE, PARKING METER ENFORCEMENT, FEES: The above entitled Ordinance was presented for second reading.

AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTIONS 363.07 AND 363.08 OF ITS TRAFFIC CODE, AS THE SAME APPLY TO PARKING METER ENFORCEMENT ON SUNDAY AND HOLIDAYS, AND PARKING TIME LIMITS AND FEES.

Motion by Herbst, second by Byrne to adopt the above entitled Ordinance. After discussion, motion by Shamberger, second by Byrne to make a minor amendment correcting language which refers to the date of Martin Luther King Day. The amendment carried 7-0; and there being no further discussion, the main motion carried 7-0.

AN ORDINANCE AMENDING THE FIRE PROTECTION CODE, FIRE SERVICE PROTECTION FEE: The above entitled Ordinance was presented for second reading.

AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 747.02(a) OF ITS FIRE PROTECTION SERVICE CHARGES CODE, AS THE SAME APPLIES TO THE LEVY AND IMPOSITION OF FIRE PROTECTION SERVICE.

Motion by Bane, second by Selin to adopt the above entitled Ordinance. After explanation from the City Manager, motion carried 7-0.

AN ORDINANCE ANNULLING A PORTION OF SIXTH STREET IN WARD 4: The above entitled Ordinance was presented for second reading.

AN ORDINANCE VACATING, ABANDONING AND ANNULLING AND APPROXIMATE 50' RIGHT-OF-WAY EXTENDING ALONG A PORTION OF SIXTH STREET AND RUNNING A DISTANCE OF APPROXIMATELY ONE HUNDRED AND NINE FEET IN THE FOURTH WARD OF THE CITY OF MORGANTOWN, MONONGALIA COUNTY, WEST VIRGINIA, NOT USED NOR USEFUL FOR STREET PURPOSES.

Motion by Bane, second by Shamberger to adopt the above entitled Ordinance. Motion carried 7-0.

AN ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT FOR THE PURCHASE OF WOODBURN SCHOOL PROPERTY: The above entitled Ordinance was presented for second reading.

AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING THE EXECUTION OF AN INTER-GOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY AND THE BOARD OF EDUCATION OF THE COUNTY OF MONONGALIA, OUTLINING THE TERMS AND CONDITIONS OF THE CITY'S PURCHASE OF PROPERTY KNOWN AS THE WOODBURN ELEMENTARY SCHOOL.

Motion by Shamberger, second by Selin to adopt the above entitled Ordinance. After discussion, motion carried 7-0.

AN ORDINANCE ESTABLISHING THE RATES OF COMPENSATION FOR CITY EMPLOYEES: The above entitled Ordinance was presented for second reading.

AN ORDINANCE ESTABLISHING THE RATES OF COMPENSATION FOR THE CITY OF MORGANTOWN EMPLOYEES FOR THE FISCAL YEAR 2013-2014.

Motion by Shamberger, second by Selin to adopt the above entitled Ordinance. Motion carried 7-0.

BOARDS AND COMMISSIONS: Councilor Byrne insisted upon the re-appointment Mr. Jeff Ryan to the Sister Cities Commission, to fill the remainder of an unexpired term. Council allowed the repeat appointment, and it passed by acclamation. The record will reflect that Mr. Ryan was previously appointed as such on April 16, 2013. This then stirred a discussion about Council's recent determination to allow the next Council to make all Boards and Commissions appointments in July.

PUBLIC PORTION:

There being no appearances, Mayor Manilla declared the public portion closed.

SPECIAL COMMITTEE REPORTS: Councilor Shamberger reported on the Neighborhood Coordinating Council meeting, and noted that many neighborhood picnics will be taking place soon and encouraged participation in those. She also alerted citizens to lock their cars, as the Police Department reports increased parked car burglaries. Lastly, Councilor Shamberger announced a meeting designed to attract new residents to Morgantown. Councilor Byrne announced a visit from 21 Delegates from Xuzhou's China Mining and Technology University to Morgantown, and noted the Sister Cities Commission will be welcoming them with a reception.

NEW BUSINESS:

AN BOND ORDINANCE PROVIDING FOR THE ACQUISITION OF THE SCOTTS RUN PUBLIC SERVICE DISTRICT'S VARIOUS BONDS, RE-DESIGNATING SUCH WITH THE CITY'S COMBINED UTILITY SYSTEM REVENUE BONDS: The below entitled Ordinance was presented for first reading:

A BOND ORDINANCE PROVIDING FOR THE ASSUMPTION OF THE SCOTTS RUN PUBLIC SERVICE DISTRICT SEWER SYSTEM AND ITS: (I) SEWER REVENUE BONDS, SERIES 1991 A, (II) SEWER REVENUE BONDS, SERIES 1991 B, (III) SEWER REVENUE BONDS, SERIES 2003 A AND (IV) SEWER REVENUE BONDS, SERIES 2009 A AND RE-DESIGNATING AND REPLACING WITH ITS: (I) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 B; (II) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 C; (III) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 D; AND (IV) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 E (COLLECTIVELY, THE "BONDS"). THE BONDS ARE PAYABLE SOLELY FROM REVENUES TO BE DERIVED FROM THE OWNERSHIP AND OPERATION OF THE COMBINED UTILITY SYSTEM OF THE CITY.

Motion by Bane, second by Byrne to pass the above entitled Ordinance to second reading. After discussion, the rules were suspended to allow further explanation from MUB Director Tim Ball. Motion carried 7-0.

AN ORDINANCE AMENDING THE STREETS, UTILITIES AND PUBLIC SERVICES CODE, SEWER SERVICE FEES: The below entitled Ordinance was presented for first reading:

AN ORDINANCE AMENDING SECTION 925.03 OF THE CITY OF MORGANTOWN'S STREETS, UTILITIES AND PUBLIC SERVICES CODE BY SETTING FORTH THE RATES, FEES AND CHARGES FOR SERVICE TO CUSTOMERS OF THE SEWERAGE SYSTEM OF THE CITY OF MORGANTOWN, INCLUDING THE ADDITION OF A NEW SCHEDULE FOR THE SCOTT'S RUN PUBLIC SERVICE DISTRICT SERVICE TERRITORY.

Motion by Bane, second by Selin to pass the above entitled Ordinance to second reading. Motion carried 7-0.

AN ORDINANCE AUTHORIZING THE ACQUISITION OF THE SCOTTS RUN PUBLIC SERVICE DISTRICT: The below entitled Ordinance was presented for first reading:

AN ORDINANCE AUTHORIZING THE ACQUISITION OF THE SEWERAGE COLLECTION AND TRANSPORTATION SYSTEM OF SCOTT'S RUN PUBLIC SERVICE DISTRICT AND APPROVING AN ACQUISITION AGREEMENT BY AND AMONG SCOTT'S RUN PUBLIC SERVICE DISTRICT, THE CITY OF MORGANTOWN AND MORGANTOWN UTILITY BOARD.

Motion by Bane, second by Nugent to pass the above entitled Ordinance to second reading. After explanation from the City Manager, motion carried 7-0.

CITY MANAGERS REPORT:

Mr. Mikorski first introduced to Council the new Assistant City Manager of Operations, Mr. Glen Kelly, who has also served in the past as Director of the Municipal Airport. He briefly noted Mr. Kelly's achievements and qualifications.

INFORMATION:

1. Request from Archie's and Classics 3 for Mountain Fest Motorcycle Rally Events.

Mr. Mikorski explained the request for the floor plan extension and also explained that changes in State policy have allowed these types of request to become an administrative matter, no longer requiring Council to vote. Mr. Mikorski stated that based on the past success and responsible history of these two businesses, the approval letter was administered by the City Manager's Office.

ACTION:

1. Capital Escrow Budget Revision.

After explanation from Mr. Mikorski about the necessary revision which reduces expenditures, and the Capital Escrow Program; He explains how this action will help to balance the budget. motion by Nugent, second by Bane to approve the above Budget Revision. After discussion, motion carried 7-0.

REPORT FROM CITY CLERK: No report.

REPORT FROM CITY ATTORNEY: No report.

REPORT FROM COUNCIL MEMBERS:

Councilor Bane: Councilor Bane read a short biography of Mayor Manilla's time on Council, and honored him at his last regular meeting by presenting him with a plaque and certificate of appreciation for his many years of service to the City of Morgantown and for his many achievements for the betterment of the community.

Councilor Nugent: Councilor Nugent echoed Councilor Bane's praise of Mayor Manilla and also commended Councilor Herbst with a plaque and certificate of appreciation for honorably serving her term on Council. Councilor Nugent also noted the upcoming Wiles Hill – Highland Park neighborhood association as well as events related to the 150th anniversary of West Virginia's statehood.

Councilor Selin: Councilor Selin announced the Taste of Morgantown event, as well as a Mon River clean-up event.

Councilor Shamberger:

Councilor Shamberger honored Councilor Bill Byrne upon his retirement from City Council, and noting his openness and dedication to positive change for Morgantown. Councilor Selin added praise for Councilor Byrne, enumerating his involvements in many aspects of the City. Councilor Shamberger then presented Councilor Byrne with a plaque and certificate of appreciation for his great service to the City of Morgantown on City Council. Councilor Shamberger continued her report commending area youth including 4-H, Girl State, praising the efforts of these worthy youth groups.

Councilor Byrne:

Councilor Byrne announced upcoming theatre events and encouraged participation in the local theatre. He commended Ruth Ellen Phillips for spearheading a summer reading program, and reported shoes hanging from wires in his ward. Councilor Byrne then read a statement which he has provided for the record, reflecting upon his tenure on Council, thanking his supporters and advising the new council.

Councilor Herbst:

Councilor Herbst noted parking changes at the public theatre. She thanked city administration and her colleagues for helping her achieve a successful term on Council. She stated that although there was a divide in Council she has counted the votes and Council voted together more than they were split, even though tough issues were faced. She challenged the next City Council to do what they feel is right for the community as a whole, and hoped no one has a hidden agenda. She praised the City Manager and encouraged the new Council to heed the knowledgeable City staff. She informed everyone that she is not racist, as some groups alleged during the campaign, which hurt her and her family deeply. She wished the new Council good luck.

Mayor Manilla:

Mayor Manilla welcomed Glen Kelly and praised Mr. Mikorski's decision in hiring him. He thanked his supporters and stated he has enjoyed his time on Council and serving the community.

EXECUTIVE SESSION: Motion by Nugent, second by Bane to enter into executive sessions, pursuant to WV State Code Section 6-9A-4(b) (2) (A) in Order to Discuss Personnel Matters; with City Council and City Clerk present. Immediately following, a session pursuant to WV State Code Section 6-9A-4(2) (9) as it Pertains to the Sale, Purchase of Lease of Realty; with City Council, City Manager and City Attorney present. Sessions entered into at 8:15 p.m.

ADJOURNMENT: There being no further items of business or discussion, the meeting adjourned by unanimous consent at 9:04 p.m.

City Clerk

Mayor

*A FULL TRANSCRIPT OF ALL COUNCIL MEETINGS IS AVAILABLE ON DVD AT THE MORGANTOWN CITY LIBRARY.

BOARDS AND COMMISSIONS - TERMS EXPIRED AND CURRENT VACANCIES

Appointments below for Boards will be voted on when new Council takes office July 2013.

BOARD OF PARKS AND RECREATION COMMISSION:

Frank Scafella's term expires on June 30th, 2013. Mark Wise is checking to see if he wishes to continue to serve. Frank Scafella wishes to continue to serve. Council can vote on that appointment at the Regular Meeting. Marti Shamberger, Council Appt. Term expires on June 30th New Council needs to decide who will serve on this commission. Residents appointed by City Council- 5 members.

HISTORIC LANDMARKS COMMISSION:

Linda Herbst's Council Appt. Term expires on June 30th, 2013. New Council needs to decide who will serve on this commission. Appt. by Council at least 2 members inter. In historic preservation- 1 Council Rep.

