



Office of the City Clerk

# The City of Morgantown

Linda L. Little, CMC  
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**AGENDA  
MORGANTOWN CITY COUNCIL  
REGULAR MEETING  
May 21, 2013  
7:00 p.m.**

1. CALL TO ORDER
2. ROLL CALL BY CITY CLERK
3. PLEDGE TO THE FLAG
4. APPROVAL OF MINUTES: Canvassing Minutes Meeting – May 6, 2013  
Regular Meeting – May 7, 2013
5. CORRESPONDENCE:
6. PUBLIC HEARING:
  - A. AN ORDINANCE PROVIDING FOR THE ANNEXATION OF 5 ACRES ADDITIONAL TERRITORY, COMMONLY KNOWN AS MILEGROUND ARMORY SITE, INTO THE CITY OF MORGANTOWN PURSUANT TO SECTION 8-6-4 OF THE WEST VIRGINIA CODE.
  - B. AN ORDINANCE AND RESOLUTION WHICH WOULD AUTHORIZE AND DIRECT THE MODIFICATION OF CERTAIN TERMS OF THE CITY'S OUTSTANDING TAX INCREMENT REVENUE BONDS (FALLING RUN PROJECT NO. 1) SERIES 2007A AND APPROVE THE FORMS OF CERTAIN DOCUMENTS IN CONNECTION WITH SUCH MODIFICATIONS.
7. UNFINISHED BUSINESS:
  - A. Consideration of APPROVAL of SECOND READING (ADOPTION) of AN ORDINANCE PROVIDING FOR THE ANNEXATION OF 5 ACRES ADDITIONAL TERRITORY, COMMONLY KNOWN AS MILEGROUND ARMORY SITE, INTO THE CITY OF MORGANTOWN PURSUANT TO

SECTION 8-6-4 OF THE WEST VIRGINIA CODE.(First Reading April 16, 2013).

- B. Consideration of APPROVAL of SECOND READING (ADOPTION) of AN ORDINANCE AND RESOLUTION WHICH WOULD AUTHORIZE AND DIRECT THE MODIFICATION OF CERTAIN TERMS OF THE CITY'S OUTSTANDING TAX INCREMENT REVENUE BONDS (FALLING RUN PROJECT NO. 1) SERIES 2007A AND APPROVE THE FORMS OF CERTAIN DOCUMENTS IN CONNECTION WITH SUCH MODIFICATIONS. (First Reading April 16, 2013).
  - C. Consideration of APPROVAL of a RESOLUTION OF THE CITY OF MORGANTOWN CONCERNING ELECTRIC UTILITY RATE IMPACTS OF PROPOSED POWER PLANT TRANSFERS.
  - D. Boards and Commissions
- 8. PUBLIC PORTION WHICH SHALL BE SUBJECT TO RULES ESTABLISHED BY COUNCIL AND ADOPTED BY RESOLUTION
  - 9. SPECIAL COMMITTEE REPORTS
  - 10. NEW BUSINESS:
    - A. Consideration of APPROVAL of FIRST READING of AN ORDINANCE AMENDING ARTICLE 1301 OF THE MORGANTOWN PLANNING AND ZONING CODE PERTAINING TO THE COMPREHENSIVE PLAN FOR THE PHYSICAL DEVELOPMENT OF THE CITY OF MORGANTOWN; TO DELETE REFERENCES TO THE 1998 COMPREHENSIVE PLAN; AND, TO ADOPT THE 2013 COMPREHENSIVE PLAN.
    - B. Consideration of APPROVAL of FIRST READING of AN ORDINANCE AMENDING THE FY 2012-2013 ANNUAL BUDGET OF THE CITY OF MORGANTOWN ON AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND.
    - C. Consideration of APPROVAL of FIRST READING of AN ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BY AND

BETWEEN THE CITY OF MORGANTOWN AN MONONGALIA COUNTY  
COMMISSION AS THE SAME APPLIES TO CERTAIN ANIMAL CONTROL  
SERVICES TO BE PROVIDED BY THE COUNTY TO THE CITY.

11. CITY MANAGER'S REPORT:

INFORMATION:

1. Letter from the County Commission Regarding the Hartman Run Bridge.

12. REPORT FROM CITY CLERK

13. REPORT FROM CITY ATTORNEY

14. REPORT FROM COUNCIL MEMBERS

15. ADJOURNMENT

\*If you need an accommodation contact us at 284-7439\*

**May 6, 2013 GENERAL MUNICIPAL ELECTION**

Monday, May 6 at 3:30 p.m.

**PRESENT:** Councilmembers Ron Bane, Jenny Selin, Wes Nugent and Linda Herbst as the City of Morgantown Board of Canvassers. The following persons were present to assist the Board of Canvassers: City Clerk Linda Little, Colleen Skotnicki, Kenny Holloway and Timothy Povroznik.

The Common Council of the City of Morgantown met in the Council Chambers of City Hall on Monday, May 6th at 3:30 p.m. as an ex-officio board of canvassers, this being the fifth day after the election to canvass the returns of the General Municipal Election held in the City of Morgantown, West Virginia, on Tuesday, April 30, 2013

The tally sheets and certificates of results which were in the custody of the City Clerk were placed before the Board.

The Canvassing Board determined that precinct 20 was going to be the precinct to verify. As Councilor Bane opened up the ballots from precinct 20 Colleen Skotnicki and Councilor Herbst tallied all votes and Councilor Selin watched that no mistakes were made. All were verified and found to be correct.

The Board then proceeded to make motions and accept each of the 6 absentee ballots that came in after the polls closed, and postmarked April 30, 2013.

The Board then proceeded to make motions to accept and count each of the 6 provisional ballots.

Having completed the canvass of ballots cast for the April 30, 2013 General Municipal Election, the final results were declared and upon motion, dully seconded and passed by the Council/Canvassing Board adjourned at 4:18 p.m.

**(Official Votes for April 30, 2013 General Municipal Election is attached as Exhibit A.)**

**CANVASSING BOARD:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**COMMON COUNCIL OF THE CITY OF MORGANTOWN AND EX-OFFICIO BOARD OF CANVASSERS**

**ATTEST:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**OFFICIAL ELECTION RESULTS  
CITY OF MORGANTOWN  
CITY COUNCIL ELECTION  
April 30, 2013**

	PRECINCT																		ABSENTEE & PROVISIONAL	TOTAL VOTES	
	First Ward		Second Ward		Third Ward		Fourth Ward			Fifth Ward			Sixth Ward		Seventh Ward						
	01	02	04	06	10	16	20	21	26	13	14	15	08	30	23	27	90				
Ron Bane	81	143	158	32	15	69	7	34	132	25	59	14	111	86	135	59	57	8	1225	Ron Bane	
WRITE IN																				0	WRITE IN
Jim Manilla	58	101	101	17	13	46	3	26	106	22	38	11	75	70	87	56	47	7	862	Jim Manilla	
Bill Kawecki	52	144	205	40	7	60	5	38	73	8	46	14	129	50	158	37	37	7	1110	Bill Kawecki	
WRITE IN																				0	WRITE IN
Wes Nugent	76	148	157	27	16	77	7	29	123	25	60	12	116	89	128	57	55	10	1212	Wes Nugent	
WRITE IN																				0	WRITE IN
Jenny Selin	55	150	217	41	11	63	1	52	92	10	49	18	137	55	154	46	42	7	1200	Jenny Selin	
Bill Graham	50	84	76	12	9	40	6	11	87	17	33	5	61	63	86	43	41	3	727	Bill Graham	
WRITE IN																				0	WRITE IN
Marti Shamberger	49	150	203	36	11	53	1	44	73	17	48	15	125	58	165	43	48	6	1145	Marti Shamberger	
Mark Furfari	60	88	88	19	9	50	7	19	98	17	38	10	75	65	75	44	37	7	806	Mark Furfari	
WRITE IN																				0	WRITE IN
Jay Redmond	57	101	99	30	10	43	6	22	102	23	41	9	75	73	81	44	48	6	870	Jay Redmond	
Mike Fike	53	145	196	27	10	61	2	41	68	7	43	15	126	49	156	47	34	2	1080	Mike Fike	
WRITE IN																				0	WRITE IN
Nancy Ganz	53	147	203	36	15	67	2	42	86	11	44	16	130	54	173	42	54	7	1182	Nancy Ganz	
Linda Herbst	52	87	83	19	5	38	6	19	88	19	36	7	66	62	77	51	34	4	753	Linda Herbst	
WRITE IN																				0	WRITE IN

Precing Reported    yes    yes

PRECINCTS REGISTERED VOTERS BALLOTS	PRECINCT																		Abst. & Prov.	TOTAL
	First Ward		Second Ward		Third Ward		Fourth Ward			Fifth Ward			Sixth Ward		Seventh Ward					
	01	02	04	06	10	16	20	21	26	13	14	15	08	30	23	27	90			
	835	1,265	1,309	823	1,614	1,229	474	1,666	736	841	1,312	247	1,101	1,132	1,295	383	360		16,622	
	141	245	308	59	20	110	12	65	189	33	86	25	204	133	261	97	92	14	2,094	
	16.89%	19.37%	23.53%	7.17%	1.24%	8.95%	2.53%	3.90%	25.68%	3.92%	6.55%	10.12%	18.53%	11.75%	20.15%	25.33%	25.56%		12.60%	

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

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

**APPROVAL OF MINUTES:** The minutes of the Regular Meeting of April 16, 2013, were approved as corrected.

**CORRESPONDENCE:** Mayor Manilla read several proclamations honoring: The WVU Rifle Team, Law Enforcement Memorial Day, Municipal Clerk's Week, Kids to Parks Day, and Letter Carrier's Food Drive.

**LEED CERTIFICATION OF THE NORTH SIDE FIRE STATION:**

Assistant City Engineer Damien Davis explained the LEED Certification, and presented the Certification to Mayor Manilla for the North Side Fire Station.

**COMPREHENSIVE PLAN PRESENTATION:**

City Manager Jeff Mikorski gave a brief introduction of the presentation, and Director of Development Services Chris Fletcher came forward to give an accompanying power-point presentation to Council. Following the presentation, Mr. Fletcher explained the plan's non-regulatory and guiding nature, adding an ordinance is required for the plan's approval. He asked Council if they wish to move the Comprehensive Plan ordinance to a regular meeting agenda item for approval.

Motion by Selin, second by Nugent, and approved by acclamation, Council consented to place the Comprehensive Plan approving Ordinance on an upcoming regular meeting agenda.

Mayor Manilla then thanked Mr. Fletcher and the Planning Commission for their input and work on the Comprehensive Plan.

**UNFINISHED BUSINESS:**

**BOARDS AND COMMISSIONS:** By acclamation, Council permitted the shuffling of terms on the Sister Cities Commission, and further approved the re-appointment of George Lies, Richard Fleischer, Rosalyn Becker and Betsy Pyle to the Sister Cities Commission.

**PUBLIC PORTION:**

Danielle Thomas, 8 West Park Avenue, (not a City resident) addressed noise disturbances coming from the Rock Top Bar and Grill. She asked that the issue be looked into and resolved, as the noise is continuous and she perceives it to be above lawful decibel ranges.

Allen Stagers, First Energy-Mon Power, addressed the Resolution opposing the transfer of power plants on the agenda, stating that Mon Power and First Energy support the transaction and understand that cost is a concern, however he warned that not taking action or pursuing alternative courses of action will be far costlier than a transfer. He attested that it is a complex case which is currently pending before the Public Service Commission, adding that in the long run this change will benefit the customers, citizens and workers of West Virginia.

James Kotcon, 414 Tyrone Avery Road, Member of Morgantown Green Team, congratulated the City on its LEEDS Certification for the North Side Fire Station. He spoke in opposition to rate and bill increases of power customers. He explained why there is opposition to the transfer of ownership of the power plant, as no jobs would be created and rates would increase as a result. He also encouraged that energy efficient lights be used in streetlights and throughout public areas of the Municipality to save energy and reduce costs. He asked that Morgantown take a stance against higher energy rates by adopting the resolution opposing the transfer.

Guy Panrell, 763 South Hills Drive, congratulated Mr. Mikorski for his appointment as permanent City Manager, he also congratulated the newly elected and re-elected Council members- thanking those who did not win re-election for their service on Council. He encouraged the new members of Council to avoid special interest groups and serve only the greater good.

Aaron Sutch, 201 Wagner Road, spoke in support of the Resolution which opposes the transfer of power plants. He feels the associated rate hike would be unnecessary. He encouraged energy efficiency and the seeking of alternative measures. He asked Council to support the Resolution.

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

**SPECIAL COMMITTEE REPORTS:** None

**NEW BUSINESS:**

**AN ORDINANCE ANNEXING 5 ACRES OF ADDITIONAL TERRITORY INTO THE CITY OF MORGANTOWN:**

AN ORDINANCE PROVIDING FOR THE ANNEXATION OF 5 ACRES ADDITIONAL TERRITORY, COMMONLY KNOWN AS MILEGROUND ARMORY SITE, INTO THE CITY OF MORGANTOWN PURSUANT TO SECTION 8-6-4 OF THE WEST VIRGINIA CODE:

Motion by Bane, second by Byrne to pass the above entitled Ordinance to second reading. After explanation from the City Manager and City Attorney Steve Fanok added that this annexation was brought forth by petition. There being no discussion, motion carried 7-0.

**AN ORDINANCE AND RESOLUTION WHICH WOULD AUTHORIZE AND DIRECT THE MODIFICATION OF CERTAIN TERMS OF THE CITY'S OUTSTANDING TAX INCREMENT REVENUE BONDS (FALLING RUN PROJECT NO. 1) SERIES 2007A AND APPROVE THE FORMS OF CERTAIN DOCUMENTS IN CONNECTION WITH SUCH MODIFICATIONS:**

Motion by Byrne, second by Shamberger to pass the above entitled Resolution to second reading. After explanation from the City Manager, motion carried 7-0.

**A RESOLUTION APPROVING AND AUTHORIZING TO SUBMIT TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) THE 2013 COMMUNITY DEVELOPMENT BLOCK GRANT ACTION PLAN:**

Motion by Byrne, second by Selin to approve the above entitled Resolution. Motion carried 7-0.

**A RESOLUTION APPROVING AND AUTHORIZING A GRANT TO FUND THE MORGANTOWN WALNUT STREET STREETScape 2012 TRANSPORTATION ENHANCEMENT PROGRAM PROJECT:**

Motion by Byrne, second by Shamberger to approve the above entitled Resolution. Motion carried 7-0.

**A RESOLUTION OF THE CITY OF MORGANTOWN PROTESTING ELECTRIC UTILITY RATE IMPACTS OF PROPOSED POWER PLANT TRANSFERS:**

Motion by Byrne, second by Shamberger to approve the above entitled Resolution. Discussion commenced and Councilor Nugent thanked the speakers and the Green Team for bringing the issue to Council's attention, and feels the Resolution is too narrowly focused on energy efficiency, rather than on the issue at hand. He offered his own suggestions for the language of the Resolution in writing to Council.

