



Office of the City Clerk

The City of Morgantown

Linda L. Little, CMC
389 Spruce Street, Room 10
Morgantown, West Virginia 26505
(304) 284-7439 Fax: (304) 284-7525
cityclerk@morgantown.com

AGENDA
MORGANTOWN CITY COUNCIL
REGULAR MEETING
DECEMBER 6, 2011
7:30 p.m.

1. **CALL TO ORDER**
2. **ROLL CALL BY CITY CLERK**
3. **PLEDGE TO FLAG**
4. **APPROVAL OF MINUTES:** Regular Meeting November 15, 2011
Special Meeting November 29, 2011
5. **CORRESPONDENCE**
6. **PUBLIC HEARING:**
 - A. **PUBLIC HEARING on 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.**
 - B. **PUBLIC HEARING on AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING ARTICLE 1741 OF ITS BUILDING AND HOUSING CODE, AS THE SAME APPLIES TO GRADING PERMITS.**
 - C. **PUBLIC HEARING on 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".**
 - D. **PUBLIC HEARING on 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 FORTH HEREIN.

7. UNFINISHED BUSINESS:

- A. Consideration of APPROVAL of SECOND READING (ADOPTION) of 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. (First Reading November 1, 2011)**
- B. Consideration of APPROVAL of SECOND READING (ADOPTION) of AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING ARTICLE 1741 OF ITS BUILDING AND HOUSING CODE, AS THE SAME APPLIES TO GRADING PERMITS. (First Reading November 1, 2011)**
- C. Consideration of APPROVAL of SECOND READING (ADOPTION) of 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". (First Reading November 1, 2011)**
- D. Consideration of APPROVAL of SECOND READING (ADOPTION) of 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 FORTH HEREIN. (First Reading November 15, 2011)**
- E. BOARDS AND COMMISSIONS**

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

9. **NEW BUSINESS**

A. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE STORMWATER PORTION OF THE EXISTING COMBINED UTILITY SYSTEM OF THE CITY OF MORGANTOWN AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$3,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012; PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER DOCUMENTS RELATING TO THE BONDS; AND ENACTING OTHER PROVISIONS WITH RESPECT TO SUCH BONDS.**

B. Consideration of **APPROVAL** of **FIRST READING** of **ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATER PORTION OF THE EXISTING PUBLIC COMBINED WATERWORKS, SEWERAGE AND STORMWATER SYSTEM OF THE CITY OF MORGANTOWN AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$1,100,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012 A (WEST VIRGINIA DWTRF PROGRAM) AND NOT MORE THAN \$1,600,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012 B (WEST VIRGINIA DWTRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE**

TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

- C. Consideration of APPROVAL of FIRST READING of AN ORDINANCE AMENDING ARTICLE 169, SECTION 169.01, OF THE MORGANTOWN CITY CODE, AS THE SAME APPLIES TO MORGANTOWN UTILITY BOARD MEMBERS.**
- D. Consideration of APPROVAL of FIRST READING of AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF REALTY IN THE SIXTH WARD OF THE CITY OF MORGANTOWN FROM (PUD) PLANNED UNIT DEVELOPMENT TO (R-1A) SINGLE-FAMILY RESIDENTIAL DISTRICT THEREBY RESCINDING THE "HABITAT FOR HUMANITY JEROME PARK PLANNED UNIT DEVELOPMENT" 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 FORTH HEREIN.**
- E. Consideration of APPROVAL of FIRST READING of AN ORDINANCE AUTHORIZING A LICENSE AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN, LICENSOR, AND MONONGALIA COUNTY DEVELOPMENT AUTHORITY, LICENSEE, AS THE SAME APPLIES TO A PORTION OF THE REALTY BEING UTILIZED FOR THE CONSTRUCTION OF ROAD KNOWN AS THE MORGANTOWN MUNICIPAL AIRPORT ACCESS ROAD.**
- F. Consideration of a RESOLUTION AUTHORIZING THE EXECUTION OF A COMMUNITY PARTICIPATION GRANT, FUNDS FOR USE BY THE WEST VIRGINIA BOTANIC GARDENS.**
- G. Consideration of a RESOLUTION AUTHORIZING THE EXECUTION OF A COMMUNITY PARTICIPATION GRANT, FUNDS FOR USE BY THE CENTER FOR EXCELLENCE IN DISABILITIES AT WEST VIRGINIA UNIVERSITY.**

10. SPECIAL COMMITTEE REPORTS

11. REPORT FROM CITY MANAGER:

INFORMATION:

1. Board of Health Clean Indoor Air Regulation

NEW BUSINESS:

1. Transfer of Ownership of Tailwinds, Inc. and Ali Baba Restaurant to Kunundrum International, LLC

12. REPORT FROM CITY CLERK
13. REPORT FROM CITY ATTORNEY
14. REPORT FROM COUNCIL MEMBERS
15. EXECUTIVE SESSION
16. ADJOURNMENT

If you need an accommodation contact us at 284-7439

REGULAR MEETING NOVEMBER 15, 2011:

The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Wednesday, November 15, 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, Bill Byrne and Linda Herbst.

APPROVAL OF MINUTES: The minutes of the Regular Meeting on November 1, 2011 were approved as printed.

CORRESPONDENCE: Councilor Byrne mentioned the letter that was sent out by the County Assessor on Appraised values of properties and requested a briefing from the City Manager, City Attorney and Finance Director at the next Regular Meeting. Councilor Byrne commented that citizens are requesting the City reduce its millage to help in this big increase. Mayor Manilla read proclamations for "Great American Smokeout Day" and "Girl Effect Week".

PUBLIC HEARING - 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:

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

PUBLIC HEARING - 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:

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

UNFINISHED BUSINESS:

AN ORDINANCE AUTHORIZING INTERGOVERNMENTAL AGREEMENT WITH MONONGALIA COUNTY DEVELOPMENT AUTHORITY REGARDING A NEW ROADWAY AT THE MUNICIPAL AIRPORT: The below entitled Ordinance was presented for second 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.

Motion by Nugent, second by Selin to adopt the above entitled Ordinance. Council suspended the rules to allow further explanation from Airport Director Michael Clow. Question was called and motion carried 7-0.

AN ORDINANCE REPEALING & ENACTING A NEW ARTICLE 917 ESTABLISHING A TREE BOARD: The below entitled Ordinance was presented for second 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 Byrne, second by Shamberger to adopt the above entitled Ordinance. Motion carried 7-0.

BOARDS AND COMMISSIONS: No appointments at this time.

PUBLIC PORTION:

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

NEW BUSINESS:

AN ORDINANCE AMENDING 929.01, 929.03, 929.05, 929.06, 929.10, 929.13, 929.19, 929.20 & 929.22 AS IT APPLIES TO STORMWATER MANAGEMENT AND WATER CONTROL: The below entitled Ordinance was presented for first reading:

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.

Motion by Byrne, second by Selin to pass the above entitled Ordinance to second reading. Council suspended the rules to allow explanation from Assistant General Manager of MUB Doug Smith. Following discussion, the Question was called and motion carried 7-0.

AN ORDINANCE AMENDING ARTICLE 1741 GRADING PERMITS: The below entitled Ordinance was presented for first reading:

AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING ARTICLE 1741 OF ITS BUILDING AND HOUSING CODE, AS THE SAME APPLIES TO GRADING PERMITS.

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

AN ORDINANCE AMENDING 1705 APPLIES TO BUILDING PERMIT COORDINATION AND PROVISIONS OF GRADING REQUIREMENTS ARTICLE 929: The below entitled Ordinance was presented for first reading:

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".

Motion by Nugent, second by Byrne to pass the above entitled Ordinance to second reading. After discussion, motion carried 7-0.

CONSIDERATION OF APPROVAL OF A RESOLUTION AUTHORIZING THE EXECUTION OF A STATE AND FEDERAL GRANT PROJECT AGREEMENT, FUNDS FOR FINAL PHASE OF LOWER HIGH STREET STREETScape PROJECT: The above entitled Resolution was presented for Council's approval:

Motion by Byrne, second by Nugent to approve the above entitled Resolution. After discussion, motion carried 7-0.

SPECIAL COMMITTEE REPORTS: Councilor Byrne reported on the Sister Cities Commission and his recent visit to China. He added that the Friendship City application documents will go before Council for approval in December. Mayor Manilla introduced WVU SGA Liaison Evan Duff who reported that lights on High Street will be included in the next report to Council.

CITY MANAGERS REPORT:

INFORMATION:

Item No. 1: Mr. Moore presented Council with a Memo regarding the financial direction of the Mon County Board of Education's Eastwood Elementary School Project. After Discussion amongst Council, Mr. Moore reported he will update Council as more information becomes available.

CITY CLERK'S REPORT: City Clerk Linda Little commended Signs & Signals, Santa Claus and the City Manager on the beautiful downtown Christmas lights.

CITY ATTORNEY'S REPORT: City Attorney Steve Fanok complimented the Engineering, and Planning Departments and MUB for their fast work in responding to the grading Ordinances presented tonight.

REPORT FROM COUNCIL MEMBERS:

Councilor Bane: Councilor Bane stated that the City of Morgantown has no authority concerning tax changes in the County. He suggested that concerned citizens are concerned go to the County Commission or Assessor with regard to property values and assessments.

Councilor Nugent: Councilor Nugent informed citizens of a website where they may go to look up information regarding their property values and assessment. He also reported the upcoming Wiles Hill Neighborhood Association Meeting. He stated that the open comment period for the WVU Transportation & Parking Plan ends November 18. He asked Councilor Herbst to discuss the proposed WVU Transportation & Parking Plan at the next meeting of the Parking Authority. He also suggested that Roy Nutter, the Chair from the Traffic Commission attend the January Committee of the Whole meeting to discuss traffic calming issues. He then encouraged citizens to patronize local small businesses on High Street for the upcoming Small Business Saturday event downtown.