HUMAN RIGHTS COMMISSION:

Terms for Anna Marie Lofaso, Jan Derry and Warren Hager expire on June 30, 2013. Don Spencer is checking to see if they wish to continue to serve. Appt. by Council. Terms to be staggered.

METROPOLITAN THEATER COMMISSION:

Marty Shamberger's Council Appt. Term expires on June 30th, 2013. New Council needs to decide who will serve on this commission. 7 Members to be City residents, 1 Council Member and 1 Council Commission

MORGANTOWN UTILITY BOARD:

William Burton resigned (e-mail attached) on May 7, 2013 due to health reasons. City Clerk is advertising for applicants. Deadline for applicants was May 28, 2013. Council will interview candidates at a Special Meeting on July 16th, 2013. Residents to serve at large, two appointees citizens of Mon County, 3 residents of the City.

PARKING AUTHORITY:

Dennis Bidwell's term expires on 6-30-13 and Tom Arnold, Parking Authority Director says he wishes to continue to serve. Linda Herbst Council Appt. Term expires June 30, 2013. New Council needs to decide who will serve on this commission. Residents-3 members at large appointed by Mayor, 1 elected and 1 Council Member

PLANNING COMMISSION:

Jenny Selin Council Appt. Term expires June 30, 2013. New Council needs to decide who will serve on this commission. Nominated by CM on recommendation, confirmed by Council.

SISTER CITIES COMMISSION:

Bill Byrne's Council Appt. Term expires June 30, 2013. New Council needs to decide who will serve on this commission. Two members from greater metro area. 1 Council member. 9 member commission. Staggered terms.

TRAFFIC COMMISSION:

Margaret Roberts First Ward representative wishes not to continue to serve. First Ward Councilor (Ron Bane) will check to see if there is a representative in their ward that is interested in serving. Wes Nugent Council Appt. Term expires June 30, 2013. New Council needs to decide who will serve on this commission. Residents appointed by Council, must represent specific categories.

TRANSIT AUTHORITY:

Ron Bane Council Appt. Term expires June 30, 2013. New Council needs to decide who will serve on this commission. Specific categories. Council Member, 2 City Appt. City/County Join Apt, 3 County Appt.

URBAN LANDSCAPE COMMISSION:

Julie Lattanzi, Fifth Ward appt. resigned and sixth ward app Annette Tanner term expires on 7-1-13. Need the Fifth Ward Councilor (Marti Shamberger) to find a replacement and also the Sixth Ward Councilor (Bill Byrne) to find a replacement. Jenny Selin Appt. Term expires June 30, 2013. New Council needs to decide who will serve on this commission. Residents appointed by Council, must represent specific categories.

WARD AND BOUNDARY COMMISSION:

Terms for all wards expire on 6-30-2013. All wish to continue to serve except Third. Third Ward Council Member (Wes Nugent) will find replacement for that commission. Councilor Nugent is suggesting Roger Banks of Overhill Street. Council can vote on that appointment at a Regular Meeting. Appt. by Council. Per Wd.

YOUTH COMMISSION:

ALL TERMS EXPIRE 6/1/13 FOR MEMBERS. Waiting to hear from Marissa at BOPARC on new appointments. High School students residing in Metropolitan area.

***POLICE & FIRE CIVIL SERVICE COMMISSIONS: NEW PRESIDENTS APPOINTED IN JANUARY.**

****Information for Boards and Commissions vacancies are placed in the Dominion Post, are advertised on the City's Government Station Channel 15, and are posted at the Library and also information is on the City's Web Page.***

****Council decided on 3-21-06 by unanimous consent that if there is only one candidate for Boards & Commissions, the City Clerk will check with Council before scheduling a Special Meeting.***

****BZA and Planning Commission term expirations are advertised in October and interviews must be completed by December per State Law.***

Boards and Commission interview structure will be reviewed at a Committee of the Whole.

MEMORANDUM

TO: City Council
Jeff Mikorski, City Manager

FROM: Timothy L. Ball, General Manager, MUB

DATE: June 26, 2013

SUBJECT: **MUB BOARD VACANCY**

At its meeting on June 24, 2013, the MUB Board members directed that the following recommendation should be forwarded to City Council, as the Council members consider their selection of an appointee to fill the unexpired term for the MUB Board position formerly held by William Burton.

The MUB Board respectfully recommends, assuming all other factors being equal, that special consideration and favorable selection be made for a candidate who resides outside of the City of Morgantown. This recommendation, of course, also makes the assumption that the non-resident applicant is sufficiently well qualified.

Recall that the Council recently enacted a revision to City Code section 169.01, to allow non-residents of the City to be eligible, so long as they are residential customers of MUB, and they reside with the County.

The revision to 169.01 was proposed in recognition of the fact that approximately half of MUB's customers reside outside of the City. The proportion of non-resident customers is increasing, and for these reasons, the MUB Board feels that it is appropriate and important to allow those non-resident customers to be more directly represented through Board membership.

ORDINANCE NO. _____

AN ORDINANCE AMENDING TABLE 1331.05.01 "PERMITTED LAND USES" OF THE PLANNING AND ZONING CODE AS IT PERTAINS TO "LODGING OR ROOMING HOUSE" USES.

The Morgantown City Council hereby ordains that Table 1331.05.01 "Permitted Land Uses" of the City's Planning and Zoning Code is amended as follows (deleted matter struck through):

Table 1331.05.01: Permitted Land Uses

Uses	R-1	R-1A	R-2	R-3	PRO	B-1	B-2	B-4	OI	B-5	I-1	Supplemental Regulations
Lodging or Rooming House			C	P			P	C				

This ordinance shall be effective upon date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk

AN ORDINANCE AMENDING ARTICLE 1365.09 OF THE PLANNING AND ZONING CODE AS IT PERTAINS TO PARKING DEVELOPMENT STANDARDS.

The Morgantown City Council hereby ordains that Article 1365.09 "Parking Development Standards" of the City's Planning and Zoning Code is amended as follows (deleted matter struck through; new matter underlined):

1365.09 PARKING DEVELOPMENT STANDARDS.

All off-street parking areas for four or more automobiles shall be developed in accordance with the standards of this section, except in the case of one and two-family dwellings, agricultural and rural uses, and storage of vehicular merchandise not counting toward the minimum requirements as set forth in this Code.

(A) Dimensions.

- (1) Each required off-street standard parking space shall be at least ~~nine (9)~~ eight and one half (8.5) feet in width and at least eighteen (18) feet in ~~length~~ depth, exclusive of access drives or aisles, ramps, columns, or office or work areas. Such space shall have adequate vertical clearance. ~~For compact stalls, the size may be reduced to seven (7) feet by sixteen (16) feet. Angled parking lots shall conform to the design standards illustrated in Graphic 1365.09.01.~~
- (2) Up to ten (10) percent of the total number of required parking spaces may be designed for compact cars; provided, compact spaces are limited to employees or residents only and the property owner/manager assigns and enforces such spaces accordingly. Compact spaces shall be grouped together and identified as "compact cars only" with pavement stenciling and/or signage. Compact spaces should be located furthest from building entrances to discourage use by non-compact vehicles. Each compact space shall be at least eight (8) feet in width and at least fifteen (15) feet in depth, exclusive of access drives or aisles, ramps, columns, or office or work areas. Such space shall have adequate vertical clearance.
- (23) Except on lots occupied by one and two-family dwellings, each off-street parking space shall open directly upon an aisle or driveway at least twelve (12) feet wide or such additional width and design in accordance with Table 1365.09.01, so as to provide safe and efficient means of vehicular access to such parking space. Such aisle or driveway shall be unobstructed and allow for the passage of emergency vehicles at all times. This requirement may be waived by the Planning Director where such waiver will not cause a hazard.
- (34) All required parking spaces and aisles shall be provided wholly within the property lines and shall not extend into any public right-of-way.

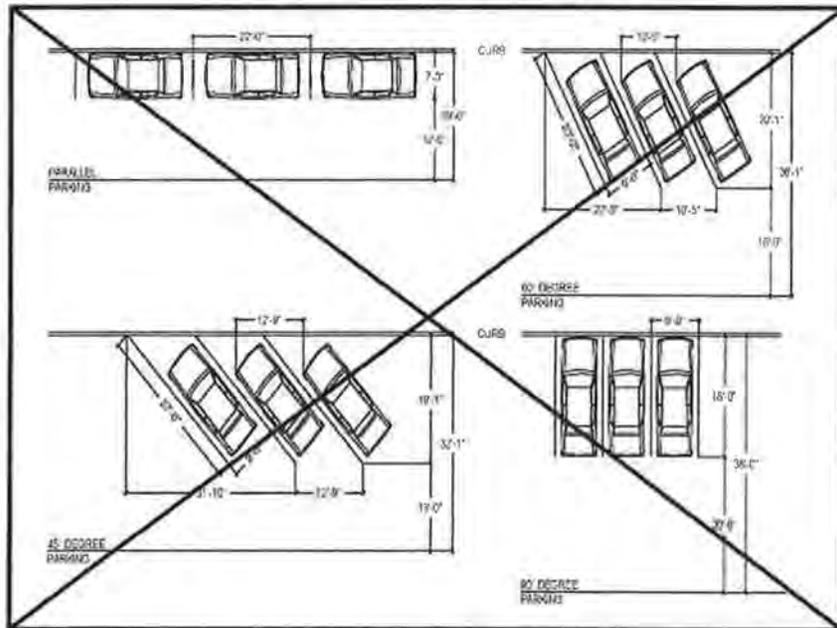
Table 1365.09.01: Dimensions of Parking Stalls, Angles and Aisles and Angles of Parking Spaces

Parking Angle* (in degrees)	Aisle Width (in feet)	Aisle Traffic Flow
45°	13'	One-way
60°	16'	One-way
90° or angled parking opening onto two-way aisles	20'	Two-way
Parallel	12'	One-way

*Angle shall be measured between centerline of parking space and centerline of aisle.

Parking Angle	Stall Type	Width of Stall (feet)	Depth of Stall Perpendicular to Aisle (feet)	One-Way Aisle Width (feet)	Two-Way Aisle Width (feet)
45°	Standard	8.5	17.5	12.0	20.0
	Compact	8	16.0	12.0	20.0
60°	Standard	8.5	19.0	16.0	20.0
	Compact	8	17.0	15.0	20.0
90°	Standard	8.5	18.0	20.0	20.0
	Compact	8	15.0	20.0	20.0
Parallel	Standard	22.0	7.5	12.0	20.0
	Compact	19.0	7.5	10.0	20.0

Graphic 1365.09.01: "Parking Angles"



(B) Layout and Design.

- (1) All off-street parking or loading facilities shall be designed with appropriate means of vehicular access to a street or an alley in a manner which will least interfere with traffic movement.
- (2) Driveway entrances or exits shall be no closer than 15 feet to an adjoining residential property line or 5 feet to an adjoining non-residential property line or designed in such a manner as to least interfere with traffic movement. No driveway across public property at the right-of-way line of the street shall exceed a width of 22 feet, unless a greater width is specifically approved by the City Engineer. No driveway shall be located closer than 30 feet of the nearest point of the intersection of two streets.
- (3) Connections between parking lots or reservations of land for future such connections may be required at the discretion of the Planning Director.
- (4) Required off-street parking spaces shall be so designed, arranged and regulated so that:
 - (a) Such parking areas are lined or designated to insure the most efficient use of the parking spaces.
 - (b) Individual spaces on lots with 5 percent average slope or greater are provided with anchored bumper guards or wheel guards. Under no circumstances shall parking spaces be provided on lots in excess of 10 percent slope.
 - (c) Parking spaces are unobstructed and have access to an aisle or driveway so that any automobile may be moved without moving another, and so that no maneuvering directly incidental to entering or leaving a parking space shall be on any public right-of-way or walkway, unless otherwise permitted at the direction of the Planning Director.
 - (d) With the exception of drive-through windows and related stacking lanes, All paved portions of all parking spaces and maneuvering aisles shall be physically separated from any wall of a building by a vertical curb, maintained planting strip, and/or other suitable barrier set back a minimum of five (5) feet from any wall of a building.
- (5) Off-street parking spaces may be open to the sky or enclosed in a building. In any instance when a building is constructed or used for parking facilities on the lot, said building shall be treated as any major structure and subject to all requirements thereof.
- (6) All parking lots abutting residential uses or districts, and all parking lots in any district containing more than four (4) spaces shall be subject to the landscaping and screening requirements for such parking lots as set forth in Article 1367, Landscaping and Screening.

