

**REGULAR MEETING NOVEMBER 1, 2011:**

The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Wednesday, November 1, 2011, at 7:30 P.M.

**PRESENT:** City Manager Terrence Moore, City Clerk Linda Little, City Attorney Steve Fanok, Deputy Manager Jeff Mikorski, Mayor Jim Manilla and Council Members Ron Bane, Wes Nugent, Jenny Selin, Marti Shamberger and Linda Herbst. Bill Byrne Absent.

**APPROVAL OF MINUTES:** The minutes of the Regular and Special Meetings on October 18, 2011 were approved as printed.

**CORRESPONDENCE:** Mayor Manilla presented a proclamation to former Council Member John Gaddis, commending his years of service to the City of Morgantown. He then announced the promotion of Officer Kenneth Murphy to Patrolman First Class, followed by Medals of Valor and Lifesaving Medal for heroic acts in the line of duty to Officers PFC Lawrence Hasley, PFC William Ryan, Lt. Michael Lantz, 1<sup>st</sup> Sgt. Scott Carl, Sgt. Robert Gilmore and Sgt. Bryon Hennessey. Mayor Manilla then presented a final proclamation, in commemoration of Extra Mile Day. A petition filed by the residents of Karen Lane was presented before Council, stating their wish to be designated as a City street.

Mayor Manilla then read from an article in the Exponent Telegram about the North Central WV Airport and its Director's views about improving Morgantown's airport. After discussion, Councilor Bane encouraged citizens, businesses and WVU Officials to boycott CKB Airport until an apology is received for the comments made in the above mentioned article. Council then requested Mr. Moore to write to CKB Airport Officials stating displeasure with such statements.

**PUBLIC HEARING - AN ORDINANCE AMENDING TABLE 1331.05.01 "PERMITTED LAND USES" OF THE PLANNING AND ZONING CODE AS IT PERTAINS TO "ANIMAL GROOMING SERVICES" USES.**

There being no appearances of objections, Mayor Manilla declared the Public Hearing closed.

**UNFINISHED BUSINESS:**

**AN ORDINANCE AMENDING TABLE 1331.05.01 OF THE PLANNING AND ZONING CODE:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE AMENDING TABLE 1331.05.01 "PERMITTED LAND USES" OF THE PLANNING AND ZONING CODE AS IT PERTAINS TO "ANIMAL GROOMING SERVICES" USES.

Motion by Nugent, second by Selin to adopt the above entitled Ordinance. Motion carried 6-0. (Byrne Absent).

**BOARDS AND COMMISSIONS:** No appointments at this time.

**PUBLIC PORTION:**

Scott Batt, Petitioner for the rezoning in 5<sup>th</sup> ward from B-1 to B-4, asked Council to consider the property use on its merits alone.

Rodney Pyles, 536 Harvard Avenue, spoke on behalf of the Historic Landmarks Commission, stated the zoning Ordinance from B-1 to B-4 would make an impact on two historic properties. He noted that the

Planning Commission rejected the rezoning and urged Council to do the same. He asked Council to preserve the historic area considered in the proposed rezone.

Joseph James, WVU Student, requested that Council seek statements from WVU regarding their plans to address Marcellus Shale issues.

Leo Schlosnagle, Morgantown Resident and WVU Faculty Member, reported that he attended a recent symposium about Marcellus Shale and water quality and stated that he talked to Senator Manchin and feels that he was not informed about the issues and has concerns about drilling and the safety issues involved. He thanked Council for issuing the fracking ban.

Logan Shamberger, 250 2<sup>nd</sup> Street, asked Council if repealing the fracking ban was the right thing to do for our community. He urged Council to consider the health and well-being of citizens in their decision facing a possible repeal.

Melissa Pyles, 536 Harvard, also spoke on the above referenced zoning change, and stated that the historic districts are important and bring value to the community. She asked that Council not adopt or pass an ordinance that may change or destroy property with historic value.

Evan Duff, WVU SGA Representative introduced other members of student government including the Student Body President and Safety Director. He then yielded to Safety Director Smalls who spoke about the safety walk and future plans for student safety. Mr. Smalls indicated that the main safety focus at this time is for lighting, which will not only benefit students, but all Morgantown residents.

Michelle Stevens, American Cancer Society Representative, thanked Council for their support of the clean air act and looks forward to the implementation on January 1<sup>st</sup>.

Bev Keener, Area Tobacco Coordinator, handed Council books with information to aid in the implementation of the smoking ban with restaurants and bars.

Brent Bailey 901 Fairfax, asked council to not rescind the fracking Ordinance. He urged Council to be agents of change and put citizens first.

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

**NEW BUSINESS:**

**AN ORDINANCE AUTHORIZING INTERGOVERNMENTAL AGREEMENT WITH MONGALIA COUNTY DEVELOPMENT AUTHORITY REGARDING A NEW ROADWAY AT THE MUNICIPAL AIRPORT:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE BY THE CITY OF MORGANTOWN REPEALING A JUNE 15, 2010 ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF MORGANTOWN AND THE MONONGALIA COUNTY DEVELOPMENT AUTHORITY REGARDING THE FINANCING AND CONSTRUCTION OF A NEW ROADWAY AND EXTENSION OF UTILITIES ON THE EAST SIDE OF THE MORGANTOWN MUNICIPAL AIRPORT, AND AUTHORIZING IN ITS PLACE A NEW INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF MORGANTOWN AND MONONGALIA COUNTY DEVELOPMENT AUTHORITY WHICH ADDRESSES THE SAME MATTERS.

Mr. Moore requested that Airport Director Michael Clow give commentary regarding the above Ordinance. The rules were suspended to allow comments. Motion by Nugent, second by Selin to pass the above entitled Ordinance to second reading. Motion carried 6-0. (Byrne Absent).

**AN ORDINANCE REPEALING & ENACTING A NEW ARTICLE 917 ESTABLISHING A TREE BOARD:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE REPEALING ARTICLE 917 OF THE MORGANTOWN CITY CODE AND ENACTING A NEW ARTICLE 917, AS THE SAME APPLIES TO THE ESTABLISHMENT OF A MUNICIPAL TREE BOARD AND REGULATIONS REGARDING TREES.

Motion by Bane, second by Nugent to pass the above entitled Ordinance to second reading. After discussion, a minor amendment by Councilor Bane was considered and passed 6-0 with unanimous consent. Question was called on the main motion, and carried 6-0. (Byrne Absent).

**AN ORDINANCE PROVIDING A ZONING RECLASSIFICATION IN THE FIFTH WARD FROM (B-1) TO (B-4):** The below entitled Ordinance was presented for first reading:

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF A PARCEL OF REAL ESTATE IN THE FIFTH WARD OF THE CITY OF MORGANTOWN FROM (B-1) NEIGHBORHOOD BUSINESS DISTRICT TO (B-4) GENERAL BUSINESS DISTRICT BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FOR THE HEREIN.

Motion by Bane, second by Nugent to pass the above entitled Ordinance to second reading. After discussion, motion carried 6-0. (Byrne Absent).

**AN ORDINANCE REPEALING ARTICLE 721 APPLYING TO WELL DRILLING:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE BY THE CITY OF MORGANTOWN REPEALING ARTICLE 721 OF THE CITY OF MORGANTOWN BUSINESS AND TAXATION CODE, AS THE SAME APPLIES TO WELL DRILLING.

Motion by Bane, second by Nugent to approve the above entitled Ordinance. After lengthy discussion including commentary from the City Attorney, City Manager and City Clerk, motion by Bane, second by Selin to Table the above entitled Ordinance. Motion carried 5-1. Mayor Manilla voted NO. (Byrne Absent).

**SPECIAL COMMITTEE REPORTS:** Councilor Nugent reported that he attended the Municipal League Board Meeting on 10-21-11 and will email Council a report.

**CITY MANAGERS REPORT:**

**NEW BUSINESS:**

**Item No. 1:** Acceptance and Authorization of United States Department of Justice, Office of Community Oriented Policing Services 2011 COPS Hiring Program Grant Award.

Mr. Moore gave an overview of the Grant Program and called upon Police Chief Ed Preston for further explanation. After discussion, motion by Bane, second by Selin to approve the City Manager's

execution the above referenced Grant Program. Motion carried 6-0. (Byrne Absent).

Mr. Moore then asked Chief Preston to give Council an update regarding vandalism and related issues. Discussion continued regarding these and other concerns.

**CITY CLERK'S REPORT:** No Report.

**CITY ATTORNEY'S REPORT:** No Report.

**REPORT FROM COUNCIL MEMBERS:**

Councilor Bane: Councilor Bane agreed that Clarksburg airport officials should apologize for comments in the article read by Mayor Manilla at the beginning of the meeting. He also asked that the Jake Brake Ordinance be looked at as an ongoing effort to eliminate nullified Ordinances on the City's books. By consensus of Council it was agreed to place the issue on a future Committee of the Whole Agenda. He asked additionally that the City Attorney recommend other similar Ordinances for review as well.

Councilor Nugent: Councilor Nugent confirmed with Mr. Moore that the PSC Special Meeting will take place at 6pm prior to the 11/28 COW meeting. He thanked SGA leaders at WVU and looks forward to working with PSC on common issues. He thanked Mr. Moore for arranging a meeting with City Officials to address litter and trash concerns. He announced the upcoming Traffic Commission meeting and various items on that agenda. He encouraged Council to move forward with transitioning Council Packet materials to an electronic format. With consensus of Council, it was agreed to discuss ePackets at an upcoming COW. He thanked his neighbors for their diligence in recovering stolen street signs.

Councilor Bane added information regarding some citizen's desire for another traffic light on 705, which he informed he will oppose.

Councilor Selin: Councilor Selin added that information about the Evansdale plan is available online. She discussed a transit meeting addressing several issues and the ongoing planning process. She expressed appreciation for the efforts of several City entities and staff who have been helping with issues in her ward. She mentioned a temporary exhibit of couches turned into planters around the City.

Councilor Shamberger: Councilor Shamberger noted that John Gaddis and the Police officers who were honored tonight are deserving of an Extra Mile award. She also commended the MFD as well as the recent work of litter pick up crews. She announced a concert at the Met Theatre and encouraged everyone to attend.

Councilor Byrne: Absent.

Councilor Herbst: Councilor Herbst concurred with Councilor Byrne regarding the extra light suggested for 705. She thanked Mayor Manilla for

attending the Suncrest neighborhood association meeting recently, where they are working hard to address neighborhood issues.

Mayor Manilla:

Mayor Manilla reported on the South Park Bridge graffiti cleanup, and Mr. Moore added that the cleanup efforts are led by the FCI crew, and supervised by the Police and Public Works Departments. Then, City Clerk Little made various community performance and event announcements.

**ADJOURNMENT:** There being no further business, the meeting adjourned by unanimous consent at 9:31pm.

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

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



## **BOARDS AND COMMISSIONS - TERMS EXPIRED AND CURRENT VACANCIES**

**\*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.**

### **FIRE CIVIL SERVICE: 4 YEAR TERM:**

**David Alexander IAFF Local 313 Representative has resigned and the Firefighters are looking for a representative.**

### **URBAN LANDSCAPE COMMISSION: 2 YEAR TERM:**

**Marilyn Bowers, 2<sup>nd</sup> wd resigned still vacant and On July 27<sup>th</sup> Anne Cumming, Urban Forester resigned and still vacant.** Nominated by CM, from each ward, 13 members with staggered terms, 1 councilmember, and non-ward members must represent specific category.

### **YOUTH COMMISSION 1 YEAR TERM:**

**Marissa Travinski has names of all new members.** High School students residing in Metropolitan area.

**\*POLICE & FIRE CIVIL SERVICE COMMISSIONS APPOINT NEW PRESIDENTS 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.

10-13-11



**AN ORDINANCE BY THE CITY OF MORGANTOWN REPEALING A JUNE 15, 2010, ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF MORGANTOWN AND THE MONONGALIA COUNTY DEVELOPMENT AUTHORITY REGARDING THE FINANCING AND CONSTRUCTION OF A NEW ROADWAY AND EXTENSION OF UTILITIES ON THE EAST SIDE OF THE MORGANTOWN MUNICIPAL AIRPORT, AND AUTHORIZING IN ITS PLACE A NEW INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF MORGANTOWN AND MONONGALIA COUNTY DEVELOPMENT AUTHORITY WHICH ADDRESSES THE SAME MATTERS.**

The City of Morgantown hereby ordains that the June 15, 2010 Ordinance that it adopted authorizing an intergovernmental agreement by an between the City and the Monongalia County Development Authority regarding the financing and construction of a new roadway and extension of utilities on the east side of the Morgantown Municipal Airport is repealed in its entirety; and in its place the City Manager is authorized to execute, by and on behalf of the City, the Intergovernmental Agreement hereto attached.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_  
MAYOR

ADOPTED:

FILED:

\_\_\_\_\_  
CITY CLERK

RECORDED:

## INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement ("Agreement") entered into this \_\_\_ day of \_\_\_\_\_, 2011 by and between the Monongalia County Development Authority, Morgantown, Monongalia County, West Virginia ("MCDA") a West Virginia Public Corporation and the City of Morgantown, Morgantown, Monongalia County, West Virginia ("City"), a Municipal Corporation.

### HISTORY AND BACKGROUND

The City is the owner and operator of the Morgantown Municipal Airport located in Morgantown, Monongalia County, West Virginia. The City has and is undertaking a concerted effort to bring more aviation and business activity to the Airport.

The City entered into negotiations with the State Armory Board, a body corporate and agency of the state of West Virginia regarding the possible relocation and expansion of the National Guard Unit in Morgantown, West Virginia, to property located at the Morgantown Municipal Airport owned by the City. Those negotiations included the development and construction of a new facility by the National Guard located at the Airport along with the expansion of the current services and activities of the Guard to be performed out of the new Readiness Center.

In addition to the new National Guard Readiness Center, the City, in conjunction with discussions, participation and planning with the MCDA, will develop an Access Road at the Airport as part of the overall development of the Airport and the National Guard's new Readiness Center.

WHEREFORE, The City and the MCDA enter into this Agreement for the purpose of development of the Access Road, Business Park, the new National Guard Readiness Center and the Airport area in general upon the terms and conditions set forth in this Agreement.

### ARTICLE ONE DEFINITIONS

1.0 "Advance of Sale Proceeds" shall mean as it pertains to:

- A. MCDA: The One-Million, Four-Hundred and Eighty-Eight Thousand Dollars (\$1,488,000.00) plus the preliminary advance of One-Hundred Thousand Dollars (\$100,000.00) each by the MCDA and the Monongalia County Commission, or a total of One-Million, Six-Hundred and Eight-Eight Thousand Dollars (\$1,688,000.00), all payable to the MCDA.
- B. City of Morgantown: The Three-Million, Three-Hundred and Ten Thousand Dollars (\$3,310,000.00) plus the preliminary advance of One-Hundred

Thousand Dollars (\$100,000.00), or a total of Two-Million, Four-Hundred and Ten Thousand Dollars (\$3,410,000.00), payable to the City of Morgantown.

- 1.1 "Agreement" shall mean this Intergovernmental Agreement including all schedules, exhibits, attachments and modifications.
- 1.2 "Access Road" shall mean the Phase I of the roadway to be constructed from State Route 857 to the Guard Property and from the Access Road to the hanger area.
- 1.3 "Airport" shall mean the Morgantown Municipal Airport.
- 1.4 "Armory Property" shall mean the approximately 5.0 acres of land located at 1705 Mileground Road, Morgantown, Monongalia County, West Virginia, also known as the Battery B1-201<sup>st</sup> FA National Guard Armory facility as more particularly set forth and described in Schedule 1.4, attached to this Agreement.
- 1.5 "City" shall mean the City of Morgantown, Morgantown, Monongalia County, West Virginia, a municipal corporation.
- 1.6 "Committee" shall mean the committee appointed by the MCDA and the City to oversee the acquisition, development, and initial operation of the Access Road.
- 1.7 "DOH" shall mean the West Virginia Department of Transportation Division of Highways.
- 1.8 "FAA" shall mean the United States Federal Aviation Administration.
- 1.9 "Federal Grant" shall mean the One Million Nine Hundred Sixty Thousand Dollars (\$1,960,000) appropriation from Federal Transportation Allocation.
- 1.10 "Guard Property" shall mean the approximately 45 acre parcel of land located at the Airport owned by the City to be transferred to the State Armory Board for construction of a National Guard Readiness Center, as more particularly set forth and described in Schedule 1.10, attached to this Agreement .
- 1.11 "MCDA" shall mean the Monongalia County Development Authority, Monongalia County, West Virginia, a public corporation.
- 1.12 Phase II shall mean the roadway to be constructed from Phase I of the Access Road to the Business Park Property.
- 1.13 "TSA" shall mean the Transportation Security Administration.

## ARTICLE TWO PROPERTY TRANSFER

- 2.0 The City shall as soon as is reasonably possible after execution of this Agreement enter into a Road License Agreement for the property identified in the attached Schedule 2.0 with the MCDA for the sole purpose of developing and

constructing the Access Road from State Route 857 to the Guard Property and the Business Park. This License shall be for a term beginning on the date of execution of the Road License Agreement for the Property by the City with the MCDA and ending, and automatically terminating on the date that is the earliest to occur of completion and acceptance of construction of the Access Road by the City or the Access Road ceases to be used as a public road. The termination of the License Agreement shall occur without further notice or action on the part of the City or the MCDA. The City and the MCDA shall enter into and execute any and all documents necessary to consummate the termination of the License Agreement of the Property upon completion of construction of the Access Road.

- 2.1 In conjunction with this Agreement, the City has transferred the property identified in the attached Schedule 1.10 to the State Armory Board for the purpose of constructing and establishing the new National Guard Armory Readiness Center on the Guard Property. This transfer was in exchange for the current Armory Property located on the Mileground, Morgantown, Monongalia County, West Virginia and more particularly set forth in plat attached as Schedule 1.4.
- 2.2 Upon obtaining clear title to the Armory Property the City shall proceed to, as soon as reasonably practical, sell the Armory Property to the highest bidder (but for not less than the appraised fair market value of the property) upon terms and conditions as established by the City.
- 2.3 The proceeds received from the sale of the Armory Property shall be utilized for the development and construction of the Access Road and the Airport. The use of these funds shall be in compliance with the provisions of Article Four of this Agreement.

### ARTICLE THREE ACCESS ROAD COMMITTEE

- 3.0 The development and construction of the Access Road shall be governed by a Committee as defined above, and established by the MCDA and the City. This Committee shall have the authority, responsibility, and obligation on behalf of the MCDA for the acquisition, development, operation and oversight of the Access Road as set forth in this Agreement. In relation to the acquisition of property for the Access Road only, to the extent that the MCDA exercises its power of eminent domain under Chapter 7 of the West Virginia Code, this Committee shall be an advisory Committee only. The restriction of the Committee to act in an advisory capacity applies only to the acquisition of property for the Access Road thru eminent domain.
- 3.1 The initial Committee shall consist of four (4) members. Two (2) members shall be appointed by the MCDA, and two (2) members shall be appointed by the City.
- 3.2 The MCDA and the City shall, as soon as possible, appoint the members to the Committee. Due to the importance and responsibilities of this Committee, the

City and MCDA may, but shall not be required to, appoint the Members of the Committee prior to the execution of this Agreement. In that event, the City and MCDA, by executing this Agreement, consent to, and affirm, those appointments.