Discussion continued about various related issues. Councilor Bane suggested language focus on rate payers and their potential for hardships resulting from the proposed action by First Energy. Councilor Selin suggested the Green Team offer alternative wording to help modify the message of the Resolution. Councilor Byrne questioned how strong of a position Morgantown is willing to take on the matter and concurred that the Green Team is the right body to look at and modify the Resolution language. Councilor Herbst offered caution and encouraged Council to carefully consider the wording to avoid controversial issues, as in the past.

After further discussion Councilor Shamberger concurred with rate payer concerns and the suggestion to allow the Green Team to re-work the Resolution language. Councilor Byrne then withdrew his previous motion to approve, substituting a motion to refer the Resolution to the Green Team for language modification, review to be completed in time to discuss at the next regular meeting of City Council. Motion was seconded by Councilor Bane, and carried 7-0.

Discussion resumed about energy efficiency and the possibility of LED streetlights and collaboration as such with First Energy.

**CITY MANAGERS REPORT:**

Primarily, Mr. Mikorski addressed Ms. Thomas' comments at Public Portion, informing that noise waivers are no longer available for commercial businesses. He stated that noise levels are measured close to the site in question and close to the site of the complaint to ascertain noise levels. Mr. Mikorski then invited Police Chief Ed Preston to elaborate on the process of dealing with noise complaints of this nature.

Chief Preston stated that the Rock Top Bar and Grill has not been the only business in question related to downtown and event noise and complaints. He explained the process for responding to and investigating noise complaints on a business level. He noted that Rock Top has been issued a warning for violating the noise ordinance and another violation will cause fines and citations. He stated that the process for enforcing noise ordinances is uniform and the last readings for Rock Top were below the maximum decibel levels allowed in City Code.

Councilor Shamberger asked what Ms. Thomas' recourse could be, as she is not a Morgantown City resident. Chief Preston has informed Ms. Thomas that the next time she has a noise complaint to request a Morgantown Officer be present to test the noise levels traveling to her home. Discussion continued about decibel levels and the origination of the City's current noise ordinances. Mr. Fanok urged that reasonable noise levels are still covered by the City Code and the responding Police Officer would make such a determination at the scene. Discussion continued about residential and commercial noise waivers processes and related concerns.

**NEW BUSINESS:**

1. **Elevator Maintenance Contract.**

After explanation from Mr. Mikorski, followed by discussion; motion by Selin, second by Shamberger, to approve the bid results for the Elevator Maintenance Contract to Kone Elevators and Escalators. Motion carried 7-0.

**INFORMATION:**

**1. Mon Power Meter Schedule Change**

After explanation from the City Manager, the rules were suspended to allow Council to take questions from Mon Power representative Allen Stagers. Discussion then continued regarding the upcoming meter schedule change.

**2. Current Street Sweeping Schedule**

Mr. Mikorski updated Council with new information about the current street sweeping schedule.

**3. 6-Month Goals**

Mr. Mikorski shared goals with Council for his first six months as City Manager.

**REPORT FROM CITY CLERK:** No Report.

**REPORT FROM CITY ATTORNEY:** Mr. Fanok commended Mr. Mikorski on his goals presentation.

**REPORT FROM COUNCIL MEMBERS:**

Councilor Bane: Councilor Bane thanked Mayor Manilla and Councilor Herbst for their service to the community and time on Council. He stated that Mr. Mikorski's goals are worthy and he hoped that the next Council will continue to support the City Manager. He commended Mr. Mikorski and his many years of service to the City. Councilor Bane encouraged new Council members to read the City Charter and familiarize themselves with the 'do's and don'ts' for Council Members.

Councilor Nugent: Councilor Nugent thanked the voters for re-electing him to Council and pledged to work hard toward the betterment of the City.

Councilor Selin: Councilor Selin noted that she looks forward to working with the City Manager and that his goals instill confidence for moving forward. She announced the Farmer's Market is now open under the new pavilion, and a special Mother's Day concert at the Met Theatre with Landau Eugene Murphy. She thanked the voters who participated in the City Election.

Councilor Shamberger: Councilor Shamberger thanked fellow Council Members for their service, and expressed enthusiasm for the City Manager's goals. She was grateful that the election returns were live-streamed online, and also noted that the Boys and Girls Club has moved into the Woodburn School and is utilizing the property.

Councilor Byrne:

Councilor Byrne mentioned a national accolade given to MHS. He congratulated those who won in the City Election, thanked those who have served on Council and also thanked employees who worked during the election. He commended Mr. Mikorski on his goals and suggested that all Morgantown's business areas be recognized for generating revenue and looked at for expansion. He noted that stakeholders should be involved in the development of the Safe Community designation. He stated that Council should support the City Manager and looks forward to the new Council.

Councilor Herbst:

Councilor Herbst thanked Mr. Mikorski for his thoughtful goals. She noted that she will continue working within her ward even after her Council term is up, to support improvements to the area.

Mayor Manilla:

Mayor Manilla gave the Main Street Morgantown bi-monthly update as provided by the organization. He then announced that student move-out continues through May 12<sup>th</sup>.

**EXECUTIVE SESSION:** Pursuant to WV State Code Section 6-9A-4(b)-2(A) in order to discuss personnel matters and Pursuant to WV State Code Section 6-9A-4(2)(9) as it pertains to the sale, purchase or lease of realty. Motion by Bane second by Nugent to enter into executive sessions at 9:15 p.m., with City Council, City Manager and City Attorney present.

Mayor Manilla noted for the record that the personnel matters portion of the upcoming executive sessions will be to finalize the terms of the recently appointed City Manager's employment agreement.

**ADJOURNMENT:** There being no further items of business or discussion, the meeting adjourned by unanimous consent at 10:06 p.m.

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City Clerk

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Mayor

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



**Office of the City Manager**

# The City of Morgantown

Interim City Manager  
Jeff Mikorski, ICMA-CM  
389 SPRUCE STREET  
MORGANTOWN, WEST VIRGINIA 26505  
(304) 284-7405 FAX: (304) 284-7430  
[www.morgantownwv.gov](http://www.morgantownwv.gov)

## City Manager's Report for City Council May 21, 2013

### Information:

1. Attached is the letter I received from the County Commission regarding the Hartman Run Bridge and their request for the City to provide a financial commitment to replace the bridge. Although the bridge is a major connector in the City, the bridge was not a part of our Capital Improvement Plan and no funding was budgeted for this purpose in the FY 2013-2014 City Budget.

With City Council's approval, I will begin discussions with the Monongalia County Commission on what amount they are expecting from the City, timeframe of project implementation, and plans provided to the County Commission from the West Virginia Department of Highways, before bringing a recommendation on financial

Jeff Mikorski, City Manager

# MONONGALIA COUNTY COMMISSION

243 HIGH STREET, ROOM 202  
COURTHOUSE  
MORGANTOWN, WEST VIRGINIA 26505

L.W. "Bill" Bartolo, Commissioner  
Eldon A. Callen, Commissioner  
Tom Bloom, Commissioner

Telephone: 304 291-7257



May 9, 2013

Mr. Jeff Mikorski  
City Manager  
389 Spruce Street  
Morgantown, West Virginia 26505

Dear Mr. Mikorski:

As you may be aware, the Commissioners once again discussed the Hartman Run Bridge during their meeting of May 8.

They have expressed some concern over the design, traffic pattern, interruption of essential services, among other subjects, when the demolition and reconstruction actually begins.

Besides the safety conditions, the cost has been the largest factor. Therefore, since the City is greatly affected by the replacement, the Commission is requesting Morgantown officials to consider financial assistance towards the project.

The bridge is an essential factor in the Sabraton area that actually affects traffic throughout other areas of the City. Your support and possible financial commitment for the replacement project will ensure a united community to the Department of Highways. We all need to emphasize the importance of this long awaited project.

The Commission is arranging for the immediate inspection of the bridge and has stated if it is determined the bridge is unsafe, they will close it without hesitation.

We look forward to hearing from you on behalf of the City of Morgantown.

Thank you.

For the Commission,

A handwritten signature in cursive script that reads "Diane F. DeMedici".

Diane F. DeMedici  
County Administrator  
Monongalia County Commission

## BOARDS AND COMMISSIONS - TERMS EXPIRED AND CURRENT VACANCIES

### FIRE CIVIL SERVICE COMMISSION:

Joshua Jarrell resigned as Chamber rep. He is suggesting Michael A. Jacks (attached information) to serve out his term. Council can vote on that appointment at the Regular Meeting on May 21, 2013. Appt. Made by those they rep. New pres. In Jan.

### MORGANTOWN UTILITY BOARD:

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

### TRAFFIC COMMISSION:

Margaret Roberts First Ward representative wishes not to continue to serve. First Ward Councilor will check to see if there is a representative in their ward that is interested in serving. Residents appointed by Council, must represent specific categories.

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

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

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

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

5/14/13



*State of West Virginia*  
*Earl Ray Tomblin*  
*Governor*

Department of Commerce  
State Capitol  
Building 6, Room 525  
Charleston, WV 25305-0311

Telephone: (304) 558-2234  
Toll Free: (800) 982-3386  
Fax: (304) 558-1189  
[www.wvcommerce.org](http://www.wvcommerce.org)

May 1, 2013

Mr. Jeff Mikorski  
Interim City Manager  
City of Morgantown  
389 Spruce Street  
Morgantown, West Virginia 26505

Dear Mr. Mikorski:

Please accept my resignation as a commissioner on the Fire Civil Service Commission for the City of Morgantown effective Wednesday, May 1, 2013. My relocation to the Charleston area and my duties with the West Virginia Department of Commerce make it impossible for me to continue to serve on the Commission.

I have thoroughly enjoyed my affiliation with this important civic organization. The professionals who serve as firefighters for the City of Morgantown are without equal and it was an honor to work with them and on behalf of Morgantown.

Without reservation, I respectfully recommend Michael Jacks, an attorney with the law firm of Gentle, Turner & Sexton, as my replacement on this Commission. He is trustworthy and an individual of excellent character and sound judgment. I have attached hereto a copy of his resume which contains his contact information.

In conclusion, I am indebted to you for affording me the opportunity to serve, and I believe Mr. Jacks would be a tremendous asset to the Commission; he has my unqualified support. Thank you for your consideration of my recommendation.

Sincerely,

A handwritten signature in blue ink that reads "Joshua L. Jarrell".

Joshua L. Jarrell  
Deputy Secretary/General Counsel

JJ/db

cc: Michael Jacks (via email)  
Linda Little (via email)

# MICHAEL A. JACKS

MICJACKS@GMAIL.COM • 304-906-9165  
378 LAWNVIEW DRIVE, MORGANTOWN, WV 26505

## WORK EXPERIENCE

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### **Gentle, Turner & Sexton, Associate Attorney – January 2011 to Present**

- I serve as the Executive Director of a Claims Office in Harrison County where we administer a large class action settlement with DuPont ([www.perrinedupont.com](http://www.perrinedupont.com)). The settlement provides medical monitoring and property remediation programs to individuals who were allegedly exposed to hazardous heavy metals from the operation of a zinc smelter.
- My duties include directly managing the work of between two and five employees and coordinating the work of consultants and contractors. I also draft a variety of complex legal documents such as proposed Orders, reports to the Court, contracts, and requests for proposals.

### **Harrison County Circuit Court, Judicial Law Clerk to the Hon. Thomas A. Bedell, Circuit Judge – August 2009 to January 2011**

- Drafted Orders, assisted the Court during hearings and trials, and researched a variety of civil and criminal matters.

### **Dinsmore & Shohl, LLP, Summer Associate – May to August 2008**

- Conducted legal research; drafted memoranda, motions, and discovery responses.

### **Monongalia County Circuit Court, Volunteer Summer Clerk to the Hon. Russell M. Clawges, Jr. – May to August 2007**

- Drafted Orders, researched legal issues, and observed trials and hearings.

## EDUCATION

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### **Juris Doctorate, West Virginia University College of Law - May 2009**

- GPA 3.49, Class Rank 24 out of 152.
- West Virginia State Bar Merit Full Scholarship.
- Moot Court Board, Treasurer, Executive Council, I assisted in developing the Energy Law Moot Court Competition.
- Study Abroad Scholarship: Brazilian Law & Politics.
- CALI Award for the best grade in Torts II.

**Bachelor of Arts, English, West Virginia University - December 2005**

- *Magna cum laude*, G.P.A. 3.6.
- Sigma Tau Delta, English Honorary.
- Creative Writing Concentration.
- Minor in Philosophy.
- WVU PROMISE Scholar, full scholarship.
- Mountaineer Scholar.
- WVU Honors College.
- Frasure-Singleton Scholar, a one week internship at the State Legislature.
- Lacrosse Team.

**High School Diploma, Morgantown High School – June 2002**

**PROFESSIONAL AFFILIATIONS**

- West Virginia Bar, Admitted October 2009.
- United States District Court, Northern District of West Virginia, Admitted September 2010.
- American Bar Association.
- West Virginia Chapter of the Alexander Graham Bell Association for the Deaf and Hard of Hearing.

**MICHAEL A. JACKS  
MICJACKS@GMAIL.COM • (304)906-9165  
378 LAWNVIEW DRIVE, MORGANTOWN, WV 26505**

Zimbra

llittle@cityofmorgantown.org

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**MUB Board Member**

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**From :** Beverly Robertson <brobertson@mub.org>  
**Subject :** MUB Board Member  
**To :** Linda Little <llittle@cityofmorgantown.org>  
**Cc :** Doug Smith <drsmith@mub.org>

Tue, May 07, 2013 02:12 PM

 1 attachment

Hello Linda,

On May 7, 2013, William Burton notified the Morgantown Utility Board of his resignation from the Board, which is effective immediately due to health reasons.

Thank you,  
Beverly



**AN ORDINANCE PROVIDING FOR THE ANNEXATION OF 5 ACRES OF ADDITIONAL TERRITORY, COMMONLY KNOWN AS MILEGROUND ARMORY SITE, INTO THE CITY OF MORGANTOWN PURSUANT TO SECTION 8-6-4 OF THE WEST VIRGINIA CODE.**

**WHEREAS,** Petitions have been filed with the City of Morgantown pursuant to Section 8-6-4 of the West Virginia Code requesting the annexation of 5 acres (known as Mileground Armory realty), more specifically described on the boundary plan/exhibit and metes and bounds description hereto attached and made a part of this ordinance;

**WHEREAS,** Morgantown City Council is of the opinion that the petitions, boundary plan/exhibit, and metes and bounds description conform to the requirements of Section 8-6-4 and all other applicable sections of the West Virginia Code; and

**WHEREAS,** Morgantown City Council is of the opinion the City of Morgantown should annex said 5 acres into its corporate limits.