(7) Any lighting facilities used to illuminate off-street parking areas shall be so located, shielded and directed upon the parking area in such a manner that they do not reflect or cause glare onto adjacent properties or interfere with street traffic. In no instance shall bare, unshaded bulbs be used for such illumination.

(C) Surfacing and Drainage.

- (1) All open off-street parking areas shall be surfaced with an all-weather, dust-free concrete or asphalt material, and shall be maintained in good condition and free of weeds, dirt, trash and debris; except that, a gravel surface may be used for a period not exceeding six months after the date of granting the Certificate of Occupancy where ground conditions are not immediately suitable for permanent surfacing as specified above.
- (2) A gravel surface in the area of storage or handling may be used permanently in association with industries that handle liquids or chemicals which create a potential hazard if containment should be lost and where absorption into the ground through a loose surface material would eliminate or alleviate such hazard.
- (3) Such parking areas shall be graded and properly drained in such a manner that there will be no free flow of water onto either adjacent property or public sidewalks. Further, any run-off generated by such improved areas shall be disposed of in accordance with the stormwater management ordinance and other City regulations.
- (4) Other surface materials and designs may be utilized when specifically approved by the City Engineer, for purposes of reducing storm water runoff or other environmental and aesthetic considerations.

This ordinance shall be effective upon date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk

AN ORDINANCE AMENDING ARTICLE 1363.04 "SPECIAL REQUIREMENTS" OF THE PLANNING AND ZONING CODE AS IT PERTAINS TO THE NUMBER OF PRINCIPAL STRUCTURES PERMITTED ON A LOT.

The Morgantown City Council hereby ordains that Article 1363.04 "Special Requirements" of the City's Planning and Zoning Code is amended as follows (deleted matter struck through; new matter underlined):

1363.04 SPECIAL REQUIREMENTS.

The following special requirements are established to clarify certain conditions pertaining to the use of lots and access points:

- (A) Structures on a Lot. Only one principal building and its accessory structures may be located on a lot unless development is approved as a planned unit development, ~~or as a shopping center, office park, or research and development center,~~ townhouse dwellings, or multi-family dwellings as permitted in ~~the O-1, B-5, and I-1 districts~~ Table 1331.05.01 "Permitted Land Uses."
- (B) Lot of Record. Any lot recorded or in single ownership at the time of adoption of these regulations shall be permitted to exist in its present dimension.
- (C) Permanent Outdoor Display of Goods. For nonresidential uses in nonresidential zones, a permanent outdoor display of goods shall conform to the required building setback. No display shall be permitted in any public right-of-way.
- (D) Temporary Outdoor Display of Goods. Temporary outdoor display of merchandise may encroach ten (10) feet on the required building setback. No display shall be permitted in any public right-of-way.

This ordinance shall be effective upon date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk

CITY OF MORGANTOWN

AN ORDINANCE AMENDING SECTION 925.03 OF THE CITY OF MORGANTOWN'S STREETS, UTILITIES AND PUBLIC SERVICES CODE BY SETTING FORTH THE RATES, FEES AND CHARGES FOR SERVICE TO CUSTOMERS OF THE SEWERAGE SYSTEM OF THE CITY OF MORGANTOWN, INCLUDING THE ADDITION OF A NEW SCHEDULE FOR THE SCOTT'S RUN PUBLIC SERVICE DISTRICT SERVICE TERRITORY.

THE COUNCIL OF THE CITY OF MORGANTOWN HEREBY ORDAINS: The following rules, rates and charges are hereby fixed, determined and established for municipal sewerage services provided to all general domestic, commercial, industrial and resale users and customers of the City of Morgantown's Municipal Sewage Treatment Plant and Collection System, commencing upon the effective date as hereinafter provided, and in accordance with the following Rates and Schedules:

925.03 SCHEDULE OF RATES

SCHEDULE NO. 1

(a) Applicable to entire territory served, except that served by Cheat Lake Wastewater Treatment Plant, ~~and the former Canyon Public Service District, and the former Scott's Run Public Service District.~~ Effective for bills rendered on or after January 1, 2012.

(1) Availability of service. Available for sanitary sewer service.

(2) Rate. Based upon the metered amount of water supplied.

Gallons Used

First	60,000 per month	\$4.66 per 1,000 gallons
All Over	60,000 per month	\$4.00 per 1,000 gallons

(3) Minimum Charge.

Per month	\$ 4.66
Bi-monthly	\$ 9.32

(4) Tap fee. The following charges are to be made whenever the utility installs a new tap to serve an applicant. A tap fee of one hundred dollars (\$100.00) will be charged to customers applying for service before construction is completed adjacent to the customer's premises in connection with a certificate proceeding before the Commission. This pre-construction tap fee will be invalid after the completion of construction adjacent to an applicant's

premises that is associated with a certificate proceeding. A tap fee of seven hundred dollars (\$700.00) will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap system.

(5) Delayed payment penalty. The above tariff is net. On all current usage billings not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is only to be collected once for each month where it is appropriate.

(6) Reconnection charge. A fee of fifteen dollars (\$15.00) during Utility Board regular working hours and twenty-five dollars (\$25.00) after hours shall be charged whenever the service is disconnected for violation of rules, nonpayment of bills, or fraudulent use of water. No such charge shall be assessed if the customer has paid a water reconnection charge for the same reconnection.

(7) Leak adjustment \$0.385 per M gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible water leakage on the customers of the meter. This rate shall beside applied to all such unusual consumption above the customer's historical average usage.

SCHEDULE NO. 2

(b) Applicable to territory served by Cheat Lake Wastewater Treatment Plant. Effective for bills rendered on or after January 1, 2012.

- (1) Availability of service. Available for sanitary sewer service.
- (2) Rate. Based upon the metered amount of water supplied.

Gallons Used

First	2,000 per month	or 4,000 bi-monthly	\$8.75 per 1,000 gallons
Next	8,000 per month	or 16,000 bi-monthly	\$8.00 per 1,000 gallons
Next	20,000 per month	or 40,000 bi-monthly	\$7.50 per 1,000 gallons
Next	30,000 per month	or 60,000 bimonthly	\$7.00 per 1,000 gallons
Next	940,000 per month	or 1,880,000 bi-monthly	\$6.00 per 1,000 gallons
All Over	1,000,000 per month	or 2,000,000 bi-monthly	\$5.50 per 1,000 gallons

- (3) Minimum Charge.
 - A. Per month \$ 17.50
 - B. Bimonthly \$ 35.00

(4) Tap fee. A fee of seven hundred dollars (\$700.00) will be charged for new customers connecting to the sewerage system.

(5) Delayed Payment Penalty. The above tariff is net. On all current usage billings not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is only to be collected once for each month where it

is appropriate.

(6) Reconnection Charge. A fee of fifteen dollars (\$15.00) during Utility Board regular working hours and twenty-five dollars (\$25.00) after hours shall be charges whenever the service is disconnected for violation of rules, nonpayment of bills, or fraudulent use of water. No such charge shall be assessed if the customer has paid a water reconnection charge for the same reconnection.

(7) Leak Adjustment. \$0.385 per M gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible water leakage on the customer's side of the meter. This rate shall be applied to all such unusual consumption above the customer's historical average usage.

SCHEDULE NO. 3

(c) Applicable to territory served. Effective for bills rendered on or after January 1, 2012.

(1) Availability of service. Available for sanitary sewer service to other systems.

(2) Rates. All wastewater from other systems will be treated at the approved rate of \$1.50 per 1,000 gallons.

~~(3) Surcharge. \$0.83 per 1,000 gallons of wastewater treated from Scotts Run Public Service District until the contribution related to plant capital costs is refunded; the amount of the credit to Scotts Run Public Service District will be debited to Contributions in Aid of Construction.~~

SCHEDULE NO. 4

(d) Applicable to the former Canyon Public Service District service area. Effective forty-five (45) days after enactment, or as soon thereafter as the same may be approved by the Public Service Commission of West Virginia; and upon acquisition of the Canyon Public Service District.

(1) Availability of service. Available for sanitary sewer service.

(2) Rates. (Customers with metered water supply)
Service Charge \$8.50 per month
Usage Charge \$8.67 per 1,000 gallons

(3) Minimum Charge. No minimum bill will be rendered for less than the following based on meter size:

Meter Size	Minimum Charge
5/8"	\$25.46 per month
1 1/2"	\$125.78 per month
2"	\$201.02 per month

(4) Flat Rate Charge. Customers with non-metered water supply \$25.84 per month.

(5) Tap fee. The following charges are to be made whenever the utility installs a new tap to serve an applicant. A tap fee of one hundred dollars (\$100.00) will be charged to customers applying for service before construction is completed adjacent to the customer's premises in connection with a certificate proceeding before the Commission. This pre-construction tap fee will be invalid after the completion of construction adjacent to an applicant's premises that is associated with a certificate proceeding. A tap fee of seven hundred dollars (\$700.00) will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap system.

(6) Delayed payment penalty. The above tariff is net. On all current usage billings not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is only to be collected once for each month where it is appropriate.

(7) Disconnection charge. Whenever water service has been disconnected for non-payment of sewer bills in conjunction with a water service termination agreement with the Cheat View Public Service District, a disconnection fee of \$15.00 shall be charged or in the event the delinquent sewer bill is collected by Cheat View Public Service District, an administrative fee of \$15.00 shall be charged.

Whenever water service, which has been previously disconnected or otherwise withheld for non-payment of a sewer bill in conjunction with a water service termination agreement with Cheat View Public Service District, is reconnected, a reconnection fee of \$15.00 shall be charged.

(8) Leak adjustment. \$2.89 per 1,000 gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible water leakage on the customer's side of the meter. This rate shall be applied to all such unusual consumption above the customer's historical average usage.

SCHEDULE NO. 5

(e) Applicable to the former Scott's Run Public Service District service area. Effective forty-five (45) days after enactment, or as soon thereafter as the same may be approved by the Public Service Commission of West Virginia; and upon acquisition of the Scott's Run Public Service District.

(1) Availability of service. Available for sanitary sewer service.

(2) Rates. (Customers with metered water supply)

Service Charge \$8.50 per month

Usage Charge \$8.53 per 1,000 gallons

(3) Flat Rate Charge. (Customer with non-metered water supply)

Equivalent to 3,832 gallons water usage, \$41.47.

(4) Delayed payment penalty. The above schedule is net. On all accounts not paid in full when due, ten percent will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

(5) Tap fee. The following charges are to be made whenever the utility installs a new tap to serve an applicant. A tap fee of one hundred dollars (\$100.00) will be charged to customers applying for service before construction is completed adjacent to the customer's premises in connection with a certificate proceeding before the Commission. This pre-construction tap fee will be invalid after the completion of construction adjacent to an applicant's premises that is associated with a certificate proceeding. A tap fee of seven hundred dollars (\$700.00) will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap system.

(6) Disconnect/Reconnect/Administrative Fees. Whenever water service has been disconnected for non-payment of sewer bills in conjunction with a water service termination agreement with Pleasant Valley Public Service District, a disconnection fee of \$20.00 shall be charged or in the event the delinquent sewer bill is collected by Pleasant Valley Public Service District, an administrative fee of \$20.00 shall be charged.