- 3.3 The Committee shall develop and adopt policies and procedures for the responsibilities, obligations, requirements and operation of the Committee.
- 3.4 During the construction phase of the Access Road, the Committee shall have authority over and responsibility for the following:
  - A. Review of and recommendation to the MCDA of all construction contracts for execution.
  - B. Review, authorization, and approval of all change orders, modifications, and expansion of any contract for construction of the Access Road.
  - C. Review and approval of all expenditures. The approval by the MCDA shall be required for any expenditure by the Committee, during the construction phase of the Access Road, that is in excess of the amount set forth in the budget for the project considering the budget as a whole and all contingency line items. After completion of the Access Road any expenditure by the Committee relating to the Access Road shall require approval of the MCDA and the City prior to incurring such expenditure.
  - D. The approval of the purchase price, option contracts, purchase contracts or other methods of acquiring the property necessary for the Access Road. The Committee shall approve all option and/or purchase contracts for the property, and/or rights of way, necessary for the Access Road prior to approval and execution by the MCDA.
  - E. While not anticipated to be necessary, the Committee shall, in relation to the acquisition of property for the Access Road only, act strictly in an advisory capacity in the event MCDA exercises its power of eminent domain. The restriction of the Committee to act in an advisory capacity applies to the acquisition of property for the Access Road.
  - F. Ensuring compliance with all aspects and requirements of the FAA, the TSA, and all other government agencies, rules and regulations, and shall coordinate all such matters through the Morgantown Municipal Airport Director during planning, development and construction of the Access Road.
  - G. The oversight, review and approval of all disbursements. The Committee shall be responsible for the oversight and approval of all disbursements of funds including operating expenses for the Access Road.
- 3.5 The Committee shall prepare and approve a budget and timetable for the acquisition, development and construction of the Access Road. This budget shall be approved by the committee and the City prior to adoption by the MCDA.
- 3.6 The City and the MCDA understand and agree that the Access Road may be developed in two phases. Phase I being developed first and encompassing the design, development and construction of the Access Road from CR 857 to Station 16+50.00, and from the hanger area located at Station 100.00 to the

Access Road located at Station 113 +00 as shown on the plans prepared by Alpha and Associates and conditionally approved by the West Virginia Division of Highways. Phase II being developed second and encompassing the design, extension, development and construction of the Access Road from Station 16+50.00, as shown on the plans prepared by Alpha and Associates and conditionally approved by the West Virginia Division of Highways, to the entrance of the Business Park.

- 3.7 The City and MCDA agree to diligently pursue, and as soon as possible, fully develop and construct Phase II of the Access Road. The City and the MCDA agree that the proceeds from the sale of the Armory Property shall not be used for Phase II of the Access Road.
- 3.8 Appointees on the Committee of the MCDA and the City shall be responsible for updating and keeping their respective bodies fully informed regarding the activities of the Committee.

#### ARTICLE FOUR INITIAL FUNDING

- 4.0 The initial funding available for the Access Road and Business Park is estimated to be Six Million Seven Hundred Eighty-Two Thousand Dollars (\$6,782,000). The source of this funding has been identified as follows:
  - A. One Million Nine Hundred Sixty Thousand Dollars (\$1,960,000) from the Federal Grant to the project.
  - B. Four Million Three Hundred Thousand Dollars (\$4,300,000) from the estimated sale proceeds of the Armory Property after the land transfer with the State Armory Board.
  - C. Five Hundred Twenty-Two Thousand Dollars (\$522,000) from the City of Morgantown from Business and Occupation taxes to be generated on the construction on the Guard Property.
- 4.1 The estimated cost for the development and construction of the Access Road, extension of utilities to the Guard Property is Six Million Seven Hundred Fifty-Eight Thousand Dollars (\$6,758,000). These expenditures, and any applicable change orders are to be paid from the initial funding identified in Section 4.0 above for the project. These amounts are estimates and may vary once design, engineering and construction contracts are awarded, and considering subsequent change orders. However, since the proceeds from the sale of the Armory Property and the reinvestment of the Business & Occupation tax payments from the City on the construction of the Guard Property will not be immediately available, interim funding has been secured. The interim funding for this construction shall be provided as follows:

- A. One Million Nine Hundred and Sixty Thousand Dollars (\$1,960,000) in the form of a Federal Grant. This funding has been appropriated by the United States Congress and is currently held by the DOH.
  - B. Three Million One Hundred Thirty Four Thousand Dollars (\$3,134,000) to be contributed by the City as an Advance on Sale Proceeds of the Armory Property.
  - C. One Million Six Hundred Eighty-Eight Thousand Dollars (\$1,688,000) to be contributed by the MCDA in the form of an Advance on the Sale Proceeds of the Armory Property.
- 4.2 The City and MCDA understand and agree that the Advance on the Sale Proceeds provided by the MCDA is to be used as interim funding until the sale of the Armory Property is completed and shall be the last funds utilized in the Access Road development and construction. The City and MCDA shall use the funds provided by the City and the Federal Grant prior to using any of the proceeds from MCDA.
- 4.3 The Advance on the Sale Proceeds from the MCDA shall be interest free and provide for repayment as more fully described in Section 4.4 of this Agreement.
- 4.4 The Advance on Sale Proceeds from MCDA shall be repaid in full upon the sale of the Armory Property. The repayment to the MCDA shall be disbursed from the closing proceeds of the sale after the payment of all costs and expenses associated with the sale of the Armory Property. The disbursement from the sale proceeds to repay the MCDA advance shall have first priority and shall be paid prior to disbursement of any other funds to any other parties including but not limited to the Advance on Sale Proceeds by the City.
- 4.5 After repayment of the Advance on sale proceeds by the MCDA, the Advance on Sale Proceeds by the City shall be repaid from the sale proceeds of the Armory Property. Any remaining proceeds shall, after the payment of all normal operating expenses, development costs and construction of the Access Road and infrastructure, be delivered to the Airport.

## ARTICLE FIVE ACCESS ROAD

- 5.0 MCDA shall oversee and coordinate the development and construction of the Access Road. The MCDA shall utilize the Committee for this purpose and the Committee shall have full authority to proceed and complete its responsibilities in relation to the Access Road. The development and construction of the Access Road shall be in accordance with the plat and survey of the Access Road attached as Schedule 5.0 and the budget as developed by the Committee.
- 5.1 The Committee shall, in accordance with architects, engineers, and legal counsel for the development of the Access Road, address all matters associated with the Access Road such as ownership of the right of way and Access Road, limited or controlled access to the Access Road, utility easements and rights of way and all

other matters as may come before it pertaining to the Access Road as the City and MCDA deem appropriate.

- 5.2 MCDA understands, agrees and accepts that once the Access Road is complete that the Access Road and right of way shall fully comply with the Federal Grant including, but not limited to, any requirements that the Access Road be owned by either the DOH or the City. MCDA agrees to cooperate fully to provide for the orderly and complete transfer of the Access Road right of way to the DOH or the City, in compliance with the Federal Grant, federal, state, or municipal requirements or directives. The transfer of the Access Road and right of way shall be done in the same phases as the construction. Upon completion of Phase I, MCDA shall transfer Phase I to the City or DOH. MCDA understands and agrees that any and all parcels acquired for the Access Road, whether the Access Road is completed or not, shall, upon written request of the City, transfer free of charge to the City or their designee. MCDA and the City further understand and agree that the Parcel identified in the attached Schedule 2.0, shall automatically revert back to the City specifically set forth in Section 2.0 of this Agreement.
- 5.3 The Committee shall take into consideration and provide for, and comply with, all FAA, TSA, and all other applicable government agency requests, and directives in the development and construction of the Access Road, and shall coordinate all such requirements through the Morgantown Municipal Airport Director.
- 5.4 MCDA through the Committee shall be responsible for acquiring all necessary rights of way, easements, and approvals for development of the Access Road. In relation to the acquisition of property for the Access Road only, the Committee shall act in an advisory capacity regarding the MCDA's use of its eminent domain power. The restriction of the Committee to act in an advisory capacity applies strictly to the acquisition of property for the Access Road. All acquisition costs and expenses shall be approved by the Committee in accordance with this Agreement.
- 5.5 MCDA shall enter into an extension agreement of the engineering and design contract with Alpha and Associates identifying with specificity the completion of the design engineering and construction of the Access Road including assistance on property and rights of way acquisitions as the Committee deems necessary.
- 5.6 MCDA shall enter into such other professional services contracts as required and negotiated by the Committee from time to time.

## ARTICLE SIX ACCOUNTING AND RECORD KEEPING

- 6.0 The Access Road shall be developed and operated on a stand alone basis. As such, the construction, development and operation of the Access Road shall be accounted for as its own separate entity or department for internal reporting purposes.

- 6.1 The day to day financial and accounting services shall be provided for the MCDA by the City. The City shall establish and maintain, for accounting purposes, a separate set of accounts for the Access Road. The annual accounting and reporting of the development and operations of the Access Road shall be provided in cooperation with, and direction from, the independent auditors for the MCDA.
- 6.2 The City shall be responsible for and maintain all funds initially contributed by the City, MCDA, and the Federal Grant and all funds generated by any source for construction of the Access Road.
- 6.3 Subject to the provision of Section 6.4 below, the City shall upon request of the Committee pay from the funds set forth above in Article Four, all reviewed and approved invoices. The City and MCDA each reserve the right to pay, modify, question, challenge, or otherwise reject any invoice relating to the project notwithstanding any approval by the Committee.
- 6.4 In the event the City or MCDA reject or otherwise fail to approve any invoice submitted for payment by the Committee, the rejecting entity shall provide the Committee with the basis for the rejection and recommended action for removal of the objection.
- 6.5 Any invoice, request for payment, or other request for distribution of funds relating to acquisition, development, construction and operation of the Access Road that is in excess of the amount set forth in the budget for the project considering the budget as a whole and all contingency line items shall require the approval of the City and MCDA.
- 6.6 The City and MCDA agree to respond within twenty business days regarding any approval of expenditures required by this Agreement.

## ARTICLE SEVEN MISCELLANEOUS

- 7.0 This Agreement contains the understanding and agreement of the parties regarding the development and operation of the Access Road. This Agreement may be amended from time to time by the parties. Any amendment, modification, or change to the provisions of this Agreement shall be in writing, signed by all of the parties.
- 7.1 The City and MCDA represent and warrant that by executing this Agreement each has the requisite power and authority to enter into this Agreement and that this Agreement has been duly authorized and approved by the City and MCDA.
- 7.2 In the event any aspect of this Agreement shall be determined to be unenforceable or contrary to governing laws, rules and regulations, or ordinances such provision shall be modified or stricken as the case may be to bring this

Agreement into compliance. The modification or removal of any such provision shall not affect the enforceability of the remainder of this Agreement.

- 7.3 The City and the MCDA shall appoint a representative to act as the contact person for their respective organization with the Committee. This contact person may or may not also be a member of the Committee.
- 7.4 This Agreement shall at all times be governed by the laws of the state of West Virginia.
- 7.0 Time is of the essence in the performance of this Agreement.

MONONGALIA COUNTY  
DEVELOPMENT AUTHORITY

CITY OF MORGANTOWN

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By: Russell Lorince  
Its: Vice President

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By: Terrence Moore  
Its: City Manager

**AN ORDINANCE REPEALING ARTICLE 917 OF THE MORGANTOWN CITY CODE AND ENACTING A NEW ARTICLE 917, AS THE SAME APPLIES TO THE ESTABLISHMENT OF A MUNICIPAL TREE BOARD AND REGULATIONS REGARDING TREES.**

The City of Morgantown hereby ordains that Article 917 of its City Code is repealed in its entirety and replaced with a new Article 917 that reads as follows:

**ARTICLE 917  
Community Forestry**

**917.01 PURPOSE**

This Article establishes policies, regulations, and standards necessary to ensure that the City will continue to realize the benefits provided by its community forest. The provisions of this Article are enacted to:

- A. Create a desirable environment that protects the public health, comfort, safety and welfare of Morgantown residents, businesses and industries;
- B. Establish and maintain the maximum sustainable amount of tree cover on public and private lands in the City;
- C. Establish minimum site management requirements for trees protected by this Article;
- D. Establish and maintain appropriate diversity in tree species and age classes to provide a stable and sustainable community forest;
- E. Moderate effects of the sun, wind and temperature changes;
- F. Promote energy efficiency and conservation;
- G. Decrease storm water runoff;
- H. Filter pollutants from the air and release oxygen;
- I. Buffer noise and visual pollution;
- J. Stabilize soil and prevent erosion;
- K. Improve and maintain City gateways, streets, parking areas, parks and neighborhoods;
- L. Support traffic calming;

- M. Increase property values and protect investment;
- N. Preserve exceptional trees;
- O. Screen incompatible land uses;
- P. Provide habitat for wildlife;
- Q. Encourage public education about trees and landscaping and their value.

#### **917.02 DEFINITIONS**

*For the purposes of this Article, the following terms, phrases, words and their derivations shall have the meaning herein given:*

- (a) "Adopted tree care standards" are those standards of tree maintenance, trimming clearances, and methods of protection during construction, as established in the American National Standards Institute (ANSI) Standard A300, National Standard for Tree Care Operations - Tree, Shrub and Other Woody Plant Maintenance - Part 1 - Standards Pruning Practices, as may be amended. The above standards are adopted with the understanding that any requirements therein referring to ANSI Z133.1 safety standards are deleted. The City Manager is authorized to issue waivers from the above A300 requirements to individuals on a case-by-case basis should a request for a waiver be made to him/her and he/she believes the granting of such a waiver to be justified.
- (b) "Canopy" means the shade a tree will provide at maturity.
- (c) "City" means City of Morgantown, West Virginia.
- (d) "City Forester" means the City Manager or his/her designee, who shall be responsible for the implementation and enforcement of all requirements contained within this Article.
- (e) "Commercial Tree Expert" means a person who has received Certified Arborist status from the International Society of Arboriculture.
- (f) "Commercial Tree Pruner/Service" means a person who performs work on trees for profit.
- (g) "Community Forest" means trees and vegetation located within an urban area. Community forestry is the management of these urban resources for the improvement of the economic, environmental, and social well being of the community.

- (h) "Critical Root Zone" means an area surrounding a tree trunk that is delineated one foot outside of the drip line of the tree.
- (i) "Crown Reduction" means pruning to reduce height or size of a tree by cutting limbs back to a point of origin or back to laterals capable of sustaining the remaining limb. "Topping" is not a proper technique to reduce a crown.
- (j) "Diameter Breast Height (DBH)" means the diameter of a tree at a point four and one-half feet above the ground. DBH shall be measured from the uphill side of a tree.
- (k) "Dripline" means an imaginary vertical line that extends downward from the outer most tips of the tree branches to the ground.
- (l) "Environmentally Sensitive Areas" means wetlands, riparian corridors, landslide prone areas, steep slopes, and fish and wildlife areas that have been so designated by the controlling governmental department or agency.
- (m) "Exceptional Tree" means a tree located on public or private land designated as exceptional due to historic association, rare tree species or extraordinary value because of its age, size or type.
- (n) "Hazardous Tree" means a tree or tree parts with a high probability of falling or causing injury or property loss to persons or property on public space in the vicinity of the tree, or a tree harboring insects or disease that has been determined to be a threat to the surrounding environment.
- (o) "Person" means any person, firm, partnership, association, corporation, company, or organization of any kind
- (p) "Private Land" means land not owned by the City or other governmental entity.
- (q) "Public Place" means any municipal public street, municipal public highway, municipal public park, or any realty owned or held by the City within the boundaries of the City.
- (r) "Shall" is always mandatory and not merely discretionary.
- (s) "Specifications for Street Tree Planting" means a document maintained on species suitability, spacing and standard planting protocols.
- (t) "Street Trees" means trees located and spaced along municipal streets which have been adopted by and are being maintained by the City.
- (u) "Topping" means the severe removal of a tree canopy back to large stubs.

- (v) "Tree" means any tree in a public place or on private property as indicated by the provisions of this Article.
- (w) "Tree Registry" means a list of exceptional trees registered within the City.

#### 917.03 MUNICIPAL TREE BOARD

A Municipal Tree Board shall be appointed by City Council and shall consist of at least seven, but no more than ten members. Of the members, at least one shall have specialized knowledge and expertise regarding tree management and care. Tree Board members shall serve three-year terms without compensation.

The duties of the Municipal Tree Board shall be as follows:

- (a) Advise and consult with the City Manager, or other staff designated by the City Manager, on any matter pertaining to this Article;
- (b) Study the problems and determine the needs of the City in connection with its management of trees and shrubs and make specific recommendations to the City Manager;
- (c) Work in collaboration with the City Urban Landscape Commission, the Board of Park and Recreation Commissioners, the Public Works Department, the Parking Authority, the Planning Commission, and other agencies and departments as needed;
- (d) Review City plans and policies, when requested to do so by the City Manager, that contain matters relating to urban forestry, community values, and arboriculture;
- (e) Recommend legislation regarding the community forest;
- (f) Provide for the City Manager reports as requested and an analysis of annual budgets pertaining to the community forest;
- (g) Develop a program for identifying and maintaining exceptional trees in the City and make recommendations to the City Manager and City Council for adopting such a program;
- (h) Provide information regarding the selection, planting and maintenance of trees on public property;
- (i) Facilitate the planning and implementation of public education addressing proper tree care and community forestry;
- (j) Coordinate the City Arbor Day programs, grants, and other similar programs.

#### 917.04 ARTICLE ADMINISTRATION

The City Manager, or his/her designee, shall be responsible for the implementation and enforcement of all requirements of this Article, and shall be the City Forester for purposes of this Article. The City Manager, or his/her designee, shall have control and supervision of all trees which now or which may hereafter exist upon any public place in this City when such trees are in such condition as to affect the public health, safety and welfare. The City Manager, or his/her designee, is authorized to consult with the Municipal Tree Board for advice and assistance on matters pertaining to this Article.

#### 917.05 LIABILITY AND INDEMNIFICATION

Nothing within this article is to be interpreted to read that the City or any of its officers, agents or employees has accepted responsibility for assuring that the public will be safe from injury from any tree within the City. The City recognizes that acts of God may intervene and that it is the ultimate responsibility of the individual property owner to assure that trees on his or her realty are maintained in a safe manner that does not endanger a neighbor or the general public. The City may be responsible for the condition of trees on its publicly owned realty; however, it does not accept responsibility or liability for damage caused by any tree located on private property, state roads, or state rights of way.

#### 917.06 JURISDICTION

The City Manager, or his/her designee, shall have the right and duty to prune, preserve or remove any tree or other plant existing upon any public place when such tree, or part thereof, is so infected with any injury, fungus, insect or other plant pathogens or when such tree, or part thereof, constitutes an interference with travel. The City Manager, or his/her designee, shall be authorized to take such measures with regard to such trees or plants as he or she deems necessary to preserve the function and preserve or enhance the beauty of such public place.

The City Manager, or his/her designee, shall have the authority and it shall be his/her duty to order the pruning, preservation or removal of trees upon private property when such trees meet the definition of a "Hazardous Tree" as defined within this Article, are an obstruction as set forth in Section 917.18 of this Article, or have a root system that is damaging infrastructure, such as sidewalks or streets within a public place.