Councilor Selin: Councilor Selin thanked the Police Department for keeping Krepps Park parking lot clear. She commended those working hard on the

Comprehensive Plan. She added that plans for the new Farmers Market Place Pavilion are going well and noted the Thanksgiving Market at the Marilla Center on Saturday.

Councilor Shamberger:

Councilor Shamberger thanked Ron Justice for chairing the Woodburn Planning Meeting, and encouraged members of the community to share their ideas for repurposing the Woodburn property. She announced the upcoming Woodburn School and Woodburn Neighborhood Association Meetings. Councilor Shamberger welcomed and commended Code Officer Michaels who has taken on all the garbage issues on Wiley Street and all the major arteries throughout the city. She thanked all those who serve our City and wished everyone a Happy Thanksgiving.

Councilor Byrne:

Councilor Byrne complimented Susan Sullivan for distributing the information on the gateway cleanup initiative. He addressed the letters from the County Assessor, and stated that the assessment was set by the County Commission & City. He stated to Councilor Bane that he agrees a reduction in revenue would be an unfortunate consequence. He then wished everyone a Happy Thanksgiving.

Councilor Herbst:

Councilor Herbst thanked those involved with the preparation of the Grading Ordinances, and announced the upcoming Suncrest Neighborhood Association Meeting. She suggested that Council organize a walking tour to address lighting, and inquired with the City Manager about the new Public Works truck. Mr. Moore replied that the new truck is needed for Snow Removal. Councilor Herbst then wished everyone a Happy Thanksgiving.

Mayor Manilla:

Mayor Manilla mentioned the upcoming BOH meetings to address the smoking Ordinances and County regulations. Mayor Manilla stated that we don't give enough credit to lot of our departments and thanked the Planning, Engineering and MUB for the Ordinances on the agenda this evening. Mayor Manilla mentioned that he is glad that MUB is opening their horizons to add a member to its board outside the city limits.

ADJOURNMENT: There being no further business, the meeting adjourned by unanimous consent at 9:00 pm.

City Clerk

Mayor

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

SPECIAL MEETING November 29, 2011:

The special meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Tuesday, November 29, 2011 at 5:00 p.m.

PRESENT: Mayor Jim Manilla, City Clerk Linda Little, and Council Members Ron Bane, Wes Nugent, Jenny Selin, Bill Byrne, Marti Shamberger and Linda Herbst.

The meeting was called to order by Mayor Manilla.

EXECUTIVE SESSION:

Motion by Bane, second by Shamberger, to go into an executive session pursuant to Section 6-9A-4-2 of the West Virginia Code in order to discuss personnel matters with the following persons present Mayor Manilla and Council Members. Time 5:01

ADJOURNMENT:

There being no further business, Council adjourned at 6:15 p.m.

City Clerk

Mayor

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



Morgantown Municipal Airport

100 Hart Field Road
Morgantown, West Virginia 26505
(304) 291-7461
www.morgantownairport.com

November 14, 2011

Elias G. Hishmeh
President
Tailwinds, Inc.
82 Hart Field Road
Morgantown, WV 26505

Re: Transfer of Ownership

Dear Mr. Hishmeh

It is with regret that the City of Morgantown agrees to your transfer of ownership of Tailwinds, Inc. and the Alai Baba Restaurant to Kunundrum International, LLC. It is our understanding that no changes to the lease for space at the Airport to operate Ali Baba's Restaurant will occur.

Ali Baba's Restaurant, and Voyagers' Restaurant before it, has become a significant part of the Airport culture. You have provided a service to pilots, crews, passengers, and others for years. We hear from many people that the restaurant is the reason they come to Morgantown. And, the restaurant attracts patrons from the community that are not flying in or out of Morgantown, making it an ambassador for the Airport. That is owed in large part to you and your family's personal oversight and interaction with the customers. You will all be missed.

Thank you for your years of service to the Morgantown Municipal Airport and to the Morgantown community. We look forward to many more years of service with the new owner. As always, feel free to contact me now or in the future.

Sincerely,



Michael J. Clow, A.A.E.

cc: Terrence R. Moore, ICMA-CM, City Manager

Michael J. Clow, A.A.E.
Airport Director
mclow@cityofmorgantown.org

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.**

BOARD OF ZONING APPEALS: 3 YEAR TERM:

Terms for Bernie Bossio and George Papatreas expire on 12/31/11. They both wish to continue to serve. City Clerk advertised to see if there are interested candidates. Deadline is 12/14/11. Council can vote on appointments at December 20th Regular Meeting. Residents appointed by City Council-5 members.

FIRE CIVIL SERVICE: 4 YEAR TERM:

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

HISTORIC LANDMARKS COMMISSION: 4 YEAR TERM:

Ralph Schmitt and Larry Sypolt's term expired on 11/15/11. Both wish to continue to serve. Council can vote on those appointments on December 6th Regular Meeting. Appointments by Council at least 2 members interest in historic preservation-1 Council rep.

MORGANTOWN UTILITY BOARD: 5 YEAR TERM:

Frank Scafella's term expired on November 4, 2011. He does wish to continue to serve. There are no other candidates at this time. Council can vote on the appointment at the December 6th Regular Meeting. Appointments by City Manager to serve at large.

PLANNING COMMISSION: 3 YEAR TERM:

Sam Loretta and Tim Stranko's term expires on 12/31/11. Both wish to continue to serve. City Clerk advertised for candidates. Deadline is 12/14/11. Council can vote for appointments on December 20, 2011 at their Regular Meeting. Nominated by City Manager on recommendation. Confirmed by City Council.

TRANSIT AUTHORITY: 3 YEAR TERM:

Denny Poluga's (City Appointment) term expires on 12/31/11. Mr. Poluga wishes to continue to serve. Council can vote on that appointment at the December 20th Regular Meeting.

URBAN LANDSCAPE COMMISSION: 2 YEAR TERM:

Marilyn Bowers, 2nd wd resigned still vacant and On July 27th 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.
11-22-11

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.

(fi) 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.

(gj) 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.

(hk) 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.

(l) 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.

(im) 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 ~~g~~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:

ADOPTED:

FILED:

RECORDED:

MAYOR

CITY CLERK

ORDINANCE NO. _____

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

ORDINANCE NO. _____

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 FORTH HEREIN.

Property included in this consideration is identified in the 2006 Monongalia County Assessor's records as Parcel No. 118 of County Tax Map No. 26; Morgantown Corporation District.

THE CITY OF MORGANTOWN HEREBY ORDAINS:

1. That the zoning classification for Parcel No. 118 of County Tax Map No. 26 of the 2006 tax assessment as described herein and illustrated on the exhibit hereto attached and declared to be a part of this Ordinance to be read herewith as if the same was fully set forth herein is reclassified from (B-1) Neighborhood Business District to (B-4) General Business District.
2. That the Official Zoning Map be accordingly changed to show said zoning reclassification.

This Ordinance shall be effective from date of adoption.

FIRST READING:

Mayor

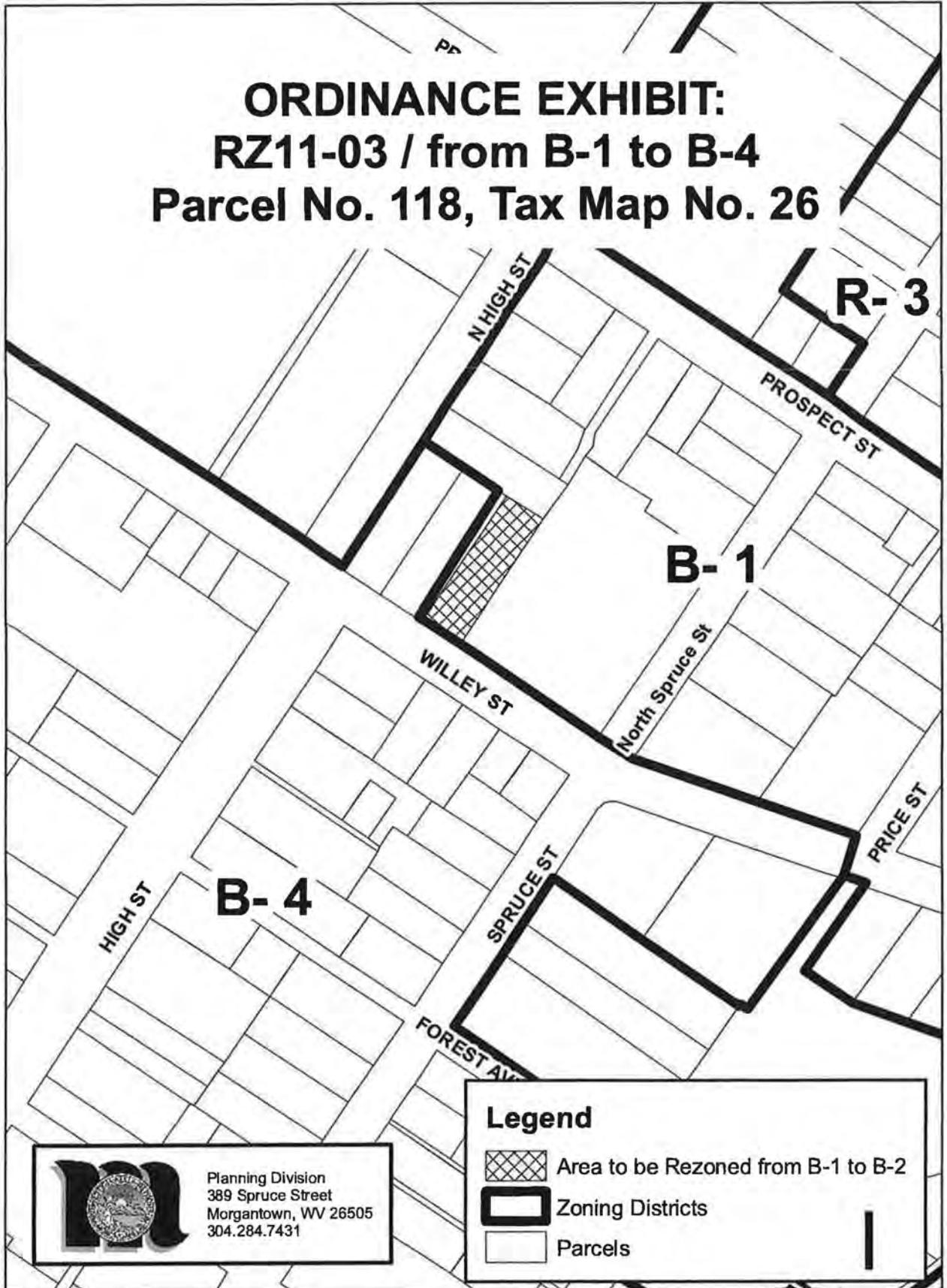
ADOPTED:

FILED:

RECORDED:

City Clerk

**ORDINANCE EXHIBIT:
RZ11-03 / from B-1 to B-4
Parcel No. 118, Tax Map No. 26**



 Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

Legend

-  Area to be Rezoned from B-1 to B-2
-  Zoning Districts
-  Parcels

AN ORDINANCE AMENDING ARTICLE 169, SECTION 169.01, OF THE MORGANTOWN CITY CODE, AS THE SAME APPLIES TO MORGANTOWN UTILITY BOARD MEMBERS.

The City of Morgantown hereby ordains that Section 169.01 of its Administrative code is amended as follows:

169.01 CREATION; MEMBERS; COMPENSATION.

- (a) Upon the issuance of the combined waterworks and sewerage system refunding revenue bonds, the management, control and operation of the waterworks system and the sewerage system of the City shall be vested in the Morgantown Utility Board (the "Board"), created, appointed and functioning as hereinafter provided.
- (b) The management, control and operation of the stormwater drainage and sewer system of the City shall be vested in the Morgantown Utility Board.
- (c) The Board shall consist of five persons, each of whom shall be ~~citizens and residents of the City~~ residential customers of the Morgantown Utility Board, shall be persons of outstanding reputation, ability and integrity, and shall be appointed by Council. No more than two of the appointees may be citizens of Monongalia County, residing outside of the corporate limits of the City; all remaining appointees shall be citizens and residents of the City. The City Manager shall notify all appointees of their appointment. The terms of such Board members first appointed shall be for one, two, three, four and five years, respectively, from the first day of the month in which appointed. In the event of a vacancy and also within thirty days after the expiration of the term of office of any Board member, a successor shall be appointed by Council. All vacancies shall be filled for the unexpired term only and all other appointments shall be for a term of five years, to commence on the date following the scheduled expiration date of the previous term. The Board shall adopt rules of procedure for the time and place of its meetings and the conduct thereof. Any Board member shall be eligible for reappointment upon expiration of his term. The Board members shall each receive compensation for their services at the rate established by ordinance of Council and in addition, shall be reimbursed for any and all expenses incurred in the performance of their duties under order of the Board. Each Board member shall be subject to removal for just cause by Council by the recorded vote of a majority of Council after a public hearing thereon. The decision of Council as to such removal shall be final and not subject to review by any court, arbitrator or other body, and each Board member accepting such appointment shall acknowledge the finality of such decision.

This Ordinance shall be effective December 21, 2011.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF REALTY IN THE SIXTH WARD OF THE CITY OF MORGANTOWN FROM (PUD) PLANNED UNIT DEVELOPMENT TO (R-1A) SINGLE-FAMILY RESIDENTIAL DISTRICT THEREBY RESCINDING THE "HABITAT FOR HUMANITY JEROME PARK PLANNED UNIT DEVELOPMENT" 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 FORTH HEREIN.

WHEREAS, the City of Morgantown adopted Ordinance 09-30 on July 7, 2009 to amend the Official Zoning Map of the City of Morgantown for the "Habitat for Humanity Jerome Park Planned Unit Development Outline Plan".

WHEREAS, Ordinance 09-30 provided for the zoning reclassification of Parcel 41 of Monongalia County Tax Map 24 (2006 tax assessment), Morgantown Corporation District from (R-1A) Single-family Residential District to (PUD) Planned Unit Development District.

WHEREAS, Article 1357.03 (D) of the City's Planning and Zoning Code provides that a PUD Development Plan must be submitted to the Planning Division not more than eighteen (18) months following City Council approval of the PUD Outline Plan. Said Article provides that the Planning Commission may extend the time for application for approval of the PUD Development Plan for good cause, consistent with the purposes of the Zoning Ordinance OR initiate action to amend the Official Zoning Map so as to rescind the Planned Unit Development designation.

WHEREAS, on February 10, 2011, the Planning Commission extended the original PUD Development Plan application deadline from January 7, 2011 to July 15, 2011.

WHEREAS, the Planning Division duly notified the "Habitat for Humanity Jerome Park" developer by means of a letter dated June 27, 2011 that:

1. Article 1357.03 "Procedure for Approval of Planned Unit Development" of the Planning and Zoning Code provides that a PUD Development Plan must be submitted to the Planning Division no later than eighteen (18) months following City Council approval of the Outline Plan. City Council approved the "Habitat for Humanity Jerome Park" PUD Outline Plan on July 7, 2009, which established an expiration deadline of January 7, 2011.
2. The Planning Commission approved on February 10, 2011 an extension of said expiration deadline from January 7, 2011 to July 15, 2011.
3. Article 1357.03 (D) (4) (c) requires the Planning Division to report to the Planning Commission on Planned Unit Developments with time limits that have expired and notify the original applicants of same and that the Morgantown Planning Commission may extend the PUD Development Plan submission deadline for good cause, consistent with the purposes of the Zoning Ordinance.

4. The Planning Division is to report the subject expiration to the Planning Commission with a recommendation to determine whether to consider extending the deadline or initiate action to amend the Official Zoning Map so as to rescind the Planned Unit Development designation.
5. Should the "Habitat for Humanity Jerome Park" developer seek to pursue an additional PUD Development Plan submission deadline extension, a letter detailing the merits and just cause for same must be submitted to the Planning Division no later than July 8, 2011 so that it may be advertised and considered by the Planning Commission at its August 11, 2011 hearing.

WHEREAS, the Planning Division did not receive a PUD Development Plan submission deadline extension request from the "Habitat for Humanity Jerome Park" developer.

WHEREAS, the Morgantown Planning Commission held a public hearing on November 10, 2011 and voted unanimously to initiate action to amend the Official Zoning Map so as to rescind the "Habitat for Humanity Jerome Park PUD Outline Plan" designation.

NOW THEREFORE BE IT ORDAINED BY THE CITY OF MORGANTOWN:

1. That the zoning reclassification provided in Ordinance 09-30 is hereby rescinded;
2. That Parcel 41 of Monongalia County Tax Map 24 (2006 tax assessment), Morgantown Corporation District as described herein and illustrated on the exhibit hereto attached and declared to be a part of this Ordinance to be read herewith as if the same was fully set forth herein is reclassified from (PUD) Planned Unit Development to (R-1A) Single-family Residential District; and,
3. That the Official Zoning Map be accordingly changed to show said zoning reclassification.

This Ordinance shall be effective from date of adoption.

FIRST READING:

Mayor

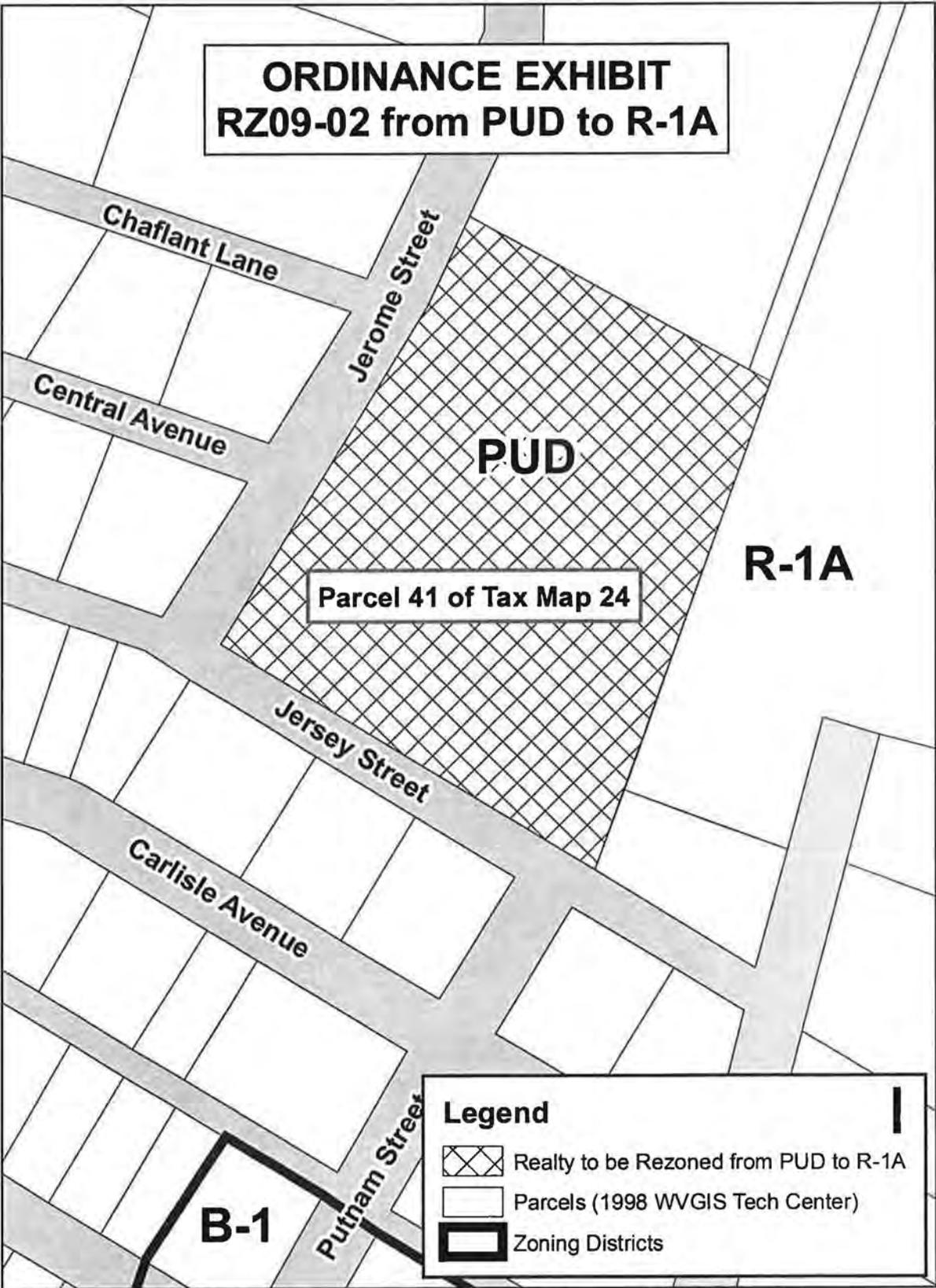
ADOPTED:

FILED:

RECORDED:

City Clerk

**ORDINANCE EXHIBIT
RZ09-02 from PUD to R-1A**



Map prepared by the Morgantown Planning Division (11/16/2011)

AN ORDINANCE AUTHORIZING A LICENSE AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN, LICENSOR, AND MONONGALIA COUNTY DEVELOPMENT AUTHORITY, LICENSEE, AS THE SAME APPLIES TO A PORTION OF THE REALTY BEING UTILIZED FOR THE CONSTRUCTION OF ROAD KNOWN AS THE MORGANTOWN MUNICIPAL AIRPORT ACCESS ROAD.

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

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

ROAD LICENSE AGREEMENT

THIS ROAD LICENSE AGREEMENT (the "Agreement") is made this _____ day of _____, 2011, by and between the CITY OF MORGANTOWN, Morgantown, West Virginia, a Municipal Corporation (the "City")

AND

MONONGALIA COUNTY DEVELOPMENT AUTHORITY, a West Virginia Public Corporation, (the "MCDA").

WHEREAS, the City is the fee title owner of parcels of land located in the City of Morgantown, County of Monongalia, West Virginia, which are more particularly described at the following Deed Book references in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, collectively (the "Property"):

DATE	GRANTOR	DEED BOOK/ PAGE
October 11, 1935	Ruth Fleming Hare and Lloyd H. Huse	273/266
February 9, 1938	Thomas E. Powell and Mary C. Powell	290/293
August 8, 1939	Bethlehem Steel Corporation	302/46
June 18, 1945	John Evanto, et al	365/92

WHEREAS, MCDA desires to acquire License over, on, under and through City's Property as set forth in the preliminary plat attached as Exhibit "A" and incorporated herein by reference and as more particularly described by the metes and bounds description attached as Exhibit "B" also incorporated herein by reference, "License Area" for the, use, construction, reconstruction, operation, maintenance, repair, renewal and removal of a public road to be known as the Morgantown Municipal Airport Access Road (" Access Road").

WHEREAS, the MCDA will construct the Access Road and desires the Access Road to become a public road;

WHEREAS, the City will inspect the work performed by the MCDA in accordance with its normal procedure to assure that the Access Road is constructed in a manner that will allow it to be accepted as a public road.

WITNESSETH, That the City, for and in consideration of the sum of ONE DOLLAR (\$1.00) lawful money of the United States, paid by the MCDA, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey to the MCDA, its successors and assigns, the free and uninterrupted use, liberty and privilege of a License over, on, under and through the License Area for so long as the License Area is utilized for a public road, to lay, construct, reconstruct, maintain, repair, replace and operate the Access Road on the City's Property subject to the covenants contained in this Road License Agreement.

The City and the MCDA covenant and agree as follows:

1. That the above recitals and the attached Exhibits are incorporated as an integral part of the License Agreement as if fully set forth herein;
2. That the City warrants that it is the fee simple owner of title to the Property and the interest conveyed by this Agreement. The City agrees to cooperate with the MCDA so that the Access Road can be recognized as a public road in all respects.
3. That the location of the License Area is shown on the plat of the Access Road Right-of-Way prepared by Alpha Associates Incorporated and attached as Exhibit "A" and more fully described in the attached Exhibit "B".
4. That the MCDA covenants and agrees that all work performed with reference to the construction of the Access Road will be done in conformity with the standards established by the City of Morgantown and the State of West Virginia. The MCDA further covenants and agrees that after completion of construction of the Access Road, the City shall be provided with duly certified copies of "as built" plans, showing the exact location of the Access Road.
5. That the MCDA is granted the right of passage over City's Property, over existing public roadways, in and through the License Area, all for purposes consistent with treating the Access Road as a public road and exercising the rights granted by this Road License Agreement. Any damage to the License Area not authorized by this License Agreement occurring in the course of exercising the rights granted by this Road License Agreement shall be repaired at the cost and expense of MCDA to the condition which existed immediately prior to such damage.
6. That the License granted is for the construction and use of the Access Road within the City of Morgantown to be owned, operated and maintained by the MCDA as a public road.
7. That except as set forth in Section 13 hereof, the City agrees not to construct any building or structures over or create any hazard or obstruction to or interfere with MCDA's use of the License Area. MCDA is granted the right to remove any trees, shrubberies, roots, fences or other obstructions that may interfere or threaten to interfere with the roadway construction, by appropriate methods and to perform such excavation and earth removal or placement as may be necessary for the construction of the Access Road. Provided, however, that before taking such action MCDA shall notify City of the action to be taken and the MCDA shall take no action that will interfere in anyway with the operation of the Airport. It shall be conclusively presumed that

the MCDA has properly notified the City for construction of the Access Road upon providing the City a complete set of plans and specifications and includes the City in the MCDA's "Notice to Proceed" to the contractor for construction of the Access Road. The City may send a representative to the regularly scheduled construction meetings for the project and participation by a City representative in the regularly scheduled construction meetings for the project shall be deemed on going notice to the City regarding construction of the Access Road.

8. That the MCDA shall, maintain, repair, service, construct and reconstruct the Access Road until the first to occur of this License Agreement terminating or for so long as the Access Road is maintained as a public road, so as to keep same in good operating condition, and in so doing, use reasonable care not to unduly disturb the balance of the City's Property outside the License Area or the City's use and enjoyment thereof.

9. That the MCDA shall pay the costs of recording this License Agreement and with obtaining all permits in connection with this License Agreement and construction of the Access Road, and pay any tax that may be assessed or imposed as a result of this License.

10. That this License and the rights granted hereunder shall terminate at the earliest to occur of the Property, subject to the License, no longer being utilized for a public road or upon completion of construction and acceptance of the Access Road by the City. The MCDA and the City agree to execute any and all documents necessary to convey title to the Access Road to the City and terminate this License Agreement.

11. That this License may be terminated in writing by the City at any time that the FAA determines that the License Area will be required for aeronautical purposes. Upon License termination the License Area and all rights, duties and obligations therein will revert to the City.

12. That the MCDA by accepting this License agrees for itself, its successors and assigns that it will not make use of the License Area in any manner which might interfere with the landing and taking off of aircraft from Morgantown Municipal Airport. In the event the aforesaid covenant is breached, the City reserves the right to enter upon the License Area and cause the abatement of the interference at the expense of the MCDA.

13. That the City reserves, for the use and benefit of the public, an easement for the free passage of aircraft, defined as any contrivance now known or hereafter developed for flight, by whomever owned or operated, over the License Area. The City reserves the right, after providing written notice to the MCDA and an opportunity to cure, and the MCDA's failure to cure within thirty(30) days of such notice (or shorter period in the event of an emergency situation) to enter upon the License Area and remove any structure or object and cut any tree, all of which shall be at the expense of the MCDA, in the event such structure or tree interferes with the flight path of aircraft from the Morgantown Municipal Airport.

14. That this License shall be subordinate to the provisions of and requirements of any existing or future agreement between the City and the United States, relating to the development, operation, or maintenance of the Morgantown Municipal Airport.

15. That the MCDA agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event any future structure as planned for the License Area, or in the event of any planned modification or alteration of any future structure situated on the License Area.

16. That this License shall be subject to all other terms and conditions of the City's grant assurances to the Federal Aviation Administration (the "FAA") pursuant to all Grant Agreements entered into by and between the FAA and the City. The City shall provide the MCDA with written notification of all FAA grant assurances and requirements.

17. This License is entered into by the City pursuant to authorization duly given by the City on _____, 2011 at by Ordinance No. _____.

TO HAVE AND TO HOLD all the privileges by the MCDA, its successors and assigns, to and for the use of the MCDA, its successors and assigns forever.