Whenever water service, which has been previously disconnected or otherwise withheld for non-payment of a sewer bill in conjunction with a water service termination agreement with Pleasant Valley Public Service District, is reconnected, a reconnection fee of \$20.00 shall be charged.

(7) Returned Check Charge. A service charge equal to the actual bank fee assessed to the sewer utility up to a maximum of \$25.00 will be imposed upon any customer whose check for payment of charges is returned by the bank due to insufficient funds.

(8) Leak adjustment. \$0.61 per 1,000 gallons of water is to be used when a bill reflects unusual water consumption which can be attributed to eligible leakage on customer's side of meter. This rate shall be applied to all consumption above the customer's historical average usage.

This Ordinance shall become effective forty-five (45) days after enactment or as otherwise provided herein, or as soon thereafter as the same may be approved by the Public Service Commission of West Virginia.

First Reading: June 18, 2013

MAYOR

Second Reading
and Public Hearing: July 2, 2013

CITY CLERK

Filed: _____

Recorded: _____

CITY OF MORGANTOWN

AN ORDINANCE AUTHORIZING THE ACQUISITION OF
THE SEWERAGE COLLECTION AND TRANSPORTATION
SYSTEM OF SCOTT'S RUN PUBLIC SERVICE DISTRICT
AND APPROVING AN ACQUISITION AGREEMENT BY AND
AMONG SCOTT'S RUN PUBLIC SERVICE DISTRICT, THE
CITY OF MORGANTOWN AND MORGANTOWN UTILITY
BOARD

WHEREAS, the City of Morgantown is a municipal corporation and political subdivision of the State of West Virginia in Monongalia County of said state (the "City");

WHEREAS, in accordance with Chapter 8, Article 20 of the West Virginia Code of 1931, as amended (the "Code"), and pursuant to an ordinance duly enacted by the City on September 1, 1987, as amended on May 1, 2007, the City created the Morgantown Utility Board (the "Board") and vested in the Board the responsibility for the supervision, management, control and operation of the combined waterworks, sewerage and stormwater system of the City (the "System");

WHEREAS, the City, acting by and through the Board, currently provides sewerage collection and treatment services to approximately 19,063 sewerage customers and six resale customers within the corporate limits of the City and in the surrounding unincorporated area pursuant to certificates of convenience and necessity issued by the Public Service Commission of West Virginia ("Commission");

WHEREAS, Scott's Run Public Service District (the "District") is a public service district and public corporation created by order of The County Commission of Monongalia County (the "County Commission") pursuant to the provisions of Chapter 16, Article 13A of the Code;

WHEREAS, the District currently provides sewerage collection and transportation service to approximately 970 customers in Monongalia County, West Virginia;

WHEREAS, by prior orders of the Commission, the District was granted certificates of convenience and necessity to construct and operate a sewerage collection and transportation system serving areas around the City;

WHEREAS, the District's public sewerage system consists of a collection and transportation system, including associated mains, pumps, filters, basins, tanks, lift stations, laterals, valves, connections, and all other equipment and personal property used and useful in

providing sewerage services to customers of the District, together with all real property, lands, easements, rights-of-way, permits, certificates of convenience and necessity, deposit accounts, savings accounts, investments, security deposits, accounts receivable, bond sinking funds, bond reserve accounts and all other tangible and intangible assets owned or held by the District and used or useful in providing sewerage collection and transportation service to the District's customers (collectively, the "Sewerage System");

WHEREAS, the District currently has outstanding the following indebtedness secured by the Sewerage System: (i) Sewerage System Revenue Bonds, Series 1991 A (West Virginia Water Development Authority), dated December 20, 1991, issued in the original aggregate principal amount of \$137,568; (ii) Sewerage System Revenue Bonds, Series 1991 B (West Virginia Water Development Authority), dated December 20, 1991, issued in the original aggregate principal amount of \$4,586; (iii) Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), dated November 25, 2003, issued in the original aggregate principal amount of \$8,111,813; (iv) Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), dated December 18, 2009, issued in the original aggregate principal amount of \$1,688,394; and (v) Sewer Revenue Bonds, Series 2009 B (West Virginia SRF Program/ARRA), dated December 18, 2009, issued in the original aggregate principal amount of \$3,939,585 (collectively, the "Bonds");

WHEREAS, the District faces considerable cost and expense to continue to own, operate and maintain, and upgrade the Sewerage System in a manner that will ensure continued reliable and adequate sewerage service;

WHEREAS, the Board and the District are parties to a Sewer Service Agreement, whereby the Board provides sewerage treatment services for wastewater from the District's Sewerage System;

WHEREAS, pursuant to adoption of a resolution on May 22, 2013, as the entity vested by the City with responsibility for the supervision, management, control and operation of the City's System, the Board recommended to the City that it acquire the Sewerage System in order to provide sewerage collection and treatment service to the current customers of the Sewerage System (the "Acquisition"), all on the terms, conditions, and limitations substantially as set forth in the form of an agreement attached hereto as Exhibit A and incorporated herein by reference (the "Acquisition Agreement"); and

WHEREAS, the City will pay a purchase price for the Sewerage System that is equal to the aggregate outstanding principal amount of the Bonds which shall be assumed by the City on the date of the Acquisition.

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

Section 1. The City hereby authorizes acquisition of the Sewerage System in order to provide sewerage collection and treatment service to the current customers of the Sewerage System.

Section 2. The City hereby approves the Acquisition Agreement substantially in the form attached hereto and made a part hereof as Exhibit A, in connection with the Acquisition.

Section 3. The City will promptly request, or join with the Board and/or the District in requesting, the written consent of the holders of the District's Bonds to the City's assumption of the current outstanding balances associated with the Bonds.

Section 4. The City hereby authorizes approval of the final forms and execution of all documents necessary and appropriate to facilitate the Acquisition, specifically including, but not limited to, the Acquisition Agreement.

Section 5. The Acquisition is in the public interest, serves a public purpose of the City and will promote the health, welfare and safety of the District's customers.

Section 6. This Ordinance shall be effective immediately following enactment hereof.

[Remainder of Page Intentionally Blank]

Enacted this 18th day of June, 2013.

By: _____
Mayor

ATTEST:

By: _____
City Clerk

APPROVED AND CORRECT AS TO FORM:

By: _____
City Solicitor

627490.00053

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of THE CITY OF MORGANTOWN on the 18th day of June, 2013.

Dated: _____, 2013.

[SEAL]

City Clerk

EXHIBIT A

Form of Acquisition Agreement

ACQUISITION AGREEMENT

THIS AGREEMENT, made and entered into this 23 day of May, 2013, by the MORGANTOWN UTILITY BOARD, a municipal corporation of the CITY OF MORGANTOWN, which Board is duly appointed by the City and organized and existing pursuant to the provisions of Chapter 8 of the West Virginia Code (the "Board"); SCOTT'S RUN PUBLIC SERVICE DISTRICT, a public service district and a public corporation existing pursuant to the provision of Chapter 16, Article 13A of the West Virginia Code (the "District"); and, the CITY OF MORGANTOWN (the "City"), a political subdivision of the State of West Virginia (together, the "Parties").

WITNESSETH:

WHEREAS, the Board currently provides sewerage collection and treatment services to approximately 19,063 sewerage customers and 6 resale customers within the corporate limits of the City and its environs in the surrounding unincorporated area pursuant to certificates of convenience and necessity issued by the Public Service Commission of West Virginia ("Commission"); and,

WHEREAS, the District currently provides sewerage collection services under the direction and supervision of its Public Service Board (the "District's Public Service Board") to approximately 970 sewerage customers within Monongalia County pursuant to a certificate of convenience and necessity issued by the Commission; and,

WHEREAS, the sewerage facilities of the District consists of a sewerage collection system, including associated pumps, filters, basins, tanks, lift stations, laterals, valves, connections, and all other equipment used and useful in providing sewerage services to customers of the District (the "Sewerage System"); and,

WHEREAS, the Board and the District are parties to a System Operation and Maintenance Agreement, whereby the Board operates and maintains the District's Sewerage System and provides all ancillary business support services (the "O&M Agreement"); and,

WHEREAS, the Board is willing to acquire, operate and maintain the Sewerage System as provided herein in order to provide sewerage collection and treatment service to the current customers of the Sewerage System as well as further growth in the need for sewerage collection and treatment service in the area; and,

WHEREAS, the District has determined that it is in the best interests of the District to convey the Sewerage System to the Board on the terms, conditions and limitations set forth in this Acquisition Agreement ("Agreement"); and

WHEREAS, the City, by ordinance, approves of and authorizes the acquisition, operation, and maintenance of the Sewerage System by the Board upon the terms and conditions provided in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants as contained herein, the Parties agree as follows:

1. PURCHASE AGREEMENT. The Board hereby agrees to acquire from the District and the District hereby agrees to convey to the Board, for the consideration and upon the terms and conditions hereinafter set forth, the Sewerage System, including any and all sewerage collection systems, including associated pumps, filters, basins, tanks, lift stations, laterals, valves, connections, and all other equipment of the District used or useful in the rendition of sewerage service to the customers of the District, including all extensions of the Sewerage System made after the date hereof and prior to the Closing (hereinafter defined), together with all lands, easements, rights of way, permits, rights, certificates of convenience and necessity, and, all other tangible and intangible assets owned or held by the District and used or useful in providing sewerage services to the customers of the District, such property and facilities to be conveyed by the District to the Board being more specifically described in the following exhibits attached to and incorporated herein by reference:

Exhibit 1 - General Description of Sewerage System

Exhibit 2 - Tangible and Intangible Personal Property Associated with Sewerage System

Exhibit 3 - Real Property, Including Leaseholds, Rights of Way, Easements and Other Interests in Real Property Associated with Sewerage System

Exhibit 4 - Schedule of Pending Claims, Actions, Etc. Pursuant to Section 10.A.(iv)

Exhibit 5 - Disclosure Pursuant to Section 11.A.(vii) Regarding Knowledge of or Grounds to Know Basis for Assertion of Claims

Exhibit 6 - List of Debt Obligations

2. CONSIDERATION FOR CONVEYANCE OF THE DISTRICT SEWERAGE SYSTEM. As consideration for the conveyance of the Sewerage System to the Board (subject to the exceptions and reservations provided for herein), the Board and the District agree as follows:

A. Fair Market Value. The Board and the District agree and each hereby acknowledge and represent that the consideration for the conveyance of the Sewerage System to the Board, as set forth in this Agreement, was reached through arms-length negotiations and represents the fair market value of the assets conveyed by the terms of this Agreement.

B. Payment, Assumption or Defeasance of Indebtedness. At Closing, the Board shall pay, assume or defease the following long term indebtedness relating to the Sewerage System: said debts are tabulated at Exhibit 6. Notwithstanding the foregoing, the District will continue to make all payments of principal, interest and administrative fees, if any, on the Bonds until Closing, at which time the City and the Board will assume, pay or defease the Bonds.

C. Review of Facilities. In addition to the other consideration described herein, the Board shall undertake a review (the "Review") of the Sewerage System's current facilities and lines to determine how to assist in providing quality sewerage service to the Sewerage System's customers, subject to review and approval of the West Virginia Department of Environmental Protection ("WVDEP"). Other than the Review, the customers of the sewerage system post-Closing shall remain solely responsible for any further capital and operations costs associated with the Sewerage System, including any costs incurred in complying with the NPDES permit (as modified, to the extent applicable) and any relevant Consent Order issued by the WVDEP.

D. Conveyance of Sewerage Systems. At Closing, the District shall convey to the Board the Sewerage System, by executing and delivering to the Board and/or the City deeds, assignments and/or bills of sale, as appropriate, in form and substance acceptable to the Board, for all of the real and personal property and rights associated with the Sewerage System, including, but not limited to, all property and rights identified and described in Exhibit 1, Exhibit 2, and Exhibit 3 to this Agreement.