#### 917.07 APPEALS

Any action of the City staff pertaining to the directives of this Article may be appealed to the City Manager. The appeal shall clearly specify the reasons for which a hearing is being requested. The City Manager's action shall be final unless appealed to the City Council. To be effective, an appeal to the City Council must be in writing, state reasons for the appeal, and must be filed with the City Clerk within 10 days after notice of the

decision by the City Manager is mailed to the applicant. The decision of the City Council shall be final.

#### 917.08 COMMON MORGANTOWN TREES: SPECIES AND VARIETIES

The City Manager, or his/her designee, in consultation with the Municipal Tree Board shall develop and maintain a list of undesirable trees. This list shall provide guidance for planting within municipal public property and rights of way. All trees planted within public rights-of-way must be a species that will not adversely affect the surrounding infrastructure such as sidewalks, curbs, street or underground utilities, including but not limited to heaving of the infrastructure by the root system.

#### 917.09 PLANTING OF TREES ON PUBLIC PLACE OR PUBLIC RIGHT-OF-WAY

Planting and maintenance of trees on a public place or within municipal public right of ways shall be performed under the supervision of the City Manager, or his/her designee, who shall be in consultation with the City department having jurisdiction over the property in question. Any tree hereafter planted on, or in a location that, as it matures will affect the safe use of such land, shall be selected, sited, planted, and maintained in accordance with the tree care specifications established by this Article.

#### 917.10 TREE REMOVAL ON PUBLIC PLACE OR PUBLIC RIGHT OF WAY

Any person removing a tree from a public place or municipal public right of way shall do so in accordance with the standards adopted in this Article. Any person or agency private or public, needing to remove a tree six inches or more in DBH from such land shall first be required to obtain permission from the City Manager or his/her designee. Permits for removal of trees of any size located in environmentally sensitive areas must be issued in writing by the City Manager, or his/her designee, with the full knowledge of the Municipal Tree Board. Such permits may be granted for one tree or for groups of trees, and shall be issued pursuant to guidelines established by the City Manager in consultation with the Municipal Tree Board. An exception to the foregoing requirement of obtaining permission shall be those instances in which City Administration has identified and needs to remove a hazardous tree from a public place.

Any person or agency removing trees which are neither hazardous trees nor trees creating a hazardous condition, by permit, which are six inches or more in DBH shall provide for the planting of new trees in approximately equal numbers of appropriate species in appropriate locations mutually agreed upon by the City Manager, or his/her designee, and the person obtaining the permit. Failure to obtain a permit when one would be required for removal of trees shall not relieve responsibility for the planting of replacement trees.

For any tree that is deemed to be a hazardous tree that is located on realty other than a public place or municipal public right of way, the City Manager, or his/her designee, shall give notice to the property owner and follow procedures stated in Section 917.06

and 917.07.

#### 917.11 TREES NOT ON A PUBLIC PLACE

Trees located on land other than a public place or municipal public right of way are the property and responsibility of the owner of such land. Yet such trees have public usefulness, and value in energy conservation; in moderating extremes in temperature and humidity; in moderating storm water runoff; in reducing noise, glare and air pollution; in reducing soil erosion; in traffic calming; and in improving the City's aesthetic character. To encourage the conservation of this resource, the City Manager with the assistance of the Municipal Tree Board, is empowered to take the following measures:

- (a) Provide information and technical referral service to landowners, developers, builders, and other interested parties, including persons and private and public agencies, in protecting trees during planting and construction;
- (b) Provide leadership for Arbor Day observances and other public education efforts as stated in Section 917.03.

The City wishes to encourage and promote the planting of street trees to provide shade within the City; however public right of way space is limited and not always adequate for growing shade trees. Space on private land adjoining the right of way is often adequate for such planting of shade trees by the City, and the use of such space would ensure that many streets and neighborhoods that would otherwise be excluded from a municipal tree planting program would be included. The planting of shade trees by the City on private property adjoining the right-of-way would produce significant public benefits by providing a healthy and attractive tree canopy along City Streets, and also serve to encourage property owners to plant suitable shade trees in a similar manner on their property.

For these reasons the City Manager, or his/her designee, is hereby authorized to contract with such property owners utilizing a "Greenspace Planting Agreement" to encourage the planting of desirable tree types in locations that will benefit all citizens of the City. This Agreement shall delineate the conditions to which both the City and the property owner agree, the continuing authority of this Article, the responsibility of the property owner for the trees except as modified by the Agreement, the duration of the Agreement, a sketch of the planting site, showing all existing utilities (both above and below ground) and the statement of full authority on the part of the property owner with respect to the above planting location.

#### 917.12 EXCEPTIONAL TREES AND THE CITY TREE REGISTER

The City Manager, or his/her designee, shall maintain a City Tree Register of exceptional trees located on public and private property. Recognition of exceptional trees shall be given by certificate awarded to the property owner and by listing the tree

on the municipal web site. A private property owner must request in writing that his/her tree be listed on the City Tree Register as an exceptional tree and must agree in writing, prior to such designation that he/she will have included in his/her deed for the realty a restrictive covenant binding all successor owners of the realty to the requirements of this Article as it pertains to the exceptional tree in question.

Exceptional trees listed on the City Tree Register and which are on a public place within a public right of way (street or alley), or on private property may only be removed following notification of the City Manager or his/her designee and the Municipal Tree Board, unless it is deemed a hazardous tree or is creating a hazardous condition. Removal of exceptional trees shall be generally prohibited in environmentally sensitive areas unless the trees are determined by the City Manager or his/her designee to be in an irreversibly hazardous condition.

The City Manager, or his/her designee, in communication with the Tree Board shall maintain Specifications for Street Tree Planting.

### 917.13 TREE PROTECTION AND MITIGATION

Injury to trees is prohibited in that no person shall, without the consent of the owner in the case of a tree , or without a written permit from the City Manager or his/her designee, in the case of a public tree , do, or cause to be done by others, any of the following acts:

- (a) Secure, fasten or run any rope, wire, sign or other device or material to, around or through a tree;
- (b) Break, injure, mutilate, deface, kill or destroy or permit any fire to burn where it will injure any tree;
- (c) Permit any toxic chemical, gas, smoke, brine, oil or other injurious substance to seep, drain or be emptied upon or about any tree or shrub;
- (d) Set fire or permit fire to burn when such fire or the heat of such will injure any portion of any tree;
- (e) Excavate any ditch, tunnel or trench, or lay any drive within a distance ratio of one foot per inch of girth at DBH, to the extent practical, from the center of any tree.
- (f) Erect, alter, repair or raze any building or structure without placing suitable guards around all nearby trees as recommended in ANSI Tree Protection During Construction Standards;
- (g) Remove any guard, stake or other device or material intended for the protection of any public tree or close or obstruct any open space

about the base of a public tree or shrub designed to permit access to air, or water or fertilizer.

In order to maintain the overall community forest, reasonable efforts shall be made to replace trees that are removed and to protect desirable trees that are endangered.

A tree six inches or more in DBH removed from public places by decision of the City Manager, or his/her designee, the Public Works Department or the Board of Parks and Recreation Commissioners shall be replaced somewhere in the community forest on a one-for-one basis within one year. The plan for location and species of any replacement shall be reviewed by the City Manager, or his/her designee, and the Tree Board.

Trees of desirable species and good health shall be protected as much as possible from damage during construction, sidewalk repair, utilities work above and below ground, and other similar activities

Training may be offered to City departments to assist City personnel in utilizing protective arboricultural techniques.

#### 917.14 PRUNING STANDARDS

All tree pruning on public property shall conform to the ANSI A300 standards for tree care operations. The City Manager, or his/her designee, on a case-by-case basis, is authorized to issue waivers to specific requirements within ANSI A300, should a request for such waiver be made and the City Manager, or his/her designee, deems such waiver justified.

#### 917.15 UTILITY CLEARANCE

Tree limbs that grow within public rights of way, in which trees are routinely pruned or otherwise cut during utility maintenance operations by utility companies or companies paid by utility companies to do such work, shall be maintained by the utility company in compliance with applicable franchise agreements approved by the City. Should a franchise agreement expire, the regulations of this article shall apply to any such utility, the same as if the work were being performed by a City department. The same shall apply to all public utilities doing work within a public right of way. Each tree trimming policy of a utility company must be reviewed by the City Manager, or his/her designee, prior to any trimming by the utility company.

(A) The tree trimming policy mentioned above shall include a plan for providing the City or other landowner, tenants of abutting realty whose trees will be cut or trimmed by order of the utility, with reasonable notice which shall include:

(a) a description of the area(s) in which the right of way clearing or

- maintenance is performed;
  - (b) an approximate schedule of work;
  - (c) a description of the type(s) of work to be performed, including, but not limited to tree trimming, tree removal, brush cutting, herbicide application, growth regulation, slash disposition.
  - (d) a general description of clearances required or rights of way widths to be maintained; and
  - (e) the name and telephone number of a contact person at the utility.
- (B) In the case of right of way clearing or maintenance planned or scheduled in the normal course of operation, the utility company shall make personal contact with the City or other landowner, and owners or tenants of abutting realty whose trees will be cut or trimmed by order of the utility. In the case of abutting realty which lacks a habitable structure or contains a vacant structure, personal contact shall be replaced by a Class I legal advertisement in a newspaper of general circulation in the City of Morgantown.
- (C) In the case of right of way clearing or maintenance resulting from a sudden emergency, the utility shall issue a news release to the Morgantown media. After the sudden emergency is over and the necessary clearing is complete, the utility shall publish a notice regarding the affected properties in a Class I legal advertisement in a newspaper of general circulation in the City of Morgantown.
- (D) For purposes of this Section, "personal contact" means, that at least seven (7) business days prior to the scheduled clearing or maintenance, an attempt will be made by the utility to contact the persons by telephone or in person. Should the attempt be unsuccessful, a door hanger or similar type of written notice will be left at the residence which contains the information required by this Section. A second personal contact attempt will be made prior to the start of work. Should contact be made with a tenant, the utility shall either actually contact the owner before beginning work or publish a legal advertisement as set forth in Section (B) and (C) above.
- (E) Upon receiving notice of such work to be performed by the utility, the City of Morgantown will notify existing neighborhood associations within the affected area, of the same.
- (F) All tree removal on public land or within public rights of way shall follow City tree removal standards set forth in Section 917.10 of this Article.
- (G) All tree pruning and maintenance shall be subject to the requirements set forth in

Sections 917.14 of this Article.

- (H) Utility maintenance that requires digging or trenching near trees shall provide protection of the Critical Root Zone. Open trenching in the root zone of a tree is to be avoided when practical except when the trenching falls outside the Critical Root Zone.
- (I) All trees located where there is insufficient space to bypass the Critical Root Zone must be augured if practical. Auguring activity shall not occur on more than one side of the tree and shall follow distance and depth requirements outlined in the ANSI tree care specifications manual.
- (J) If auguring is not practical or the Critical Root Zone is damaged, the Utility shall remove the existing tree and replace the tree. The location and type of tree to be determined by the City Manager, or his/her designated representative.

#### 917.16 TOPPING

No person, commercial firm or City department shall, as a normal practice, top any street tree, park tree, or other tree located on public property. Crown reduction by a qualified arborist may be substituted where appropriate. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this ordinance at the determination of the City Manager.

#### 917.17 HAZARDOUS TREES

Any hazardous tree, as defined by this Article, insofar as it affects the public health, comfort, safety and welfare is hereby declared a public nuisance dangerous to life and limb.

#### 917.18 OBSTRUCTION

It shall be the duty of any person or persons owning or occupying real property bordering on any street upon which there may be trees to prune trees in a manner that they will not obstruct or shade street lights, obstruct the passage of pedestrians on sidewalks, obstruct vision of street signs, or obstruct view of street or alley intersection or obstruct the view of the operator of any motor vehicle with regard to other vehicles, traffic sign or signals, or pedestrians along the street. The minimum clearance for any overhanging portion thereof shall be 8 feet over sidewalks and 13 feet over all streets.

Any hedge, tree shrub, other growth, situated at the intersection of two or more streets, alleys, or driveways in the City is hereby declared to be a public nuisance to the extent that such hedge, tree, shrub, other growth or fencing obstructs the view of the operator of any motor vehicle with regard to other vehicles, traffic signs or signals, or pedestrians approaching or crossing such intersection.

No hedge, tree shrub, other growth, located adjacent to a road surface shall obstruct the clear and complete vision of the operator of any motor vehicle in regard to other vehicles, traffic signs and signals, or pedestrians within the public right of way.

#### 917.19 DISEASE OR INSECT INFECTED TREE:

In those cases in which a tree is determined to be so severely insect or disease infected that it is a threat to the Community Forest, the City Manager, or his/her designee, shall have the authority to seek judicial relief, if necessary, to eliminate the threat.

#### 917.20 WRITTEN ORDER TO PRUNE, PRESERVE, REMOVE TREE OR WOODY PLANT

When the City Manager, or his/her designee, shall find it necessary to order the pruning, preservation or removal of trees or plants upon private property as authorized in Section 917.06, he/she shall serve a written order to correct the dangerous condition upon the owner, operator, occupant, or other person responsible for its existence. This order shall be served in one of the following ways:

- (a) By making personal delivery;
- (b) Sent by certified or first class mail addressed to the last known address; or
- (c) If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the property to which the notice applies.

The order required herein shall set forth a time limit of no less than 30 days for compliance, dependent upon the hazard and danger created by the violation. In cases of extreme danger to person or public property, the City Manager, or his/her designee, shall have the authority to require compliance immediately upon service of this order.

#### 917.21 ORDER TO CORRECT A HAZARDOUS CONDITION

A person to whom an order hereunder is directed shall have the right, within twenty-four hours of service of such order, to appeal to the City Manager, who shall review such order within seven days and file his/her decision thereon. Unless the order is revoked or modified, it shall remain in full force and be obeyed by the person to whom it is directed.

A person to whom such order is directed must comply with such order within 10 days after an appeal shall have been determined. When a person to whom an order is directed fails to comply within the specified time period, the City Manager, or his/her

designee, may take such steps as he/she finds necessary to remedy the condition, including judicial relief from the Circuit Court of Monongalia County.

Any person failing to obey an order given by the City Manager, or his/her designee, pursuant to this Article shall be subject to the penalties set forth in Section 917.23 of this Article.

#### 917.22 TREE CARE OPERATORS

All persons, firms, or corporations engaged in commercial tree care operations are required to comply with all applicable federal, state, and City of Morgantown rules and regulations that govern such operations.

#### 917.23 PENALTY

Any person who neglects or refuses to comply with, or assists in the violation of, any of the provisions of this Article, or order, permit or notice issued pursuant thereto, shall be fined not more than \$500 for each such violation. Each day any such violation continues shall constitute a separate offense, and in those cases where the violation involves the removal or damage of a tree, each such removal or damaged tree shall also constitute a separate offense.

#### 917.24 DAMAGE AND COST OF REPLACEMENT

Any person who causes a tree to be removed or damaged within a municipal public right-of-way or upon realty owned by the municipality or realty owned by a board, commission, or authority of the municipality, in violation of this Article, or any order, permit, or notice issued pursuant thereto, shall repair or replace any such tree at the violator's sole cost and expense. The cost of replacement shall be determined by the City Manager.

#### 917.25 ENFORCEMENT

The City Manager or his/her designee is hereby charged with the responsibility for the enforcement of this Article and he/she may serve notice to any person in violation thereof or institute legal proceedings as may be required.

#### 917.26 SEVERABILITY

Should any part or provision of this Article be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the Article as a whole or any part thereof other than the part held to be invalid.

This ordinance shall be effective upon date of adoption.

FIRST READING:

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Mayor

ADOPTED:

FILED:

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City Clerk

RECORDED:

## MEMORANDUM

TO: City Council  
Terrence Moore, City Manager

FROM: Timothy L. Ball, General Manager, MUB

DATE: November 11, 2011

SUBJECT: **STORMWATER ORDINANCE - UPDATES  
COUNCIL MEETING INFORMATION  
November 15, 2011**

This will serve as a read ahead to help you prepare for the meeting. If you have any questions please contact me prior to the meeting on Tuesday evening.

The proposed updates to the Stormwater Ordinance (Article 929 of the City Code) will accomplish several important improvements:

- a. Requiring stormwater controls as the first step for any site that is graded or excavated. Current regulations do not empower our full authority until development (requiring a building permit) is begun. We need to fill this gap. We will do so by clarifying the coordination of permits issued by MUB and the City. MUB will create a new Erosion and Sediment Permit, which will apply even if stormwater detention requirements are not triggered.
- b. Providing financial penalties (fines) for violations. The current Ordinance does not include penalties. The update will classify violations as a criminal misdemeanor, punishable by a fine of to \$500, to be administered by the Municipal Court.
- c. Defining streams and rivers as part of the stormwater system. This clarification will help further justify use of stormwater funds for purposes directly related to improvements of streams and rivers. The Richard Mine project is a prime example.
- d. Setting new rates in order to generate new revenues to support debt service for the Sabraton Stormwater Project. The project will cost \$2.6 million, and will be financed using a 30 year municipal bond (to be repaid from stormwater revenues). This will require an 11% increase in stormwater rates, effective April 1, 2012.

Several Council members have asked if improvements are needed in other areas of the stormwater system, and whether they should be included in the currently proposed Sabraton project. We are happy to address those concerns:

- i. There will always be additional areas that could be included in any project scope under consideration, but we believe it is most prudent to proceed with the Sabraton project as it has been defined. The inclusion of other areas would, without question, delay implementation of improvements in Sabraton. The delay could be as much as a year, or more, and we believe that such delay must be prevented.
- ii. There are two areas that would be included in an expanded project scope if we were to do so. The first is Poponoe Run, upstream of Willowdale, parallel to Randolph Rd, toward Meadowbrook and Stewartstown Rd. The second is a tributary of Poponoe Run, from Willowdale, along Chateau Royale, through Acorn Village and Tanglewood. Each of these areas need significant stormwater improvements, but the solution alternatives and preliminary plans are not sufficiently developed to allow inclusion in the current Sabraton project.
- iii. Our current plan for these other future projects is to fund them from our (existing) annual capital improvement budget. This may or may not require phased construction spread out over several years (we won't know that until solutions, scope, and budget are defined). Another possibility is that we may be able to do some part them with any surplus funds that might remain upon completion of the currently proposed Sabraton project.
- iv. The last alternative would be that we may need a separate bond issue to finance the future projects. That is not expected to be necessary, but if it were to be the case, we would hope to wait at least two years before proposing the new borrowing and any related rate increase. Such scheduling would conform to the guidance recently provided to us by Council that we should pursue smaller and more frequent increases.

I will personally not be available attend the Council meeting on November 15, but I will be happy to provide any further explanation that you may desire by phone or email.

Assistant General Manager / Chief Engineer Doug Smith will attend the Council meeting on November 15, and will be able to address any questions at that time.

**AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTIONS 929.01, 929.03, 929.05, 929.06, 929.10, 929.13, 929.19, 929.20, AND 929.22 OF ITS STREETS, UTILITIES AND PUBLIC SERVICES CODE, AS THE SAME APPLIES TO STORMWATER MANAGEMENT AND SURFACE WATER DISCHARGE CONTROL.**

The City of Morgantown hereby ordains that Article 929 of its Streets, Utilities and Public Services Code is amended as follows (new matter underlined, deleted matter struck through):

**929.01 Definitions:**

Unless the context specifically indicates otherwise, the meaning of the terms used herein shall be as follows:

- (a) "Best Management Practices (BMPs)" are physical, structural and/or managerial practices that, when used singly or in combination, control site run-off, spillage and leaks, waste disposal and drainage from raw material storage and prevent or reduce the discharge of pollutants directly or indirectly to waters of the State. BMPs may include schedules of activities, prohibition of practices, design standards, educational activities and treatment requirements.
- (b) "City watershed" are those areas within the corporate limits of the City of Morgantown, and designated areas outside of those limits, over which surface water naturally drains into the City. Designation of areas outside of the corporate limits of the City of Morgantown shall be made by the Director.
- (c) "Director" is the General Manager of the Morgantown Utility Board, or his/her designee.
- (d) "Facility" for purposes of Section ~~929.18~~ 929.16 of this Article is a building, structure, installation or ~~construction~~ site in which pollutants are or may be produced and/or generated as a result of any activity, a process or processes, conducted within the building, structure ~~or installation, , installation, or site.~~
- (e) "Flat rate charge" is the charge applicable to a single-family dwelling per dwelling unit.
- (f) "Footing drain" is a pipe or conduit which is placed around the perimeter of a building foundation or other structures for the purpose of admitting ground water.
- (g) "Illicit connection" means any physical connection to a publicly maintained storm drain system which has not been authorized by the Morgantown Utility Board from the date of enactment of this article.
- (h) "Illicit discharge" means any discharge to a storm drain or into the stormwater collection system that is not composed entirely of stormwater, except discharges pursuant to a NPDES permit, discharges resulting from firefighting activities, and other discharges exempted in this article.
- (i) "Impervious area" is land area covered by buildings, pavement, gravel or other material that significantly inhibits stormwater from penetrating the ~~soil~~ earth. Unvegetated clay or clay-like soil surfaces shall be considered impervious for the purposes of this article.

(j) "Industrial sites" are those sites that contain industrial activities which require NPDES stormwater permits as set forth in 40 CFR 122.26(a)(6).

(k) "Multi-unit property" is a residential, non-residential or commercial property of any size that has located upon the property two or more tenants, at least one of which having no ownership interest in the property.

(l) "New Development" is any construction activity upon undisturbed/undeveloped land.

(m) "Non-stormwater" is all flows to the stormwater system not defined as stormwater in Section 929.01 of this article or as determined by the Director. This includes, but is not limited to, cooling water, process water, ground water from a purge well and swimming pool discharge.

(n) "Pervious area" is all land area that is not impervious.

(o) "Pollutant" means objects including, but not limited to, dredged soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, grease, petroleum products, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, dirt, industrial, municipal and agricultural waste, gasses entrained in water, paints, oil and other automotive fluids, soil, rubbish, debris, materials containing fecal coliform, fecal streptococcus, and enterococcus, heavy metals, hazardous wastes, yard waste from commercial landscaping operations, animal waste, materials that result from the process of building, and offensive matter of any kind, which, when discharged to water, cause or contribute to water pollution.

(p) "Pollution" is the degradation of the physical, thermal, chemical, biological or radioactive properties of the waters of the State and/or the discharge of any pollutant to the waters of the State which will or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare or to the beneficial use of the water and/or the water environment.

(q) "Re-Development" is any reconstruction of or modification to the impervious area of an existing property that requires or would require a ~~building permit~~ Stormwater Erosion and Sediment Permit and/or a Stormwater Management and Comprehensive Drainage Permit under existing ordinance.

(r) "Stormwater" is atmospheric precipitation, surface runoff water, ground water discharge, water from operation of the water distribution system, water used in fire fighting, runoff from street sweeping, flows from footing drains and all other discharge sources identified in the City of Morgantown stormwater NPDES permit, except as may be defined as non-stormwater by this article.

(s) "Stormwater management" is the process of collection, conveyance, storage, treatment and disposal of stormwater to ensure control of the magnitude and frequency of runoff to minimize the impact of the runoff upon the water quality of the receiving stream and the other hazards associated with flooding.

(t) "Stormwater service charge" is a flat rate charge, a charge based on land area, and/or a non-stormwater user charge.

(u) "Stormwater permit" is a generic term which refers to either, or both, the Stormwater Erosion and Sediment Permit and/or the Stormwater Management and Comprehensive Drainage Permit, whichever is applicable given the context of the reference. These specific permits are described in detail in sections 929.13 and 929.20, respectively.

(uv) "Stormwater system" is public and private stormwater sewers, drains, ditches, streets, retention/detention ponds, dams, river impoundments and flood control facilities used for collecting and transporting stormwater and non-stormwater. includes all facilities, structures and natural water courses used for collecting and conducting stormwater to, through and from drainage areas to points of final outlet including, but not limited to, any and all of the following: Inlets, conduits, outlets, channels, ponds, drainage easements, water quality facilities, catch basins, streams, creeks, rivers, ditches, gulches, flumes, culverts, siphons, retention or detention basins, dams, floodwalls, pipes, flood control systems, levies and pumping stations. As applied in this Article, "stormwater system" does not include highways, roads and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways.

(vw) "User" is a firm, person or property which is the legal owner or occupant of a property that directly or indirectly contributes stormwater or non-stormwater flows to the stormwater system, whether within or outside the corporate limits of the City of Morgantown.

#### **929.02 General:**

(a) This article has been enacted to protect and enhance the water quality of our watercourses, water bodies, groundwater and wetlands in a manner pursuant to and consistent with the Clean Water Act and associated federal and state stormwater regulations.

(b) The intent of this article is:

- (1) To control non-stormwater discharges to storm drain systems.
- (2) To reduce pollutants in stormwater discharges.
- (3) To control stormwater runoff by providing design, construction and maintenance criteria for permanent and temporary stormwater facilities.
- (4) To maintain and improve the stormwater collection system in order to protect and improve water quality in the receiving streams and to reduce or eliminate local flooding resulting from stormwater accumulation.
- (5) To fully comply with federal and state statutory and regulatory requirements and schedules regarding stormwater management and the water quality of the receiving streams.

#### **929.03 Stormwater Service Charges:**

(a) Users connected to or draining into the public ~~storm drainage~~ stormwater system shall pay an equitable share of the actual cost of the operation, maintenance of, improvements to, and necessary additions to the stormwater system. Therefore, all owners or tenants of real property in the City of Morgantown and the City watershed shall be charged for the use of the stormwater system based on the amount of stormwater and rate of flow of stormwater which is projected to discharge into the stormwater system from the property.

(b) The City Council shall, by ordinance, set fees which will recover from users their fair share of costs for use of the stormwater system by property within and outside the corporate limits of the City of Morgantown and within the City watershed. Such fees will be for the operation and maintenance of, improvements to, and necessary additions to, the stormwater system.

#### **929.04 Property Affected:**

Except as provided in this Article, all real property shall be subject to the stormwater service charges regardless of whether privately or publicly owned.

#### **929.05 Flat Rate Charges:**

The monthly service charge for users occupying a single-family residential dwelling, as defined by the Director, shall be ~~three dollars and sixty three cents (\$3.63)~~ five dollars and thirty cents (\$5.30). After ~~October 1, 2008~~, April 1, 2012, the monthly service charge for a single-family residential dwelling shall be ~~five dollars and thirty cents (\$5.30)~~ five dollars and eighty eight cents (\$5.88). The City Council may, from time to time, by ordinance, change these service charges.

#### **929.06 Charges Based on Land Area:**

The monthly service charge for properties other than described in Section 929.05 shall be computed in the following manner: ~~one dollar and forty five cents (\$1.45)~~ two dollars and twelve cents (\$2.12) per 1,000 square feet of impervious area upon the property, as determined by the Director. After ~~October 1, 2008~~, April 1, 2012, the monthly service charge for properties other than described in section 929.05 shall be computed in the following manner: ~~two dollars and twelve cents (\$2.12)~~ two dollars and thirty five cents (\$2.35) per 1,000 square feet of impervious area upon the property, as determined by the Director.

Service charges for a multi-unit property shall be billed to each individual tenant upon the property in a fair and proportionate share of the total property service charge, if said tenant has an individual drinking water service meter. At the discretion of the property owner, or if the individual tenants do not have individual drinking water service meters, service charges for a multi-unit property may be billed to the property owner. A property owner exercising this choice must complete a written agreement as required by the Director.

The Director shall assign discount credits to those newly constructed properties employing volumetric flow reduction facilities. The Director may further assign discount credits to those existing properties employing rate of flow reduction practices. Such credits shall be provided only for additional volumetric flow reductions achieved voluntarily above and beyond the levels otherwise required by this Article.

The City Council may, from time to time, by ordinance, change these rate charges.

### **929.07 Billing:**

The billing for stormwater service may be combined with the billing for other utility services provided by the Morgantown Utility Board.

### **929.08 Collection:**

Unpaid stormwater service charges shall constitute just cause for disconnection of public water service to the non-paying property. The Director shall ensure sufficient notice of disconnection is issued no later than thirty (30) days prior to the scheduled disconnection, and that notice of disconnection is posted on the affected property no later than five (5) days prior to the scheduled disconnection. Water service shall be reactivated only upon full payment of the stormwater service charges or other payment arrangements approved by the Director. In the alternative, the Director may take appropriate legal action to collect unpaid charges.

### **929.09 Use of Funds:**

All funds collected for stormwater service shall be accounted for separately and shall be used solely for the construction, operation and maintenance of the stormwater system.

### **929.10 General Requirements and Prohibitions:**

(a) The use of the stormwater collection system shall be the collection and transportation of stormwater.

(b) No person shall place or cause to be placed any pollutant into the stormwater system other than stormwater, unless written approval has been granted by the Director. The Director may refuse to grant approval to discharge non-stormwater into the stormwater system for any reason or combination of reasons.

(c) The Morgantown Utility Board shall administer use of the stormwater system to all users within the City watershed, whether located within or outside City limits.

(d) No person shall cause or permit the introduction of any pollutant into the stormwater system, whether solid, liquid or gaseous, that will cause:

- (1) Chemical reaction, either directly or indirectly with the materials of construction used in the stormwater system or that will impair the strength or durability of sewers or structures;
- (2) Mechanical action that will destroy or damage sewers or structures;
- (3) Restriction of the normal maintenance and inspection of sewers;
- (4) Danger to public health and safety or to the environment;
- (5) Conditions that create a public nuisance;
- (6) An oil sheen or unusual color;

(7) Abnormal demand on the stormwater system capacity; ~~or,~~

(8) An adverse effect upon the function of the stormwater system; or,

~~(8 9)~~ The stormwater system to violate its NPDES permit or applicable receiving water standards and all other Federal, State, and local regulations.

(e) Any person or entity engaged in activities which will or may result in pollutants entering the storm drain system shall undertake best management practices to reduce such pollutants. Examples of such activities include, but are not limited to, ownership and/or operation of facilities that may be a source of pollutants, such as paved parking lots, gasoline stations, industrial facilities, and private roads/streets.

(f) No person shall throw, deposit, leave, maintain or cause to be thrown, deposited, left or maintained any refuse, rubbish, garbage, grease, petroleum products, or other discarded or abandoned objects, articles and accumulations in or upon any street, alley, sidewalk, storm drain inlet, catch basin, conduit or other drainage structures, parking area, or upon any private or public plot of land so that the same might become a pollutant, except where the pollutant is being temporarily stored in properly contained waste receptacles or is part of a well defined compost system.

(g) No person shall cause or permit any dumpster, solid waste bin, or similar container to leak such that any pollutant is discharged into any street, alley, sidewalk, storm drain, inlet, catch basin, conduit or other drainage structure, or upon any public or private plot of land in the urban watershed.

(h) No person shall use the stormwater system for discharge from any environmental cleanup that is regulated under federal or state law unless approved by the Director. Approval by the Director must be conditioned upon the discharge meeting all criteria for discharge under this chapter. Approval conditions may provide for measures appropriate to prevent harm due to possible exfiltration into the ground adjacent to the system or failure of any pretreatment system for the discharge.

(i) No person shall alter the configuration or condition of the stormwater system, or create a configuration or condition within the stormwater system, which adversely affects the function of the stormwater system.

(j) No person shall purposefully discharge or purposefully cause the discharge of stormwater from their property without the use of an approved connection to the City stormwater system. The intent of this item is to leave natural drainage unregulated, but to regulate any change to the natural drainage caused by manmade actions. Any person found to be in violation of this prohibition shall take appropriate action, subject to the approval of the Director, to stop and to prevent such discharge.

(1) If unable to achieve compliance through their own means, such person shall apply and pay for an extension of the City stormwater system to his/her property. In such cases, the work necessary within the private property to collect

the stormwater and to connect to the City stormwater system shall be performed by and at the expense of the private party.

- (2) Any party receiving a warning Notice of Violation and/or an Order from the Director requiring correction of such conditions may appeal as provided in section 929.32.

### **929.11 Illicit Connections:**

It is prohibited to establish, use, maintain or continue illicit connections to the municipal stormwater system, or to commence or continue any illicit discharges to the municipal stormwater system.

### **929.12 Outdoor Storage Areas:**

In outdoor areas, no person shall store grease, oil or other hazardous substances in a manner that will or may result in such substances entering the stormwater system. In outdoor areas, no person shall store motor vehicles, machine parts, or other objects in a manner that may leak grease, oil, or other hazardous substances to the stormwater system. To prevent the discharge of hazardous substances to the stormwater system, the Director may require the installation of a spill containment system. Spill containment systems may consist of a system of dikes, walls, barriers, berms, or other devices as required. No person shall operate a spill containment system such that it allows incompatible liquids to mix and thereby create a hazardous condition.

### **929.13 Erosion and Sediment from Construction Sites:**

(a) Any person performing construction work in the City watershed of the City of Morgantown shall comply with the provisions of this Article and shall provide erosion and sediment controls that effectively prevent discharges of pollutants to a storm drain the stormwater system. The City Council may establish by ordinance standards and guidelines implementing BMPs designed to provide erosion and sediment control from construction sites. For the purposes of this section, construction shall mean any man-made activity which, either temporarily or permanently, disturbs, alters, creates, cuts, fills, grades, excavates, occupies, or otherwise affects the land such that soil, or any other natural non-vegetative earthen material, is exposed and/or potentially transported into the water environment through the mechanisms of erosion and sedimentation.

(b) The Director may establish standards and guidelines for implementing BMP's intended to provide erosion and sediment control for construction sites. Such standards and guidelines shall be at least as stringent as those, if any, provided by the WV Division of Environmental Protection.

(c) The following activities shall be exempt from the requirements of this section.

- (1) Residential gardens and/or flower beds of less than 1000 square feet of actual disturbed area;
- (2) Additions or modifications to existing detached single-family dwellings of a size less than 1,000 square feet of actual disturbed area; and

- (3) Activities that result in an actual disturbed area of less than 1,000 square feet. However, a phased construction project shall be measured by the size of all planned or contemplated phases. Each phase may be required to meet the requirements of this article.
- (4) Any exemption provided under this Section shall relieve only the requirement to apply for and obtain a stormwater Erosion and Sediment Permit. The activity must still be conducted in such a manner that pollution from erosion and sedimentation as a result of the activity is prevented.

(d) All construction work subject to the provisions of this article shall be required to obtain a stormwater Erosion and Sediment Permit unless exempted under the provisions of Section 929.13(c). The Director shall issue a stormwater Erosion and Sediment Permit for plans that meet the requirements of this section and any other requirements of this article.

- (1) No City grading permit shall be issued without the approval of a stormwater Erosion and Sediment Permit issued under the provisions of this article, unless the Director has issued a formal Determination stating that a stormwater Erosion and Sediment Permit is not required. Processing of the application for a stormwater Erosion and Sediment Permit shall be coordinated with other City permits as provided in Section 929.22.
- (2) No City building permit that includes work subject to the provisions of this section shall be issued without the approval of a stormwater Erosion and Sediment Permit issued under the provisions of this article, unless the Director has issued a formal Determination stating that a stormwater Erosion and Sediment Permit is not required. Processing of the application for a stormwater Erosion and Sediment Permit shall be coordinated with other City permits as provided in Section 929.22.

(e) Any construction work for which a stormwater Erosion and Sediment Permit is required, shall implement the measures required by the stormwater Erosion and Sediment Permit as the first item of work to be performed, before any other aspect of the construction is begun.

- (1) In the event that unique site conditions require some other aspect of the construction to be accomplished prior to implementation of the measures required by the stormwater Erosion and Sediment Permit, the Permittee shall be required, as a condition of the Permit, to provide and maintain temporary and / or phased measures so that the intent of this section is accomplished . In such cases, site work shall be planned and prioritized so that implementation of the full measures of the Permit shall be accomplished as soon as possible.

(f) Any permit issued under the provisions of this article shall be posted at the subject site during the time that such work is being performed, in such manner and at such place on such premises as the same may be readily seen and inspected by the police officers and other agents and officials of the City. In the event that any such permit so posted shall be removed, lost or destroyed, a duplicate thereof shall immediately be applied for to the Director.

#### **929.14 Discharge of Pollutants:**

Discharges from the following activities will not be considered a source of pollutants to waters of the State when properly managed: water line flushing and other discharges from potable water sources, landscape irrigation and lawn watering, irrigation water, diverted stream flows, rising ground waters, groundwater infiltration to separate storm drains, uncontaminated pumped ground water, foundation and footing drains, roof drains, water from crawl space pumps, residential air conditioning condensation, springs, individual residential and non-profit group car washes, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges or flows from fire fighting activities and training.

**929.15 Discharge in Violation of Permit:**

Any discharge that would cause a violation of a Municipal NPDES Permit and any amendments, revisions or reissuance thereof, either separately considered or when combined with other discharges, is prohibited. Liability for any such discharge, including, but not limited to, the cost of remedial activity, shall be the responsibility of the person(s) causing or responsible for the discharge, and the City shall seek to have such persons defend, indemnify and hold harmless the City in any administrative or judicial enforcement action against the City of Morgantown and/or the Morgantown Utility Board relating to such discharge as provided by applicable rules of law.

**929.16 Notification of Spills:**

All persons in charge of a facility or responsible for emergency response for a facility are responsible to train facility personnel, maintain records of such training and maintain notification procedures to assure that immediate notification is provided to the Director upon becoming aware of any suspected, confirmed or unconfirmed release of material, pollutants or waste creating a risk of discharge into the municipal stormwater system or into a receiving stream.

**929.17 Construction:**

(a) Only designated Morgantown Utility Board employees or parties authorized by the Director may perform construction upon the public facilities of the stormwater system. Public facilities of the system shall include:

- (1) Those facilities that serve two or more properties, including, but not limited to, main pipelines that collect and transmit stormwater from and/or across two or more properties; and,
- (2) All taps or other connections from a private lateral to a public facility of the system.

(b) All public costs and expenses of and incidental to the installation of private stormwater facilities, connections to public facilities, and installation of public facilities to facilitate and convey flows from a specific private facility shall be borne by the owner(s) of the private facility. Payment terms for these costs and expenses shall be designated by the Director.