IN WITNESS WHEREOF, the City has caused this License Agreement to be executed on the day and year above set forth.

CITY:

WITNESS/ATTEST:

CITY OF MORGANTOWN

By: _____
Print Name & Title: _____

MCDA:

WITNESS/ATTEST:

MONONGALIA COUNTY DEVELOPMENT

By: _____
Print Name & Title: _____

EXHIBIT "A"
ENGINEER'S DRAWING OF LICENSE AREA

EXHIBIT "B"
LEGAL DESCRIPTION

EXHIBIT B

Morgantown Municipal Airport Access Road

MCDA – Tract 1.1

Page 1 of 1

TRACT 1.1 – City of Morgantown

All that certain tract or parcel of real estate, situate, lying and being on the waters of West Run in the City of Morgantown, Monongalia County, West Virginia, and more particularly bounded and described as follows:

BEGINNING at a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) along the western right of way line of proposed Morgantown Municipal Airport Access Road, Monongalia County, West Virginia, said point being proposed right of way line 69 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 101 feet radially left of centerline at Station 15+58

thence, westerly, continuing with said proposed right of way line 170 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 249 feet radially left of centerline at Station 16+19.36

thence, westerly, continuing with said proposed right of way line 261 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 465 feet radially left of centerline at Station 17+05.70

thence, northwesterly, continuing with said proposed right of way line 188 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 518 feet radially left of centerline at Station 17+97.08

thence, northerly, continuing with said proposed right of way line 153 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 544 feet radially left of centerline at Station 18+70.30

thence, northwesterly, continuing with said proposed right of way line 75 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 602.47 feet radially left of centerline at Station 18+92.04

thence, northerly, continuing with said proposed right of way line 124 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 649 feet radially left of centerline at Station 19+43.26

thence, westerly, continuing with said proposed right of way line 92 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 739 feet radially left of centerline at Station 19+51.73

thence, northwesterly, continuing with said proposed right of way line 98 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 787 feet radially left of centerline at Station 19+85.55

thence, westerly, continuing with said proposed right of way line 137 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 921.49 feet radially left of centerline at Station 19+95.05

thence, northerly, continuing with said proposed right of way line 250 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 929.08 feet radially left of centerline at Station 20+82.82

thence, southeasterly, continuing with said proposed right of way line 266 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 687 feet radially left of centerline at Station 20+40.12

thence, southeasterly, continuing with said proposed right of way line 182 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 551 feet radially left of centerline at Station 19+85.70

thence, southeasterly, continuing with said proposed right of way line 209 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 445 feet radially left of centerline at Station 18+95.09

thence, southeasterly, continuing with said proposed right of way line 370 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 243 feet radially left of centerline at Station 17+09.37

thence, northeasterly, continuing with said proposed right of way line 81 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 166.24 feet radially left of centerline at Station 17+28.16

thence, northerly, continuing with said proposed right of way line 225 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 110 feet radially left of centerline at Station 19+00

thence, northerly, continuing with said proposed right of way line 121 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 105 feet radially left of centerline at Station 20+00

thence, northeasterly, continuing with said proposed right of way line 123 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 65 feet radially left of centerline at Station 21+00

thence, northwesterly, continuing with said proposed right of way line 96 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 140 feet radially left of centerline at Station 21+50

thence, northeasterly, continuing with said proposed right of way line 65 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 145 feet radially left of centerline at Station 22+00

thence, easterly, continuing with said proposed right of way line 107 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 60 feet radially left of centerline at Station 22+54.39

thence, northerly, continuing with said proposed right of way line 205 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 120 feet left of and at a right angle to centerline at Station 24+50

thence, northeasterly, continuing with said proposed right of way line 346 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 120 feet radially left of centerline at Station 28+00

thence, northeasterly, continuing with said proposed right of way line 330 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 160 feet radially left of centerline at Station 31+50

thence, northeasterly, continuing with said proposed right of way line 264 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 60 feet left of and at a right angle to centerline at Station 34+00

thence, northerly, continuing with said proposed right of way line 113 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 85 feet radially left of centerline at Station 35+00

thence, northeasterly, continuing with said proposed right of way line 74 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 89.60 feet radially left of centerline at Station 35+64.02,

thence, northeasterly, continuing with said proposed right of way line 45 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 88.33 feet radially left of centerline at Station 36+05.58 said rod stands as corner to Guy A. and Loretta K. Walls and proposed Morgantown Municipal Airport Access Road Tract 2.1;

thence, southeasterly, with said proposed Morgantown Municipal Airport Access Road Tract 2.1 for 207 feet, more or less, to a point 119.21 feet radially right of centerline at Station 36+12.06;

thence, southerly, continuing with said proposed Morgantown Municipal Airport Access Road Tract 2.1 for 37 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 131.82 feet radially right of centerline at Station 35+67.61, said rod stands along the eastern right of way line of proposed Morgantown Municipal Airport Access Road;

thence, southwesterly, with said proposed right of way line 94 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 110 feet radially right of centerline at Station 34+50

thence, southwesterly, continuing with said proposed right of way line 198 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 75 feet right of and at a right angle to centerline at Station 32+50

thence, southwesterly, continuing with said proposed right of way line 412 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 70 feet radially right of centerline at Station 28+50

thence, southerly, continuing with said proposed right of way line 175 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 150 feet right of and at a right angle to centerline at Station 27+00

thence, southwesterly, continuing with said proposed right of way line 490 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 105 feet radially right of centerline at Station 22+00

thence, southwesterly, continuing with said proposed right of way line 205 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 75 feet radially right of centerline at Station 19+50

thence, southerly, continuing with said proposed right of way line 93 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 45 feet radially right of centerline at Station 18+50

thence, southeasterly, continuing with said proposed right of way line 132 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 150 feet radially right of centerline at Station 17+50

thence, southerly, continuing with said proposed right of way line 112 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 128.66 feet radially right of centerline at Station 15+97.09

thence, southwesterly, continuing with said proposed right of way line 232, more or less, to the place of beginning and containing 14.60 acres (635,976 square feet), more or less, as surveyed in December, 2010, by Alpha Associates, Inc., of Morgantown, WV, and as shown on a plat of survey for Monongalia County Development Authority dated December 24, 2010, identified as Tract 1.1, recorded in map cabinet _____ and made a part of this description.

The tract or parcel of land hereinabove described is a portion of that same real estate conveyed unto The City of Morgantown, a municipal corporation, by four deeds; the first, dated October 11, 1935, from Ruth Fleming Huse and Lloyd H. Huse, her husband, and of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in deed book 273, at page 266; the second, dated February 9, 1938, from Thomas E. Powell and Mary C. Powell, his wife, and of record in the said Clerk's Office in Deed Book 290, at Page 293; the third, dated August 8, 1939, from Bethlehem Steel Corporation, a corporation organized and existing under the laws of the State of Delaware, and of record in the said Clerk's Office in Deed Book 302, at Page 46; and the fourth, dated June 18, 1945, from John Evanto, et al., under special term of the Circuit Court of Monongalia County, and of record in the said Clerk's Office in Deed Book 365, at Page 92.

Said tract or parcel of real estate is more specifically shown on tax map sheet 32A as part of parcels 12, 13, 20 and 21 in the City of Morgantown.

Alpha Associates, Incorporated

Steven V. Buchanan, PS #1009

RESOLUTION

WHEREAS, the City of Morgantown submitted the necessary paperwork to obtain \$2,500 for the West Virginia Botanic Gardens through the Governor's Community Participation Grant Program, and the grant application has been approved for funding; and

WHEREAS, the grant (11LEDA0668) will allow the WV Botanic Gardens to purchase material to construct an information kiosk on the grounds of the Botanic Gardens; and

WHEREAS, Morgantown City Council is of the opinion that this program will be of great benefit to the residents of Morgantown that utilize the WV Botanic gardens facility, and therefore agrees to administer the grant contract.

NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown this 6th day of December, 2011, that the City agrees to the conditions of the contract and authorizes the Mayor to sign the West Virginia Development Office contract, and City Manager to administer the execution of the grant

Mayor

City Clerk

GOVERNOR'S COMMUNITY PARTICIPATION

GRANT PROGRAM CONTRACT

between the

WEST VIRGINIA DEVELOPMENT OFFICE

and the

CITY OF MORGANTOWN

THIS AGREEMENT, entered into this 1st day of July, 2010, by the West Virginia Department of Finance and Administration on behalf of the West Virginia Development Office hereinafter called the "WVDEVO" and the City of Morgantown and its authorized officers, agents, and representatives, hereinafter called the "Grantee."

WITNESS THAT:

WHEREAS, the WVDEVO has promised and agreed to assist the Grantee to perform such tasks hereafter described in the scope of services, which is to be partially financed by funds made available through the Governor's Community Participation Grant program.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. **Assistance of the Grantee**. The WVDEVO hereby agrees to assist the Grantee including all authorized officers, agents, and representatives, to perform such tasks and functions as set forth below in the scope of services.
2. **Scope of Services**. The Grantee, or its designated agent, shall do, perform and carry out, in a satisfactory and proper manner as determined by the WVDEVO, and appropriate regulatory agencies, if required, all duties, tasks, and functions necessary to purchase building materials to construct an information kiosk at the West Virginia Botanic Gardens.
3. **Personnel**. The Grantee represents that it has, or will secure at its own expense, personnel with the necessary qualifications and experience required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with WVDEVO.
4. **Time Performance**. The Grantee will commence its duties under this Contract on July 1, 2010, and such duties shall be undertaken and completed in such sequences as to assure their expeditious completion in the light of the purpose of the Contract; but, in any event, all of the services required hereunder shall be completed by June 30, 2012. The completion date of this contract may only be extended by mutual written agreement of both parties dependent on the reappropriation of funds under the Governor's Community Participation Grant program. If no such agreement exists, the Grantee shall not receive payment for services rendered or work performed relative to this grant after June 30, 2012.
5. **Compensation**. In consideration of the services rendered by the Grantee, the WVDEVO agrees to pay the Grantee the sum of \$2,500. This amount constitutes complete compensation for all services rendered. In

no instance shall the agreed upon compensation exceed \$2,500 without the written consent of the Governor of the State of West Virginia.