3. OPERATION OF SEWERAGE SYSTEM; RATES.

A. Operation of System. Unless otherwise agreed by the Board and the District in writing, until Closing, day-to-day operation of the Sewerage System shall continue to be the responsibility of the District. From and after Closing, the Board shall own and operate the Sewerage System, and all sewerage customers currently served by the District shall thereafter for all purposes be customers of the Board.

B. Rates to be Charged: After Closing, the sewer rates charged to the former sewer customers of the District shall be the District's current sewer rates on file with the Commission at the time of Closing. This rate structure shall remain in effect until otherwise changed by the Board and the City pursuant to municipal ordinance.

4. CUSTOMER ACCOUNTS AND BILLING. Upon request of the Board, the District will provide the Board, in a data format acceptable to the Board, a complete and current list of the District's Sewerage System customers, including the name, telephone number (if known), mailing address, service address (if different from mailing address), type of service (residential, commercial, wholesale, etc.) and any service deposit held for each customer. Upon closing, the District will transfer all customer accounts to the Board, and the Board will assume all responsibilities for customer accounts and the billing customers of the Sewerage System. Customer deposits shall be transferred to the Board and credited to the customer accounts of the Board. The Board will be entitled to all revenue from sewerage services provided by the Board on and after Closing.

5. ASSUMPTION OF LIABILITIES AND UNDERTAKINGS OF THE DISTRICT. Upon closing, the Board shall, subject to approval of third parties in interest and relevant state and federal agencies, if any, assume any and all liabilities or debts of the District, including but not limited to, any liabilities or debts owed to investors, vendors, consultants, attorneys, engineers, accountants, suppliers, governmental entities, repairmen and/or contractors.

While the Board shall assume these responsibilities as the successor entity to the District, the costs associated with these responsibilities shall remain a financial obligation underwritten solely of the customers of the District's former service area.

6. POST CLOSING DISPOSITION OF CONTRIBUTIONS IN AID OF CONSTRUCTION. Any balance at closing held by the District as contributions in aid of construction will be conveyed to the Board and thereafter be distributed according to the requirements of West Virginia Code § 16-13A-18a within thirty (30) days of final approval of this transaction by final order of the Public Service Commission of West Virginia.

7. REQUIRED CONSENTS AND APPROVALS.

A. Statutory. The Parties agree to obtain the following consents and approvals:

(i) District Requirements. Pursuant to the provisions of W. VA. CODE § 16-13A-18a, the District will cause a resolution in proper form to be introduced to the District's Public Service Board which, if duly adopted, will (i) deem the sale of the Sewerage System to the City pursuant to this Agreement to be in the best interests of the District, (ii) approve the Agreement and authorize it to be executed in the name and on behalf of the District, and (iii) approve all other documents and matters in connection with this Agreement.

(ii) City Requirement. Pursuant to the provisions of W. VA. CODE § 8-11-4, the City will cause an ordinance in proper form to be introduced to the Council of the City which, if duly adopted, will approve the Agreement and authorize it to be executed in the name and on behalf of the City. In accordance with the provisions of W. VA. CODE § 8-20-3, the City will cause an ordinance in proper form to be introduced to the Council of the City which, if duly adopted, will authorize the issuance of revenue bonds in connection with the acquisition of the Sewerage System as described in this Agreement.

(iii) County Commission Requirements. Pursuant to the provision of W. VA. CODE § 16-13A-18a, the District will cause an order in proper form to be introduced to the County Commission of Monongalia County which, if duly entered, will approve the City's acquisition of the District's Sewerage System.

(iv) Public Service Commission Requirements. Pursuant to the provisions of W. VA. CODE §§ 16-13A-18a and 24-2-12, and no later than ten (10) days after entry of the County Commission order described above, the Board and the District shall file and diligently pursue a joint petition to the Commission for consent and approval of the proposed sale of the Sewerage System and the material provisions of this Agreement. The joint petition will also seek Commission approval for any and all other related matters that may require such approval.

B. Bond Holders. Pursuant to the covenants contained in the financing documents associated with the Bonds, and no later than ten (10) days after the execution of this Agreement, the District shall seek the written consent of the holders of the District's Bonds to the conveyance of the Sewerage System to the Board.

8. COOPERATION OF PARTIES. The Parties agree to cooperate fully with one another and with third parties to ensure that all required filings are made, notices given, consents granted or obtained and in taking all such actions as may be necessary to timely seek and obtain any and all approvals or waivers required for the conveyance by the District and acquisition by the Board of the Sewerage System under this Agreement.

9. CLOSING. Closing of the transaction contemplated by this Agreement, including delivery of all duly executed documents necessary to effect the conveyance of legal title to the Sewerage System from the District to the Board ("Closing"), shall take place within sixty (60) days after the latest of (i) the issuance by the Commission of a final, non-appealable, Order approving this Agreement and the proposed sale of the Sewerage System to the Board on the terms set forth herein; and, (ii) the receipt of any other required waivers, consents or approvals to the transfer of the Sewerage System. Upon mutual agreement of the Board and the District, the time of Closing may be extended.

10. CONVEYANCE AND TRANSFER. At Closing, the District shall deliver to the Board an apt and proper deed, bill of sale, lease, assignment and other necessary or appropriate instruments, each duly executed and in a form acceptable to the Board, transferring and conveying to the City and/or the Board, and their successors and assigns forever, good title to the real and personal property that comprise the Sewerage System as described in Section 2.D of this Agreement, free and clear of liens and encumbrances, together with all files, plats, maps, plans, records, ledgers, and similar property, or copies thereof, in any way connected with the rendition of sewerage service by the District.

11. REPRESENTATIONS, WARRANTIES AND COVENANTS BY THE DISTRICT.

A. General Representations and Warranties of District. The District represents and warrants to and covenants with the Board that as of the date of this Agreement and as of the date of the Closing:

(i) The District is a public service district, public corporation and political subdivision of the State of West Virginia.

(ii) The District, upon receipt of the prior consent and approval of the County Commission of Monongalia County, the Public Service Commission of West Virginia, and the holders of Bonds, has the lawful right, power and authority and capacity to sell the assets to be conveyed pursuant to this Agreement in accordance with the terms, provisions and conditions of this Agreement.

(iii) The District is the owner of good and marketable fee simple title to the assets to be conveyed pursuant to this Agreement, free and clear of all liens, encumbrances or claims other than as provided herein.

(iv) Except as otherwise disclosed in Exhibit 4 hereto and made a part hereof, there are no claims, actions, judgments, bankruptcies, liens, executions, suits, decrees, proceedings or orders presently pending or threatened against, by or affecting the District

relating to either of the Sewerage System or the assets to be conveyed pursuant to this Agreement, nor is there any litigation nor any other proceedings (including condemnation or similar proceedings) before any court or government or administrative department, commission, bureau, board or agency, domestic or foreign, which threaten or affect the assets to be conveyed pursuant to this Agreement or which may, in any one case or in the aggregate, result in any material decrease in the value of, or constitute a lien or claim against, the Sewerage System.

(v) No party, person or entity is in possession of any of the assets to be conveyed pursuant to this Agreement or any portion thereof, and no party, person or entity has any interest in such assets or any portion thereof, except the District. The District shall take every precaution to ensure that all public property is secured and available for transfer.

(vi) This Agreement has been duly authorized, executed and delivered by the District and is a valid and legal obligation of the District.

(vii) Except as otherwise disclosed on Exhibit 5 attached hereto and made a part hereof, the District does not know or have reasonable grounds to know of any basis for the assertion against the District of any claims or liabilities which could materially adversely affect the value of the assets to be conveyed pursuant to this Agreement.

(viii) The books and records of the District relating to the Sewerage System (the "Financial Information") are correct and complete in all material respects, present fairly the results of operations included in such Financial Information and do not omit any information necessary to make such Financial Information not misleading.

(ix) Since the date of such Financial Information, there has been no material adverse change in the financial condition or operations of the Sewerage System that would make such Financial Information incorrect or misleading.

(x) The Sewerage System is not constructed, and is not occupied, used or operated in violation of, or is otherwise in violation of, and the District has received no notice of any violations or potential violation of any zoning, building, health, environmental or other laws, codes, ordinances, regulations, orders or requirements of any city, county, state, federal or other governmental authority having jurisdiction thereof, or any private restrictive covenants affecting the Sewerage System; and all certificates, licenses, permits, authorizations, consents and approvals required by any such governmental authority for the continued use, occupancy and operation of either of the Sewerage System have been obtained, are paid for and are free of restrictions.

(xi) From the date of this Agreement until Closing, the District will not sell, convey, lease or in any other way dispose of any of the assets to be conveyed pursuant to this Agreement.

(xii) All improvements, machinery, equipment, tools, furniture and other fixed tangible assets of the Sewerage System are in good operating condition and repair, reasonable wear and tear excepted, and are necessary to the continued operation of the Sewerage System by the Board substantially in the manner as it was conducted prior to the date of this Agreement and the date of the Closing.

(xiii) All information and data furnished by the District to the Board with respect to the Sewerage System and the assets to be conveyed pursuant to this Agreement are true, correct, complete and not misleading.

(xiv) The District will not cause or permit any action to be taken which will cause any of the foregoing representations, warranties and covenants to be untrue or unperformed on the date of the Closing.

(xv) The District will deliver at Closing all documents and instruments required by this Agreement and perform all acts necessary or appropriate for the consummation of the purchase and sale of the Sewerage System as contemplated by and provided for in this Agreement.

(xvi) The District shall deliver at Closing a certificate updating its representations, warranties and covenants herein as true and correct, in the same manner and with the same effect as though such representations and warranties had been made on and as of the date of the Closing.

(xvii) The District acknowledges and agrees that, except as specifically provided herein, the Board, in entering into this Agreement, is not obligated to use, employ or hire any of the District's officers, agents or employees and that, except as otherwise provided in this Agreement, the Board does not accept any responsibility for any contractual or legal obligations that the District might have to any other officers, agents or employees.

(xviii) The District acknowledges and agrees that, except as otherwise provided in this Agreement, the City does not accept any responsibility for any contractual or legal obligations that the District might have to any officers, agents, employees, or other third parties.

B. Environmental Representations, Warranties and Covenants of District.

(i) The District represents and warrants that the Sewerage System has never been operated in a manner as to be in violation of any Environmental Laws, as hereinafter defined. For the purposes of this Section, the term "Environmental Laws" shall mean any "Superfund" or "Super Lien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, as may now or at any time hereafter be in effect, regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Substance or the release or threatened release of a Hazardous Substance. For the purposes of this Section 10.B.(i), the term "Hazardous Substance" shall mean and include a "hazardous substance", "pollutant", "contaminant" or "hazardous waste", as such terms are defined as such in (or for the purposes of) the Environmental Laws, petroleum products, asbestos and/or any hazardous, toxic or dangerous waste, substance or material.

(ii) The District agrees that it will not take any action or omit to take any action with respect to the Sewerage System prior to the date of the Closing that would be a violation of any Environmental Law or would result in the Sewerage System being in violation of any Environmental Law.

(iii) The District covenants that to the fullest extent permitted by law, it will indemnify, hold harmless, and defend the City and/or the Board from any and all claims, loss, damage, judgments, response costs, and expenses arising out of or in any way relating to a breach of these environmental representations, warranties and covenants contained herein, including, but not limited to: (a) costs of remediation or removal; (b) claims or judgments of third parties (including governmental agencies), for damages, penalties, response costs, injunctive or other relief; (c) expenses, including fees of attorneys and experts, for reporting the existence of hazardous substances or hazardous wastes to any governmental agency; and (d) any and all expenses or obligations, including attorneys' fees, incurred at, before and after any trial or appeal therefrom or administrative proceeding or appeal therefrom, whether or not taxable as costs, including, without limitation, attorneys' fees, paralegals' fees, witness fees (expert and otherwise), deposition costs, copying and telephone charges and other expenses, all of which shall be paid by the District when accrued.