(c) Parties authorized by the Director to perform construction of or upon the public facilities of the stormwater system shall comply with the design and construction standards promulgated by the Director. These parties shall allow for inspection of the construction by the Director at all

times, and construction shall only occur during normal working hours of the Utility Board. No facility constructed by an authorized party may be covered or connected to a public facility without specific authorization of the Director. This authority shall be granted by the Director upon satisfaction of the announced design and construction standards.

(d) All public facilities shall, upon authorized completion, be property of the City of Morgantown.

(e) A party authorized by the Director to perform construction upon the public facilities of the stormwater system shall meet the following requirements prior to and throughout construction:

- (1) Compliance with all relevant Federal and State labor, employment and environmental laws; and,
- (2) Compliance with all relevant and applicable state laws regarding government construction contracts, including, but not limited to, WV Code §§ 5-22-1, et seq. And 21-5A-1, et seq.; and,
- (3) Full and active policy coverage as certified by the West Virginia Bureau of Employment Programs, Workers' Compensation Division; and,
- (4) Contractor's liability insurance, issued by an insurance company with a Best's rating of no less than "A" and certified to the satisfaction of the Director, which may include commercial general, automobile, umbrella and builders risk policies, naming the City of Morgantown and the Morgantown Utility Board as additional insureds. Policies and coverage limits and terms required shall be appropriate to the subject construction and shall be designated by the Director; and,
- (5) A construction bond, issued by an insurance company with a Best's rating of no less than "A" and certified to the satisfaction of the Director, equal to the estimated cost of the construction and for a term equal to the duration of the construction project. At the discretion of the Director, a bonded party may provide a cumulative general construction bond in satisfaction of this requirement; and,
- (6) A repair bond, issued by an insurance company with a Best's rating of no less than "A" and certified to the satisfaction of the Director, in an amount no more than the reasonable estimate of repair costs, as determined by the Director, and for a term of no longer than five years, beginning on the date of substantial project completion. At the discretion of the Director, a bonded party may provide a cumulative general construction bond in satisfaction of this requirement; and,
- (7) Certification of full compliance with all relevant state and local permits and tax rules and regulations, certification of appropriate property rights to perform the construction, and conveyance to the City of Morgantown of appropriate property rights for the completed public facilities.

- (8) Nothing in subsections (e) (2),(3),(4),(5) and (6) hereof shall apply to any situation where the Director shall come to an agreement with volunteer or a volunteer group doing work for a qualified not-for-profit entity, whereby the Director will provide engineering, technical or other services and the volunteers will provide the necessary labor without charge to, or liability upon, the City of Morgantown or the Morgantown Utility Board. The not-for-profit entity shall be responsible for all costs to the utility associated with such a project.

**929.18 Stormwater Taps:**

(a) The Director or a party authorized by the Director will furnish and install stormwater system taps of the size and at the location requested in writing by an applicant upon a form to be provided by the Director. The applicant shall pay the full cost of the tap installation.

(b) The Director may deny a tap application when the requested tap is proposed to an inadequate public facility.

**929.19 Enforcement:**

(a) No person shall cause or allow any discharge into the municipal separate storm sewer system in violation of the City's NPDES permit, the Clean Water Act and/or this Article.

~~(a)~~ No person shall construct or maintain any property, residence or business not in compliance with the standards of this article.

~~(b)~~ The Director and other authorized employees of the City bearing proper credentials and identification shall be permitted, after reasonable notice, to enter upon all properties in the City watershed for the purposes of inspection, observation, measurement, sampling and testing in accordance with the provisions of this article.

~~(c)~~ No person or firm shall fail to provide any report or other information or perform any duty required by this article.

~~(d)~~ The Director is authorized to take appropriate legal action to require compliance with this article.

~~(e)~~ The Director is authorized to take appropriate legal action to enforce and collect upon the terms of a construction and/or repair bond in the event of default of the conditions described therein.

~~(f)~~ The Director is authorized to issue warning notices of violations for any conditions found to violate the requirements provided in this Article. A warning notice of a violation of this Article shall be served upon the alleged violator by personal delivery or by certified mail, return receipt requested. The warning notice shall state the nature of the violation, the potential penalty, the action required to correct the violation, and a time limit for making the correction.

~~(g)~~ Violations of this article shall be a criminal misdemeanor, subject to criminal citation and punishable by a fine of up to Five Hundred Dollars (\$500). Each and every day or portion thereof that a person or entity fails or refuses to remedy a violation shall be considered a separate

offense. Citations may be issued against any person or firm who has violated or continues to violate any section of this Article or any of the following:

- (1) Failing to comply with a valid order issued under this Article; and/or
- (2) Failing to allow entry, inspection or monitoring; and/or
- (3) Violation of reporting requirements or falsification of reports.

~~(f)~~ If, after reasonable warning notice, a person fails to comply with this article within the time limit included in the notice, the Director may cause the work to be done to obtain compliance and shall charge the cost of that work to the person responsible. The responsible person shall pay in full the charged amount within thirty (30) days of the invoice date, or otherwise make arrangements, acceptable to the Director, for full payment of the invoiced amount. seek issuance of a criminal citation by appropriate law enforcement authorities.

~~(g)~~ In addition to any other remedy, the Director, after thirty (30) calendar days written notice and five (5) calendar days notice posted on the affected property, is authorized to disconnect water service, sanitary sewer and stormwater sewer services to any property in violation of this article. The notice shall state that persons affected may within five (5) calendar days provide the Director with any information or reasons as to why services should not be disconnected.

~~(h)~~ The Director is authorized to take all steps necessary to immediately and without notice halt any discharge of pollutants which reasonably appear to present an imminent danger to the health or welfare of persons or to the environment of the City watershed. A person or entity causing such discharge shall immediately eliminate the violation. If such person or entity fails to immediately eliminate the violation, the Director may take all steps necessary to eliminate the discharge.

~~(i)~~ When the Director finds that a person or entity has violated or continues to violate any section of this Article, the Director may petition a court of competent jurisdiction for the issuance of a permanent or temporary injunction, as appropriate, which restrains or compels specific compliance with this Article. The Director may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement that the person or entity conduct an environmental remediation. A petition for injunctive relief shall not be a bar against or a prerequisite for taking any other action against the person or entity. The Director may recover from a violator reasonable attorney's fees, court costs and other expenses associated with the enforcement of this Article, as well as the cost of actual damages incurred by the City.

~~(j)~~ Persons aggrieved by any determination of the Director in enforcing this Article may appeal that determination to the Morgantown Utility Board, or a court of proper jurisdiction. Prosecution shall be stayed pending such an appeal.

## **929.20 Stormwater Management and Comprehensive Drainage Plans:**

(a) The requirements and standards of this section shall apply to all new developments and redevelopment projects. The intent of these regulations is to minimize the discharge and transport of pollutants to storm drain systems and prevent the deterioration of water quality.

(b) All new developments and redevelopment projects within the City watershed shall include stormwater management plans and comprehensive drainage plans as described in this section. These plans shall be subject to the review and approval of the Director.

(c) The following activities shall be exempt from the requirements of this section, except that no activity shall be exempt from the management of the discharge of sediment or any other form of water pollution that may leave any parcel or site.

- (1) Agricultural land management activities;
- (2) Additions or modifications to existing detached single-family dwellings of a size less than 1,000 square feet; and
- (3) Activities that result in impervious surface area of less than 3,000 square feet, regardless of the ratio of impervious surface area to total site area. However, a phased construction project shall be measured by the size of all planned or contemplated phases. Each phase may be required to meet the requirements of this article.

(d) All new development and redevelopment subject to the provisions of this article shall be required to obtain a stormwater Management and Comprehensive Drainage Permit ~~permit~~ unless exempted under the provisions of Section 929.20(c). The Director shall issue a stormwater Management and Comprehensive Drainage Permit ~~management permit~~ for plans that meet the requirements of this section and any other requirements of this article. No City grading permit, or building permit which includes work subject to the provisions of this section, shall be issued without the submission approval of a stormwater Management and Comprehensive Drainage Permit ~~permit~~ issued under the provisions of this article, unless the Director has issued a formal Determination stating that a stormwater Management and Comprehensive Drainage Permit is not required. Processing of the application for a stormwater Management and Comprehensive Drainage Permit shall be coordinated with other City permits as provided in Section 929.22.

- (1) Any work for which a stormwater Management and Comprehensive Drainage Permit is required, shall implement the measures required by the stormwater Management and Comprehensive Drainage Permit as the first item of work to be performed, before any other aspect of the construction is begun.
- (2) In the event that a stormwater Erosion and Sediment Permit is also required, the measures required by the Erosion and Sediment Permit shall be implemented first, and the measures required by the Management and Comprehensive Drainage Permit shall be implemented simultaneously, if possible, or immediately thereafter, so that no other aspect of the construction is begun until all stormwater permit requirements have been implemented.
- (3) In the event that unique site conditions require some other aspect of the construction to be accomplished prior to implementation of the measures required by the

stormwater Management and Comprehensive Drainage Permit, the Permittee shall be required, as a condition of the Permit, to provide and maintain temporary and / or phased measures so that the intent of this section is accomplished . In such cases, site work shall be planned and prioritized so that implementation of the full measures of the Permit shall be accomplished as soon as possible.

- (4) Any permit issued under the provisions of this article shall be posted at the subject site during the time that such work is being performed, in such manner and at such place on such premises as the same may be readily seen and inspected by the police officers and other agents and officials of the City. In the event that any such permit so posted shall be removed, lost or destroyed, a duplicate thereof shall immediately be applied for to the Director.

(e) Technical, administrative or procedural matters may be modified by the Director as needed to meet the objectives and policies defined in this article, so long as such modifications are not contrary to or beyond the intent of the objectives and policies included in this article.

(f) Uniform requirements shall be applied to each regulated project site. These requirements shall be based upon the criterion that post development stormwater peak runoff rates of flow must not exceed the pre-development peak runoff rates of flow. In redevelopment projects, a peak runoff rate of flow reduction of ten percent (10%) from the preexisting peak runoff rate of flow must be achieved. However, no reduction shall be required beyond the peak runoff rate of flow that would occur from the parcel in its natural, undeveloped state.

(g) For construction that results in impervious area of 3,000 square feet or more and less than 25,000 square feet, and if the ratio of impervious surface area to total site area is less than seventy-five percent (75%), a stormwater management and comprehensive drainage plan will be required in order to qualify for a stormwater permit. The plan shall include the following information:

(1) Descriptive Information:

A. Title block with:

1. Development name
2. Owner
3. Design firm
4. Legend
5. North arrow
6. Vicinity map
7. Scale
8. Sheet numbers
9. Date

B. Topographical features:

1. Original contours at intervals no greater than two vertical feet.
2. Existing drainage components, i.e., streams, ponds, pipes, etc.
3. Property boundary lines.
4. Existing streets, buildings, and utilities.
5. 100 year flood plain.
6. Off-site drainage entering site.

7. Original drawing no larger than 24-inch x 36-inch and at a scale from 1 inch equals 10 feet to 1 inch equals 50 feet.

C. Site plan:

1. Existing and proposed structures, roads, buildings, paved areas.
2. Existing and proposed stormwater management system and components including sizes, lengths, pertinent elevations, etc.
3. Where and how proposed stormwater management system will be connected to existing systems.
4. Location and grade of all swales including cross sections.
5. Location and design of all other Best Management Structures /Implementations.
6. Sediment and Erosion Control measures are required. Refer to the most current edition of the West Virginia Department of Environmental Protection Sediment and Erosion Control manual for acceptable means and methods.
7. Existing and proposed ground cover.
8. Total Impervious Area.
9. Control release facilities showing cross-sections and profiles.

D. Final as-built drawings:

1. Show location, length, sizes, pertinent elevations of the stormwater management system.
2. All impervious areas shall be accurately depicted.
3. Failure to provide final as-built drawings within three months of substantial project completion will cause the utility to prepare these drawings. The responsible party shall be charged for this service. The Director may extend this time as deemed necessary.

(2) Design standards:

- A. Flow rates shall be calculated by use of the Rational Method unless sufficient justification for use of another method is approved by the Director.
- B. The minimum "time of concentration" to be used in the calculations shall be six (6) minutes.
- C. ~~The ABT & Grigg Method shall be used to determine the volume necessary for detention.~~ The method for determining the volume necessary for detention may be chosen by the Applicant, but such choice shall remain subject to the approval of the Director. Detention structures shall be designed in such a manner that the post-construction peak runoff rate of flow shall be equal to or less than the pre-construction peak runoff rate of flow for 2-year/24-hour, 10-year/24-hour and 25-year/24-hour storms. In redevelopment projects, a peak runoff rate of flow reduction of 10% from the pre-existing peak runoff rate of flow must be achieved. However, no reduction shall be required beyond the peak runoff rate of flow that would occur from the parcel in its natural, undeveloped state.

D. Beginning on July 1, 2013, detention structures that have not been approved for construction shall be designed in such a manner that the post-construction peak runoff rate of flow shall be equal to or less than the pre-construction peak runoff rate of flow for 2-year/24-hour, 10-year/24-hour and 50-year/24-hour storms. In redevelopment projects, a peak runoff rate of flow reduction of 10% from the preexisting peak runoff rate of flow must be achieved. However, no reduction shall be required beyond the peak runoff rate of flow that would occur from the parcel in its natural, undeveloped state.

(3) Design Backup:

A. Calculations of volumetric runoff and peak runoff rate of flow for both pre-development and post-development.

B. Calculations for stormwater detention/retention facility and other system elements.

C. Operation and Maintenance Manual for private stormwater control facilities

(4) Sedimentation and erosion control measures are required. Refer to the most current edition of The West Virginia Department of Environmental Protection Sedimentation and Erosion Control Manual for acceptable means and methods.

(h) For construction that results in impervious area of 25,000 square feet and greater or, if the ratio of impervious surface area to total site area is greater than 75%, a Stormwater Management and Comprehensive Drainage Plan will be required in order to qualify for a stormwater permit. The plan shall include the following information:

(1) Descriptive Information:

A. Title Block With:

1. Development name
2. Owner
3. Design firm
4. Authorized registered professional engineer stamp, signature, and date.
5. Legend
6. North arrow
7. Vicinity map
8. Scale
9. Sheet numbers
10. Date
11. Revision numbers and dates

B. Topographical features

1. Original and proposed contours at intervals no greater than 2 vertical feet.
2. Existing drainage components, i.e., streams, ponds, pipes, etc.
3. Property Boundary lines.
4. Existing streets, buildings, and utilities.
5. 100 year flood plain.
6. Off-site drainage entering site.

7. Original drawing no larger than 24-inch x 36-inch and at a scale from 1-inch equals 10 feet to 1-inch equals 50 feet.

C. Site plan:

1. Existing and proposed structures, roads, buildings, paved areas.
2. Existing and proposed stormwater management system and components including sizes, lengths, pertinent elevations, etc.
3. Where and how proposed stormwater management system will be connected to existing systems.
4. Location and grade of all swales including cross sections.
5. Location and design of all other Best Management Structures/Implementations.
6. Sedimentation and Erosion Control measures are required. Refer to the most current edition of The West Virginia Department of Environmental Protection Sedimentation and Erosion Control Manual for acceptable means and methods.
7. Existing and proposed ground cover.
8. Total Impervious Area
9. Control release facilities showing cross-sections and profiles.

D. Final as-built drawings:

1. Submitted in Autocadd DXF or DWG file format
2. Show all revised contours and appropriate "spot elevations"
3. Show location, length, sizes, pertinent elevations of the stormwater management system.
4. All impervious areas shall be accurately depicted.
5. Failure to provide final as-built drawings within three months of substantial project completion will cause the utility to prepare these drawings. The responsible party shall be charged for this service. The Director may extend this time as deemed necessary.

(2) Design standards:

- A. Flow rates shall be calculated by use of the Rational Method unless sufficient justification for use of another method is approved by the Director.
- B. The minimum "time of concentration" to be used in the calculations shall be six (6) minutes.
- C. ~~The ABT & Grigg Method shall be used to determine the volume necessary for detention.~~ The method for determining the volume necessary for detention may be chosen by the Applicant, but such choice shall remain subject to the approval of the Director. Detention structures shall be designed in such a manner that the post-construction peak runoff rate of flow shall be equal to or less than the pre-construction peak runoff of flow rate for 2-year/24-hour, 10-year/24-hour and 25-year/24-hour storms. In redevelopment projects, a peak runoff reduction of 10% from the pre-existing peak runoff rate of flow must be achieved. However, no

reduction shall be required beyond the peak runoff rate of flow that would occur from the parcel in its natural, undeveloped state.

- D. Beginning on July 1, 2013, detention structures that have not been approved for construction shall be designed in such a manner that the post-construction peak runoff rate of flow shall be equal to or less than the pre-construction peak runoff rate of flow for 2-year/24-hour, 10-year/24-hour and 50-year/24-hour storms. In redevelopment projects, a peak runoff rate of flow reduction of 10% from the preexisting runoff must be achieved. However, no reduction shall be required beyond the peak runoff rate of flow that would occur from the parcel in its natural, undeveloped state.

(3) Design Backup:

- A. Calculations of volumetric runoff and peak runoff rate of flow for both pre-development and post-development.
- B. Calculations for stormwater detention/retention facility and other system elements.
- C. Operation and Maintenance Manual for private stormwater control facilities.

(4) Sedimentation and erosion control measures are required. Refer to the most current edition of The West Virginia Department of Environmental Protection Sedimentation and Erosion Control Manual for acceptable means and methods.

(i) All development and/or redevelopment projects shall minimize the impact to the water environment by applying structural and/or non-structural management practices selected to address site-specific conditions. The minimum requirement for runoff water quality treatment shall be a reduction of 80% of the average post-development total suspended solids and a reduction of 40% of the average post-development phosphorus load.

(j) No construction shall be performed in a manner that will negatively impact the water environment in the vicinity of construction or in other areas, regardless of whether this impact is manifested by flow restrictions, increased runoff, diminishing channel or floodplain storage capacity, harm to aquatic life or any other manifestation of negative impact.

(k) New construction or reconstruction shall be permitted only after temporary or permanent erosion and sediment control management practices have been placed and are operational to the satisfaction of the Director. The Director may halt construction, void a permit, or take other enforcement actions consistent with this section upon a finding of inadequate erosion and sediment control management practices upon a site or property subject to the provisions of this section.

(l) All active construction sites shall be inspected by the owner no less than weekly and within 24 hours after a 0.25 inch rain event to ensure and verify effective erosion and sediment control.

The owner shall maintain records of these inspections. The Director may halt construction on properties that do not provide satisfactory proof of compliance with this requirement.

(m) The Owner of a completed new development and/or redevelopment construction shall submit to the Director within thirty (30) days of substantial project completion an “as-built” plan of the stormwater management facilities located upon the property/site.