6. **Method of Payment.** In order to receive payments under the terms of this Agreement, the Grantee shall submit the following: (a) a Letter of Transmittal containing a progress report, and (b) a Request for Payment Financial Report. The final ten percent shall be made available upon submission of certification of completion and acceptance of the project by the Grantee. Upon receipt of said documents, the WVDEVO shall review the same for reasonableness and appropriateness.

7. **Changes.** The WVDEVO and the Grantee may, from time to time, require changes in the scope of the services of the work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Grantee's compensation and work to be performed, which are mutually agreed upon by and between the WVDEVO and the Grantee, shall be incorporated in written amendments to this Contract.

8. **Sub-Grantees and Reversion of Property.** The Grantee may administer funds on behalf of sub-grantees, provided that such a sub-grantee is certified as a nonprofit organization by the United States Internal Revenue Service and the West Virginia Secretary of State's Office. Should such a sub-grantee cease to exist, all commodities or supplies purchased with funds provided under the auspices of this Contract by or for the sub-grantee shall become the property of the Grantee.

9. **Competitive Bid Procedures.** Competitive bidding shall be pursued in all instances. The Grantee must follow the more stringent of either state or local purchasing regulations. The West Virginia Purchasing Division requirements, at a minimum, are as follows: Commodities and services expected to cost \$2,500 or less require no bids, however, competition is encouraged. Purchases between \$2,500.01 and \$5,000 require three verbal bids to be documented on a verbal bid quotation summary. Purchases \$5,000.01 to \$25,000 require three written bids.

The Grantee shall solicit competitive, sealed bids for commodities and supplies related to this project which have an estimated value of over \$25,000. Any attempts by the Grantee to segregate the project into sections having an estimated value of less than \$25,000 shall be cause for termination of this agreement under the provisions of Paragraph 28. These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions West Virginia Code §59-3. This notice shall be published by the Grantee in the newspaper with the largest circulation serving the general area once a week for two successive weeks preceding the final bid date.

The Grantee shall also, where feasible, solicit sealed bids by listing the project in the F. W. Dodge Reports, sending requests by mail to prospective suppliers or contractors, and by posting notice on a bulletin board in a public place. The Grantee shall have available upon request for review by the WVDEVO or its designated representative, bid documents and other evidence of compliance with these procedures.

10. **Project Wage Rates.** Every contract involving construction, reconstruction, demolition, improvement, enlargement, painting, decoration, alteration, and/or repair work which involves the employment of any contractor and/or subcontractor necessary for the undertaking and completion of this project, regardless of the source of funds utilized to pay such contract, must comply with the West Virginia Act on Wages on Construction of Public Improvements, West Virginia Code §21-5A. **This law applies to all construction contracts, regardless of cost.**

The receipt and utilization of funds procured under this agreement mandate that all construction contracts necessary for the undertaking and completion of this project, regardless of the source of funds

utilized to pay such construction contracts, must comply with the provisions of West Virginia Code § 21-5A.

Such provisions shall include the payment of the Fair Minimum Wage Rates as determined by the West Virginia Commissioner of Labor for each craft or classification of all workmen needed to perform the contract in the locality in which the public work is performed. For projects involving federal funds which are covered by the provisions of the Davis Bacon Act (40 U.S.C. 276-a 276a-5), the Grantee shall cause the contractor and/or subcontractors to pay the higher wage rate, federal or state.

Further, the Grantee shall note this requirement in the advertisement for bids and print these wage rates on all bid documents. The Grantee shall also have available upon request for review by the WVDEVO or its designated representative, bid documents and other evidence of compliance including copies of contractor's payrolls.

11. **Construction.** The Grantee shall procure construction contracts in accordance with West Virginia Code §5-22-1. **The state and its subdivisions shall, except as provided in this section, solicit competitive bids for every construction project exceeding \$25,000 in total cost.**

Further, the receipt and utilization of funds procured under this agreement mandate that ALL CONSTRUCTION CONTRACTS NECESSARY FOR THE UNDERTAKING AND COMPLETION OF THIS PROJECT, regardless of the source of funds utilized to pay such construction contracts, must comply with the provisions of West Virginia Code § 21-5A.

The term construction shall mean any construction, reconstruction, improvement, enlargement, painting, decorating, or repair of any public improvement let to contract. These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions West Virginia Code §59-3. This notice shall be published by the Grantee in the newspaper with the largest circulation serving the general area once a week for two successive weeks preceding the final bid date.

Any contracts under this agreement must comply with the West Virginia Act on Wages on Construction of Public Improvements, West Virginia Code §21-5A. This law applies to all construction contracts, regardless of cost. The Grantee shall note this requirement in the advertisement for bids and print these wage rates on all bidding blanks.

The Grantee shall designate the time and place for opening such construction bids in accordance with West Virginia Code §5-22-2.

12. **Bonding.** The Grantee shall secure bonding in accordance with West Virginia Code §5-22-1. All bids submitted pursuant to this chapter shall include a valid bid bond or other surety as approved by the state of West Virginia or its subdivisions. Following the solicitation of such bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: provided, that the state and its subdivisions may reject all bids and solicit new bids.

In the procurement of contracts or subcontracts for construction of less than \$100,000, the Grantee shall follow local or State requirements relating to bid guarantees, performance bonds, and payment bonds, provided that the Grantee's and State's interests are adequately protected and that such contracts can be executed in a timely manner.

In the procurement of contracts or subcontracts for construction that exceed \$100,000, the Grantee shall obtain the following:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. This bid guarantee shall consist of a firm commitment such as bid bond, certified check, or other negotiable instrument accompanying a bid that the bidder will, upon acceptance of the bid, execute the contractual documents as may be required with the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. This performance bond shall be executed by the successful contractor in connection with the contract to secure fulfillment of the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. This payment bond shall be executed in connection with a contract to assure payment is required by law of all persons supplying labor and materials in the execution of the work provided for in the contract.

13. **Architecture and Engineering.** The Grantee shall procure architectural or engineering services in accordance with of the West Virginia Code §5G. In the procurement of architectural and engineering services for projects estimated to cost \$250,000 or more, the Grantee shall publish a Class II legal ad in compliance with West Virginia Code §59-3. In the procurement of services for projects estimated to cost less than \$250,000, the Grantee shall conduct discussions with three or more professional firms.

14. **Design-Build.** The Grantee shall procure design-build projects in accordance with West Virginia Code §5-22A-1. This applies solely to building projects. Highways, water, sewer, and all other public works projects are specifically prohibited from using the design-build method.

15. **Environmental and Historical Assessment.** The Grantee shall comply with all applicable federal, state and local environmental and historical preservation laws and regulations. The Grantee acknowledges this requirement and certifies that the project will be in compliance with such laws and regulations.

16. **Equal Employment Opportunity.** With respect to employment in carrying out the program objectives, the Grantee agrees that it will not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, national origin, or physical handicap.

17. **Facilities Accessible to the Handicapped.** The Grantee shall require any facilities constructed under the auspices of this Contract to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A11/1-1961, as modified (41CFR101-17.1703 and (13CFR309.14)). The Grantee shall be responsible for conducting inspections to ensure compliance with these specifications.

18. **Facilities Operation.** The Grantee shall operate and maintain all facilities constructed under the auspices of this Contract in accordance with minimum standards as may be required or prescribed by the applicable federal, state and local statute, law, ordinance or regulation as to actual construction procedures, as well as maintenance and operation of such facilities upon completion.

19. **Interest of Members of WVDEVO and Others.** No officer, member or employee of the WVDEVO or officer, member or employee of the Grantee who exercises any function or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Contract which affects his personal interest or the interest of any corporation, partnership, or association in which he is directly or indirectly interested or has any personal or pecuniary interest, nor shall any officer, member of, or employee of, the Grantee or any member of its governing body, or officer, member, or employee of the contractor have any interest, direct or indirect, in this Contract or the proceeds thereof.

20. **Officials Not To Benefit.** No member of the Legislature of the State of West Virginia, or individual performing a service for the Grantee in connection with this project, shall be admitted to any share thereof or to any benefit to arise from this Agreement.

21. **Inspections of Project Records.** At any time during normal business hours and as often as the WVDEVO or its designated representative may deem necessary, there shall be made available to the WVDEVO or its designated representative for examination, all of its records with respect to all matters covered by this Contract and permit the WVDEVO or its designated representative to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records and personnel, conditions of employment and other data relating to all matters covered by this Contract during the entire time period beginning with project approval and ending three years after the final disbursement of grant funds.

22. **Project Audits.** (a) The Grantee shall cause an audit of this program to be included in the audit of the Grantee performed by the West Virginia State Auditor's Office, Chief Inspection Division, or its designated representative in accordance with West Virginia Code §6-9-7. The audit shall be performed in conformance with generally acceptable accounting procedures.