12. REPRESENTATIONS, WARRANTIES AND COVENANTS BY THE CITY AND BOARD.

A. The City and the Board represent and warrant to and covenant with the District that as of the date of this Agreement and as of the date of the Closing:

(i) The City is a municipality and political subdivision of the State of West Virginia, and the Board is a public utility and political subdivision of the State of West Virginia. The Board was duly created pursuant to an ordinance of the City to operate and maintain the City's sewerage system.

(ii) The Board has the lawful right, power and authority and capacity to acquire the Sewerage System pursuant to this Agreement in accordance with the terms, provisions and conditions of this Agreement. Once acquired pursuant to the terms of this Agreement, the Board has the lawful right, power and authority and capacity to operate and maintain the Sewerage System.

(iii) This Agreement has been duly authorized, executed and delivered by the Board and the City, and it is a valid and legal obligation of the Board and of the City.

13. ACCESS TO BOOKS, RECORDS, AND FACILITIES; CUSTOMER LISTS TO BE PROVIDED BY DISTRICT. Between the date hereof and Closing, the Board shall have the right to examine, and to obtain copies of, all books and records of the District relating to the Sewerage System operations of the District and the Sewerage System being conveyed under this Agreement and to inspect and inventory the utility assets, including the physical plants and all materials, supplies, spare parts, and the like, of the District used in the utility operation of the District at such reasonably convenient times as the Board may require. In the event the transactions contemplated by this Agreement are not consummated, all of such copies and inventories shall be returned to the District.

The Board shall have the right, at its sole cost and discretion, to perform a Phase I Environmental study, and further environmental studies if necessary, of any and all real property used or relevant to the operation of the Sewerage System, regardless of whether such real property is conveyed to the District under this Agreement.

If, prior to the Closing, (i) any material discrepancies are discovered in the books and records of the District, (ii) any claims, liabilities, liens, encumbrances or defects in title which would materially affect the value of the assets conveyed by this Agreement are discovered by, or disclosed to, the District, or (iii) any of the representations and warranties set forth in Section 11 of this Agreement are determined by the Board to be untrue or incorrect, then, in that event, the Board may, at its sole option, terminate this Agreement, and neither the Board, the City, nor the District shall be further obligated hereunder or incur or be liable for any claim, loss, damages or expenses to the other as a result of such termination.

Between the date hereof and Closing, the District will provide the Board with a complete list of the customers served by the Sewerage System, including the name, telephone number (if known), mailing address and service address (if different from the mailing address) for each customer, any deposit or other credit to any customer account, and the type of service (residential, commercial, wholesale, etc.) being provided. The District further agrees to provide the customer list and related data in an electronic format acceptable to the Board.

14. BINDING EFFECT. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their respective successors and assigns.

15. NOTICES. Any notice to be given hereunder to the Parties shall be sent by registered mail to the following:

A. District. Scott's Run Public Service District, P.O. Box 517, Granville, WV 26534, or to such other person and address as District may in writing direct.

B. Board. Morgantown Utility Board, c/o General Manager, 278 Greenbag Road, Morgantown, West Virginia 26501, or at such other person and address as the Board may in writing direct.

C. City. City of Morgantown, c/o Steve Fanok, City Attorney, 389 Spruce Street, Morgantown, WV 26505, or to such other person and address as the City may in writing direct.

16. AMENDMENTS. No amendments to this Agreement shall be effective until reduced to writing and executed by all of the Parties hereto.

17. FORCE MAJEURE. If the performance by any of the Parties of the covenants or agreements contained herein is delayed or prevented for reasons beyond the control of that, such as an act of God, act of war, strike, lockout, restraint of labor from whatever cause, either partial or general, riot or civil commotion, order of court or administrative tribunal having jurisdiction over either party hereto, then and in any of those events, that party shall be excused from such performance to the extent that it is necessarily prevented, hindered or delayed thereby, during the continuance of any such happening or event and the time for such performance shall be extended commensurate with such delays, provided, however, that party claiming an excuse from performance under this Section shall notify the other party in writing of the occurrence of any such event of force majeure within a reasonable time after it becomes known.

18. EXECUTION IN COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same document.

19. CONDITIONS PRECEDENT TO EFFECTIVENESS OF AGREEMENT. The Parties hereto understand and agree that this Agreement, and the obligations of the Parties hereunder, are expressly conditioned upon the following, each of which is a condition precedent to the validity and enforceability of this Agreement:

A. This Agreement and the proposed acquisition by the City and/or the Board of the Sewerage System shall be approved by the District's Public Service Board at a properly noticed meeting and by resolution enacted at a properly noticed meeting of said Board.

B. The District shall obtain written approval from the County Commission of Monongalia County approving the Board's acquisition of the Sewerage System.

C. This Agreement and the proposed acquisition by the City and/or the Board of the Sewerage System and assumption of the Bonds shall be approved by the Board at a properly noticed meeting of the Board and by resolution properly adopted.

D. This Agreement and the proposed acquisition by the City and/or the Board of the Sewerage System and assumption of the Bonds shall be approved by the Council of the City at properly noticed meetings of said Council by ordinance and/or supplemental resolution properly enacted and/or adopted.

E. The Public Service Commission shall have entered a final, non-appealable, Order that approves (i) a Petition to be filed by the Board; and, (ii) this Agreement and the specific terms and conditions related to any ratemaking and regulatory treatments contained in this Agreement or in any Joint Stipulation among the Parties approving this Agreement.

F. The Order of the Public Service Commission shall not contain nor have attached to or otherwise incorporate into it any terms, conditions, or limitations that, in the sole opinion of either the District or the Board, shall adversely affect the economic feasibility of the Agreement.

G. The District shall obtain written approval from the holders of the District's Bonds to the Board's acquisition of the Sewerage System.

H. The Parties shall have received all required consents or waivers to the sale and transfer of the Sewerage System to the Board. If any required consent or waiver cannot be timely obtained, the Parties may elect to waive this condition precedent and proceed to close the sale on such further or additional written terms as may be mutually agreed to.

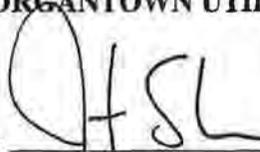
I. Satisfactory results from such Environmental Studies as the Board deems appropriate, such satisfaction to be determined at the Board's sole discretion.

20. **BOARD AGREEMENT TERMINATION RIGHTS.** The Parties agree and understand that, notwithstanding any provision of this Agreement to the contrary, the Board reserves the right to terminate this Agreement at any time prior to the acquisition of the Sewerage System if the Board shall determine, in its sole discretion, that the transaction is not longer beneficial to the Board and the City, for any reason. In the event the Board shall terminate this Agreement as provided in this paragraph, the District, and its agents and professionals, shall have no claim against the Board for expenses or cost incurred in relation to this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Board has caused this Agreement to be executed by its duly authorized Chairman, and the District has caused this Agreement to be executed by the Chairman of the District's Public Service Board, also duly authorized, and the City has caused this Agreement to be executed by its City Manager, duly authorized to act on the City's behalf, all as of the day and year first above written.

MORGANTOWN UTILITY BOARD

By:  _____
J.T. Straface, Chairman

SCOTT'S RUN PUBLIC SERVICE DISTRICT

By:  _____
John Morris, Chairman

CITY OF MORGANTOWN

By: _____
Jeff Mikorski, City Manager

EXHIBIT 1

GENERAL DESCRIPTION OF DISTRICT SEWERAGE SYSTEM

The Sewerage System consists of all sewerage utility assets owned by the District situate in Monongalia County, West Virginia, used or useful in serving the District and its environs, including all real estate, rights-of-way, easements, and all other interests in said real estate, together with the improvements thereon and all appurtenances thereunto belonging, as well as all permits, franchises, treatment plant structures, equipment, and related facilities, transmission and collection lines and mains of every kind and description, any meters and services, and sewerage storage and pumping facilities, used or useful in providing sewerage service to the District's customers or otherwise used or useful in collecting, carrying away and treating domestic or industrial wastes and disposing of the effluents, as well as any and all other assets that are necessary, needed or incidental to the operation of the Sewerage System, including the tangible and intangible personal property as described in Exhibit 2.

EXHIBIT 2

TANGIBLE AND INTANGIBLE PERSONAL PROPERTY
ASSOCIATED WITH SEWERAGE SYSTEM

All tangible and intangible personal property necessary or incidental to the operation of the Sewerage System (as described in Exhibit 1) or used or useful for providing sewerage services to customers of the District that can be conveyed, assigned or otherwise transferred to the Board at the Closing, including any and all contracts, licenses, franchises, permits, agreements, certificates of convenience and necessity, customer lists and all other tangible and intangible personal property of like kind and nature, including but not limited to all pipelines, pumps, mains, equipment and supplies.

EXHIBIT 3

**REAL PROPERTY, INCLUDING LEASEHOLDS, RIGHTS-OF-WAY,
EASEMENTS AND OTHER INTERESTS IN REAL
PROPERTY ASSOCIATED WITH SEWERAGE SYSTEM**

All of the real property used or useful in connection with the operation of the Sewerage System, and all land associated with treatment sites, pump stations and lift stations, together with the rights, easements, rights-of-way, leases and other licenses, permits or agreements, held by the District under which any and all of said sewerage utility property of the District is held and operated.

EXHIBIT 4

SCHEDULE OF PENDING CLAIMS, ACTIONS, ETC.
PURSUANT TO SECTION 10.A.(iv)

[District to provide]

EXHIBIT 5

DISCLOSURE PURSUANT TO SECTION 10.A.(vii)
REGARDING KNOWLEDGE OF OR GROUNDS TO
KNOW BASIS FOR ASSERTION OF CLAIMS

[District to provide]

EXHIBIT 6

**LISTING OF DEBT OBLIGATIONS
PURSUANT TO SECTION 2.B.**

Scotts Run PSD
Existing Sewer Debt

Series	Lender	Issue Date	Original Amount	Interest Rate	Admin Fee	Maturity	Balance (3/31/2013)	Reserve Requirement	Amount in Reserve (3/31/2013)	Notes
1991 A	WDA	12/20/1991	\$137,568	7.75%	NA	2031	110,256.00	11,276.00	11,301.00	reserve fully funded
1991 B	WDA	12/20/1991	\$4,586	0%	NA	2031	2,234.00	118.00	138.72	reserve fully funded
2003 A	SRF	11/25/2003	\$8,111,813	0%	0.50%	9/1/2043	6,510,774.00	213,468.00	192,404.59	reserve being funded over 10 yrs
2009 A	SRF	12/18/2009	\$1,688,394	0%	0.25%	12/1/2049	1,622,178.00	44,144.00	6,994.07	reserve being funded over 10 yrs
2009 B	SRF/ARRA	12/18/2009	\$3,939,585	0%	NA	9/1/2021	\$0 - forgivable	NA	NA	no reserve

AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING A TERMINABLE RIGHT-OF-WAY AND EASEMENT AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN, GRANTOR, AND DEBRA F. BLANKENSHIP, GRANTEE, AS THE SAME APPLIES TO A STORMWATER LINE WITHIN THE CITY'S KREPPS PARK REALTY.

The City of Morgantown hereby ordains that its City Manager is authorized to execute the agreement hereto attached, by and on behalf of the City of Morgantown.

The Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

1 TERMINABLE RIGHT-OF-WAY AND EASEMENT AGREEMENT

2 THIS RIGHT-OF-WAY AND EASEMENT AGREEMENT, made and executed this ____ day
3 of _____, 2013, by and between the City of Morgantown, West Virginia, a municipal corporation,
4 party of the first part, Grantor and Dedra F. Blankenship, Party of the second part, Grantee.