(n) Waivers for Providing Stormwater Management

1. Every applicant shall provide for stormwater management as required by this ordinance unless a waiver of these requirements is granted by the Director. A written request for waiver must be submitted to the Director in a form that he/she prescribes.
2. The Director may not waive the minimum requirements for stormwater management of water quality protection.
3. Any requirements beyond those described in Section 929.20(i) may be waived by the Director, if the Director finds that meeting the minimum on-site stormwater management requirements is not feasible due to the unique natural or existing physical characteristics of a site, or that the property owner would suffer an undue hardship if required to meet the full requirements of this regulation. To be eligible for a waiver, the applicant must also demonstrate to the satisfaction of the Director that the waiver will not result in any of the following impacts to downstream waterways:
  - A. Deterioration of existing culverts, bridges, dams, and other structures;
  - B. Degradation of biological functions or habitat;
  - C. Accelerated stream bank or streambed erosion; or,
  - D. Increased threat of flood damage to public health, life and/or property.
4. Where compliance with the full requirements for on-site stormwater management is waived, the applicant shall satisfy stormwater management requirements by accomplishing a mitigation measure approved by the Director. Mitigation measures may include, but are not limited to, the following:
  - A. Alternative means for on-site management of stormwater discharges that have been established in a stormwater management plan that has been approved by the Director.
  - B. The creation of appropriately designed and constructed stormwater management facility or drainage improvements on other properties, public or private, that currently lack stormwater management facilities. This alternative facility must provide a level of stormwater control that is equal to or greater than that which would be afforded by the waived on-site practices and there must be a legally obligated entity responsible for the long-term operation and maintenance of the off-site practice. The Director shall, to the maximum extent practical, ensure that the benefits arising from the off-site practice shall be realized in the same basin/watershed as the waived management practice.

- C. The purchase and donation of privately owned lands to the City or the grant of an easement to the City, to be dedicated to preservation, reforestation, and/or the creation of green space, wetlands, or permanent buffer areas to protect water quality and aquatic habitat.

Any mitigation measure shall provide a level of environmental protection and/or improvement that is, in the sole discretion of the Director, approximately equal to or greater than that which would have been provided by the waived practice.

(o) Fee in Lieu of Stormwater Management Practices.

1. Where the Director waives all or part of the minimum stormwater management requirements, and the applicant does not complete an approved mitigation project, the applicant shall be required to pay a fee in lieu of stormwater management practices, in an amount as determined by the Director. This amount shall be approximately equal to the cost of stormwater management and based on the cubic feet of storage required for stormwater management of the development in question. All of the monetary contributions shall be credited to an appropriate stormwater capital improvements program project, and shall be made by the applicant prior to the issuance of any stormwater permit for the development.

(p) Impervious areas measured for determining the requirements of this section, or for assessing compliance with the requirements of this section, shall be determined using the highest combination of proposed/constructed impervious area plus any additional proposed/actual disturbed area in excess of the proposed/constructed impervious footprint.

(q) Disturbed areas measured for determining the requirements of this section, or for assessing compliance with the requirements of this section, shall include areas for which vegetative cover has been, or will be, altered, reduced, or eliminated and for which a change in runoff characteristics may be reasonably determined.

**929.21 Stormwater Design Manual:**

(a) The Stormwater Utility may furnish additional policy, criteria and information including specifications and standards, for the proper implementation of the requirements of this article and may provide such information in the form of a Stormwater Design Manual.

(b) This manual will include a list of acceptable stormwater treatment practices, including the specific design criteria for each stormwater practice. The manual may be updated and expanded from time to time, at the discretion of the Stormwater Utility, based on improvements in engineering, science, monitoring and local maintenance experience. Stormwater treatment practices that are designed and constructed in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards.

**929.22 Plan Submission and Review Process:**

(a) The plan submission and review process shall be coordinated with and integrated into the City planning and permitting process. Following the effective date of this section, no building permit shall be issued without an approved stormwater management plan if required under this article. Persons applying to the City for a grading permit, and/or a building permit that includes work subject to the provisions of this Article, shall submit their request for stormwater Determination to the City simultaneously with the submission of their other City permit application(s). The City shall promptly forward all such requests for stormwater Determination to the Director for review and further action.

(1) Applicants may choose to submit their request for stormwater Determination directly to the Director in advance of their application for a City grading permit and/or building permit, but in such case the applicant shall include a copy of their request for stormwater Determination with their eventual submission to the City, and the City shall forward the copy of the request for stormwater Determination to the Director.

(2) Applicants for projects located outside of the municipal boundaries of the City shall submit their request for stormwater Determination directly to the Director.

(b) Upon receipt of a request for stormwater Determination, the Director shall review same and issue a formal written Determination. The Determination shall state:

(1) whether a stormwater Erosion and Sediment Permit is, or is not, required, and

(2) whether a stormwater Management and Comprehensive Drainage Permit is, or is not, required.

(c) The City shall not issue any grading permit, or any building permit that includes work subject to the provisions of this Article, unless and until the appropriate stormwater permit(s), as identified and required by the Determination, has (have) been approved and issued.

#### **929.23 Maintenance of Stormwater Facilities:**

(a) Private stormwater facilities located in private property and within the City watershed shall be maintained by the owner or other responsible party and shall be repaired and/or replaced by such person when such facilities are no longer functioning as designed.

(b) Disposal of waste from maintenance of private facilities shall be conducted in accordance with applicable federal, state and local laws and regulations.

(c) Records of installation and maintenance and repair shall be retained by the owner or other responsible party for a period of five (5) years and shall be made available to the Director upon request.

(d) The Director may perform corrective or maintenance work, which shall be at the owner's expense, upon any failure to maintain facilities or correct problems with facilities after receiving due reasonable notice from the Director.

(e) Routine maintenance of detention/retention facilities shall be conducted by the owner of the facility in accordance with this article and guidance of the Director.

#### **929.24 Inspection:**

(a) Stormwater systems within the City watershed shall be inspected by the Director during and after construction to assure consistency with the approved stormwater management plan.

(b) All stormwater systems within the City watershed shall be subject to the authority of the Director to ensure compliance with this article and may be inspected when deemed necessary.

(c) The owner of a private stormwater system, or other responsible party designated by the owner, shall make annual inspections of the facilities, including any detention/retention facility, and maintain records of such inspections for a period of five (5) years.

(d) Whenever necessary to make an inspection to enforce any of the provisions of this article, or whenever the Director has reasonable cause to believe that there exists in any building or upon any premises any condition which may constitute a violation of the provisions of this article, the Director may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed by this article; provided that:

- (1) If such building or premises is occupied, he or she first shall present proper credentials and request entry; and
- (2) If such building or premises is unoccupied, he or she first shall make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry.

(e) The property owner or occupant has the right to refuse entry but, in the event such entry is refused, the Director is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry and performing such inspection.

(f) Routine or area inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this Article, including but not limited to, random sampling and/or sampling in areas with evidence of stormwater pollution, illicit discharges, or similar factors.

#### **929.25 Sampling:**

With the consent of the owner or occupant or with Court order, the Director may establish on any property such devices as are necessary to conduct sampling or metering operations. During all inspections as provided herein, the Director may take any samples deemed necessary to aid in the pursuit of the inquiry or to record the on-site activities, provided that owners or occupants shall be entitled to split samples.

### **929.26 Testing and Monitoring:**

(a) Whenever the Director determines that any person engaged in any activity and/or owning or operating any facility may cause or contribute to stormwater pollution or illicit discharges to the stormwater system, the Director may, by written notice, order that such person undertake such monitoring activities and/or analyses and furnish such reports as the Director may require. The written notice shall be served either in person or by certified or registered mail, return receipt requested, and shall set forth the basis for such order and shall particularly describe the monitoring activities and/or analyses and reports required. The burden to be borne by the owner or operator, including costs of these activities, analyses and reports, shall bear a reasonable relationship to the need for the monitoring, analyses and reports and the benefits to be obtained. The recipient of such order shall undertake and provide the monitoring, analyses and reports within the time frames set forth in the Order.

(b) Within twenty (20) days of the date of receipt of the order notice, the recipient shall respond personally or in writing advising the Director of the recipients position with respect to the Order's requirements. Thereafter, the recipient shall be given the opportunity to meet with the Director to review the Order's requirements and revise the Order as the Director may deem necessary. Within ten (10) days of such meeting, the Director shall issue a final written order. Final Orders issued pursuant to this Section may be appealed to the Morgantown Utility Board by the filing of a written appeal with the Utility Board within ten (10) days of receipt of the final Order. The appeal notice shall set forth the particular Order requirements or issues being appealed. The Utility Board shall hear the appeal at its earliest practical date and may either affirm, revoke or modify the Order. The decision of the Utility Board shall be final, but may be subject to review by a Court of competent Jurisdiction.

(c) In the event the owner or operator of a facility or property fails to conduct the monitoring and/or analyses and furnish the reports required by the Order in the time frames set forth therein, the Director may cause such monitoring and/or analyses to occur. If a violation is found, the Director may assess all costs incurred, including reasonable administrative costs and attorney's fees, to the owner or operator. The Director may pursue judicial action to enforce the Order and recover all costs incurred.

### **929.27 Concealment:**

Causing, permitting, aiding, abetting or concealing a violation of any provision of this Article shall constitute a violation of such provision.

### **929.28 Acts Resulting in Violation of Federal Clean Water Act:**

Any person who violates any provision of this article, or who discharges waste or wastewater which causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, also may be in violation of the federal Clean Water Act and may be subject to the sanctions of that Act including civil and criminal penalties.

### **929.29 Violations Deemed a Public Nuisance:**

(a) In addition to the penalties hereinbefore provided, any condition caused or permitted to exist in violation of any of the provisions of this article shall be considered a threat to the public health, safety, welfare and the environment, may be declared and deemed a nuisance by the Director and may be summarily abated and/or restored by the Director and/or civil action taken to abate, enjoin or otherwise compel the cessation of such nuisance.

(b) The cost of such abatement and/or restoration shall be borne by the owner of the property and the cost thereof shall be a lien upon and against the property and such lien shall continue in existence until the same shall be paid.

(c) If any violation of this article constitutes a seasonal and recurrent nuisance, the Director shall so declare. Thereafter such seasonal and recurrent nuisance shall be abated every year without the necessity of any further declaration.

(d) In any administrative or civil proceeding under this article in which the City or its agent prevails, the City or its agent may be awarded all costs of investigation, administrative overhead, out-of-pocket expenses, costs of administrative hearings, costs of suit and reasonable attorneys' fees.

### **929.30 Administrative Enforcement Powers:**

(a) In addition to the other enforcement powers and remedies established by this article, the Director has the authority to utilize the following administrative remedies.

- (1) Cease and Desist Orders. When the Director finds that a discharge has taken place or is likely to take place in violation of this article, the Director may issue an order to cease and desist such discharge, or practice, or operation likely to cause such discharge and direct that those persons not complying shall:
  - A. Comply with the requirement;
  - B. Comply with a time schedule for compliance, and/or
  - C. Take appropriate remedial or preventive action to prevent the violation from recurring.
- (2) Notice to Clean. Whenever the Director finds any oil, earth dirt, grass, weeds, dead trees, tin cans, rubbish, refuse, waste or any other material of any kind, in or upon the sidewalk abutting or adjoining any parcel of land, or upon any parcel of land or grounds or in close proximity to any open drain or ditch channel, which may result in an increase in pollutants entering the storm drain system or a non-stormwater discharge to the storm drain system, he or she may give notice to the property owner remove and lawfully dispose of such material in any manner that he or she reasonably may provide. The recipient of such notice shall undertake the activities as described in the notice within the time frames set forth therein.
- (3) In the event the owner or operator of a facility fails to conduct the activities as described in the notice, the Director may cause such required activities as described in the notice to be performed, and the cost thereof shall be assessed and invoiced to the

owner of the property. If the invoice is not paid within ~~sixty (60)~~ thirty (30) days, a lien shall be placed upon and against the property.

**929.31 Nonexclusivity of Remedies:**

Remedies under this article are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

**929.32 Appeal:**

Any person, firm, corporation or organization notified of non-compliance with this article or required to perform monitoring, analyses, reporting and/or corrective activities who is aggrieved by the decision of the Director may appeal such decision in writing to the Morgantown Utility Board within ten (10) days following the effective date of the decision. Upon receipt of such request, the Utility Board shall request a report and recommendation from the Director and shall set the matter for administrative hearing at the earliest practical date. At said hearing, the Utility Board may hear additional evidence, and may revoke, affirm or modify the earlier decision. Such decision shall be final, subject to appeal to a Court of competent jurisdiction.

**929.33 Disclaimer of Liability:**

The degree of protection required by this article is considered reasonable for regulatory purposes. The standards set forth herein are minimum standards and this article does not imply that compliance will ensure that there will be no unauthorized discharge of pollutants into the waters of the State. This article shall not create liability on the part of the City, any agent or employee thereof for any damages that result from reliance on this article or any administrative decision lawfully made thereunder.

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 ARTICLE 1741 OF ITS BUILDING AND HOUSING CODE, AS THE SAME APPLIES TO GRADING PERMITS.

The City of Morgantown hereby ordains that sections 1741.01, 1741.02, 1741.03, and 1741.99 of its Building and Housing Code are amended as follows; Sections 1741.04, 1741.05, 1741.06, 1741.07, and 1741.08 of its Building and Housing Code are deleted and re-enacted as follows; and new Sections 1741.09, 1741.10, 1741.11, 1741.12, and 1741.13 are added to the Building and Housing Code as follows (new matter underlined, deleted matter struck through):

**1741.01 DEFINITIONS**

The following definitions shall apply in the interpretation and enforcement of this article:

- (a) ~~"Cut" or "excavation" means a portion of land surface or area from which earth has been removed or will be removed by excavation; the depth below original ground surface to excavated surface.~~ "As-Built" means the documentation of the conditions after construction as opposed to the designed or proposed conditions.
- (b) ~~"Erosion" means the wearing away of the land surface by action of wind, water or gravity.~~ "Clean Fill" means uncontaminated natural earthen non-organic, non-frozen material such as clay, silt, sand, gravel and rock. No rock or similar irreducible material greater than 12-inches in any dimension shall be included in fills.
- (c) ~~"Existing grade" means the vertical location of the ground surface prior to cutting or filling.~~ "Cut" or "excavation" means a portion of land surface or area from which earth has been removed or will be removed by excavation; the depth below original ground surface to excavated surface.
- (d) ~~"Fill" means a man-made deposit of soil, rock or other materials.~~ "Erosion" means the wearing away of the land surface by action of wind, water or gravity.
- (e) ~~"Finished grade" means the final grade or elevation of the ground surface conforming to the proposed design.~~ "Existing grade" means the vertical location of the ground surface prior to cutting or filling.
- (f) ~~"Grading" means any stripping, cutting, filling, stockpiling or any combination thereof and shall include the land in its cut or filled condition.~~ "Fill" means a man-made deposit of soil, rock or other clean materials.
- (g) ~~"Grading permit" means a permit issued to authorize work performed under this article.~~ "Finished grade" means the final grade or elevation of the ground surface conforming to the proposed design.
- (h) ~~"Mulching" means the application of plant or other suitable materials on the soil surface to conserve moisture, hold soil in place, and aid in establishing plant cover.~~ "Grading" means any stripping, cutting, filling, stockpiling or any combination thereof and shall include the land in its cut or filled condition.
- (i) ~~"Permittee" means any person to whom a permit is issued in accordance with the provisions of this article.~~ "Grading Permit" means a permit issued to authorize work performed under this Article.
- (j) ~~"Person" means a firm, partnership, association, body politic and corporate or any other group acting as a unit, as well as an individual.~~ "Grubbing" means to clear away surface vegetation by the removal of roots, stumps, etc.

- (k) "Sediment" means solid material, both mineral and organic, that is in suspension, is being transported, or has been moved from its site of origin, by air, water or gravity as a product of erosion. "Mulching" means the application of plant or other suitable materials on the soil surface to conserve moisture, hold soil in place, and aid in establishing plant cover.
- (l) "Slope" means the degree of deviation of a surface from horizontal usually expressed in percent or degree. "Permittee" means any person to whom a permit is issued in accordance with the provisions of this Article.
- (m) "Soil" means all unconsolidated mineral and organic material of whatever origin that overlies bedrock and which can be readily excavated. "Person" means a firm, partnership, association, body politic and corporate or any other group acting as a unit, as well as an individual.
- (n) "Site" means any plot or parcel of land or combination of contiguous lots or parcels of land where grading is performed or permitted. "Sediment" means solid material, both mineral and organic, that is in suspension, is being transported, or has been moved from its site of origin, by air, water or gravity as a product of erosion.
- (o) "Stripping" means any activity which removes or significantly disturbs the vegetative surface cover including clearing and grubbing operations. "Slope" means the degree of deviation of a surface from horizontal usually expressed in percent or degree.
- (p) "Monongahela Soil Conservation District" means the subdivision of the State of West Virginia created and organized in 1943, pursuant to the provisions of the "Soil Conservation District's Law of West Virginia". "Soil" means all unconsolidated mineral and organic material of whatever origin that overlies bedrock and which can be readily excavated.
- (q) "Temporary cover" means straw, hay, mulch or annual seedings used for critical areas to minimize soil erosion for no more than one season. "Site" means any plot or parcel of land or combination of contiguous lots or parcels of land where grading is performed or permitted.
- (r) "Permanent cover" means perennial seedings and plants used for critical areas to minimize soil erosion as permanent cover. "Stripping" means any activity which removes or disturbs the vegetative surface cover including clearing and grubbing operations.
- (s) "Temporary cover" means straw, hay, mulch or annual seedings used for critical areas to minimize soil erosion for no more than one season.
- (t) "Permanent cover" means perennial seedings and plants used for critical areas to minimize soil erosion as permanent cover.

#### **1741.02 GRADING PERMIT REQUIRED.**

No person shall do or cause to be done any grading, stripping, or cutting and/or filling upon any site within the City unless and until he/she has obtained a gGrading pPermit approved by the City Manager or his/her designee. Provided, however, that no gGrading pPermit shall be required for the tilling or cultivation of any plot of ground within the City for the purpose of growing flowers, vegetables or other plants. Nor shall a grading permit be required for any other grading when the area of disturbed land surface is less than 150 square feet or when the net volume of cut and fill is less than five cubic yards.

## 1741.03

## REQUIREMENTS FOR GRADING PERMIT.

Any person desiring a Grading Permit shall submit the following information for the entire site upon which any minor or major grading, stripping, or cutting and/or filling is to be done.

- ~~(a) — A plat or boundary line survey of the entire site on which the grading, stripping, or cutting is to be done.~~
- ~~(b) — Description of the features, existing and proposed, surrounding the site, of importance to the proposed development.~~
- ~~(c) — Description of general topographic and general soil conditions on the site. Information regarding soil conditions is available from the published Soil Survey of Marion and Monongalia Counties, West Virginia, July 1982.~~
- ~~(d) — Location and description of existing and future man-made features of importance to the proposed development.~~
- ~~(e) — Nature or source of soil is a fill project.~~
- ~~(f) — Soil erosion and sedimentation control techniques if the proposed grading, stripping or cutting will result in soil erosion and/or siltation of adjoining property or property in the area.~~
- ~~(g) — Description of proposed revegetation.~~
- ~~(h) — A timing schedule indicating the anticipated starting and completion dates.~~
- ~~(i) — Evidence of compliance with Floodplain ordinance. Information is available from Flood Insurance Rate Map by U.S. Department of Housing and Urban Development, August 9, 1979.~~
- ~~(j) — All applications for grading permits shall be made in writing upon a form provided by the office of the Building Inspector and shall be made under oath and signed by the owner of the site, or for the owner by the contractor proposing to do the work, or other authorized person.~~
- ~~(k) — In certain cases where the grading is extensive, the City Manager may require that a performance bond be posted in an amount sufficient, as determined by the City Engineer, to either restore the ground to its original condition or to complete grading as permitted, if the work is not completed by the completion date as stated in the grading permit.~~

(a) Minor Grading. Grading Permits upon which area disturbed will be less than or equal to 1,000 square feet.