(b) In accordance West Virginia Code §12-4-14, if the grantee is not audited by the West Virginia State Auditor's Office and the grantee received state funds or grants in the amount of fifteen thousand dollars or more, the grantee shall file an audit of the disbursement of funds with the legislative auditor's office. The audit shall be filed within two years of the disbursement of funds or grants by the grantee and shall be made by an independent certified public accountant at the cost of the corporation, association or other organization, and must show that the funds or grants were spent for the purposes intended when the grant was made. State funds or audits of state funds or grants under fifteen thousand dollars (\$15,000) may be authorized by the joint committee on government and finance to be conducted by the legislative auditor's office at no cost to the grantee.

23. **Reporting.** The Grantee shall submit any reports requested by the WVDEVO concerning financial status and program progress. Failure to provide such reports as required by WVDEVO in a timely manner shall be cause for termination of this Contract under the terms of Paragraph 7.

24. **Fiscal Management.** The Grantee shall be responsible for establishing and maintaining adequate procedures and internal financial controls governing the management and utilization of funds provided under this Contract, as well as funds provided as the Grantee's matching share.

25. **Political Activity.** No officer or employee of the Grantee whose principal employment is in connection with any activity which is financed in whole or in part pursuant to this agreement shall take part in any of the activities expressly prohibited by the Hatch Act.

26. **Repayment.** The Grantee shall refund to the State any expenditures determined to be made for an ineligible purpose for which State funds were received.

27. **Resolution of Disputes.** Resolution of disputes between the State and the Grantee concerning administrative and programmatic matters during the terms of this Agreement shall be initiated through consultation and discussion at the State's Administrative Offices with final decision on questions of policy or fact being determined by the Director of the Community Development Division or his/her designated representative. Nothing in this Agreement shall be construed as making the final decision on a question of law, or to limit in any manner any remedies or recourses available under applicable laws. Citizen's complaints or disputes regarding Grantee performance or actions relative to the approved project are the responsibility of the Grantee.

28. **Termination of Contract for Cause.** If, through any cause, the Grantee shall fail to fulfill in a necessary and proper manner his obligations under this Contract, or if the Grantee shall violate any of the covenants, agreements, or stipulations of this Contract, the WVDEVO shall thereupon have the right to terminate this Contract by giving written notice to the Grantee of such termination and specifying the effective date thereof, at least fifteen days before the effective date of such termination. The Grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed on the described project.

Notwithstanding the above, the Grantee shall not be relieved of liability to the WVDEVO for damages sustained by the WVDEVO by virtue of any breach of the Contract by the Grantee, and the WVDEVO may withhold any payments to the Grantee for the purpose of set-off until such time as the exact amount of damages due the WVDEVO from the Grantee is determined.

29. **Termination for Convenience of WVDEVO.** The WVDEVO may terminate this Contract at any time by giving written notice to the Grantee of such termination and specifying the effective date of termination. If the Contract is terminated by the WVDEVO as provided herein, the Grantee will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Grantee covered by this Contract, less payments of compensation previously made.

30. **Termination by the Grantee.** The Grantee may unilaterally rescind this agreement at any time prior to the commencement of the project. After project commencement, this agreement may be rescinded, modified, or amended only by mutual agreement. A project shall be deemed commenced when the Grantee makes any expenditure or incurs any obligation with respect to the project.

31. **Signing.** This Contract shall be signed by the Executive Director of the West Virginia Development Office and by the Mayor of the City of Morgantown upon authorization of the City of Morgantown by adoption and passage of a resolution, motion or similar official action.

IN WITNESS WHEREOF, the WVDEVO and the Grantee have executed this Agreement as of the date first above written.

**STATE OF WEST VIRGINIA
WEST VIRGINIA DEVELOPMENT OFFICE**

J. Keith Burdette, Executive Director

CITY OF MORGANTOWN

By: _____
Jim Manilla, Mayor

Federal Employee Identification Number

F.E.I.N.

RESOLUTION

WHEREAS, the City of Morgantown submitted the necessary paperwork to obtain \$4,000 for Center for Excellence in Disabilities at West Virginia University through the Governor's Community Participation Grant Program, and the grant application has been approved for funding; and

WHEREAS, the grant (11LEDA0651) will allow the Center for Excellence in Disabilities to purchase a portable ramp that will be available for community use through the West Virginia Assistive Technology System loan library; and

WHEREAS, Morgantown City Council is of the opinion that this program will be of great benefit to the residents of Morgantown that utilize the services of the Center for Excellence in Disabilities , and therefore agrees to administer the grant contract.

NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown this 6th day of December, 2011, that the City agrees to the conditions of the contract and authorizes the Mayor to sign the West Virginia Development Office contract, and City Manager to administer the execution of the grant

Mayor

City Clerk

GOVERNOR'S COMMUNITY PARTICIPATION

GRANT PROGRAM CONTRACT

between the

WEST VIRGINIA DEVELOPMENT OFFICE

and the

CITY OF MORGANTOWN

THIS AGREEMENT, entered into this 1st day of July, 2010, by the West Virginia Department of Finance and Administration on behalf of the West Virginia Development Office hereinafter called the "WVDEVO" and the City of Morgantown and its authorized officers, agents, and representatives, hereinafter called the "Grantee."

WITNESS THAT:

WHEREAS, the WVDEVO has promised and agreed to assist the Grantee to perform such tasks hereafter described in the scope of services, which is to be partially financed by funds made available through the Governor's Community Participation Grant program.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. **Assistance of the Grantee**. The WVDEVO hereby agrees to assist the Grantee including all authorized officers, agents, and representatives, to perform such tasks and functions as set forth below in the scope of services.

2. **Scope of Services**. The Grantee, or its designated agent, shall do, perform and carry out, in a satisfactory and proper manner as determined by the WVDEVO, and appropriate regulatory agencies, if required, all duties, tasks, and functions necessary to enable the Center for Excellence in Disabilities at West Virginia University to purchase a portable ramp. The ramp will be available for community use through the West Virginia Assistive Technology System loan library.

3. **Personnel**. The Grantee represents that it has, or will secure at its own expense, personnel with the necessary qualifications and experience required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with WVDEVO.

4. **Time Performance**. The Grantee will commence its duties under this Contract on July 1, 2010, and such duties shall be undertaken and completed in such sequences as to assure their expeditious completion in the light of the purpose of the Contract; but, in any event, all of the services required hereunder shall be completed by June 30, 2012. The completion date of this contract may only be extended by mutual written agreement of both parties dependent on the reappropriation of funds under the Governor's Community Participation Grant program. If no such agreement exists, the Grantee shall not receive payment for services rendered or work performed relative to this grant after June 30, 2012.

5. **Compensation**. In consideration of the services rendered by the Grantee, the WVDEVO agrees to pay the Grantee the sum of \$4,000. This amount constitutes complete compensation for all services rendered. In

no instance shall the agreed upon compensation exceed \$4,000 without the written consent of the Governor of the State of West Virginia.

6. **Method of Payment.** In order to receive payments under the terms of this Agreement, the Grantee shall submit the following: (a) a Letter of Transmittal containing a progress report, and (b) a Request for Payment Financial Report. The final ten percent shall be made available upon submission of certification of completion and acceptance of the project by the Grantee. Upon receipt of said documents, the WVDEVO shall review the same for reasonableness and appropriateness.

7. **Changes.** The WVDEVO and the Grantee may, from time to time, require changes in the scope of the services of the work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Grantee's compensation and work to be performed, which are mutually agreed upon by and between the WVDEVO and the Grantee, shall be incorporated in written amendments to this Contract.

8. **Sub-Grantees and Reversion of Property.** The Grantee may administer funds on behalf of sub-grantees, provided that such a sub-grantee is certified as a nonprofit organization by the United States Internal Revenue Service and the West Virginia Secretary of State's Office. Should such a sub-grantee cease to exist, all commodities or supplies purchased with funds provided under the auspices of this Contract by or for the sub-grantee shall become the property of the Grantee.

9. **Competitive Bid Procedures.** Competitive bidding shall be pursued in all instances. The Grantee must follow the more stringent of either state or local purchasing regulations. The West Virginia Purchasing Division requirements, at a minimum, are as follows: Commodities and services expected to cost \$2,500 or less require no bids, however, competition is encouraged. Purchases between \$2,500.01 and \$5,000 require three verbal bids to be documented on a verbal bid quotation summary. Purchases \$5,000.01 to \$25,000 require three written bids.

The Grantee shall solicit competitive, sealed bids for commodities and supplies related to this project which have an estimated value of over \$25,000. Any attempts by the Grantee to segregate the project into sections having an estimated value of less than \$25,000 shall be cause for termination of this agreement under the provisions of Paragraph 28. These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions West Virginia Code §59-3. This notice shall be published by the Grantee in the newspaper with the largest circulation serving the general area once a week for two successive weeks preceding the final bid date.

The Grantee shall also, where feasible, solicit sealed bids by listing the project in the F. W. Dodge Reports, sending requests by mail to prospective suppliers or contractors, and by posting notice on a bulletin board in a public place. The Grantee shall have available upon request for review by the WVDEVO or its designated representative, bid documents and other evidence of compliance with these procedures.

10. **Project Wage Rates.** Every contract involving construction, reconstruction, demolition, improvement, enlargement, painting, decoration, alteration, and/or repair work which involves the employment of any contractor and/or subcontractor necessary for the undertaking and completion of this project, regardless of the source of funds utilized to pay such contract, must comply with the West Virginia Act on Wages on Construction of Public Improvements, West Virginia Code §21-5A. **This law applies to all construction contracts, regardless of cost.**

The receipt and utilization of funds procured under this agreement mandate that all construction contracts necessary for the undertaking and completion of this project, regardless of the source of funds

utilized to pay such construction contracts, must comply with the provisions of West Virginia Code § 21-5A.