5 WITNESSETH: That for and in consideration of the sum of \$1.00 and other good and valuable
6 consideration, the receipt of all which is hereby acknowledged, the said party of the first part, Grantor,
7 does hereby grant and convey, with covenants of Special Warranty, unto the said party of the second
8 part, Grantee and to its successors or assigns, a terminable right-of-way and easement to construct, lay,
9 operate, maintain, remove, reconstruct, replace or repair pipelines for the carrying and transporting of
10 storm water in, on, under and through a certain tract and parcel of land situate in the Morgantown
11 Taxing District, Tax Map 8, Parcel 2, Monongalia County, West Virginia, and which said tract and parcel
12 of land is further described in a deed record in the Office of the Clerk of the County Commission of
13 Monongalia County, West Virginia, in Deed Book 225 at Page 178, to which said deed reference is
14 hereby made for all pertinent purposes.

15 The said right-of-way and easement on side property is as follows:

16 **±130' of storm piping traveling generally west from a common line**
17 **between the subject parcel and a parcel owned by the Grantee and**
18 **further described as Morgantown Taxing District, Tax Map 8, Parcel 4,**
19 **Monongalia County, West Virginia, and which said parcel of land is**
20 **further described in a deed of record in the Office of Clerk of the**
21 **County Commission of Monongalia County, West Virginia, in Deed**
22 **Book 1349 at page 741 to a point on an unnamed tributary of Poponoe**
23 **Run; all as depicted and further described in Exhibit "A", attached and**
24 **incorporated herein.**

25 It is covenanted and agreed between the parties hereto that the Grantee shall have a centerline
26 right-of-way and easement on said property ten feet in width, as described above, in order to facilitate
27 the conveyance of storm water runoff. It is further covenanted and agreed that the Grantee shall
28 properly backfill and restore to ground level any ditch opened on said right-of-way and easement upon
29 the completion of any construction work performed thereon. Grantee shall present construction plans

30 for the storm water project to the City Engineer, for review prior to initiating work. Grantee shall
31 comply with all changes to the plan that are requested by the City Engineer.

32 The said Grantor further grants and conveys unto said Grantee, its successors or assigns, the
33 right of ingress, egress, and regress, to and from said right-of-way and easement for all proper purposes
34 and at all reasonable times and a temporary construction right-of-way and easement of such width as is
35 reasonable and necessary to carry out the construction, repair, or replacement of all or part of the
36 above described storm line.

37 The said Grantor, its successors and assigns, shall use and enjoy the premises of said right-of-
38 way and easement, except for the purposes hereinabove granted to the said Grantee, its successors or
39 assigns.

40 The Grantor does hereby grant and convey said right-of-way and easement to the Grantee, its
41 successors or assigns, upon the following terms and conditions:

42 This Agreement shall be binding upon the parties hereto, their successors or assigns.

- 43 1. Prior to initiating work on the storm water line, Grantee is to obtain all necessary municipal
44 permits.
- 45 2. Grantee agrees to indemnify and hold harmless the City of Morgantown, its Board of Park
46 and Recreation Commissioners, and their successors or assigns from any and all property or
47 injury claims that result from this easement being granted.
- 48 3. **Relocation or Removal** - The City of Morgantown reserves the right to require Grantee to
49 relocate the storm line at anytime the City deems that relocation is necessary. Should
50 relocation be required, Grantee will be required to obtain a new easement from the City.
51 The City's granting of any such relocation easement will not be unreasonably withheld. The
52 City of Morgantown reserves the right to terminate this easement agreement and require
53 Grantee to remove the storm water system that Grantee has placed within the easement
54 area. Removal by Grantee shall take place within (90) days of receiving written notice from
55 the City of Morgantown that this easement is being terminated.

56

57

DECLARATION OF CONSIDERATION OR VALUE

58

The undersigned hereby declare:

59

That the conveyance made in the document to which this declaration is appended is exempt from

60

taxation under the provisions of Chapter 11, Article 22, of the Code of West Virginia, for the reason that it is a

61

conveyance made from a political subdivision of the State of West Virginia.

62

WITNESS the following signatures:

63

City of Morgantown

64

65

By: _____

By: _____

66

Jeff Mikorski

Dedra F. Blankenship

67

City Manager

68

69

STATE OF WEST VIRGINIA,

70

71

CONTY OF MONONGALIA, to-wit:

72

73

The foregoing instrument was acknowledged before me on the ____ day of _____, 2013, by

74

Debra F. Blankenship.

75

My commission expires: _____

76

77

78

Notary Public in and for the State of West Virginia

79

STATE OF WEST VIRGINIA,

80

COUNTY OF MONONGALIA, to-wit:

81

The foregoing instrument was acknowledged before me on this ____ day of _____, 2013, by

82

Jeff Mikorski, City Manager, acting for and on behalf of the City of Morgantown, a municipal corporation.

83

My commission expires: _____

84

85

EXHIBIT "A"

STAR CITY

CITY OF MORGANTOWN
MONONGALIA COUNTY, WV
MORGANTOWN TAX DISTRICT
TAX MAP 8 PARCEL 2
DEED BOOK 225 PAGE 178

DEDRA F. BLANKENSHIP
MONONGALIA COUNTY, WV
MORGANTOWN TAX DISTRICT
TAX MAP 8 PARCEL 4
DEED BOOK 1349 PAGE 741

PROPERTY LINE
(TYP.)

UNNAMED TRIBUTARY
OF POPONOE RUN

PROPOSED
RESIDENTIAL
HOME

N/F BRIAN C. WALDEN
MONONGALIA COUNTY, WV
MORGANTOWN TAX DISTRICT
TAX MAP 8 PARCEL 5
DEED BOOK 1393 PAGE 768

±130'

±89'

N/F HAZEL LUCILLE MCCORD
MONONGALIA COUNTY, WV
MORGANTOWN TAX DISTRICT
TAX MAP 8 PARCEL 6
DEED BOOK 362 PAGE 822

PROPOSED
CENTERLINE RIGHT-OF-WAY

PROPOSED
SWM SYSTEM

PARKVIEW
DRIVE

±45'

POPONOE RUN

N/F MARY K. MCCARTNEY
MONONGALIA COUNTY, WV
MORGANTOWN TAX DISTRICT
TAX MAP 8 PARCEL 3
DEED BOOK 516 PAGE 295

N/F JOHN ROSCOE &
AMY STRICKLAND DALE
MONONGALIA COUNTY, WV
MORGANTOWN TAX DISTRICT
TAX MAP 8 PARCEL 7
DEED BOOK 1269 PAGE 504

THIS EXHIBIT IS NOT INTENDED TO BE A PROPERTY SURVEY. IT IS
INTENDED TO BE USED FOR INFORMATION PURPOSES ONLY.

DRAWN BY: S. COHEN	DATE: 5-7-13	3		
DESIGN BY:	DATE:	2		
CHECKED BY:	DATE:	1		
APPROVED BY:	DATE:			
SCALE: 1" = 30'	REV:	DATE:	BY:	DESCRIPTION:

Cheat Road Engineering
70 Old Cheat Road
Morgantown, WV 26505

PROJECT NAME:
1319 Parkview Drive
Residential Home
Morgantown, WV

OWNER / CLIENT:
Dedra Blankenship
639 Poplar Woods Drive
Morgantown, WV 26505

DRAWING TITLE:
Exhibit A

PROJECT NUMBER:
13-012

DRAWING NUMBER:
13-012-Design
SHT. 1 OF 1

DATE:
5-02-13

AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTIONS 1751.06(b) AND 1751.07 (d) OF ITS BUILDING AND HOUSING CODE, AS THE SAME APPLY TO INSPECTIONS AND LETTERS OF COMPLIANCE; AND ADDING A NEW SECTION 1751.18 TO ARTICLE 1751 ADDRESSING CARBON MONOXIDE DETECTORS.

The City of Morgantown hereby ordains that Sections 1751.06 (b) and 1751.07 (d) of its Building and Housing Code are amended and a new section 1751.18 is added to the foregoing code as follows (new matter underlined, deleted matter struck through):

1751.06 INSPECTIONS.

- (a) The Housing Inspector shall conduct all inspections during reasonable hours of the day and after presentation of proper identification. The owner may arrange, and the occupant shall have the opportunity, to be present during an inspection. In all cases, if the occupant or owner of a dwelling unit refuses entry to conduct inspection, the Housing Inspector shall not conduct any such inspection without a search warrant. The Housing Inspector shall take the necessary action to obtain such search warrant.
- (b) The Housing Inspector shall inspect within ~~four~~ three years of the effective date of this section, all rental units.
- (c) The Housing Inspector shall promptly inspect any dwelling at the written request of the owner, or upon receipt of a written complaint from a person with demonstrable interest with the nature of the noncompliance specifically indicated and with evidence that the subject matter of the complaint has been reported to the operator in writing and that five working days have since passed without the operator having made an effort to correct the alleged problem. In addition, the Housing Inspector may inspect any dwelling as frequently as necessary to assure abatement of the noncompliance. The Housing Inspector shall not respond to a second letter or further letter by any person requesting an inspection where he has reason to believe the request is made for harassment and not made in good faith. If after inspection the dwelling unit is found in nonconformance with the requirements of this article, the Housing Inspector shall proceed under Section 1751.08.
- (d) Persons with demonstrable interest are: owner, occupant, tenant, lessee or other occupant in the same dwelling, owner or occupant of abutting properties.
- (e) The fact that a complaint of nonconformance with this article is made by the occupant shall not be used as a ground, cause or basis for termination of the tenancy or reduction of services by the owner. However, at the end of any lease, the owner may change occupants.

- (f) The inspection of any owner-occupied single-family dwelling with roomers shall be limited to the utilities and the areas occupied and used by the roomers and to the egress from those areas.
- (g) The Housing Inspector shall keep confidential all evidence exclusive of the inspection record, which he may discover or obtain in the course of an inspection made pursuant to this article and such evidence shall be considered privileged.

1751.07 GRANT OF LETTER OF COMPLIANCE; EXPIRATION.

- (a) If after inspections the dwelling is found to conform with the requirements of this article, the Housing Inspector shall issue a letter of compliance within two working days.
- (b) If dwelling units of a duplex or multiple dwelling are not all in compliance, the Housing Inspector may issue a temporary letter of compliance for each dwelling unit conforming to the provisions of this article. A three-year letter of compliance shall be issued for the completed dwelling after the Housing Inspector finds it in conformance with this article.
- (c) A copy of the letter of compliance shall be available for inspection at the Inspection Office.
- (d) Letters of compliance issued after the effective date of this section shall expire ~~five~~ three years from the date of issuance unless sooner revoked under Section 1751.08. In those cases where a temporary letter of compliance is first issued for the completed dwelling after the Housing Inspector finds it in conformance with this article.
- (e) The letter of compliance shall include at least: The information contained in the application, the date of inspection, the name of the Inspector, the date of issue, and date of expiration.
- (f) For multiple dwellings, the Inspector may issue a letter of compliance for the entire dwelling that includes all the required information and that lists the address for each dwelling unit.

and

1751.18 CARBON MONOXIDE DETECTORS

An operational single station carbon monoxide detector with a suitable alarm or a combination smoke detector and carbon monoxide detector, which shall be alternating current (AC) powered, either plugged directly in to an electrical source, with battery back up, shall be installed, maintained, tested, repaired or replaced, if necessary, in accordance with manufacturer's direction as follows:

1. In the sleeping rooms of any existing one and two- family dwelling unit, apartment or lodging and rooming house intended to be rented or leased which has fuel-burning heating or cooking sources including, but not limited to, furnace, stove, or hot water heater;
2. In the sleeping rooms of any existing one and two-family dwelling unit, apartment or lodging and rooming house that is connected to a garage, storage shed or barn, which has fuel-burning heating or cooking sources, including, but not limited to, a furnace, stove, or hot water heater;
3. All single station carbon monoxide detectors with a suitable alarm or combination smoke detector and carbon monoxide detectors shall be hardwired into alternating current (AC) electrical source, with battery back-up when installed in newly constructed one and two-family dwelling units whether owned or intended to be rented or leased, apartments or lodging and rooming houses.
 - (a) Any person installing a carbon monoxide detector in a residential unit shall inform the owner, lessor or the occupant or occupants of the residential unit of the dangers of carbon monoxide poisoning and instructions on the operation of the carbon monoxide detector installed.
 - (b) When repair or maintenance work is undertaken on a fuel-burning heating or cooking source or a venting system in an existing residential unit, the person making the repair or performing the maintenance shall inform the owner, lessor or the occupant or occupants of the unit being served by the fuel-burning heating or cooking source or venting system of the dangers of carbon monoxide poisoning and recommend the installation of a carbon monoxide detector.
 - (c) As set forth in Section 29-3-16(k) of the West Virginia Code, any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, for a first offense, shall be fined \$250. For a second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined \$750. For a third and subsequent offenses, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined \$2,000.
 - (d) As set forth in Section 29-3-16(l) of the West Virginia Code, a violation of this section may not be considered by virtue of the violation to constitute evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages.
 - (e) As set forth in Section 29-3-16(m) of the West Virginia Code, a violation of this section may not constitute a defense in any civil action or proceeding involving any insurance policy.