- (1) Site plan with dimensions including a description of the features, existing and proposed, surrounding the site, of importance to the proposed development.
- (2) Description of general topographic conditions on the site.
- (3) Location and description of existing and future man-made features of importance to the proposed development.
- (4) Nature or source of soil if a fill project.
- (5) Soil erosion and sedimentation control techniques if the proposed grading, stripping, cutting and/or filling will result in soil erosion and/or siltation of adjoining property or property in the area.
- (6) Description of proposed revegetation.
- (7) A timing schedule indicating the anticipated starting and completion dates.
- (8) Evidence of compliance with Floodplain Ordinance.

- (9) All applications for Grading Permits shall be made in writing upon a form provided by the Code Enforcement Division and shall be made under oath and signed by the owner of the site, or for the owner by the contractor proposing to do the work, or other authorized person.
- (10) Evidence of compliance with the Stormwater Ordinance (Article 929).
- (i) No City Grading Permit shall be issued without the approval of a stormwater Erosion and Sediment Permit issued under the provisions of Article 929, unless the Director of the Morgantown Utility Board, or his/her designee, has issued a formal Determination stating that a stormwater Erosion and Sediment Permit is not required. Processing of the application for a stormwater Erosion and Sediment Permit shall be coordinated with the Grading Permit as provided in Section 1741.04.
- (ii) No City Grading Permit shall be issued without the approval of a stormwater Management and Comprehensive Drainage Permit issued under the provisions of Article 929, unless the Director of the Morgantown Utility Board, or his/her designee, has issued a formal Determination stating that a stormwater Management and Comprehensive Drainage Permit is not required. Processing of the application for a stormwater Management and Comprehensive Drainage Permit shall be coordinated with the Grading Permit as provided in Section 1741.04.
- (b) Major Grading. Grading Permits upon which area disturbed will be more than 1,000 square feet.
- (1) A plat or boundary line survey of the entire site on which the grading, stripping, or cutting and/or filling is to be done. For major subdivisions of properties, monuments will be required to be placed on said property to be developed as specified in Article 1323.02 Monuments.
- (2) Site plan with dimensions including a description of the features, existing and proposed, surrounding the site, of importance to the proposed development.
- (3) A grading plan, prepared by a registered design professional, showing the existing grade and finished grade in contour intervals of sufficient clarity to indicate the nature and extent of the work and show in detail that it complies with the requirements of this Article. The plans shall show the existing grade on adjoining properties in sufficient detail to identify how grade changes will conform to the requirements of this Article. Upon execution of the grading plan once the Grading Permit has been approved, any changes, modifications, etc. to the submitted grading plan requires approval from the City Engineer and an as-built grading plan to be submitted once grading is completed. The City Engineer may cause an exception to be made that a registered design professional is not required where the nature of the work applied for is such that the requirement is not necessary.
- (4) Location and description of existing and future man-made features of importance to the proposed development including sufficient detail of adjoining properties.
- (5) A geotechnical report prepared by a registered design professional shall be provided. The report shall contain at least the following:

- (i) The nature and distribution of existing soils
  - (ii) Conclusions and recommendations for grading procedures
  - (iii) Soil design criteria for any structures or embankments required to accomplish the proposed grading
  - (iv) Where necessary, slope stability studies, and recommendations and conclusions regarding site geology.
  - (v) The City Engineer may cause an exception to be made that a geotechnical report is not required where the nature of the work applied for is such that a report is not necessary.
- (6) Nature or source of soil if a fill project.
- (7) Soil erosion and sedimentation control techniques if the proposed grading, stripping, cutting and/or filling will result in soil erosion and/or siltation of adjoining property or property in the area.
- (8) Description of proposed revegetation.
- (9) A timing schedule indicating the anticipated starting and completion dates.
- (10) Evidence of compliance with Floodplain Ordinance. Information is available from the City Engineer's Office.
- (11) Evidence of the application and approval from the West Virginia Department of Environmental Protection as follows:
- (i) For development(s) between 1 acre and less than 3 acres a Notice of Intent (NOI) Construction Stormwater WV/NPDES General Permit is required.
  - (ii) For development(s) 3 acres or more a WV/NPDES Permit is required.
- (12) The City Manager or his/her designee, may require that a performance bond be posted in an amount sufficient, as determined by the City Engineer, to either restore the ground to its original condition or to complete grading as permitted, if the work is not completed by the completion date as stated in the Grading Permit.
- (13) Evidence of compliance with the Stormwater Ordinance (Article 929).
- (i) No City Grading Permit shall be issued without the approval of a stormwater Erosion and Sediment Permit issued under the provisions of Article 929, unless the Director of the Morgantown Utility Board, or his/her designee, has issued a formal Determination stating that a stormwater Erosion and Sediment Permit is not required. Processing of the application for a stormwater Erosion and Sediment Permit shall be coordinated with the Grading Permit as provided in Section 1741.04.

- (ii) No City Grading Permit shall be issued without the approval of a stormwater Management and Comprehensive Drainage Permit issued under the provisions of Article 929, unless the Director of the Morgantown Utility Board, or his/her designee, has issued a formal Determination stating that a stormwater Management and Comprehensive Drainage Permit is not required. Processing of the application for a stormwater Management and Comprehensive Drainage Permit shall be coordinated with the Grading Permit as provided in Section 1741.04.

#### **1741.04.1 — APPROVAL.**

Upon any person filing an application for a grading permit, the City Manager shall within three working days of the date hereof, make or cause to be made an inspection of the site to be graded, and if he finds that grading control measures are not necessary or that the planned and specified measures contained in the application are adequate to control and prevent damage to adjoining property or property in the area, he shall approve the issuance of the grading permit. In the event that the City Manager finds that the proposed grading as planned will result in erosion, siltation or other damage to adjoining property or property in the area, he shall not approve the issuance of the grading permit.

- (a) — Grading permits upon tracts of land smaller than one fifth acre shall be approved by the City Manager if the following conditions are met:
- (1) — The proposed grading, filling or cutting will not result in soil erosion and/or siltation upon adjoining property or property in the area.
  - (2) — The proposed grading, fill or cutting will not endanger adjacent properties.
  - (3) — No disturbed soil shall be exposed for more than thirty days without temporary or permanent cover.
- (b) — Grading permits upon tracts of land larger than one fifth acre shall be approved by the City Manager if the following conditions are met:
- (1) — The proposed grading, stripping or cutting will not result in soil erosion and/or siltation upon adjoining property or property in the area.
  - (2) — No disturbed soil shall be exposed for more than thirty days without temporary or permanent cover.
  - (3) — If needed to prevent excessive soil erosion and/or siltation, the plans shall contain appropriate soil erosion and sedimentation control techniques.
  - (4) — The proposed grading, fill or cutting will not endanger adjacent properties.
  - (5) — In certain cases where the proposed grading is extensive, the City Manager may require the application to include the review and recommendation of the Monongahela Soil Conservation District.

#### **1741.04 — PLAN SUBMISSION AND REVIEW PROCESS.**

- (a) The plan submission and review process shall be coordinated with and integrated into the Morgantown Utility Board planning and permitting process.
- (1) Persons applying to the City for a Grading Permit shall submit their request for stormwater Determination to the City simultaneously with the submission of their Grading Permit application. The City shall promptly forward all such requests for stormwater Determination to the Director of the Morgantown Utility Board for review and further action.

- (2) Applicants may choose to submit their request for stormwater Determination directly to the Director of the Morgantown Utility Board in advance of their application for a City Grading Permit, but in such case the applicant shall include a copy of their request for stormwater Determination with their eventual submission to the City, and the City shall forward the copy of the request for stormwater Determination to the Director of the Morgantown Utility Board.
- (b) Upon receipt of a request for stormwater Determination, the Director of the Morgantown Utility Board shall review same and issue a formal written Determination. The Determination shall state:
- (1) Whether a stormwater Erosion and Sediment Permit is, or is not, required, and
- (2) Whether a stormwater Management and Comprehensive Drainage Permit is, or is not, required.
- (c) The City shall not issue any Grading Permit unless and until the appropriate stormwater permit(s), as identified and required by the Determination, has (have) been approved and issued.

**1741.05.1 — PERIOD OF VALIDITY; RENEWALS.**

~~Any grading permit issued under the provisions of this article shall be valid for a period of six months from and after the date hereof. If the grading of the site has not been completed within six months from the date of such permit, the same may be renewed for an additional period of six months without assessment of any fee therefor. If any grading is not started and the work not actually begun within six months after the date of the original permit therefore, no renewal permit shall be granted, but a new application therefor shall be made and an additional fee paid, such additional fees to be on the same schedule as any other permit.~~

**1741.05 APPROVAL.**

Upon any person filing an application for a Grading Permit, the City Manager, or his/her designee, shall make or cause to be made an inspection of the site to be graded, and if he/she finds that grading control measures are not necessary or that the planned and specified measures contained in the application are adequate to control and prevent damage to adjoining property or property in the area, he/she shall approve the issuance of the Grading Permit, subject to the requirements of Section 1741.03. In the event that the City Manager, or his/her designee, finds that the proposed grading as planned will result in erosion, siltation or other damage to adjoining property or property in the area, he/she shall not approve the issuance of the Grading Permit.

- (a) Grading Permits upon tracts of land smaller than 1,000 sq. ft. shall be approved by the City Manager, or his/her designee, if the following conditions are met:
- (1) The proposed grading, filling, cutting and/or stripping will not result in soil erosion and/or siltation upon adjoining property or property in the area.
- (2) The proposed grading, filling, cutting, and/or stripping will not endanger adjacent properties.
- (3) No disturbed soil shall be exposed for more than seven (7) consecutive days of inactivity without temporary or permanent cover.

- (b) Grading Permits upon tracts of land larger than 1,000 sq. ft. acre shall be approved by the City Manager, or his/her designee, if the following conditions are met:
- (1) The proposed grading, stripping, or cutting, and/or filling will not result in soil erosion and/or siltation upon adjoining property or property in the area.
  - (2) No disturbed soil shall be exposed for more than seven (7) consecutive days of inactivity without temporary or permanent cover.
  - (3) If needed to prevent excessive soil erosion and/or siltation, the plans shall contain appropriate soil erosion and sedimentation control techniques.
  - (4) The proposed grading, filling, cutting, and/or stripping will not endanger adjacent properties.

**1741.05.2 — PERMIT FEE**

~~Upon Filing an application for a grading permit, the applicant shall pay a sum equal to five dollars (\$5.00) for each thousand dollars (\$1,000) of the estimated cost of grading as shown on the application, but in any event a minimum fee of five dollars (\$5.00) and the payment of such sum shall be prerequisite to the processing of the permit application.~~

**1741.06 — TIME LIMITATION OF APPLICATION.**

An application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good faith or a permit has been issued; except that the City Manager, or his/her designee, is authorized to grant one or more extensions of time for additional periods not exceeding 90 days each. The extension shall be requested in writing and justifiable cause demonstrated.

**1741.05.3 — GRADING WITHOUT PERMIT; NONCOMPLIANCE.**

~~Until an application is made and approved in the manner prescribed in this article and the grading permit issued, no grading, stripping or cutting of any site within the City shall be done, and no grading, stripping or cutting of any site within the City shall be done without strict compliance with measures set forth in the grading permit.~~

**1741.07 — PERIOD OF VALIDITY; RENEWALS.**

- (a) Expiration. Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work commenced. The City Manager, or his/her designee, is authorized to grant in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.
- (b) Suspension or Revocation. The City Manager, or his/her designee, is authorized to suspend or revoke a permit issued under the provisions of this code wherever the permit is issued in error or on the basis of incorrect, inaccurate information, or in violation of any ordinance or regulation or any of the provisions of this Article.

**1741.08** ——— **COST OF INSPECTION.**

In the event that, at the discretion of the City Manager, it is necessary that the City maintain periodic or constant attendance by an inspector for work being completed under the provisions of this article, then the applicant shall be responsible for, and shall reimburse the City its full and total costs of such inspector, retirement fund benefits, social security benefits, Workers' Compensation, all costs of transportation incurred, and the reimbursement for any City equipment used by such inspector in and about such project. If more than one inspector is necessary upon such project, like payment shall be made for any additional inspectors.

**1741.08**      **POSTING; DUPLICATES.**

Any permit issued under the provisions of this article shall be posted at the site of such grading, stripping, cutting and/or filling during the time that such work is being performed, in such manner and at such place on such premises as the same may be readily seen and inspected by the police officers and other agents and officials of the City. In the event that any such permit so posted shall be removed, lost or destroyed, a duplicate thereof shall immediately be applied for to the Code Enforcement Office.

**1741.09**      **PERMIT FEE.**

- (a) Minor Grading Permit. Upon filing an application for a minor grading permit, the applicant shall pay a sum equal to thirty-five dollars (\$35.00) and the payment of such sum shall be prerequisite to the processing of the permit application.
- (b) Major Grading Permit. Upon filing an application for a major grading permit, the applicant shall pay a sum equal to thirty-five (\$35.00) for the first 1,000 square feet and an additional ten dollars (\$10.00) for each additional 1,000 square feet thereafter; however, in any event a minimum permit fee of thirty-five dollars (\$35.00) shall be submitted and the payment of such sum shall be prerequisite to the processing of the permit application.

**1741.10**      **GRADING WITHOUT PERMIT; NONCOMPLIANCE.**

- (a) Until an application is made and approved in the manner prescribed in this article and the Grading Permit issued, no grading, stripping, cutting, and/or filling of any site within the City shall be done, and no grading, stripping, cutting, and/or filling of any site within the City shall be done without strict compliance with measures set forth in the Grading Permit. Any owner, lessee, contractor and any worker who shall perform and work or labor, or shall cause, permit, or allow the same to be performed in the grading, stripping, cutting, and/or filling of any site without obtaining a permit therefor or without complying with the conditions set forth in the Grading Permit shall be guilty of a violation of this Article and shall be punishable as provided by Section 1741.99 of this City Code.
- (b) The City Manager, or his/her designee, and/or the Director of the Morgantown Utility Board, or his/her designee, shall have the authority to issue or cause to be issued, a "Stop Work Order Notice" as described in Section 1741.11.

**1741.11**      **STOP WORK ORDERS.**

- (a) The City Manager, or his/her designee, and/or the Director of the Morgantown utility Board or his/her designee, shall have the authority to issue or cause to be issued a "Stop Work Order Notice" for any grading found ongoing without having obtained a permit.

- (b) The City Manager, or his/her designee, and/or the Director of the Morgantown Utility Board, or his/her designee, shall have the authority to issue or cause to be issued a "Stop Work Order Notice" for any grading found non-compliant with the provisions of this Article and/or the conditions of the permit.
- (c) A seventy-five dollar (\$75.00) administrative fee shall be assessed to the person violating this section should a stop work order be issued. Any person who fails to comply with a stop work order, once issued, shall be subject to a penalty of no less than one hundred dollars (\$100.00) and no more than five hundred dollars (\$500.00) for each such offense. Each day that a person violates a stop work order shall constitute a separate offense.

**1741.12            COST OF INSPECTION.**

In the event that, at the discretion of the City Manager, or his/her designee, it is necessary that the City maintain periodic or constant attendance by an inspector for work being completed under the provisions of this article, then the permittee shall be responsible for, and shall reimburse the City its full and total costs of such inspector, retirement fund benefits, social security benefits, Workers' Compensation, all costs of transportation incurred, and the reimbursement for any City equipment used by such inspector in and about such project. If more than one inspector is necessary upon such project, like payment shall be made for any such additional inspectors.

**1741.13            PAYMENT OF FEES**

Before the City Manager executes a Certificate of Occupation for any such property upon which a Grading Permit has been issued pursuant to this Article, he/she shall determine whether any fees within this Article are unpaid regarding the realty for which the Certificate of Occupancy is requested. If any such Grading Permit fees, including the cost of any inspections, are due the City, then the City Manager shall hold execution of the Certificate of Occupancy until such time as the fees are paid.

**1741.99            PENALTY.**

Any owner, lessee, contractor or any worker who performs any work or labor, or causes, permits or allows the same to be performed in the grading, stripping, ~~or~~ cutting, and/or filling of any site within the City without obtaining a permit therefor or without complying with the ~~soil erosion and siltation control measures~~ conditions set forth in the ~~Grading p~~Permit shall be in violation of this Article and shall be fined not more than ~~one hundred dollars (\$100.00)~~ five hundred dollars (\$500.00). Each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any provision of this Article is committed or continued.

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 ARTICLE 1705 OF ITS BUILDING AND HOUSING CODE, AS THE SAME APPLIES TO BUILDING PERMIT COORDINATION WITH PROVISIONS SET FORTH IN ARTICLE 1741 "GRADING REQUIREMENTS" AND ARTICLE 929 "STORMWATER ORDINANCE".**

The City of Morgantown hereby ordains that Sections 1705.02 and 1705.03 of its Building and Housing Code are amended as follows (new matter underlined):

**1705.02 APPLICATION FOR PERMIT**

To obtain a permit, the applicant shall first file an application therefor in writing on a form furnished by the Building Inspection Department. Such application shall:

- (a) Identify and describe the work to be covered by the permit for which application is made.
- (b) Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.
- (c) Indicate the use and occupancy for which the proposed work is intended.
- (d) Be accompanied by construction documents and other information as required by the Building and Housing Inspection Department.
- (e) State the valuation of the proposed work.
- (f) Be signed by the applicant, or the applicant's authorized agent.
- (g) Give such other data and information as required by the Building Inspection Department.
- (h) For development and/or construction, the nature of which is subject to the provisions of Article 929 "Stormwater Ordinance", include evidence of compliance with same.
  - (1) No City Building Permit that includes development and/or construction subject to the provisions of Article 929 "Stormwater Ordinance" may be issued without the approval of a stormwater Erosion and Sediment Permit under the provisions of Article 929, unless the Director of the Morgantown Utility Board, or his/her designee, has issued a formal Determination stating that a stormwater Erosion and Sediment Permit is not required. Processing of the application for a stormwater Erosion and

Sediment Permit shall be coordinated with the building permit application as provided in Section 1705.03.

- (2) No City Building Permit that includes development and/or construction subject to the provisions of Article 929 "Stormwater Ordinance" may be issued without the approval of a Stormwater Management and Comprehensive Drainage Permit under the provisions of Article 929, unless the Director of the Morgantown Utility Board, or his/her designee, has issued a formal Determination stating that a stormwater Management and Comprehensive Drainage Permit is not required. Processing of the application for a stormwater Management and Comprehensive Drainage Permit shall be coordinated with the building permit application as provided in Section 1705.03.

**1705.03 PLAN SUBMISSION; REVIEW PROCESS; ACTION ON APPLICATION.**

- (a) The building permit application submission and review process shall be coordinated with and integrated into the Morgantown Utility Board planning and permitting process.
  - (1) Persons applying to the City for a Building Permit that includes development and/or construction subject to the provisions of Article 929 "Stormwater Ordinance" must submit their request for a stormwater Determination to the City simultaneously with the submission of their building permit application. The City shall promptly forward all such requests for stormwater Determination to the Director of the Morgantown Utility Board for review and further action.
  - (2) Applicants may choose to submit their request for stormwater Determination directly to the Director of the Morgantown Utility Board in advance of their application for a City Building Permit, but in such case the applicant shall include a copy of their request for stormwater Determination with their eventual submission to the City, and the City shall forward the copy of the request for stormwater Determination to the Director of the Morgantown Utility Board.
- (b) Upon receipt of a request for stormwater Determination, the Director of the Morgantown Utility Board, or his/her, designee shall review same and issue a formal written Determination. The Determination shall state:
  - (1) Whether a stormwater Erosion and Sediment Permit is, or is not, required, and;
  - (2) Whether a stormwater Management and Comprehensive Drainage Permit is, or is not, required.