**NOW, THEREFORE, THE CITY OF MORGANTOWN HEREBY ORDAINS** that the 5 acres (known as Mileground Armory realty) as more particularly shown and described on the boundary plan/exhibit and metes and bounds description hereto attached, are annexed into the corporate limits of the City of Morgantown; that the minutes of City Council shall indicate the same; that the Mayor and City Manager are hereby authorized to execute and forward the attached certificate to the Monongalia County Commission.

This ordinance shall be effective upon date of adoption.

First Reading:

Adopted:

\_\_\_\_\_  
MAYOR

Filed:

Recorded:

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

**PETITION FOR ANNEXATION  
(Qualified Voter Petition)**

Pursuant to Section 8-6-6(b) of the West Virginia Code, the State of West Virginia, State Armory Board, a body corporate and agency of the State of West Virginia, meets the statutory definition of Qualified Voter; and as the sole qualified voter of five (5) acres, more or less, shown on Monongalia County Tax Map 58 as Parcel 3.2, does hereby petition the City of Morgantown to annex said five (5) acres within its corporate boundaries.

The State Armory Board would assert that the Monongalia County Tax Map and property records incorrectly state that said five (5) acres is already within the City of Morgantown.

State of West Virginia  
The State Armory Board  
1703 Coonskin Drive  
Charleston, WV 25311-1099

By :

Title:

Date:

  
The Adjutant General  
26 March 13

STATE OF WEST VIRGINIA

COUNTY OF Kanawha, to-wit:

I, Carolyn Kay Nichols, a Notary Public of said County, do hereby certify that the Qualified Voter Petition that is attached, bearing the signature of MG James A. Hoyer, on behalf of the State Armory Board, has this day acknowledged the same before me in my said County.

Given under my hand this 26<sup>th</sup> day of March, 2013.

My commission expires 9-11-2022.



Carolyn Kay Nichols  
Notary Public

**PETITION FOR ANNEXATION  
(Freeholder Petition)**

Pursuant to Section 8-6-4 of the West Virginia Code, the State of West Virginia, State Armory Board, a body corporate and agency of the State of West Virginia, as the sole freeholder of five (5) acres, more or less, shown on Monongalia County Tax Map 58 as Parcel 3.2, does hereby petition the City of Morgantown to annex said five (5) acres within its corporate boundaries.

The State Armory Board would assert that the Monongalia County Tax Map and property records incorrectly state that said five (5) acres is already within the City of Morgantown.

State of West Virginia  
The State Armory Board  
1703 Coonskin Drive  
Charleston, WV 25311-1099

By:   
Title: The Adjutant General  
Date: 26 March 13

STATE OF WEST VIRGINIA

COUNTY OF Kanawha, to-wit:

I, Carolyn Kay Nichols, a Notary Public of said County, do hereby certify that the Freeholder Petition that is attached, bearing the signature of MG James A. Hoyer, on behalf of the State Armory Board, has this day acknowledged the same before me in my said County.

Given under my hand this 26<sup>TH</sup> day of March, 2013.

My commission expires 9-11-2022.



Carolyn K Nichols  
Notary Public

**LEGAL DESCRIPTION – MILEGROUND ARMORY  
for  
CITY OF MORGANTOWN**

**PARCEL: ±5.00 Ac**

All of that certain lot or parcel of real estate, situate, lying and being in Morgan District, Monongalia County, West Virginia, bounded and described as follows:

**BEGINNING** at a point in the northeastern boundary line of 90.843 acre parcel known as the Dairy Farm, corner to the northwestern right of way line of U.S. Route No. 119 and thence with said right of way line of U.S. Route No. 119, S. 63° 40' W. 500 feet to a stake; thence leaving said U.S. Route No. 119, N. 32° 37' W. 440 feet to a stake; thence N. 63° 40' E. 500 feet to a point in the northeastern boundary line of said 90.843 acre parcel and with the same S. 32° 37' E. 440 feet to the point or place of beginning, and containing 5 acres, more or less.

Being the same real estate conveyed to The State of West Virginia for the use and benefit of the STATE ARMORY BOARD, a public corporation, from THE BOARD OF BOVERNORS OF WEST VIRGINIA UNIVERSITY, a public corporation, by deed dated April 3, 1962, and of record in the office of the Clerk of the County Court of Monongalia County, West Virginia, in Deed Book 604, at Page 469.

Note: The 5 acre "Armory" parcel boundary was incorrectly referred to by the Office of the Clerk of Monongalia County as residing within the Fifth Ward to the City of Morgantown, and previously shown on Tax Map 58 as Parcel 3.2. The Office of the Clerk of Monongalia County intends to reassign the 5 acre parcel to Morgan District Map 8, as Parcel (30).

# EXHIBIT

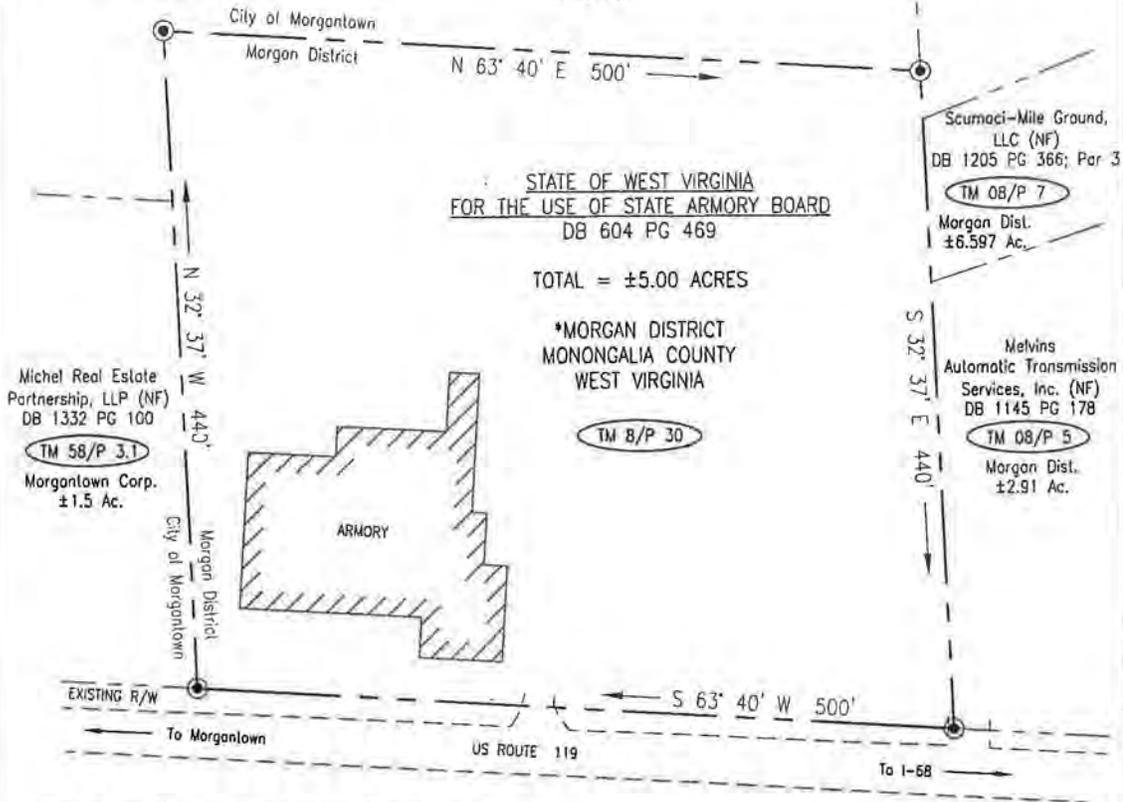


VICINITY MAP



Board of Education of the  
County of Monongalia (NF)  
DB 1424 PG 204  
**TM 58/P 3.3**  
Morgantown Corp.  
±8.85 Ac.

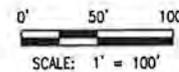
Board of Education of the  
County of Monongalia (NF)  
DB 1439 PG 850  
**TM 08/P 6.1**  
Morgan Dist.  
±2.45 Ac.



\*The 5 acre "Armory" parcel boundary shown hereon was incorrectly referred to by the Office of the Clerk of Monongalia County as residing within the Fifth Ward to the City of Morgantown, and previously shown on Tax Map 58 as Parcel 3.2. Annexation records, dated July 24, 1996, describe the "Armory" parcel boundary as being excluded from the approximate 1032 acre minor boundary adjustment, Annexation Area, corporate limits.

Note: The boundary plan shown hereon was prepared by plotting deeds of public record. The plan was not prepared from an on-the-ground boundary survey.

- TM 58/P 3.1** Indicates Tax Map / Parcel Number
- Parcel Boundary
- ⊙ Parcel Corner
- == Road
- (NF) Now or Former



## BOUNDARY PLAN / MILEGROUND ARMORY for City of Morgantown

*Bradley H. Cosdorph* 3-19-13  
Bradley H. Cosdorph, PS #874 Date



ALPHA ASSOCIATES, INC.  
209 PRAIRIE AVENUE  
MORGANTOWN, WV 26501  
PHONE/FAX: 304-296-8216  
TOLL FREE: 800-640-8216  
www.thinkALPHAfirst.com

**CERTIFICATE**

Jim Manilla, Mayor of the City of Morgantown, and Jeff Mikorski, Interim City Manager of the City of Morgantown, hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, the City of Morgantown, by and through its duly elected City Council, pursuant to Section 8-6-4 of the West Virginia Code and in the manner required by law, adopted an Ordinance annexing 5 acres of territory into the corporate limits of the City of Morgantown; that said 5 acres is more particularly described as follows:

All of that certain lot or parcel of real estate, situate, lying and being in Morgan District, Monongalia County, West Virginia, bounded and described as follows:

**BEGINNING** at a point in the northeastern boundary line of 90.843 acre parcel known as the Dairy Farm, corner to the northwestern right of way line of U.S. Route No. 119 and thence with said right of way line of U.S. Route No. 119, S. 63° 40' W. 500 feet to a stake; thence leaving said U.S. Route No. 119, N. 32° 37' W. 440 feet to a stake; thence N. 63° 40' E. 500 feet to a point in the northeastern boundary line of said 90.843 acre parcel and with the same S. 32° 37' E. 440 feet to the point or place of beginning, and containing 5 acres, more or less, as shown on the boundary plan/exhibit attached hereto, dated March 19, 2013, and prepared by Alpha Associates, Inc.

Being the same real estate conveyed to the State of West Virginia for the use and benefit of the STATE ARMORY BOARD, a public corporation, from THE BOARD OF GOVERNORS OF WEST VIRGINIA UNIVERSITY, a public corporation, by deed dated April 3, 1962, and of record in the office of the Clerk of the County Court of Monongalia County, West Virginia, in Deed Book 604, at Page 469.

---

Jim Manilla  
Mayor

---

Jeff Mikorski  
Interim City Manager

STATE OF WEST VIRGINIA

COUNTY OF MONONGALIA, to-wit:

Taken, subscribed and sworn before me by Jim Manilla, Mayor and Jeff Mikorski, Interim City Manager, before the undersigned, this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**FIRST SUPPLEMENTAL INDENTURE OF TRUST**

**by and between**

**THE CITY OF MORGANTOWN**

**and**

**THE BANK OF NEW YORK MELLON  
as Trustee**

**Dated \_\_\_\_\_, 2013**

**\$3,000,000  
The City of Morgantown  
Tax Increment Revenue Bonds  
(Falling Run Project No. 1)  
Series 2007 A**

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Exhibit A - Form of Amended and Restated Series 2007 A Bond

## **FIRST SUPPLEMENTAL INDENTURE OF TRUST**

This **FIRST SUPPLEMENTAL INDENTURE OF TRUST** is made \_\_\_\_\_, 2013 (this "First Supplemental Indenture of Trust") between **THE CITY OF MORGANTOWN**, a municipal corporation and political subdivision of the State of West Virginia (the "Issuer") and **THE BANK OF NEW YORK MELLON** (f/k/a as The Bank of New York, as trustee (the "Trustee").

**WHEREAS**, the Issuer and the Trustee entered into an Indenture of Trust dated October 5, 2007 (the "Original Indenture") under which the Issuer issued The City of Morgantown Tax Increment Revenue Bonds (Falling Run Project No. 1) Series 2007 A (the "Series 2007 A Bonds") in the aggregate principal amount of \$3,000,000 the proceeds of which were used (i) to finance the costs of certain public infrastructure improvements as described therein; (ii) to deposit funds in the Reserve Fund; (iii) to pay capitalized interest on the Series 2007 A Bonds; (iv) to fund certain Administrative Expenses; and (v) to pay the costs of issuing the Series 2007 A Bonds.

**WHEREAS**, Section 7.02 of the Indenture provides that with the prior written consent of the Owners of all the Series 2007 A Bonds, the Issuer may enter into a Supplemental Indenture which will thereafter form a part of the Indenture, to modify any of the provisions thereof.

**WHEREAS**, on June 1, 2011, there were insufficient funds available under the Original Indenture to pay the full amount of interest due on the Series 2007 A Bonds on such Interest Payment Date.

**WHEREAS**, as of the date hereof, all interest due on the Series 2007 A Bonds has been paid, but that in order to pay the full amount of interest due on the Series 2007 A Bonds on the December 1, 2012 Interest Payment Date, funds were transferred from the Reserve Fund to the Debt Service Fund and presently, the amount on deposit in the Reserve Fund is less than the Reserve Requirement.

**WHEREAS**, West Virginia University Board of Governors on behalf of West Virginia University, an agency and higher education institution of the State of West Virginia (the "University") has agreed pursuant to a Contingent and Guaranteed Payment Agreement dated October 10, 2012 (the "Payment Agreement") between the University and First United Bank & Trust, in its capacity as the Owner of all the outstanding Series 2007 A Bonds (the "Original Purchaser") to make an annual payment (the "Guaranty Payment") directly to the Trustee in an aggregate amount up to \$120,000, as further described in the Payment Agreement, to support the Series 2007 A Bonds and pursuant to the Payment Agreement the Original Purchaser agreed, for purposes of calculating the amounts of such Guaranty Payment and for purposes of modifying the interest rate provisions of the Series 2007 A Bonds, to modify the interest rate on the Series 2007 A Bonds.

**WHEREAS**, the Issuer and the Trustee have agreed to modify the Original Indenture and the terms of the Series 2007 A Bonds to lower the interest rate on the Series 2007 A Bonds for

such period of time and in a manner consistent with the Payment Agreement, to provide for the Trustee's receipt and application of the Guaranty Payment to the payment of debt service on the Series 2007 A Bonds and in connection therewith to provide for the designation of the Revenue Fund as a subaccount of the TIF Fund and the Original Purchaser, as the Owner of all the outstanding Series 2007 A Bonds has consented thereto. The Original Indenture, as supplemented by this First Supplemental Indenture, is referred to herein as the "Indenture".