This ordinance shall be effective upon date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

RECORDED:

AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING A JANUARY 6, 2009, LEASE AGREEMENT BY AND BETWEEN IT, AS LESSOR, AND THE STATE OF WEST VIRGINIA, AS LESSEE, PERTAINING TO SPACE WITHIN THE AIRPORT TERMINAL BUILDING BEING UTILIZED BY THE WEST VIRGINIA ARMY NATIONAL GUARD BAND.

The City of Morgantown hereby ordains that its City Manager is authorized to execute the Addendum Agreement hereto attached, by and on behalf of the City of Morgantown.

This ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

ADDENDUM I

THIS ADDENDUM, made **June 14, 2013**, is hereby made an integral part of the Contract of Lease ADG-022-113, which lease was made **January 6, 2009**, by and between **CITY OF MORGANTOWN**, hereinafter referred to as "Lessor," and the **STATE OF WEST VIRGINIA**, by the **Department of Administration, Real Estate Division**, as "Lessee", for and on behalf of the **Department of Military Affairs and Public Safety**, as "Tenant."

WHEREAS, the Lessor has leased unto the Lessee, for use by the Tenant, the following described Leased Premises:

Office and storage space consisting of approximately 7,000 square feet, more or less, located in the single story metal building commonly known as the Terminal Building at 100 Hart Field Road, in the City of Morgantown, Monongalia County, West Virginia, along with adequate parking (hereinafter referred to as the "Premises").

WHEREAS, the Department of Administration, Real Estate Division assigned its rights under the Contract of Lease ADG-022-113 to the State of West Virginia, Adjutant General's Department as of November 30, 2011 by letter dated November 22, 2011 (attached to this Addendum as Exhibit A).

WHEREAS, both parties hereto agree to extend the term of said Contract of Lease on a month to month basis effective **February 1, 2013**, at the current annual per square foot rate of **\$6.00**.

WHEREAS, both parties hereto agree that the above-stated changes shall be effective **January 31, 2013**.

NOW, THEREFORE, THIS ADDENDUM WITNESSETH:

It is agreed by and between the parties hereto that the Lessee will now be referred to as the **STATE OF WEST VIRGINIA, ADJUTANT GENERAL'S DEPARTMENT** and the Tenant will now be referred to as the **WEST VIRGINIA ARMY NATIONAL GUARD BAND** and that certain sections of the subject Contract of Lease and addendum are amended as follows:

(A) Contract Section 1, TERM AND NOTICES, shall be amended to read as follows:

The term of this Contract of Lease, subject to the provisions hereof, shall begin on **February 1, 2013** and continue on a month to month basis until the new West Virginia Army National Guard Readiness Center facility currently under construction at the Airport is complete and the Army National Guard Band is able to move. Pursuant to provisions of W.Va. Code §18B-19-12 (e)

(3), this lease shall be considered renewed for each ensuing fiscal year during the term of the Contract of Lease unless it is canceled by the Lessee before the end of the then current fiscal year.

Notices may be given by personal service upon the party(s) entitled to such notice, being Lessor and Lessee (not Tenant); or by certified mail, duly stamped and directed to the last-known address of the party to be notified, and deposited in the post office. The proper mailing of such notice and not the receipt thereof shall constitute the giving of such notice by either party to the other. Notices shall be directed as follows:

To the Lessor

Office of the Airport Director
Morgantown Municipal Airport
100 Hart Field Road
Morgantown, WV 26505

To the Lessee

State of West Virginia
Adjutant General's Department
Construction & Facilities Mgmt. Division
1703 Coonskin Drive
Charleston, WV 25311-1085
Phone: 304.561.6353
Fax: 304.561.6344
Email: rocky.hodges@us.army.mil
Attn: CPT Melvin "Rocky" Hodges

(B) Other Terms and Conditions:

The subject Contract of Lease shall now be identified as **ADG-022-114**.

All other terms and conditions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused their names to be affixed to this ADDENDUM I.

WITNESS:

City of Morgantown - Lessor

By _____

By _____
Jeff Mikorski, City Manager

WITNESS:

State of West Virginia,
Adjutant General's Department - Lessee

By _____

By _____
LTC David P. Shafer, CFMO
On behalf of The Adjutant General for
the State of West Virginia

Approved as to form this ____ day of _____, 2013.

Patrick Morrissey, Attorney General

By _____, Dan Greear, Chief Counsel

EXHIBIT A

Transfer of Assignment of Lease ADG-022 Letter

Mailed to Lessor 11/22/11

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
REAL ESTATE DIVISION
1409 Greenbrier Street
Charleston, West Virginia 25311

Earl Ray Tomblin
Governor

Robert W. Ferguson, Jr.
Cabinet Secretary

Charles D. Lawrence, Jr.
Executive Director

November 22, 2011

Dan W. Boroff, City Manager
Office of the Airport Director Morgantown Municipal Airport
100 Hart Field Road
Morgantown, WV 26505

Re: Transfer of Assignment of Lease ADG-022

Dan,

During the 2011 2nd Special Session, a Legislative change was made to West Virginia Code §5A-10-2. (7) that exempts the Adjutant General's Office from the Real Estate Division.

In order to conform to the change in Code, the Real Estate Division is informing you that as of 11/30/2011, the Adjutant General's Office, Department of Military Affairs and Public Safety will be solely responsible for Lease ADG-022.

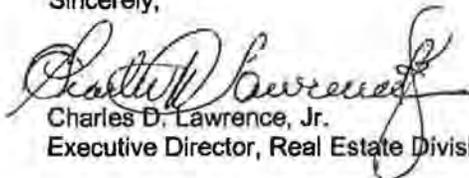
The Adjutant General's Office shall have all of the rights of Lessee contained in Lease ADG-022 including, without limitation, any option to renew, extend or cancel the Lease and shall have signatory authority as required.

As Lessee, the Adjutant General's Office assumes and agrees to be bound by all of the Real Estate Division's obligations under the Lease and shall perform all the terms, covenants and conditions of the Lease, including the payment of rent and any other required amounts to the Lessor, Office of the Airport Director Morgantown Municipal Airport.

The Adjutant General's Office shall indemnify and hold the Real Estate Division harmless from any and all claims, damages, expenses and liabilities of whatever nature, including attorney's fees, arising under the Lease or relating to the Premises after the date hereof.

All terms and conditions contained in Lease ADG-022 shall continue in full force and effect.

Sincerely,


Charles D. Lawrence, Jr.
Executive Director, Real Estate Division

cc: Rhonda Combs Wick

Attachment: West Virginia Code §5A-10-2. (7)

Telephone: (304) 558-3062

E.E.O./AFFIRMATIVE ACTION EMPLOYER

Fax: (304) 558-8082

Attachment 1

§5A-10-2. Leases for space to be made in accordance with article; exceptions.

(a) Notwithstanding any other provision of this code, no department, agency or institution of state government may lease, or offer to lease, as lessee, any grounds, buildings, office or other space except in accordance with the provisions of this article and article three of this chapter.

(b) The provisions of the article, except as to office space, do not apply to the Division of Highways of the Department of Transportation.

(c) The provisions of this article do not apply to:

(1) Public lands, rivers and streams acquired, managed or which title is vested in or transferred to the Division of Natural Resources of the Department of Commerce, pursuant to section seven, article one, chapter twenty of this code and section two, article five of said chapter;

(2) The Higher Education Policy Commission;

(3) The West Virginia Council for Community and Technical College Education;

(4) The institutional boards of governors in accordance with the provisions of subsection (v), section four, article five, chapter eighteen-b of this code;

(5) The real property held by the Department of Agriculture, including all institutional farms, easements, mineral rights, appurtenances, farm equipment, agricultural products, inventories, farm facilities and operating revenue funds for those operations;

(6) The real property held by the West Virginia State Conservation Committee, including all easements, mineral rights, appurtenances and operating revenue funds for those operations; or

(7) The Adjutant General's Department and the West Virginia National Guard, including all real property, acquisitions, leases, easements, armories, armory projects, appurtenances and operating revenue funds for those operations.

AN ORDINANCE BY THE CITY OF MORGANTOWN, AUTHORIZING A LEASE AGREEMENT AMENDMENT BY IT, AS LESSOR, AND THE UNITED STATES OF AMERICA, AS LESSEE, ON BEHALF OF THE TRANSPORTATION SECURITY ADMINISTRATION (TSA), AS THE SAME APPLIES TO LEASE TERM AND RENTAL PAYMENT.

The City of Morgantown hereby ordains that its City Manager is authorized to execute the Lease Agreement Amendment, hereto attached, by and on behalf of the City of Morgantown.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

ADOPTED:

FILED:

RECORDED:

MAYOR

CITY CLERK

**GENERAL SERVICES ADMINISTRATION
PUBLIC BUILDINGS SERVICE
SUPPLEMENTAL LEASE AGREEMENT**

SUPPLEMENTAL AGREEMENT
NO.5

DATE

TO LEASE NO.
GS-03B-03380

ADDRESS OF PREMISES
Morgantown Municipal Airport
100 Hart Field Road
Morgantown, WV 26505

THIS AGREEMENT, made and entered into this date by and between
Morgantown Municipal Airport
100 Hart Field Road
Morgantown, WV 26505

hereinafter called the Lessor, and the UNITED STATES OF AMERICA, hereinafter called the Government:

WHEREAS, the parties hereto desire to amend the above Lease to provide to add a renewal option to the lease.

NOW THEREFORE, these parties for the considerations hereinafter mentioned covenant and agree that the said Lease is hereby amended effective upon execution as follows

A. In accordance with Part II (B. Term), written notice is hereby provided that Lease No. GS-03B-03380 is renewed for one, five-year period .

B. Part II (B. TERM) of the Lease is amended by deleting the existing text and substituting, in lieu thereof, the following:

"TO HAVE AND TO HOLD the said premises with their appurtenances for the term beginning on December 1,2002 through July 31,2018, subject to termination and renewal rights as may be hereinafter set forth. The Government may terminate the lease effective at anytime by giving at least ninety (90) days notice in writing to the Lessor. No rental shall accrue after the effective date of termination said notice be computed commencing with the day after the date of mailing. All other terms and conditions of the lease shall remain in force and effect."

C. Part II (C. RENTAL) shall be amended and the following text shall be added after the text "....prorated":

"The Government shall pay the Lessor an annual operating rent of \$33,300.85

*Subject to escalations as outlined in Para C of Supplemental Lease Agreement Number 4

ALL OTHER TERMS AND CONDITIONS OF THE LEASE SHALL REMAIN IN FULL FORCE AND EFFECT.
IN WITNESS WHEREOF, the parties subscribed their names as of the above date.

LESSOR:

BY _____
(Signature)

(Title)

IN PRESENCE OF (witnessed by):

(Signature)

(Title)

UNITED STATES OF AMERICA

BY _____
(Signature)

Contracting Officer, GSA

(Official title)