- (c) The City may not issue a Building Permit that includes development and/or construction subject to the provisions of the Article 929 "Stormwater Ordinance" unless and until the appropriate stormwater permit(s), as identified and required by the stormwater Determination, has/have been approved and issued.
  
- (d) The Building Inspection Department shall examine or cause to be examined applications for permits and amendments therefore within a reasonable time after filing. If the application or the construction documents do not conform to the requirements of pertinent laws, the Building Inspection Department shall reject such application in writing, stating the reasons therefor. If the Building Inspection Department is satisfied that the proposed work conforms to the requirements of this code and laws and ordinances applicable thereto, the Building Inspection Department shall issue a permit therefor as soon as practicable, subject to the requirements of Section 1705.02.

This ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_  
Mayor

ADOPTED:

FILED:

RECORDED:

\_\_\_\_\_  
City Clerk



**RESOLUTION**

*WHEREAS, the City of Morgantown has applied to the West Virginia Department of Transportation, Division of Highways, for a grant to fund a portion of the Lower High Street Streetscape project - the final phase of streetscape work to be needed on High Street .*

*WHEREAS, the total eligible project costs of the grant to help fund the aforementioned project will be \$437,500 with \$350,000 coming from the Federal Highway Administration Funds and a \$87,500 local match coming from the City of Morgantown; and*

*WHEREAS, the West Virginia Department of Transportation has tentatively approved the \$350,000 grant contingent upon the City of Morgantown executing the agreement hereto attached and made a part of this Resolution; and*

*WHEREAS, Morgantown City Council is of the opinion that it is in the best interest of the citizens of the community for the project to be undertaken and the agreement to be executed.*

*NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown this 15th day of November, 2011, that its City Manager is authorized to execute the Agreement (State Project U331-119/ - 0.26 00 - Federal Project TEA-OL22(001)D) hereto attached.*

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*Mayor*

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*City Clerk*

**AGREEMENT**

**STATE PROJECT: U331-119/ - 0.26 00**

**FEDERAL PROJECT: TEA-0L22(001)D**

**LOWER HIGH STREET STREETScape – FINAL PHASE**

**MORGANTOWN**

**THIS AGREEMENT**, executed in duplicate, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by and between the **WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS**, hereinafter called "**DEPARTMENT**" and the **CITY OF MORGANTOWN**, hereinafter called "**SPONSOR**".

**WITNESSETH** that,

**WHEREAS, DEPARTMENT** and **SPONSOR** have determined that a project for the replacement of sidewalks is an eligible project for funding under the Transportation Enhancement Program as appropriated in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU); and

**WHEREAS, DEPARTMENT** desires to cooperate with **SPONSOR** in accomplishing the project; and

**WHEREAS**, by Resolution bearing the date of the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, the City of Morgantown directed the proper authorities to execute, acknowledge and deliver this Agreement, a copy of which Resolution is affixed hereto and made a part hereof;

**NOW THEREFORE**, it is mutually agreed as follows:

- A. That **SPONSOR** shall use either a "Force Account" and/or contract with a qualified consultant for design, engineering and bid specification documents for the project and shall submit such designs to **DEPARTMENT** for review and written approval prior to any construction then use either a "Force Account" and/or contract with a qualified contractor for construction of those project elements approved within the design plan, which may include: replacing deteriorated sidewalks and curbs, with appropriate Americans with

Disabilities (ADA) curb cuts with detectible warning devices (truncated domes), improve pedestrian safety features, new street lighting, placing minor utility lines underground, and other necessary amenities related to the completion of the sidewalks. The above described scope of work is to hereafter be referred to as "**PROJECT**". "Force Account" is defined as regularly employed City employees and City owned or rented equipment.

- B. That **SPONSOR** shall provide for, or cause to be provided for, the future maintenance of **PROJECT** for a period of no less than fifteen (15) years once the work under this Agreement is completed.
  
- C. That the total eligible project cost as set by this Agreement is four hundred thirty-seven thousand five hundred dollars (\$437,500) and the amount of funds available for reimbursement from **DEPARTMENT** shall be eighty percent (80%) of the funds expended by **SPONSOR** for eligible project costs, up to a maximum reimbursement of three hundred fifty thousand dollars (\$350,000). **SPONSOR** shall be responsible for the remaining twenty percent (20%) of the eligible project costs that are expended, in addition to all costs deemed ineligible by **DEPARTMENT**. **SPONSOR** will also be responsible, at the one hundred percent (100%) level, for any and all costs in excess of the total eligible project cost as set by this Agreement. **SPONSOR'S** twenty percent (20%) match for the estimated total eligible project cost is eighty-seven thousand five hundred dollars (\$87,500).
  
- D. That **SPONSOR** may submit invoices and/or "Force Account" documentation to **DEPARTMENT**, on no more often than a monthly basis, for up to eighty percent (80%) reimbursement to **SPONSOR** for the performance of work set forth herein, and certify that the invoices/documents properly represent payment for approved work that has been satisfactorily completed and paid for by **SPONSOR**. Each invoice must be accompanied by an up-to-date progress report detailing work undertaken and percentage of completion that reflects the reimbursement sought.
  
- E. That all "Force Account" labor and/or equipment shall be invoiced at the rate normally paid by **SPONSOR** and all labor shall be documented by name of worker, rate of pay, hours and dates of work and work performed. Equipment shall be documented by type of equipment, source of equipment, rate of rental/expense, use and dates of use. **SPONSOR** acknowledges that when using "Force Account," if City of Morgantown and/or equipment are used outside of the City of Morgantown boundaries, it is with the express understanding that the **DEPARTMENT'S** involvement is limited to reimbursement of regular compensation of City of Morgantown employees, or

for City of Morgantown owned or rented equipment, at a rate not to exceed that of comparable rental equipment. It is to be the sole responsibility of **SPONSOR** to determine if the use of City of Morgantown employees and/or equipment outside **SPONSOR'S** City of Morgantown boundaries would require payment of either Davis-Bacon or West Virginia Prevailing Wage rates.

- F. That when using a contractor, **SPONSOR** will comply, and insure compliance, with established provisions of the West Virginia Prevailing Wage Code and Federal Davis-Bacon Act Wage Codes. When both wage rates apply, the higher of the two must be paid.
- G. That the following attachment(s) is incorporated herein and made a part hereof as though fully set out herein: Attachment A-1 – "Grant Program General Clauses and Covenants (April 7, 2009)."

**IN WITNESS WHEREOF**, the parties hereto have caused their respective names to be signed by their duly authorized officers.

**WEST VIRGINIA DEPARTMENT  
OF TRANSPORTATION,  
DIVISION OF HIGHWAYS**

**ATTESTED BY:**

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(title)

\_\_\_\_\_  
(title)

**SPONSOR'S REPRESENTATIVE  
CITY OF MORGANTOWN**

**ATTESTED BY:**

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(title)

\_\_\_\_\_  
(title)

(To be executed in duplicate)

Distribution:  
Master File  
City of Morgantown

**ATTACHMENT A-1**  
**TRANSPORTATION ENHANCEMENT GRANT PROGRAM**  
**GENERAL CLAUSES AND COVENANTS**  
**(April 7, 2009)**

1. **SPONSOR**, by signature on the attached Agreement, confirms that it has both the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this Agreement.
2. **SPONSOR** shall not begin work, or cause any work to begin, for which costs **SPONSOR** intends to seek reimbursement, until such time that **SPONSOR** receives written notice to proceed from **DEPARTMENT**.
3. **SPONSOR** is responsible for **PROJECT** oversight and inspection during any and all phases of construction, as well as for obtaining all necessary permits. **SPONSOR** shall provide and maintain competent and adequate supervision at the construction site to ensure that the completed work conforms with the **DEPARTMENT** approved plans and specifications and shall furnish progress reports and/or such other information as may be required by **DEPARTMENT**.
4. **SPONSOR** agrees, as between **DEPARTMENT** and **SPONSOR**, that **SPONSOR** shall be responsible for any and all suits, claims, liability, losses, liens and demands, fines, costs, criminal and civil penalties, causes of action or any other obligations arising out of or in any manner connected with the work performed by **SPONSOR**, its agents, employees or contractors, under this Agreement, during or any time after such work is being or has been performed, including (without limitation) liability involving bodily injury, death, property damage or any violation or alleged violation of any Federal, State or local law or regulation, except for any liability or damages due to the willful or intentional unlawful acts or the negligence of **DEPARTMENT**, its employees, agents or contractors.
5. **SPONSOR**, unless otherwise noted in the attached agreement, shall erect a sign, made of a durable material, at least four foot by eight foot (4' x 8') in size, at the site of the **PROJECT** where it can be viewed by persons in the area of the **PROJECT**. It will, at minimum, contain the following information in letters clearly legible:

**(NAME OF PROJECT)**

This project includes funding from the Federal Highway Administration's  
Transportation Enhancement Program administered by the West Virginia  
Department of Transportation, Division of Highways

**Transportation Enhancement Funds**

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

Such sign is to be placed at the site immediately following **SPONSOR'S** receipt of notice to proceed and remain at the site until the **PROJECT'S** final inspection by **DEPARTMENT**.

6. **SPONSOR** shall establish safeguards to prohibit employees from using their positions for a purpose that constitutes, or presents the appearance of, either personal or organizational conflict of interest, or personal gain.
  
7. **SPONSOR** shall comply with and ensure compliance with all Federal Statutes relating to the Anti-Lobbying Requirement, Pub. L. 101-121, Section 319, 31 U.S.C. § 1352, that prohibits the recipient, or any lower tier subrecipients, of a Federal contract, grant, loan or cooperative Agreement from expending Federal funds to pay any person for influencing or attempting to influence a Federal agency or the Congress in connection with the awarding of any Federal contract, the making of any Federal grant or loan or the entering into of any cooperative Agreement.
  
8. **SPONSOR** agrees to establish a proper accounting system in accordance with generally accepted accounting standards or agency directives, and shall be responsible for insuring that its consultant(s) and/or contractor(s)/subcontractor(s) maintain all books, document papers, records, supporting cost proposals, accounting records, employees time cards, payroll records and other evidence pertaining to costs incurred in the **PROJECT** and is to make such materials available at all reasonable times during the contract period and for four (4) years after the date of **DEPARTMENT'S** closing of the project, for inspection and/or audit by **DEPARTMENT**, Federal Highway Administration, or any other authorized representative of either the State or Federal government.
  
9. **SPONSOR**, unless otherwise noted in the attached Agreement, agrees to complete **PROJECT** within two (2) years after the date the notice to proceed is issued by **DEPARTMENT**. Failure to meet this deadline, without good and acceptable cause, may cancel **DEPARTMENT'S** participation in this

**PROJECT**, at the sole discretion of **DEPARTMENT**, and any remaining funds may be forfeited by **SPONSOR**; repayment of the **PROJECT'S** Federal portion may also be required. It is the express responsibility of **SPONSOR** to inform **DEPARTMENT**, in an expeditious manner, if any condition arises which may result in this deadline not being met.

10. **SPONSOR** acknowledges that construction contracts are required to be advertised and awarded to the lowest responsible and responsive bidder through competitive bidding, while consulting services are to be chosen by solicitation of letter of qualifications, interview of candidate, and selection based on qualification, rather than price. Any deviation from these processes requires prior written approval by **DEPARTMENT**. In addition, **SPONSOR** acknowledges and agrees that no contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-procurement Programs in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension" and 49 CFR 29.
11. **SPONSOR** must retain a copy of all newspaper advertisements for requests for proposals for consultant and/or contractor/subcontractor bids, and a copy of all proposals and bids received for consideration. The documents must be kept on file by **SPONSOR** pending Final Audit by **DEPARTMENT**.
12. **SPONSOR** must retain a copy of the contract for the consultant(s) and/or contractor(s)/subcontractor(s) chosen. To ensure compliance with requirements, all bid documents and request for proposal/consultant documents must be kept on file by **SPONSOR** pending Final Audit by **DEPARTMENT**.
13. **SPONSOR**, if it is a non-Federal entity and has received five hundred thousand dollars (\$500,000) or more in Federal funds in the prior fiscal year, shall furnish to **DEPARTMENT** a single or program-specific audit conducted for that year in accordance with the provisions of the Office of Management and Budget Circular No. A-133.
14. **SPONSOR** shall notify **DEPARTMENT**, at least thirty (30) days in advance, of any ceremonies or "ribbon-cutting" celebrations commemorating the **PROJECT**.
15. **SPONSOR** shall recognize both **DEPARTMENT** and the Federal Highway Administration in all press releases, announcements, brochures, websites and/or literature concerning the **PROJECT**.

16. **SPONSOR** shall ensure that:
- a. No person, on the grounds of age, race, religion, color, sex, national origin or disability shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the use of said **PROJECT**.
  - b. Discrimination against the public shall not be practiced in accommodations operated within the area of use.
  - c. The property shall be used in compliance with all other requirements imposed by **DEPARTMENT** pursuant to Title 49, CFR, Part 21, and as said regulation may be amended.
17. **SPONSOR** shall comply, and ensure compliance by its consultant(s) and contractor(s)/subcontractor(s), with the provisions of the West Virginia Prevailing Wage Code regarding labor standards for Federally assisted construction, the Copeland "Anti-Kickback" Act (40 U.S.C. § 276C and 18 U.S.C. § 874), the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), "Equal Employment Opportunity" Executive Orders 11246 and 11375 and 41 CFR 60, the Drug Free Workplace Act of 1988, the "Buy American" requirements concerning the purchase of steel for Federally funded projects (23 CFR 635.410 (b), Worker Visibility Regulations that require that all persons working within the right-of-way of a Federal Aid Highway wear highly visible safety apparel that meets the Performance Class 2 or 3 requirements of ANSI/ISEA 107-204 publication entitled, "American National Standard for High-Visibility Safety Apparel and Headwear," and if applicable Davis-Bacon Act Wage Codes (40 U.S.C. §§ 276a to 276a-7).
18. **SPONSOR** shall notify and shall furnish **PROJECT** plans to utilities known to have facilities within the **PROJECT** limits and/or affected by the **PROJECT**; and shall arrange for any necessary relocation or adjustment of affected utilities.
19. **SPONSOR** shall ensure that all property and/or right-of-way necessary to construct this **PROJECT** shall be acquired in accordance with all applicable Federal and State laws, policies and procedures, which include but are not limited to Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and Federally assisted programs. These

requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

20. **SPONSOR** shall comply with, and ensure compliance by its consultant(s) and contractor(s)/subcontractor(s) with, all Federal statutes, executive orders, rules, and regulations regarding the "Americans With Disabilities Act," 28 CFR 35 and 29 CFR 1830 and with the "General Prohibitions Against Discrimination," 28 CFR 35 and all other regulations under Title II of "The American With Disabilities Act" which are applicable.
21. **SPONSOR** shall comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) which requires recipients in a special flood hazard area to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
22. It is the policy of **DEPARTMENT** that Disadvantaged and Women-owned Business Enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds.
23. **DEPARTMENT** shall review the **PROJECT'S** applicability to both Federal Highway Administration and State requirements for a Federally funded project and if the **PROJECT** qualifies, will complete the appropriate documents for a Programmatic Categorical Exclusion or Categorical Exclusion for compliance with the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act of 1966, as amended (106 process).
24. **SPONSOR** shall be responsible for any additional documentation, actions, or permits necessary for compliance with the NEPA and the 106 process, which include but are not limited to documentation, actions, or permits involving; archaeological surveys, 4(f) statements, noise assessment and abatement, air quality impact assessment and abatement, water quality impact assessment and abatement, hazardous waste/underground toxic assessment and abatement, navigable stream impact assessment and abatement, wetland impact assessment and abatement, endangered species impact assessment and abatement, wild and scenic river impact assessment and abatement, and/or any other environmental, cultural, or natural impact statement and abatement as applicable.
25. **SPONSOR** shall secure all necessary approvals, permits and licenses from all other governmental agencies as may be required to complete **PROJECT**. This obligation shall include the responsibility for the preparation or revision of

environmental impact statements, environmental assessments, environmental reports or other documents required by law and/or environmental litigation; and the defense of environmental litigation resulting from the planning, design and/or construction of **PROJECT**. At the **DEPARTMENT'S** request, **SPONSOR** shall furnish to **DEPARTMENT**, prior to advertising and letting **PROJECT**, evidence of the approvals, permits, licenses and approved environmental documents.

26. **SPONSOR** shall comply with, and ensure compliance by its consultant(s) and contractor(s)/subcontractor(s) with, all applicable standards, executive orders or regulations, if applicable, issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401 et. seq.), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et. seq.), and the Energy Policy and Conservation Act (Pub. L. 94-163).
27. **SPONSOR** shall administer all contracts/subcontracts and be responsible for insuring that all work shall be performed and purchases made in a manner satisfactory to **DEPARTMENT** and in accordance with the established practices and procedures of the **DEPARTMENT**, and all Federal and State laws, rules, regulations, executives orders, policies and procedures which include, but are not limited to, those included in the Transportation Enhancement Program Revised Guidelines and Application Package, the Federal Aid Policy Guide 23 CFR 633A and entitled "PART 633 – REQUIRED CONTRACT PROVISIONS", and the Rules and Regulations of the West Virginia Department of Transportation, Division of Highways, Series I Section 8 entitled Procurement Procedures for Negotiated Contracts, as applicable.
28. **SPONSOR** acknowledges and agrees that **DEPARTMENT** and the Federal Highway Administration reserve a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for governmental purpose(s):
  - a) the copyright of any work developed under this grant, subgrant or contract under this grant or subgrant; and
  - b) any rights of copyright to which a grantee, subgrantee, consultant, or contractor acquires or purchases ownership with support from this grant.
29. **DEPARTMENT** shall bear one hundred percent (100%) of all administrative costs incurred by **DEPARTMENT**, such as reviewing and processing invoices from **SPONSOR**.

30. **SPONSOR** acknowledges and agrees that the future sale, lease, transfer of title or modification in use of any property either purchased with, or receiving improvements funded through, this Agreement and occurring within the specified maintenance term requires prior approval by **DEPARTMENT** and/or the Federal Highway Administration and could require repayment, by the **SPONSOR**, of Federal funds involved.
  
31. **SPONSOR** acknowledges and agrees that failure to adhere to and comply with, and ensure compliance by its consultant(s), contractor(s) and subcontractor(s) with any item in the attached Project Agreement may result in the repayment, by the **SPONSOR**, of any and all Federal funds expended on the project. It will be at the sole discretion of the Federal Highway Administration and/or the **DEPARTMENT** to determine if the violation warrants repayment and the amount to be repaid. Prior to any obligation of repayment, **SPONSOR** shall be provided with a written notice of any alleged violation and allowed a reasonable opportunity to cure said violation.