**NOW, THEREFORE**, the Issuer and the Trustee covenant and agree as follows:

## **ARTICLE I**

### **FIRST SUPPLEMENTAL INDENTURE OF TRUST**

**Section 1.01 First Supplemental Indenture of Trust** This First Supplemental Indenture is authorized, executed and delivered by the Issuer and the Trustee pursuant to and in accordance with Section 7.02 of the Indenture. The Owner of all the outstanding Series 2007 A Bonds has consented to the terms of this First Supplemental Indenture including the amendment and restatement of the Series 2007 A Bonds in the form attached hereto as Exhibit A.

#### **Section 1.02 Definitions**

(a) All undefined capitalized terms used in this First Supplemental Indenture and not defined herein shall have the meanings set forth in Article I of the Original Indenture.

(b) The following terms set forth in the Original Indenture are hereby amended and restated as follows:

**"Series 2007 A Bonds"** means The City of Morgantown Tax Increment Revenue Bonds (Falling Run Project No. 1) Series 2007 A, originally issued on October 5, 2007 in the aggregate principal amount of \$3,000,000 and as amended and restated on the Reissuance Date.

**"TIF Fund"** means the fund by that name created by the Issuer pursuant to the District Establishment Ordinance and provided for under the Act and includes any subaccount within the TIF Fund designated by the Issuer, including but not limited to the Revenue Fund.

(c) The following terms shall have the meanings set forth below.

**"Bond Modification Resolution and Ordinance"** means the Resolution and Ordinance of the Issuer enacted \_\_\_\_\_, 2013 authorizing this First Supplemental Indenture, the amended and restated Series 2007 A Bonds and the documentation related thereto and the designation of the Revenue Fund as a subaccount of the TIF Fund.

**"Guaranty Payment"** means the annual payment made, or to be made, by the University pursuant to the Payment Agreement to pay a portion of the Debt Service on the Series 2007 A Bonds.

**"Payment Agreement"** means the Contingent and Guaranteed Payment Agreement dated October 10, 2012, by and between the West Virginia University Board of Governors on

behalf of West Virginia University and First United Bank & Trust, as the Original Purchaser of the Series 2007 A Bonds.

“**Reissuance Date**” means the date of the reissuance and delivery of the Series 2007 A Bonds to the Original Purchaser in the form attached hereto as Exhibit A, in exchange for the delivery of the original Series 2007 A Bonds by the Original Purchaser to the Trustee for cancellation and destruction, such date being \_\_\_\_\_, 2013.

**Section 1.03 Rules of Construction.** Unless the context clearly indicates to the contrary, the rules of construction set forth in Section 1.02 of the Original Indenture shall apply to the construction of this First Supplemental Indenture.

**ARTICLE II**

**AUTHORIZATION AND DETAILS OF THE BONDS**

**Section 2.01 Amended and Restated Series 2007 A Bonds Authorized.**

There is hereby authorized to be issued the amended and restated Series 2007 A Bonds in the aggregate principal amount of \$3,000,000.

**Section 2.02 Details of Series 2007 A Bonds; Form of Series 2007 A Bonds.**

Upon the Reissuance Date, the Series 2007 A Bonds shall be issuable as fully registered bonds in the denominations of \$5,000 and any integral multiples of \$5,000 in excess thereof in the form of the amended and restated Series 2007 A Bond attached hereto as Exhibit A. The Series 2007 A Bonds shall be numbered separately and lettered, if at all, in such manner as the Trustee may determine.

The Series 2007 A Bonds shall be dated the date of initial delivery thereof to the Original Purchaser. The Series 2007 A Bonds shall bear interest at the rates designated below from their dates (computed on the basis of a year of 360 days consisting of 12 months of 30 days each) until payment of principal has been made or provided for, payable on each Interest Payment Date commencing June 1, 2013, except that Series 2007 A Bonds which are reissued upon transfer, exchange or other replacement shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, or if no interest has been paid, from the Reissuance Date of the Series 2007 A Bonds. The Series 2007 A Bonds shall bear interest at the rate of (i) 2.5% per annum from December 2, 2012 until June 1, 2014; (ii) 3.5% per annum from June 2, 2014 until June 1, 2017; and (iii) 5.69% per annum thereafter. The Series 2007 A Bonds shall mature on June 1, 2033.

The Series 2007 A Bonds shall be reissued as a single bond in the principal amount of \$3,000,000. The Trustee is authorized and directed to authenticate and deliver the reissued Series 2007 A Bonds, without further acts on the part of the Issuer, to the Original Purchaser; provide, however, that the Trustee shall receive in exchange for the reissued Series 2007 A Bonds the original Series 2007 A Bonds from the Original Purchaser, which original Series 2007 A Bonds the Trustee shall cancel in accordance with the provisions of Section 2.08 of the Original Indenture.

The principal of and interest on the Series 2007 A Bonds shall be payable in lawful money of the United States of America, by certified or bank cashier's check, or by wire transfer to an account designated by the payee at the principal corporate trust office of the Trustee in Woodland Park, New Jersey, or at the principal corporate trust office of its successor, upon presentation and surrender of the Series 2007 A Bonds in the case of principal payments only. Payment of interest on any Series 2007 A Bond shall be made on each Interest Payment Date to the Bondholder at the close of business on the Regular Record Date for such Interest Payment Date, and in the case of a payment of interest by certified or bank cashier's check, such check shall be mailed by first class mail to such Bondholder at its address as it appears on such registration books.

Any such interest not so timely paid or duly provided for because funds are not available to pay any portion thereof shall cease to be payable to the Bondholder thereof at the close of business on the Regular Record Date and shall be payable to the Bondholder thereof at the close of business on a Special Record Date for the payment of any such defaulted interest. Interest shall accrue on such unpaid interest from the close of business on the applicable Regular Record Date to the Special Record Date set for payment thereof at the rate of interest per annum then applicable to the Series 2007 A Bonds. In the event funds for the payment of interest are not available as of the close of business on the Record Date, the Trustee shall notify the Bondholders of such fact by the close of business on such Record Date or as soon as practicable thereafter. Such Special Record Date shall be fixed by the Trustee whenever monies become available for payment of the defaulted interest, and notice of such Special Record Date shall be given to the Bondholder of the Series 2007 A Bonds not fewer than ten days prior thereto by first-class mail to each such Bondholder as shown on the Trustee's registration books on the date selected by the Trustee, stating the date of the Special Record Date and the date fixed for the payment of such defaulted interest.

The Series 2007 A Bonds shall be subject to redemption prior to maturity in accordance with Section 3.01, and shall otherwise have the terms, tenor, denominations, details and specifications as set forth in the form of Series 2007 A Bond attached hereto as **Exhibit A - Form of Series 2007 A Bonds**.

The Series 2007 A Bonds shall be substantially in the form set forth in **Exhibit A** attached hereto and made a part hereof which is in substitution for the form of Bond attached to the Original Indenture, with such insertions, omissions and variations as may be deemed necessary or appropriate by an Authorized Officer of the Issuer executing the same and as shall be permitted by the Act. The covenants and conditions set forth in such form are incorporated into this Indenture by reference and shall be binding upon the Issuer as though set forth in full herein.

The Series 2007 A Bonds may contain, or have endorsed thereon, any notations, legends or endorsements not inconsistent with the provisions of this Indenture or of any Supplemental Indenture authorizing the same as may be necessary or desirable and as may be determined by the Authorized Officers of the Issuer executing the Bonds prior to the authentication and delivery of such Bonds. The execution and delivery of the Bonds by the Authorized Officers of the Issuer in accordance with this Indenture shall be conclusive evidence of the approval of the form of

such Bonds by the Issuer, including any insertions, omissions, variations, notations, legends or endorsements authorized by this Indenture.

The Series 2007 A Bonds shall be numbered in the manner determined by the Trustee. Before authenticating and delivering any Bond, the Registrar shall complete the form of such Bond to show the registered owner, principal amount, interest rate, maturity date, number and authentication date of such Bond.

**Section 2.03 Conditions Precedent to Delivery of Series 2007 A Bonds.**

The amended and restated Series 2007 A Bonds shall be executed by the Issuer and delivered to the Trustee on the Reissuance Date, whereupon the Trustee, as Registrar, shall authenticate the amended and restated Series 2007 A Bonds and deliver the amended and restated Series 2007 A Bonds upon the order of the Issuer, but only upon delivery to the Trustee of:

(a) A copy of the Original Indenture and an original executed counterpart of this First Supplemental Indenture;

(b) A request and authorization to the Trustee on behalf of the Issuer, executed by an Authorized Officer, to authenticate the amended and restated Series 2007 A Bonds and deliver said amended and restated Series 2007 A Bonds to the Original Purchaser in exchange for the original Series 2007 A Bonds. The Trustee shall be entitled to rely conclusively upon such request and authorization as to the names of the purchasers and the amounts of such purchase price;

(c) An Opinion of Bond Counsel to the effect that the First Supplemental Indenture is authorized and permitted and in compliance with the terms of the Original Indenture and the Act and that the execution and delivery thereof will not adversely affect the exclusion of the interest on the Series 2007 A Bonds from gross income for federal income tax purposes; and

(d) An Opinion of Counsel to the effect that the Issuer is duly authorized to enter into this First Supplemental Indenture and will, upon the execution and delivery thereof, be valid binding and enforceable upon and against the Issuer in accordance with its terms; and

(e) Such other certificates, statements, opinions, receipts and documents as the Trustee shall reasonably require for the delivery of the amended and restated Series 2007 A Bonds.

When the documents specified above have been filed with the Trustee, and when the amended and restated Series 2007 A Bonds shall have been executed and authenticated as required by this First Supplemental Indenture, the Trustee shall deliver the amended and restated Series 2007 A Bonds to the Original Purchaser thereof in exchange for the original Series 2007 A Bonds. Upon its receipt of such original Series 2007 A Bonds, the Trustee shall cancel the same in accordance with Section 2.08 of the Indenture.

**Section 2.04 Additional Bonds.** No Additional Bonds may be issued under the Indenture without the prior written consent of the Bondholder.

## ARTICLE III

### FUNDS AND ACCOUNTS

**Section 3.01 Revenue Fund.** Section 4.07 of the Original Indenture is hereby amended and restated as follows:

**Section 4.07 - Revenue Fund.**

(a) The Issuer hereby designates the Revenue Fund to be a subaccount of the TIF Fund. All Tax Increment Revenues generated in the Redevelopment District shall be deposited upon receipt by the Sheriff of Monongalia County into the TIF Fund. All Tax Increment Revenues received by the Sheriff of Monongalia County and deposited into the TIF Fund shall be transferred on or before the first day of each month to the Issuer. As soon as practicable following receipt thereof from the Sheriff of Monongalia County, West Virginia, the Issuer shall deposit or cause to be deposited with the Trustee all to the credit of the Revenue Fund, all Tax Increment Revenues received by the Issuer. All payments received by the Trustee pursuant to the Payment Agreement shall be deposited to the credit of the Revenue Fund. On or before September 1 of each year, the Bondholder shall provide the Trustee and the Issuer with a copy of the invoice and all supporting calculations and documentation provided to the University stating the amount of the Guaranty Payment, if any, due and payable under the Payment Agreement. If such Guaranty Payment is not paid in full by November 15<sup>th</sup> of such year, the Trustee shall notify the Bondholder and the Issuer.

(b) On or before each Interest Payment Date, on each date on which the principal or Redemption Price of any Bonds becomes due, and on any other date required for the payment of any other obligations relating to the Redevelopment District, the Trustee shall withdraw from the Revenue Fund and transfer the following amounts to the following funds in the following order of priority; (i) to the Rebate Fund, any amounts required to be transferred thereto pursuant to Section 4.09 of the Original Indenture, (ii) to the Administrative Expense Fund, such amounts as are estimated by an Authorized Officer to be necessary to pay Administrative Expenses during the ensuing six-month period, (iii) to the Debt Service Fund, the amount necessary, taking into account any available amounts then on deposit in the Debt Service Fund and amounts on deposit in the Project Fund available for transfer to the Debt Service Fund, to make the amount in the Debt Service Fund equal to the interest coming due on the Bonds on the next succeeding Interest Payment Date, (iv) to the Debt Service Fund, on the Maturity Date, the amount necessary, taking into account any available amounts then on deposit in the Debt Service Fund and amounts on deposit in the Project Fund available for transfer to the Debt Service Fund, to make the amount in the Debt Service Fund equal to the principal and Redemption Price, if any, due on the Bonds on such Maturity Date, and (v) to the Reserve Fund such amount, if any, necessary to fund the Reserve Fund at the Reserve Requirement.

(c) On June 1 of each Bond Year, if following the transfers required by subparagraph (b) above, funds in excess of \$5,000 remain in the Revenue Fund, the Trustee shall transfer said funds in increments of \$5,000 to the Redemption Account within the Debt Service Fund for redemption of the principal of Series 2007 A Bonds pursuant to Section 3.01(b) of the Original Indenture.

## ARTICLE IV

### COVENANTS OF THE ISSUER; DEFAULT AND REMEDIES

**Section 4.01 Authority to Issue Bonds; Bonds Constitute Special Obligations.** The Issuer covenants that it is duly authorized under its City Charter and the Constitution and laws of the State of West Virginia to execute this First Supplemental Indenture, to amend and restate the Series 2007 A Bonds; that all action on its part for the execution and delivery of this First Supplemental Indenture and the amendment and restatement of the Series 2007 A Bonds has been duly and effectively taken; and that the Series 2007 A Bonds in the hands of the owners thereof are and will be valid and enforceable obligations of the Issuer according to the import thereof, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights to the extent applicable and their enforcement may be subject to the exercise of judicial discretion in appropriate cases.

**Section 4.02 Pledge of the TIF Fund.** The Issuer hereby confirms that the pledge of the TIF Fund to secure repayment or payment of the principal of and premium, if any, on the Bonds, includes the pledge of all of its right, title and interest in any subaccount of the TIF Fund, including but not limited to the Revenue Fund.

**Section 4.03 Trustee's Responsibility with Respect to Payment Agreement.** The Trustee's sole responsibility with respect to the Payment Agreement and the Guaranty Payments received by the Trustee pursuant thereto is set forth in Section 4.07(a) and (b) of the Original Indenture, as provided in Section 3.01 of this First Supplemental Indenture of Trust. The Trustee is not a party to the Payment Agreement and shall have no responsibility to enforce the provisions of the Payment Agreement against any party thereto. Notwithstanding the foregoing, the Trustee is a third party beneficiary under the Payment Agreement and, if properly indemnified as provided in Section 6.02 of the Original Indenture, may upon the request of not less than 10% of the principal amount of the Bonds Outstanding elect to pursue an enforcement action on behalf of the Bondholders.