Such provisions shall include the payment of the Fair Minimum Wage Rates as determined by the West Virginia Commissioner of Labor for each craft or classification of all workmen needed to perform the contract in the locality in which the public work is performed. For projects involving federal funds which are covered by the provisions of the Davis Bacon Act (40 U.S.C. 276-a 276a-5), the Grantee shall cause the contractor and/or subcontractors to pay the higher wage rate, federal or state.

Further, the Grantee shall note this requirement in the advertisement for bids and print these wage rates on all bid documents. The Grantee shall also have available upon request for review by the WVDEVO or its designated representative, bid documents and other evidence of compliance including copies of contractor's payrolls.

11. **Construction.** The Grantee shall procure construction contracts in accordance with West Virginia Code §5-22-1. **The state and its subdivisions shall, except as provided in this section, solicit competitive bids for every construction project exceeding \$25,000 in total cost.**

Further, the receipt and utilization of funds procured under this agreement mandate that ALL CONSTRUCTION CONTRACTS NECESSARY FOR THE UNDERTAKING AND COMPLETION OF THIS PROJECT, regardless of the source of funds utilized to pay such construction contracts, must comply with the provisions of West Virginia Code § 21-5A.

The term construction shall mean any construction, reconstruction, improvement, enlargement, painting, decorating, or repair of any public improvement let to contract. These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions West Virginia Code §59-3. This notice shall be published by the Grantee in the newspaper with the largest circulation serving the general area once a week for two successive weeks preceding the final bid date.

Any contracts under this agreement must comply with the West Virginia Act on Wages on Construction of Public Improvements, West Virginia Code §21-5A. This law applies to all construction contracts, regardless of cost. The Grantee shall note this requirement in the advertisement for bids and print these wage rates on all bidding blanks.

The Grantee shall designate the time and place for opening such construction bids in accordance with West Virginia Code §5-22-2.

12. **Bonding.** The Grantee shall secure bonding in accordance with West Virginia Code §5-22-1. All bids submitted pursuant to this chapter shall include a valid bid bond or other surety as approved by the state of West Virginia or its subdivisions. Following the solicitation of such bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: provided, that the state and its subdivisions may reject all bids and solicit new bids.

In the procurement of contracts or subcontracts for construction of less than \$100,000, the Grantee shall follow local or State requirements relating to bid guarantees, performance bonds, and payment bonds, provided that the Grantee's and State's interests are adequately protected and that such contracts can be executed in a timely manner.

In the procurement of contracts or subcontracts for construction that exceed \$100,000, the Grantee shall obtain the following:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. This bid guarantee shall consist of a firm commitment such as bid bond, certified check, or other negotiable instrument accompanying a bid that the bidder will, upon acceptance of the bid, execute the contractual documents as may be required with the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. This performance bond shall be executed by the successful contractor in connection with the contract to secure fulfillment of the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. This payment bond shall be executed in connection with a contract to assure payment is required by law of all persons supplying labor and materials in the execution of the work provided for in the contract.

13. **Architecture and Engineering.** The Grantee shall procure architectural or engineering services in accordance with of the West Virginia Code §5G. In the procurement of architectural and engineering services for projects estimated to cost \$250,000 or more, the Grantee shall publish a Class II legal ad in compliance with West Virginia Code §59-3. In the procurement of services for projects estimated to cost less than \$250,000, the Grantee shall conduct discussions with three or more professional firms.

14. **Design-Build.** The Grantee shall procure design-build projects in accordance with West Virginia Code §5-22A-1. This applies solely to building projects. Highways, water, sewer, and all other public works projects are specifically prohibited from using the design-build method.

15. **Environmental and Historical Assessment.** The Grantee shall comply with all applicable federal, state and local environmental and historical preservation laws and regulations. The Grantee acknowledges this requirement and certifies that the project will be in compliance with such laws and regulations.

16. **Equal Employment Opportunity.** With respect to employment in carrying out the program objectives, the Grantee agrees that it will not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, national origin, or physical handicap.

17. **Facilities Accessible to the Handicapped.** The Grantee shall require any facilities constructed under the auspices of this Contract to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A11/1-1961, as modified (41CFR101-17.1703 and (13CFR309.14)). The Grantee shall be responsible for conducting inspections to ensure compliance with these specifications.

18. **Facilities Operation.** The Grantee shall operate and maintain all facilities constructed under the auspices of this Contract in accordance with minimum standards as may be required or prescribed by the applicable federal, state and local statute, law, ordinance or regulation as to actual construction procedures, as well as maintenance and operation of such facilities upon completion.

19. **Interest of Members of WVDEVO and Others.** No officer, member or employee of the WVDEVO or officer, member or employee of the Grantee who exercises any function or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Contract which affects his personal interest or the interest of any corporation, partnership, or association in which he is directly or indirectly interested or has any personal or pecuniary interest, nor shall any officer, member of, or employee of, the Grantee or any member of its governing body, or officer, member, or employee of the contractor have any interest, direct or indirect, in this Contract or the proceeds thereof.

20. **Officials Not To Benefit.** No member of the Legislature of the State of West Virginia, or individual performing a service for the Grantee in connection with this project, shall be admitted to any share thereof or to any benefit to arise from this Agreement.

21. **Inspections of Project Records.** At any time during normal business hours and as often as the WVDEVO or its designated representative may deem necessary, there shall be made available to the WVDEVO or its designated representative for examination, all of its records with respect to all matters covered by this Contract and permit the WVDEVO or its designated representative to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records and personnel, conditions of employment and other data relating to all matters covered by this Contract during the entire time period beginning with project approval and ending three years after the final disbursement of grant funds.

22. **Project Audits.** (a) The Grantee shall cause an audit of this program to be included in the audit of the Grantee performed by the West Virginia State Auditor's Office, Chief Inspection Division, or its designated representative in accordance with West Virginia Code

§6-9-7. The audit shall be performed in conformance with generally acceptable accounting procedures.

(b) In accordance West Virginia Code §12-4-14, if the grantee is not audited by the West Virginia State Auditor's Office and the grantee received state funds or grants in the amount of fifteen thousand dollars or more, the grantee shall file an audit of the disbursement of funds with the legislative auditor's office. The audit shall be filed within two years of the disbursement of funds or grants by the grantee and shall be made by an independent certified public accountant at the cost of the corporation, association or other organization, and must show that the funds or grants were spent for the purposes intended when the grant was made. State funds or audits of state funds or grants under fifteen thousand dollars (\$15,000) may be authorized by the joint committee on government and finance to be conducted by the legislative auditor's office at no cost to the grantee.

23. **Reporting.** The Grantee shall submit any reports requested by the WVDEVO concerning financial status and program progress. Failure to provide such reports as required by WVDEVO in a timely manner shall be cause for termination of this Contract under the terms of Paragraph 7.

24. **Fiscal Management.** The Grantee shall be responsible for establishing and maintaining adequate procedures and internal financial controls governing the management and utilization of funds provided under this Contract, as well as funds provided as the Grantee's matching share.

25. **Political Activity.** No officer or employee of the Grantee whose principal employment is in connection with any activity which is financed in whole or in part pursuant to this agreement shall take part in any of the activities expressly prohibited by the Hatch Act.

26. **Repayment.** The Grantee shall refund to the State any expenditures determined to be made for an ineligible purpose for which State funds were received.

27. **Resolution of Disputes.** Resolution of disputes between the State and the Grantee concerning administrative and programmatic matters during the terms of this Agreement shall be initiated through consultation and discussion at the State's Administrative Offices with final decision on questions of policy or fact being determined by the Director of the Community Development Division or his/her designated representative. Nothing in this Agreement shall be construed as making the final decision on a question of law, or to limit in any manner any remedies or recourses available under applicable laws. Citizen's complaints or disputes regarding Grantee performance or actions relative to the approved project are the responsibility of the Grantee.

28. **Termination of Contract for Cause.** If, through any cause, the Grantee shall fail to fulfill in a necessary and proper manner his obligations under this Contract, or if the Grantee shall violate any of the covenants, agreements, or stipulations of this Contract, the WVDEVO shall thereupon have the right to terminate this Contract by giving written notice to the Grantee of such termination and specifying the effective date thereof, at least fifteen days before the effective date of such termination. The Grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed on the described project.

Notwithstanding the above, the Grantee shall not be relieved of liability to the WVDEVO for damages sustained by the WVDEVO by virtue of any breach of the Contract by the Grantee, and the WVDEVO may withhold any payments to the Grantee for the purpose of set-off until such time as the exact amount of damages due the WVDEVO from the Grantee is determined.

29. **Termination for Convenience of WVDEVO.** The WVDEVO may terminate this Contract at any time by giving written notice to the Grantee of such termination and specifying the effective date of termination. If the Contract is terminated by the WVDEVO as provided herein, the Grantee will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Grantee covered by this Contract, less payments of compensation previously made.

30. **Termination by the Grantee.** The Grantee may unilaterally rescind this agreement at any time prior to the commencement of the project. After project commencement, this agreement may be rescinded, modified, or amended only by mutual agreement. A project shall be deemed commenced when the Grantee makes any expenditure or incurs any obligation with respect to the project.

31. **Signing.** This Contract shall be signed by the Executive Director of the West Virginia Development Office and by the Mayor of the City of Morgantown upon authorization of the City of Morgantown by adoption and passage of a resolution, motion or similar official action.

IN WITNESS WHEREOF, the WVDEVO and the Grantee have executed this Agreement as of the date first above written.

**STATE OF WEST VIRGINIA
WEST VIRGINIA DEVELOPMENT OFFICE**

J. Keith Burdette, Executive Director

CITY OF MORGANTOWN

By: _____
Jim Manilla, Mayor

Federal Employee Identification Number

F.E.I.N.