## ARTICLE V

### MISCELLANEOUS

**Section 5.01 Severability.**

The parties hereto agree that the provisions contained in each Section of this First Supplemental Indenture, and within the subsections of such Sections are intended to be separate and divisible and if, for any reason, any one or more of them shall be held to be illegal, invalid or unenforceable, in whole or in part, by a court of competent jurisdiction, then (a) the same shall not be held to affect the validity of any other provision contained in this First Supplemental Indenture and (b) the same shall be deemed to be modified to the minimum extent necessary for it to be legally enforceable. The parties hereto hereby expressly request and authorize any court of competent jurisdiction to enforce any such provision or to modify any such term thereof so that it shall be enforced by such court to the fullest extent permitted by applicable law. The Issuer hereby declares that, in the event a court of competent jurisdiction declares any Section,

paragraph, sentence, clause or phrase of this First Supplemental Indenture to be illegal, invalid or unenforceable but is unable to modify it as authorized herein, it would have nevertheless adopted this First Supplemental Indenture and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the amendment and restatement of the Series 2007 A Bonds pursuant thereto irrespective of the illegality, invalidity or unenforceability of any such Section, paragraph, sentence, clause or phrase.

**Section 5.02 Applicable Law.**

This First Supplemental Indenture shall be governed by and enforced in accordance with the laws of the State of West Virginia applicable to contracts made and performed in the State of West Virginia. THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION ARISING UNDER THIS FIRST SUPPLEMENTAL INDENTURE. Any judicial proceeding arising out of or relating to this First Supplemental Indenture (including any declaratory judgments) shall be filed exclusively in the State and Federal courts located in West Virginia, and each party hereby consents to, and will submit to, the personal and subject matter jurisdiction of such courts in any proceeding to enforce any of its obligations under this First Supplemental Indenture and shall not contend that any such court is an improper or inconvenient venue. The foregoing shall not limit the right of any party to obtain execution of judgment in any other jurisdiction.

**Section 5.03 Conflict with Act.**

In the event of a conflict between any provision of this First Supplemental Indenture with any provision of the Act as in effect on the date hereof, the provision of the Act shall prevail over the conflicting provision of this First Supplemental Indenture.

**Section 5.04 Intention as to Seal and Contract.**

It is intended that this First Supplemental Indenture, when signed on behalf of the Issuer and the Trustee and duly delivered between them, shall constitute a contractual obligation under seal under the laws of the State of West Virginia with force and effect as an agreement and indenture of trust.

**Section 5.05 Counterparts.**

This First Supplemental Indenture may be executed in counterparts, each of which shall be deemed an original.

[Signatures Follow]

IN WITNESS WHEREOF, the Issuer and the Trustee have caused this First Supplemental Indenture of Trust to be executed all as of \_\_\_\_\_, 2013

THE CITY OF MORGANTOWN

[SEAL]

By: \_\_\_\_\_  
Its Mayor

By: \_\_\_\_\_  
Its Interim City Manager

Attest:

By: \_\_\_\_\_  
Its City Clerk

THE BANK OF NEW YORK MELLON

By: \_\_\_\_\_  
Its Authorized Officer

**Consented to by FIRST UNITED BANK & TRUST,  
as Registered Owner of 100% of the Series 2007 A Bonds**

By: \_\_\_\_\_

Name: Carissa L. Rodeheaver

Title: President and Chief Financial Officer

**EXHIBIT A**  
**FORM OF AMENDED AND RESTATED SERIES 2007 A BOND**

THIS BOND IS REGISTERED WITH THE TRUSTEE, THE BANK OF NEW YORK MELLON, AND IS NOT REGISTERED WITH THE DEPOSITORY TRUST COMPANY, AND ANY REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT SHOULD BE SUBMITTED TO THE TRUSTEE, THE BANK OF NEW YORK MELLON.

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

**NO. R-2**

UNITED STATES OF AMERICA  
THE CITY OF MORGANTOWN  
TAX INCREMENT REVENUE BOND  
(FALLING RUN PROJECT NO. 1)  
SERIES 2007 A

<u>Original Dated Date</u>	<u>Reissuance Date</u>	<u>Interest Rate (Per Annum)</u>	<u>Maturity Date</u>
October 5, 2007	_____ , 2013	2.5% per annum from December 2, 2012 until June 1, 2014; 3.5% per annum from June 2, 2014 until June 1, 2017; and 5.69% per annum thereafter.	June 1, 2033

Registered Owner: FIRST UNITED BANK & TRUST

Principal Sum: THREE MILLION AND 00/100 DOLLARS  
(\$3,000,000)

The City of Morgantown, West Virginia, a municipal corporation and political subdivision of the State of West Virginia (the "Issuer"), for value received, hereby promises to pay, but only from the Tax Increment Revenues (defined herein) and other amounts pledged to such payment under the Indenture (defined herein), to the Registered Owner shown above or registered assigns or legal representatives upon the presentation and surrender hereof at the designated office of the Trustee (defined herein), by certified or bank cashier's check, or by wire transfer to an account designated by the payee, the Principal Sum shown above (or such lesser amount as shall be outstanding hereunder from time to time in accordance with Section 4 hereof) on the Maturity Date shown above (or earlier as hereinafter referred to), with interest thereon from the most recent date to which interest has been paid, at the Interest Rate shown above until said Principal Sum is paid, and the first Interest Payment Date after the Reissuance Date shall be June 1, 2013, and semiannually thereafter on June 1 and December 1 of each year.

All interest due on this Bond shall be payable to the person in whose name this Bond is registered on the Bond Register maintained by The Bank of New York Mellon, Woodland Park, New Jersey, as Trustee and registrar (such entity and any successor in such capacity being referred to herein as the "Trustee"), as of the close of business on the fifteenth day of the calendar month immediately preceding the interest payment date upon which such interest is due and payable and shall be made by certified or bank cashier's check, or by wire transfer to an

account designated by the payee, and if by certified or bank cashier's check, such check shall be mailed to the address of such owner as it appears on the Bond Register maintained by the Trustee; provided, that if there is a default in the payment of interest due hereon, such defaulted interest shall be payable to the person in whose name this Bond is registered as of the close of business on a subsequent date fixed by the Trustee (the "Special Record Date") that is at least 10 and not more than 15 days before the date set for the payment of such defaulted interest.

The principal or redemption price of and interest on this Bond is payable in lawful money of the United States of America or by wire transfer or check payable in such money. If any payment of the principal or redemption price of or interest on this Bond shall be due on a day other than a Business Day (as defined in the Indenture), such payment shall be made on the next Business Day with like effect as if made on the originally scheduled date. As provided in the Act (defined herein) and the Ordinance (defined herein), this Bond is a special, limited obligation of the Issuer payable solely from the Tax Increment Revenues and other revenues pledged for its repayment as provided in the Indenture and shall not constitute a general obligation debt of the Issuer or pledge of the Issuer's full faith and credit or taxing power.

1. Indenture. This Bond is one of a duly authorized series of bonds of the Issuer designated "The City of Morgantown Tax Increment Revenue Bond (Falling Run Project No. 1), Series 2007 A" (the "Series 2007 A Bonds"), in the aggregate principal amount of Three Million Dollars (\$3,000,000), duly issued by the Issuer under and pursuant to (i) the West Virginia Tax Increment Financing Act, Chapter 7, Article 11B of the Code of West Virginia, 1931, as amended (the "Act"), (ii) certain proceedings of the Issuer, including a Resolution and Ordinance enacted by the Issuer on September 18, 2007 and a Resolution and Ordinance enacted by the Issuer on \_\_\_\_\_, 2013 in connection with the amendment and restatement of the Series 2007 A Bonds (collectively, the "Ordinance"), and (iii) the Indenture of Trust dated October 5, 2007, as amended by the First Supplemental Indenture of Trust dated \_\_\_\_\_, 2013 (collectively, the "Indenture"), by and between the Issuer and the Trustee. The terms of the Series 2007 A Bonds include those stated in the Indenture, and the Series 2007 A Bonds are subject to all such terms. Reference is made hereby to the Indenture for a description of the funds and accounts, revenues and property pledged thereunder, the nature and extent of the security created or to be created, and the rights, limitations of rights, obligations, duties and immunities of the Issuer, the Trustee and the owners of the Series 2007 A Bonds. By the acceptance of this Bond, the owner hereof assents to all of the provisions of the Indenture. Certified copies of the Indenture are on file at the office of the Trustee in West Paterson, New Jersey, and the office of the Issuer in Morgantown, West Virginia.

2. Tax Increment Revenues. In the Indenture, the Issuer has covenanted to pay the principal of, and interest on, the Series 2007 A Bonds solely from the Tax Increment Revenues and other amounts pledged therefor under the Indenture.

3. The Series 2007 A Bonds. All of the Series 2007 A Bonds are of like tenor except as to number, principal amount, maturity, interest rates and certain redemption provisions.

4. Redemption.

(a) The Series 2007 A Bonds at the time outstanding may be redeemed prior to their stated maturity at the times and in the amounts provided in the Indenture.

(b) The Trustee shall give notice of any redemption of the Series 2007 A Bonds not less than 30 or more than 60 days before the redemption date to the registered owners of the Series 2007 A Bonds to be redeemed. The failure so to give any such notice to any of such registered owners shall not affect the validity of the proceedings for the redemption.

(c) On the date designated for redemption, notice having been given as provided in the Indenture and any conditions to such redemption having been satisfied, the Series 2007 A Bonds or portions of Series 2007 A Bonds so called for redemption shall become and be due and payable at the redemption price provided for redemption of such Series 2007 A Bonds or such portions thereof on such date and, if moneys for the payment of the redemption price and accrued interest are held by the Trustee as provided in the Indenture, interest on such Series 2007 A Bonds or such portions thereof so called for redemption shall cease to accrue, such Series 2007 A Bonds or such portions thereof so called for redemption shall cease to be entitled to any benefit or security under the Indenture, and the registered owners thereof shall have no rights in respect of such Series 2007 A Bonds or such portions thereof so called for redemption except to receive payment of the redemption price thereof and the accrued interest thereon so held by the Trustee. If a portion of this Series 2007 A Bond shall be called for redemption, a new Series 2007 A Bond or Series 2007 A Bonds in aggregate principal amount equal to the unredeemed portion hereof, of the same series and maturity and bearing interest at the same rate, shall be issued to the registered owner upon the surrender hereof.

5. Defeasance. The Indenture prescribes the manner in which it may be discharged and provides that the Series 2007 A Bonds shall be deemed to be paid if moneys or certain Defeasance Obligations (as defined in the Indenture), the principal of and interest on such Bonds which, when due, will be sufficient to pay the principal or redemption price of and interest on such Series 2007 A Bonds to the date of maturity or redemption thereof, shall have been deposited with the Trustee.

6. Persons Deemed Owners: Restrictions upon Actions by Individual Holders. The Issuer and the Trustee may deem and treat the person in whose name this Bond is registered as the absolute owner hereof (whether or not this Bond shall be overdue and notwithstanding any notation of ownership or other writing hereon made by anyone other than the Issuer or the Trustee) for the purpose of receiving payment of or on account of the principal or redemption price of this Bond, and for all other purposes except as otherwise provided herein with respect to the payment of interest on this Bond, and neither the Issuer nor the Trustee shall be affected by any notice to the contrary. All such payments so made to any such registered owner, or upon his order, shall be valid and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for moneys payable under this Bond.

The registered owner of this Bond shall have no right to enforce the provisions of the Indenture, or to institute action to enforce the covenants therein, or to take any action with

respect to any event of default under the Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

7. Transfer and Exchange. This Bond may be exchanged for an equal aggregate principal amount of Series 2007 A Bonds of other authorized denominations, and the transfer of this Bond may be registered, upon presentation and surrender of this Bond at the designated office of the Trustee, duly endorsed for transfer or accompanied by an assignment duly executed by the registered owner hereof or such owner's attorney or legal representative. The Issuer and the Trustee may require the person requesting any such exchange or transfer to reimburse them for any tax or other governmental charge payable in connection therewith and for their reasonable expenses.

8. Modifications. Modifications or alterations of the Indenture may be made only to the extent and in the circumstances permitted by the Indenture.

9. Negotiability. As declared by the Act, this Bond shall be and be deemed to be for all purposes a negotiable instrument subject only to the provisions for registration and registration of transfer stated herein.

10. Governing Law. This Bond shall be governed by and construed in accordance with the laws of the State of West Virginia.

11. Notices. Except as otherwise provided in the Indenture and this Bond, when the Trustee is required to give notice to the owner of this Bond, such notice shall be mailed by first-class mail to the registered owner of this Bond at such owner's address as it appears on the registration books maintained by the Trustee. Any notice mailed as provided herein will be conclusively presumed to have been given, whether or not actually received by the addressee.

All acts, conditions and things required by the Constitution and laws of the State of West Virginia and the rules and regulations of the Issuer to happen, exist and be performed precedent to and in the issuance of this Bond and the execution and delivery of the Indenture have happened, exist and have been performed as so required.

No recourse shall be had for the payment of the principal or redemption price of and interest on this Bond or for any claims based thereon or on the Indenture against any member or other officer of the Issuer or any person executing this Bond, all such liability, if any, being expressly waived and released by the registered owner of this Bond by the acceptance of this Bond.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Indenture until it shall have been authenticated by the execution by the Trustee of the certificate of authentication endorsed hereon.

IN WITNESS WHEREOF, THE CITY OF MORGANTOWN, WEST VIRGINIA, has caused this Bond to be executed in its name by the manual or facsimile signature of its Interim City Manager and Mayor and its corporate seal (or a facsimile thereof) to be hereunto affixed, imprinted, engraved or otherwise reproduced, and attested by the manual or facsimile signature of its City Clerk.

THE CITY OF MORGANTOWN

[SEAL]

By: \_\_\_\_\_  
Its Mayor

By: \_\_\_\_\_  
Its Interim City Manager

Attest:

By: \_\_\_\_\_  
Its City Clerk

**Certificate of Authentication and Registration**

This Bond is one of the Bonds of the Series designated herein and issued under the provisions of the within-mentioned Indenture.

Date of Authentication and Registration: \_\_\_\_\_, 2013

**THE BANK OF NEW YORK MELLON, as Trustee**

By: \_\_\_\_\_  
Its: Vice President

**\$3,000,000**  
**The City of Morgantown**  
**Tax Increment Revenue Bonds**  
**(Falling Run Project No. 1)**  
**Series 2007 A**

**TAX AND NON-ARBITRAGE CERTIFICATE**

The undersigned, **JIM MANILLA** and **JEFF MIKORSKI**, the Mayor and Interim City Manager respectively of **THE CITY OF MORGANTOWN** (the "Issuer"), being the officials of the Issuer duly charged with the responsibility for the \$3,000,000 The City of Morgantown Tax Increment Revenue Bonds (Falling Run Project No. 1) Series 2007 A, of the Issuer, dated October 5, 2007, issued October 5, 2007 (the "Original Bonds") and reissued through significant modifications on \_\_\_\_\_, 20\_\_ (the "Reissued Bonds" and together with the Original Bonds, the "Bonds"), hereby certifies as follows, jointly unless otherwise stated, that all capitalized terms used herein and not otherwise defined are to have the meanings ascribed thereto in the Bond Authorizing Resolution and Ordinance of The City of Morgantown enacted by the Issuer in connection with the issuance of the Original Bonds on September 18, 2007 (the "Initial Bond Ordinance"), in the Bond Authorizing Resolution and Ordinance of the City of Morgantown enacted by the Issuer in connection with the issuance of the Reissued Bonds (the "Reissuance Ordinance" and collectively with the Initial Bond Ordinance, the "Bond Ordinance"), the Indenture of Trust dated as of October 5, 2007, by and between the Issuer and The Bank of New York Mellon (f/k/a The Bank of New York, as Trustee (the "Original Indenture"), pursuant to which the Bonds were issued, and the First Supplemental Indenture of Trust dated as of \_\_\_\_\_, 2013, by and between the Issuer and The Bank of New York Mellon, as Trustee (the "First Supplemental Indenture" and, together with the Original Indenture, the "Indenture") modifying the terms of the Bonds and causing them to be considered reissued for Federal tax purposes:

**A. DEFINITIONS**

In addition to the terms defined in the Bond Ordinance, the Indenture, and the Regulations, the following words and phrases shall have the following meanings:

**"IRS"** means the Internal Revenue Service.

**"Payment Agreement"** means the Contingent and Guaranteed Payment Agreement dated October 10, 2012, between West Virginia University, an agency and higher education institution of the State of West Virginia, and First United Bank & Trust, in its capacity as the owner of all the outstanding Bonds.

**"Project"** means the design, acquisition, construction and equipping of storm water management system facilities, water distribution system facilities, sanitary sewer system facilities, public utility relocations, road improvements, streetscape systems, and

pedestrian systems, together with other improvements described in the Project Plan and engineering fees, legal fees, and other professional fees and costs incurred in connection therewith and in connection with the establishment of the Redevelopment District and the approval of the Project Plan, and the reimbursement of all costs and expenses previously incurred for such purposes.

**“Project Plan”** means the project plan approved for the Redevelopment District pursuant to an ordinance enacted by the Council of the Issuer on August 21, 2007.

**“Purchaser”** means First United Bank & Trust as the initial purchaser of the Bonds directly from the Issuer.

**“Rebate Analyst”** means the entity or person chosen by the Issuer in accordance with Section E(2) hereof to determine the Rebate Amounts.

**“Redevelopment District”** means the City of Morgantown Falling Run Redevelopment District No. I, established pursuant to an ordinance enacted by the Council of the Issuer on December 16, 2003.

**“Regulation”** or **“Regulations”** means the temporary, proposed or final Income Tax Regulations promulgated by the Department of the Treasury that are applicable to the Bonds.

**“Tax Increment Revenues”** shall mean, subject to the exceptions and qualifications set forth in the Act, all incremental real and personal property taxes that would normally be paid to the Sheriff of Monongalia County, based upon the regular levy on all such applicable properties within the Redevelopment District.

## **B. GENERAL**

1. This certificate is being executed and delivered pursuant to Section 148 of the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder (the “Code”). The undersigned officer and elected official respectively of the Issuer are officers or officials of the Issuer charged with the responsibility of reissuing the Bonds. We are familiar with the facts, circumstances, and estimates herein certified and are duly authorized to execute and deliver this certificate on behalf of the Issuer.

2. This certificate may be relied upon as the certificate of the Issuer.

3. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on the date of reissuance and to the best of our knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

4. The Issuer has covenanted in the Indenture that it will not permit at any time or times any of the proceeds of the Bonds or any funds of the Issuer to be used directly or indirectly

to acquire any securities or obligations, the acquisition of which would cause any of the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code.

5. The Bonds were sold on October 5, 2007 (the "Sale Date") and delivered on that date to the Purchaser for a purchase price of \$3,000,000 (the par amount thereof).

6. The Original Bonds were issued for the purposes of providing moneys necessary (i) to pay Costs of the Project, (ii) to fund a Reserve Fund for the Bonds, (iii) to pay capitalized interest on the Bonds, and (iv) to pay Costs of issuance of the Bonds and related costs. The Reissued Bonds are issued to replace the Original Bonds with a new obligation having changes in interest rate and the addition of the Payment Agreement as security for the payments on the Reissued Bonds.

7. The face amount of the Original Bonds and the Reissued Bonds is \$3,000,000. The sources and uses of proceeds of the Original Bonds were as follows:

**Sources**

Par amount of Bonds \$3,000,000.00

Total Sources \$3,000,000.00

Deposit to Administrative Expense Fund \$ 5,000.00  
Deposit to Reserve Fund 120,000.00  
Deposit to Costs of Issuance Fund 286,000.00  
Deposit to Capitalized Interest Account 157,299.31  
Funds Available to Issuer for Project Costs 2,431,700.69

Total Uses \$ 3,000,000

8. The Issuer is a governmental unit and has general taxing powers.

**C. THE PROJECT AND USE OF BOND PROCEEDS**

1. More than ten percent (10%) of the proceeds of the Bonds were used for private business uses within the meaning of Section 141 due to the Issuer's Development Agreement with the Developer.

2. Not more than ten percent (10%) of the payment of principal of or interest on the Original Bonds has been, or the Reissued Bonds will be, directly or indirectly, (A) secured by any interest in (1) property used or to be used for a private business use by any person other than a state or local governmental unit, or (2) payments in respect of such property,

or (B) derived from payments (whether or not to the Issuer), in respect of property, or borrowed money, used or to be used for a private business use by any person other than a state or local governmental unit.

3. Not more than five percent (5%) of the proceeds of the Bonds will be used, directly or indirectly, to make or finance loans to persons other than a state or local governmental unit. The Bond proceeds will only be used to finance improvements to public use property or to reimburse such costs. Any use of the Bond proceeds for any portion of the Project that is deemed to not constitute public use property will, when distributed to or for the benefit of the Developer constitute a grant to the Developer for purposes of Treasury Regulation Section 1.141-5. The Bonds shall be secured by generally applicable taxes attributable to property within the Redevelopment District.

4. No portion of the payments of principal or interest will be made, financed or secured by, directly or indirectly, payments or property used in any trade or business of any person other than the Issuer. The Issuer will not permit any portion of the payment of the principal or interest on the Bonds to be secured, directly or indirectly, by (i) interests in property or (ii) payments in respect of such property, which property is used or to be used in any trade or business of any person other than the Issuer. The Issuer will not permit any portion of the payment of the principal or interest on the Bonds to be derived, directly or indirectly by payments (whether or not to the Issuer) in respect of property or borrowed money, used or to be used in any trade or business of any persons other than the Issuer.

#### **D. THE BONDS**

1. The Issuer expects to make all payments on the Bonds from Tax Increment Revenues or guarantee payments of up to \$120,000 per annum by West Virginia University under the Payment Agreement. The Tax Increment Revenues constitute a portion of the regular property tax revenues paid to the Sheriff of Monongalia County, West Virginia on all taxable properties within the Redevelopment District. Such property taxes are an enforced contribution exacted pursuant to legislative authority in the exercise of the taxing power of the Issuer, the State of West Virginia, Monongalia County, West Virginia and the Monongalia County Board of Education and such property taxes are imposed and collected for the purpose of raising revenue to be used for governmental purposes. The property tax is imposed at uniform tax rates and is applicable to all persons of the same classification in the Redevelopment District and is collected through a generally applicable manner of determination and collection. As a result, the property tax is a tax of general application within the meaning of Treasury Regulation Section 1.141-4(e). As a part of its compliance procedures with respect to the tax-exemption of the Bonds, the Issuer shall consult with Bond Counsel before agreeing to any future change in the nature of the security or sources for payment of the Bonds.

2. When received by the Sheriff of Monongalia County, West Virginia, the Tax Increment Revenues will be deposited into the TIF Fund and then deposited on a monthly basis into the Revenue Fund. Monies in the Revenue Fund will then be used in the following priority to (a) fund the Administrative Expense Fund, (b) fund the Rebate Fund (c) fund the Debt

Service Fund to provide an amount equal to the interest coming due on the Bonds on the next succeeding Interest Payment Date for such Bonds, (d) transfer to the Debt Service Fund on the Maturity Date of the Bonds, the amount necessary to pay the principal and interest coming due on the Bonds on such Maturity Date and (e) funding any deficiency in the Reserve Fund. Any amounts then remaining in the Revenue Fund in excess of \$5,000 will be used for mandatory redemption of the principal of the Bonds in \$5,000 increments in accordance with Section 3.01 of the Indenture.

3. The Issuer expects amounts received by the Sheriff of Monongalia County and deposited in the TIF Fund, the Revenue Fund and the Debt Service Fund to be used primarily to achieve a proper matching of revenues and debt service on the Bonds within each Bond Year. The TIF Fund, the Revenue Fund and the Debt Service Fund will be depleted at least once each year except for a reasonable carryover amount in the aggregate not to exceed the greater of the earnings on such funds for the immediately preceding Bond Year or 1/12th of the debt service on the Bonds for the immediately preceding Bond Year. Amounts deposited into the TIF Fund, the Revenue Fund and the Debt Service Fund are expected to be spent within 13 months after the date of receipt by or on behalf of the Issuer and any amounts received from the investment or reinvestment of moneys held in such funds will be expended within 1 year after the date of accumulation thereof in such funds. Amounts held in the TIF Fund, the Revenue Fund and the Debt Service Fund may be invested without regard to yield.

Amounts held in the Administrative Expense Fund and the Rebate Fund are neither pledged to nor expected to be used to pay debt service on the Bonds. Amounts held in the Administrative Expense Fund and the Rebate Fund may be invested without regard to yield.

4. The Debt Service Reserve Fund is established from which the Trustee may withdraw amounts from time to time solely for the purpose of making up any deficiency in the Debt Service Fund or for payment or redemption of all outstanding Bonds. The Placement Agent has advised that the Debt Service Reserve Fund is reasonably required in that it was a material factor in selling the Bonds at the lowest possible yield (given other characteristics of the Bonds) without regard to any benefit from positive net investment earnings on amounts held in the Debt Service Reserve Fund, and that it is reasonable and customary in marketing similar issues of governmental obligations. All moneys on deposit in the Debt Service Reserve Fund in excess of the Reserve Requirement shall be transferred to the Project Fund, or if the Project has been completed, to the Debt Service Fund and will be allocated to pay debt service on the Bonds. The amount deposited in the Debt Service Reserve Fund will not exceed the lesser of (i) 10% of the Sale Proceeds of the Bonds, (ii) maximum annual debt service on the Bonds, or (iii) 125% of average annual debt service on the Bonds.

5. Other than the TIF Fund, the Revenue Fund, the Debt Service Fund and the Reserve Fund, there are no other funds or accounts of the Issuer which (i) are reasonably expected to be used to pay Debt Service on the Bonds or which are pledged as collateral to secure repayment of Debt Service on the Bonds and (ii) for which there is a reasonable assurance that amounts therein will be available to pay Debt Service on the Bonds.

6. The Bonds are treated as a single issue for tax purposes. No obligations other than the Bonds are (a) being sold at substantially the same time (within 15 days) as the Bonds, (b) being sold pursuant to the same plan of financing as the Bonds, and (c) reasonably expected to be paid from substantially the same source of funds as the Bonds, determined without regard to guarantees from unrelated parties. Accordingly, no obligations other than those that comprise the Bonds are a part of the same issue with the Bonds.

7. The amortization schedule for the Reissued Bonds stated in Exhibit A to the Payment Agreement represents reasonable expectations of the Issuer.

8. The arbitrage yield on the Reissued Bonds is 4.718835%, and the weighted average maturity of the Reissued Bonds is 11.5 years.

**E. REBATE OF EXCESS ARBITRAGE**

1. Payment of Rebate Amounts to United States.

(a) Installment Computation Dates. Unless the Reissued Bonds are redeemed prior to such time, the Issuer shall pay to the United States, not later than sixty (60) days after each Installment Computation Date as measured from the date of reissuance, a Rebate Installment Payment which, when added to all previous Rebate Installment Payments made with respect to the Reissued Bonds, is equal to not less than ninety percent (90%) of the Rebate Amount (computed from the date of reissuance to each such Installment Computation Date). The initial Installment Computation Date shall be selected by the Issuer but shall not be later than \_\_\_\_\_, 2018, which is the fifth anniversary of the date of reissuance. Within 30 days after each Installment Computation Date, the Issuer shall advise the Trustee in writing as to whether a Rebate Installment Payment is payable to the Internal Revenue Service and the amount of any such payment.

(b) Final Computation Date. The Issuer shall pay to the United States, not later than \_\_\_\_\_, 2013, which is sixty (60) days after today, one hundred percent (100%) of the Rebate Amount for the Final Computation Date for the Original Bonds and not later than sixty (60) days after the last outstanding Reissued Bonds are paid or redeemed, one hundred percent (100%) of the Rebate Amount for the Final Computation Date for the Reissued Bonds.

(c) Mailing of Rebate Payment. Each Payment of an installment shall be mailed to the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255. Each payment shall be accompanied by (i) a copy of IRS Form 8038-T, and (ii) the CUSIP number for the Bond with the latest maturity.

(d) Excess Balance in Rebate Fund; Excess Rebate Payments. If on the Rebate Payment Date the balance on deposit in the Rebate Fund is in excess of

the Rebate Amount attributable to the Bonds, such excess may be withdrawn by the Issuer from the Rebate Fund. The Issuer may direct that any overpayment of rebate may be recovered from any rebate payment previously made to the United States under any procedure that may be permitted by the Code or the Regulations.

(e) Recordkeeping. In connection with the rebate requirement, the Issuer shall maintain (or cause to be maintained) the following records:

(i) The Issuer shall record all amounts paid to the United States pursuant to Section E(2) hereof.

(ii) The Issuer shall retain records of the rebate calculations until six years after the Final Computation Date.

(iii) The Issuer shall keep and record the data described in Section E(1)(c) hereof pertaining to the investment of the proceeds of the Bonds until six years after the Final Computation Date.

2. Rebate Analyst.

(a) A Rebate Analyst shall be appointed to perform the rebate calculations, as required herein.

(b) The Issuer may rely conclusively upon and shall be fully protected from all liability in relying upon the opinions, calculations, determinations, directions and advice of the Rebate Analyst. The charges and fees for such Rebate Analyst shall be payable by the Issuer as an administrative expense of the Redevelopment District from the Tax Increment Revenues of the Redevelopment District.

3. Failure to Pay Rebate Amounts. In the event the Issuer fails to pay at the proper time and in the proper amounts, any Rebate Amount, it will pay the rebate amount plus interest within 180 days after discovery of such failure as set forth in Section 1.148-3(h)(3) of the Regulations. Notwithstanding the foregoing, in the event the Issuer fails to pay at the proper time and in the proper amount any Rebate Payment or correction amount, it hereby covenants and agrees to pay any penalty required by Internal Revenue Service in lieu of a declaration of taxability on the Bonds.

**F. INVESTMENT AGREEMENT**

1. In the event that the Issuer invests any proceeds of the Bonds in an investment agreement, repurchase agreement or other investment (the "GIC"), the Issuer hereby agrees to comply with Treasury Regulations Sections 1.148-5(d)(6)(iii) and (iv) and 1.148-S(e)(ii), or

any successor thereto, in connection with the GIC, including, but not limited to, preservation of the following records until 3 years following the final maturity of the Bonds:

- (a) A copy of the GIC.
- (b) The receipt for, or other record of, the amount paid by the Issuer for the GIC, together with a record of any administrative costs paid by the Issuer and the certification by the successful bidder, of the administrative costs paid.
- (c) The name of each bidder, the time and date of each bid and the bid results.
- (d) The bid solicitation form, together with an explanation (including reasons) of any deviation from the form or any modification of any bid (including a record of any substitutions of an investment in a winning bid and of how the price of the substitute investment as determined).
- (e) For purchases other than GIC's, the cost of the most efficient SLGS portfolio determined at the time that bids were required to be submitted.

**G. MISCELLANEOUS**

- 1. The Issuer shall file Form 8038-G for the Reissued Bonds in a timely fashion with the Internal Revenue Service Center, Ogden, Utah 84201.
- 2. The original proceeds of the Bonds did not exceed the amount necessary for the purpose of the issue.
- 3. The Bonds are not, and will not be, in whole or part, directly or indirectly, federally guaranteed within the meaning of Section 149(b) of the Code.
- 4. The Issuer has not entered and will not enter into any transaction to reduce the Yield on an investment of the Gross Proceeds of the Bonds so as to cause the amount to be rebated to the United States Treasury to be less than it would have been had the transaction been at arm's length and the Yield on the Bonds not been relevant to either party to the transaction, and that all investments of Gross Proceeds will be made on an arm's length, Fair Market Value basis.
- 5. No portion of the proceeds of the Bonds will be used directly or indirectly to replace funds of the Issuer or other related governmental agency that have been used directly or indirectly to acquire securities or obligations which may reasonably be expected, on the date hereof, to produce a yield materially higher than the Yield on the Bonds.
- 6. The Bonds are not and will not be part of a transaction or series of transactions that (i) attempt to circumvent the provisions of Section 148 of the Code, or any

successor thereto, and the Regulations promulgated thereunder which enable the Issuer to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage or (ii) increase the burden on the market for tax-exempt obligations in any manner, including, without limitation, by selling obligations that would not otherwise be sold or selling a larger amount of obligations, or issuing them sooner, or allowing them to remain outstanding longer, than would otherwise be necessary.

7. No other obligations are being issued by the Issuer or any related entity at substantially the same time and sold pursuant to a common plan of financing and which will be paid out of substantially the same source of funds (or which will have substantially the same claim to be paid out of substantially the same source of funds) as the Bonds or which will be paid directly or indirectly from proceeds of the sale of the Bonds.

8. The issuance of the Bonds will not involve the use of a “device” or an “abusive transaction” within the meaning of Section 149(d)(4) of the Code and the Regulations thereunder.

9. The Issuer covenants to comply with all requirements of the Code that must be satisfied subsequent to the issuance of the Bonds in order that the interest thereon be and continue to be excludable from gross income for federal income tax purposes.

10. The Issuer shall comply with all yield restrictions on Bond proceeds as set forth in the Code.

11. Under Section 1.148-2(b) of the Regulations, an officer of the Issuer must certify the Issuer's expectations as of the issue date. In accordance therewith, the undersigned Mayor and Interim City Manager of the Issuer hereby in good faith certify that the representations and covenants set forth in this Tax and Non Arbitrage Certificate constitute the reasonable expectations of the Issuer as of the reissuance date. Accordingly, the representations and covenants set forth herein are intended and may be relied upon as the certification described in Section 1.148-2(b) of the Regulations and are being delivered as part of the record of proceedings in connection with the issuance of the Bonds.

12. To the best of our knowledge, information and belief there are no other facts, estimates and circumstances which would materially change the expectations herein expressed.

13. Ballard Spahr LLP is entitled to rely upon the representations, expectations, covenants, certifications and statements contained herein in rendering its opinions regarding the tax-exempt status of interest on the Reissued Bonds.

14. At the time of the issuance of the Bonds, the Issuer reasonably expected to spend at least eighty-five percent (85%) of the spendable proceeds of the Bonds to carry out the governmental purpose for which the Bonds are being issued within three (3) years of the date of the issuance of the Bonds. Not more than fifty percent (50%) of the proceeds of the Bonds

were or will be invested in investments having a substantially guaranteed yield for four (4) years or more.

15. Notwithstanding any other provision hereof, any provision of this Tax and Arbitrage Certificate shall be amended at any time and such amendment shall be complied with, upon receipt by the Issuer of an opinion of Bond Counsel that such amendment is necessary or permissible under the then current Code and Regulations and is either necessary to or will not adversely affect the excludability of interest on the Bonds from gross income of the recipients thereof for federal income tax purposes.

16. To the best of our knowledge, information and belief, the foregoing expectations are reasonable.

17. The Issuer agrees and covenants to use the Post-Issuance Compliance Policies set forth in Exhibit A hereof to monitor its compliance with the Code and Regulations and other rules that must be complied with (the "Tax Exempt Rules") while the Bonds are outstanding to ensure that the interest on said bonds remain exempt from gross income for federal income tax purposes. The Issuer further agrees and understands that if the Tax Exempt Rules are not complied with, the parties may use the remedial actions set forth in Regulations §1.141-12, or may use the voluntary closing agreement process of the Internal Revenue Service in order to bring the Bonds into compliance with the Tax Exempt Rules.

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IN WITNESS WHEREOF, we have executed this Tax and Non-Arbitrage Certificate this \_\_\_\_\_, 2013.

**THE CITY OF MORGANTOWN**

By: \_\_\_\_\_  
Name: Jim Manilla  
Title: Mayor

By: \_\_\_\_\_  
Name: Jeff Mikorski  
Title: Interim City Manager

## EXHIBIT A

### TAX COMPLIANCE POLICIES

#### **Purpose**

Issuers of tax-exempt bonds must comply with federal tax rules pertaining to expenditure of proceeds for qualified costs, rate of expenditure, use of bond financed property, investment of proceeds in compliance with arbitrage rules, and retention of records. The following policies are intended to establish compliance by the City of Morgantown (the "*Issuer*") with these rules in connection with the reissuance of the Issuer's Tax Increment Revenue Bonds (Falling Run Project No. 1), Series 2007 A (the "*Bonds*").

#### **Tax Requirements Associated with Sale and Issuance of Bonds**

Review and retention of tax documents related to the sale and issuance of the Bonds will be supervised by the Finance Director of the Issuer or his/her designee (the "*Oversight Officer*").

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

#### **Expenditure of Proceeds for Qualified Costs**

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

- Bond proceeds will be disbursed pursuant to an approved form of requisition stating the date, amount and purpose of the disbursement.
- Requisitions must identify the financed property in conformity with the Tax and Non-Arbitrage Certificate executed by the Issuer at closing, including any certifications as to the character and average economic life of the bond-financed property.
- Requisitions for costs that were paid prior to the issuance of the Bonds are, in general, limited to costs paid subsequent to, or not more than 60 days prior to, the date a "declaration of intent" to reimburse the costs was adopted by the Issuer. If proceeds are used for reimbursement, a copy of the declaration will be obtained and included in the records for the Bonds, if not already part of the bond transcript.

- Requisitions will be summarized in a “final allocation” of proceeds to uses not later than 18 months after the in-service date of the financed property (and in any event not later than 5 years and 60 days after the issuance of the Bonds).
- Expenditure of proceeds will be monitored against the Tax and Non-Arbitrage Certificate expectations to spend or commit 5% of net sale proceeds within 6 months, to spend 85% of net sale proceeds within 3 years, and to proceed with due diligence to complete the project and fully spend the net sale proceeds. Expected expenditure schedules, project timelines, and plans and specifications will be maintained to support expectations. Reasons for failure to meet the expected schedule will be documented and retained in the records for the Bonds.
- If the 18-month spending exception to rebate applies, expenditure of gross proceeds will be monitored against the following schedule for the arbitrage rebate exception for the issue, if applicable:
  - 15% within 6 months
  - 60% within 12 months
  - 100% within 18 months
- If the 2-year spending exception to rebate applies, expenditure of “available construction proceeds” will be monitored against the following schedule for the arbitrage rebate exception for construction issues if applicable:
  - 10% within 6 months
  - 45% within 12 months
  - 75% within 18 months
  - 100% within 24 months

### **Expenditure of Proceeds**

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

- Only a small portion (5%) of the proceeds of Bonds can be used for operating expenses or other “working capital” costs. Requisitions for costs of the Project will accordingly be monitored to confirm that they are for capital costs of the Project.

- Investment earnings on sale proceeds of the Bonds will be tracked and will be requisitioned only for appropriate expenditures.

### **Use of Bond-Financed Property**

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

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

### **Investments and IRS Filings**

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

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

## Records

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

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

## Overall Responsibility

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

### THE CITY OF MORGANTOWN

By: \_\_\_\_\_  
Name: Jim Manilla  
Title: Mayor

By: \_\_\_\_\_  
Name: Jeff Mikorski  
Title: Interim City Manager

Date: \_\_\_\_\_, 2013



**CITY OF MORGANTOWN**

**TUESDAY, MAY 7, 2013  
REGULAR MEETING**

**AGENDA ITEM**

1. Consideration for adoption on first reading of a Resolution and Ordinance of the City of Morgantown which would authorize and direct the modification of certain terms of the City's outstanding Tax Increment Revenue Bonds (Falling Run Project No. 1) Series 2007 A, approve the forms of certain documents and the execution and delivery of such documents in connection with such modifications and related matters.

Bond Modification Resolution and Ordinance

**RESOLUTION AND  
ORDINANCE OF THE CITY OF MORGANTOWN  
AUTHORIZING BOND TERM MODIFICATIONS**

**A RESOLUTION AND ORDINANCE AUTHORIZING AND DIRECTING THE MODIFICATION OF CERTAIN TERMS OF THE CITY OF MORGANTOWN'S OUTSTANDING TAX INCREMENT REVENUE BONDS (FALLING RUN PROJECT NO. 1), SERIES 2007 A, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$3,000,000 TO FINANCE COSTS OF DESIGN, ACQUISITION, CONSTRUCTION AND EQUIPPING OF INFRASTRUCTURE IMPROVEMENTS IN THE CITY OF MORGANTOWN FALLING RUN REDEVELOPMENT DISTRICT NO. 1, AND ALL NECESSARY APPURTENANCES AND RELATED FACILITIES, AND OTHER EXPENSES AND COSTS RELATED THERETO AND TO THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST SUPPLEMENTAL INDENTURE OF TRUST, AN AMENDED SERIES 2007 A BOND, A TAX AND NON-ARBITRAGE CERTIFICATE AND OTHER DOCUMENTS FOR SUCH AMENDED BONDS; APPROVING THE TERMS OF THE AMENDED SERIES 2007 A BONDS AND AUTHORIZING AND DIRECTING THE EXECUTION AND DELIVERY OF SUCH AMENDED SERIES 2007 A BONDS; AUTHORIZING THE TAKING OF ALL ACTIONS NECESSARY TO CARRY OUT THE FOREGOING.**

**WHEREAS**, The City of Morgantown, a municipal corporation and political subdivision of the State of West Virginia (the "Issuer"), under Chapter 7, Article 11B of the Code West Virginia, 1931, as amended (the "Act"), has plenary power and authority to issue tax increment obligations to finance the costs of acquisition, construction and equipping of a project or projects included in a development or redevelopment plan approved by the West Virginia Development Office and adopted by the governing body of the Issuer, that are located within a development or redevelopment district, which project costs may include (i) interest prior to and during the acquisition, construction and equipping of a project and for a reasonable time thereafter; (ii) such reserves as may be required; (iii) reimbursement of costs of any interim financing or cash expenditures entered on behalf of projects in the development or redevelopment district; and (iv) any and all other expenses incidental to planning, carrying out and financing the project;

**WHEREAS**, the Issuer has, by Ordinance enacted December 16, 2003 (the "District Establishment Ordinance"), created a redevelopment project area or district designated as the "City of Morgantown Falling Run Redevelopment District No. 1" (the "TIF District"), approved a project plan for the TIF District (the "Prior Project Plan"), and established a tax increment financing fund (the "TIF Fund") to facilitate the issuance of tax increment financing obligations by the Issuer;

**WHEREAS**, pursuant to an Ordinance enacted by the Issuer on August 21, 2007 (the "Project Plan Amendment Ordinance"), the Issuer approved a new project plan for the TIF District which amended and superceded the Prior Project Plan (the "Project Plan"), consisting generally of some or all of the following public improvements: the design, acquisition, construction and equipping of water lines, storm water culverts and facilities, sewer lines, road improvements, land and right-of-way acquisition, demolition and site preparation, pedestrian ways, other underground utilities, lighting and other related infrastructure and utilities improvements and all necessary appurtenances (the "Project");

**WHEREAS**, the Issuer has previously entered into that certain Indenture of Trust dated October 5, 2007 (the "Original Indenture"), by and between the Issuer and The Bank of New York Mellon (the "Trustee") under which the Issuer issued The City of Morgantown Tax Increment Revenue Bonds (Falling Run Project No. 1) Series 2007 A, dated October 5, 2007, issued in the original aggregate principal amount of \$3,000,000 (the "Series 2007 A Bonds") the proceeds of which were used (i) to finance costs of the Project; (ii) to deposit funds in the Reserve Fund for the Series 2007 A Bonds; (iii) to pay capitalized interest on the Series 2007 A Bonds; (iv) to fund certain Administrative Expenses; and (v) to pay the costs of issuing the Series 2007 A Bonds;

**WHEREAS**, Section 7.02 of the Original Indenture provides that with the prior written consent of the Owners of all the Series 2007 A Bonds, the Issuer may enter into a Supplemental Indenture which will thereafter form a part of the Indenture, to modify any of the provisions thereof;

**WHEREAS**, all interest which has previously become due and payable on the Series 2007 A Bonds has been paid, but in order to pay the full amount of interest due on the Series 2007 A Bonds on the December 1, 2012 Interest Payment Date, funds were transferred from the Reserve Fund to the Debt Service Fund and presently, the amount on deposit in the Reserve Fund is less than the Reserve Requirement;

**WHEREAS**, West Virginia University Board of Governors on behalf of West Virginia University, an agency and higher education institution of the State of West Virginia (the "University") has agreed pursuant to a Contingent and Guaranteed Payment Agreement dated October 10, 2012 (the "Payment Agreement") between the University and First United Bank & Trust, in its capacity as the Owner of all the outstanding Series 2007 A Bonds (the "Original Purchaser") to make an annual payment (the "Guaranty Payment") in an aggregate amount up to \$120,000, as further described in the Payment Agreement, to support the Series 2007 A Bonds and pursuant to the Payment Agreement the Original Purchaser agreed, for purposes of calculating the amounts of such Guaranty Payment and for purposes of modifying the interest

rate provisions of the Series 2007 A Bonds, to modify the interest rate on the Series 2007 A Bonds;

**WHEREAS**, the Issuer and the Trustee have agreed to modify the Original Indenture and the terms of the Series 2007 A Bonds to lower the interest rate on the Series 2007 A Bonds for such period of time and in a manner consistent with the Payment Agreement and to provide for the Trustee's receipt and application of the Guaranty Payment to the payment of debt service on the Series 2007 A Bonds and the Original Purchaser, as the Owner of all the outstanding Series 2007 A Bonds has consented thereto;

**WHEREAS**, the Issuer desires to authorize and direct pursuant to this Resolution and Ordinance the modification of the Original Indenture and the terms of the Series 2007 A Bonds to lower the interest rate on the Series 2007 A Bonds for such period of time and in a manner consistent with the Payment Agreement, to provide for the Trustee's receipt and application of the Guaranty Payment to the payment of debt service on the Series 2007 A Bonds and in connection therewith to designate the Revenue Fund established pursuant to the Original Indenture (the "Revenue Fund") as a sub-account of the Issuer's TIF Fund established for the TIF District by the District Establishment Ordinance and to authorize and direct the execution and delivery of all documents and the taking of all actions that may be necessary or desirable in connection therewith; and

**WHEREAS**, the modification of the Original Indenture and the terms of the Series 2007 A Bonds and other actions contemplated by this Resolution and Ordinance will benefit the inhabitants of The City of Morgantown, will increase opportunities for employment in the City and will help in establishing a balanced economy within the City, and the health, happiness, right of gainful employment and general welfare of the citizens and residents of the City will be promoted thereby and the same constitutes a public purpose of the Issuer under the Act.

**NOW, THEREFORE, BE IT RESOLVED AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF MORGANTOWN, AS FOLLOWS:**

Section 1. The Original Indenture and the terms of the Series 2007 A Bonds are hereby authorized, approved and directed to be modified, amended and supplemented in order to: (i) provide that the Series 2007 A Bonds shall bear interest at the rate of 2.5% per annum from December 2, 2012 until June 1, 2014; 3.5% per annum from June 2, 2014 until June 1, 2017; and 5.69% per annum thereafter; (ii) modify the flow of funds under the terms of the Original Indenture in order to provide for the receipt of the Guaranty Payment pursuant to the Payment Agreement and the application of the same to the payment of debt service on the Bonds; (iii) designate the Revenue Fund established pursuant to the Original Indenture as a sub-account of the City's TIF Fund which has been established for the TIF District by the District Establishment Ordinance; and (iv) carry into effect the modifications to the terms of the Series 2007 A Bonds and the Original Indenture which are necessary in connection with the transactions contemplated by the Payment Agreement (collectively, the "Modifications").

Section 2. The Amended and Restated Series 2007 A Bond (the "Amended Series 2007 A Bond") of the Issuer, substantially in the form submitted to this meeting as Exhibit A to

the First Supplemental Indenture (hereinafter defined) and made a part of this Resolution and Ordinance as though set forth in full herein, shall be and the same hereby is approved in order to carry out the Modifications. The Mayor and City Manager of the Issuer are hereby authorized and directed to execute, acknowledge, if necessary, and deliver the Amended Series 2007 A Bond, with such changes, insertions, variations and omissions as may be approved by the Mayor and City Manager, and the City Clerk is hereby authorized and directed to affix the seal of the Issuer thereto and to attest the same. The execution of the Amended Series 2007 A Bond by the Mayor and City Manager shall be conclusive evidence of such approval.

Section 3. The First Supplemental Indenture of Trust (the "First Supplemental Indenture"), by and between the Issuer and the Trustee, substantially in the form submitted to this meeting and made a part of this Resolution and Ordinance as though set forth in full herein, shall be and the same is hereby approved in order to carry out the Modifications. The Mayor and City Manager of the Issuer are hereby authorized and directed to execute, acknowledge, if necessary, and deliver the First Supplemental Indenture, with such changes, insertions, variations and omissions as may be approved by the Mayor and City Manager, and the City Clerk is authorized and directed to affix the seal of the Issuer thereto and to attest the same. The execution of the First Supplemental Indenture by the Mayor and City Manager shall be conclusive evidence of such approval.

Section 4. The Tax and Non-Arbitrage Certificate (the "Tax Certificate") of the Issuer with respect to the Amended Series 2007 A Bonds, substantially in the form submitted to this meeting and made a part of this Resolution and Ordinance as though set forth in full herein, shall be and the same is hereby approved in order to carry out the Modifications and the reissuance of the Series 2007 A Bonds for federal income tax purposes. The Mayor and City Manager shall execute and deliver the Tax Certificate, with such changes, insertions, variations and omissions as may be approved by the Mayor and City Manager. The execution of the Tax Certificate by the Mayor and City Manager shall be conclusive evidence of the approval of such changes, insertions, variations and omissions.

Section 5. The Issuer recognizes and acknowledges that the execution and delivery of the Amended Series 2007 A Bonds and the First Supplemental Indenture for the purposes of carrying out the Modifications will cause a reissuance of the Series 2007 A Bonds for federal income tax purposes. The Issuer authorizes and approves the execution and delivery of such documents, including but not limited to IRS Form 8038-G, and the filing of the same with the Internal Revenue Service and other appropriate parties, and the taking of such other actions as may be necessary and appropriate under the circumstances in order to maintain the tax exempt status of the Series 2007 A Bonds, as amended, for federal income tax purposes.

Section 6. The Amended Series 2007 A Bonds, together with the interest thereon and other costs incidental thereto, shall be secured solely by the pledges effected by the Original Indenture as modified pursuant to the First Supplemental Indenture herein authorized and defined, and by the tax increment and other revenues pledged for its payment in accordance with the Act. The Amended Series 2007 A Bonds, together with the interest thereon and other costs incidental thereto, shall not be deemed to be and shall not constitute an indebtedness of the Issuer, but shall be special and limited obligations of the Issuer, payable solely from the tax

increment and other revenues pledged for its payment under the Indenture and First Supplemental Indenture. Neither the Amended Series 2007 A Bonds nor the interest thereon, nor any other cost or charge in connection therewith, shall be a charge against or pledge of the property, faith and credit or taxing power, if any, of the State of West Virginia or the Issuer, except as to such property expressly provided therefor in the Indenture and First Supplemental Indenture, nor shall the same ever constitute an indebtedness of the State of West Virginia or the Issuer within the meaning of any constitutional provision or statutory limitation or constitute or give rise to a pecuniary liability of the State of West Virginia or the Issuer. No recourse shall be had for the payment of the principal of and interest on the Amended Series 2007 A Bonds against the Issuer or any official or member of the Issuer. The holders of the Amended Series 2007 A Bonds shall have no right to have taxes levied by the legislature of the State of West Virginia or the taxing authority, if any, of the Issuer for the payment of the principal of, premium, if any, or interest on the Amended Series 2007 A Bonds, but the Amended Series 2007 A Bonds shall be payable solely from the Tax Increment Revenues, the Guaranty Payment and other revenues and funds pledged pursuant to the Original Indenture and First Supplemental Indenture.

Section 7. The Revenue Fund heretofore established with the Trustee pursuant to the Original Indenture is hereby designated by the Issuer as a sub-account of the TIF Fund for the TIF District and to the extent necessary the District Establishment Ordinance is hereby amended to provide for the designation of the Revenue Fund as a sub-account of the TIF Fund.

Section 8. The Mayor, City Manager and Clerk and any other proper officers and employees of the Issuer, together with all other members and employees thereof, are hereby authorized and directed to execute, acknowledge, if necessary, and deliver any and all papers, documents, agreements, certificates and instruments, to affix the seal of the Issuer and attest the same for and on behalf of the Issuer and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by this Resolution and Ordinance, the Amended Series 2007 A Bonds, the First Supplemental Indenture and other documents relating thereto.

Section 9. All covenants, stipulations, obligations and agreements of the Issuer contained herein and contained in the Original Indenture, the First Supplemental Indenture, the Amended Series 2007 A Bonds, the Tax and Non-Arbitrage Certificate and other documents relating thereto shall be deemed to be the special and limited covenants, stipulations, obligations and agreements of the Issuer to the full extent permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Issuer and its successors from time to time and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided herein, all rights, powers and privileges conferred and duties and liabilities imposed upon the Issuer or the officials thereof by the provisions hereof and by the Original Indenture, the First Supplemental Indenture and the Amended Series 2007 A Bonds shall be exercised or performed by the Issuer or by such officers, board or body as may be required or permitted by law to exercise such powers and to perform such duties.

Section 10. No covenant, stipulation, obligation or agreement herein contained or contained in the Original Indenture, the First Supplemental Indenture, the Amended Series 2007 A Bonds or other documents relating thereto shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, agent or employee of the Issuer in his or her individual capacity and neither the members of the Issuer nor any officer executing the Amended Series 2007 A Bonds shall be subject to any personal liability or accountability by reason of the issuance of the Amended Series 2007 A Bonds. No member of the Issuer or officer or employee of the Issuer shall be individually or personally liable for the payment of the principal of or the interest on any Amended Series 2007 A Bond, but nothing herein contained shall relieve any such member, official or employee from the performance of any official duty provided by law or this Resolution and Ordinance.

Section 11. Steptoe & Johnson PLLC is hereby appointed as legal counsel to the Issuer in connection with the modification of certain terms of the Series 2007 A Bonds as described herein.

Section 12. The laws of the State of West Virginia shall govern the construction of this Resolution and Ordinance and all Amended Series 2007 A Bonds reissued hereunder.

Section 13. If any section, paragraph, clause or provision of this Resolution and Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Resolution and Ordinance.

Section 14. All previous ordinances, orders, resolutions or parts thereof in conflict with the provisions of this Resolution and Ordinance are, to the extent of such conflict, hereby repealed.

Section 15. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption and entry of this Resolution and Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, City Manager, City Clerk and members of the City Council of the City of Morgantown were at all times when any actions in connection with this Resolution and Ordinance occurred and are duly in office and duly qualified for such office.

Section 16. This Resolution and Ordinance shall take effect immediately upon final enactment following a public hearing hereon.

Section 17. Following the first reading by title hereof, an abstract of this Resolution and Ordinance, determined by the City to contain sufficient information as to give notice of the contents hereof, shall be published once a week for two successive weeks within a period of fourteen consecutive days, with at least six full days intervening between each publication, in the *Dominion Post*, being a newspaper published and of general circulation in The City of Morgantown, together with a notice stating that this Resolution and Ordinance has been

introduced and that the Issuer contemplates the final enactment thereof and that any person interested may appear before the Council upon a date certain, not less than 10 days subsequent to the date of the first publication of the said abstract and notice, and present protests, and that a certified copy of the Resolution and Ordinance is on file in the office of the City Clerk for review by interested parties during the office hours of the City Clerk.

At such hearing, all objections and suggestions shall be heard and the Council shall take such action as it shall deem proper in the premises.

First Reading: May 7, 2013

Second Reading: May 21, 2013  
following Public Hearing

Adopted this May 21, 2013.

THE CITY OF MORGANTOWN

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
Interim City Manager

APPROVED AND CORRECT AS TO FORM:

By: \_\_\_\_\_  
City Attorney

CERTIFICATION

The undersigned, being the duly qualified and acting City Clerk of The City of Morgantown, does hereby certify that the foregoing Resolution and Ordinance was duly adopted and enacted by the City Council of The City of Morgantown following a public hearing thereon, at regular meetings duly held, pursuant to proper notice thereof, on May 7 and May 21, 2013 quorums being present and acting throughout, and which Resolution and Ordinance has not been modified, amended or revoked and is a true, correct and complete copy thereof as of this \_\_\_\_\_, 2013.

By: \_\_\_\_\_  
City Clerk

## **Resolution of the City of Morgantown Concerning Electric Utility Rate Impacts of Proposed Power Plant Transfers**

- Whereas,** The City of Morgantown has made extensive investments in energy efficiency in recent years; and
- Whereas,** These investments have generated budget savings for the City, thereby reducing the cost of City operations to the taxpayer; and
- Whereas,** These energy efficiency investments have served as a model for other municipalities in West Virginia; and
- Whereas,** FirstEnergy has submitted an application (Case # 12-1571-E-PC) to the West Virginia Public Service Commission for approval to transfer full ownership of the Harrison power station to its Monongahela Power subsidiary; and
- Whereas,** This transfer is projected to add more than \$1.1 billion to the rate base of West Virginia customers, including the City of Morgantown; and
- Whereas,** FirstEnergy has proposed a rate increase for residential, commercial and industrial customers, to recover the cost of acquiring the Harrison power station; and
- Whereas,** FirstEnergy justifies this transaction as necessary to meet their projections of future increases in electricity demand; and
- Whereas,** Transfer of these facilities from FirstEnergy assets in Ohio to its Monongahela Power subsidiary will burden West Virginia customers with additional costs; and
- Whereas,** Investments in environmentally safe electricity generation through clean technology, co-generation, and alternative energy sources can provide a more cost-effective way to meet electricity needs; and
- Whereas,** Investments in energy efficiency and power demand management can reduce electricity needs necessitating additional generation capacity; and
- Whereas,** Energy efficiency and environmentally safe energy generation provide numerous environmental benefits by reducing the adverse impacts of energy generation on air, water, and the land, however may also increase customer rates; and

**Whereas,** Investments in energy efficiency and environmentally safe generation can create new jobs and generate taxes in West Virginia; and

**Whereas,** Aggressive environmentally safe energy generation and energy efficiency programs can reduce the need for the purchase of additional generating capacity; and

**Whereas,** FirstEnergy invests in energy efficiency programs in Ohio and Maryland;

**Now Therefore Be It Resolved,** that the Morgantown City Council is concerned with the proposed transfer because of the high costs and unnecessary hardships that could be imposed on the City and its ratepayers; and

**Be It Further Resolved,** on this \_\_\_\_ day of May, 2013, Morgantown City Council directs the City Manager to file with the West Virginia Public Service Commission a copy of this resolution and a letter of concern urging the application for transfer be evaluated to the fullest extent with regards to protection for ratepayers and future generation needs.

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Mayor

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City Clerk

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

WHEREAS, West Virginia State Code Chapter 8A, Article 3 provides for municipalities to prepare and adopt comprehensive plans to promote the health, safety, morals, order, convenience, prosperity, and general welfare of the inhabitants, as well as efficiency and economy in the process of development;

WHEREAS, thinking both locally and regionally, the City of Morgantown undertook a collaborative process in developing a unified Regional Vision entitled "Crossroads – It's Time to Chart Our Future" to coordinate land use and transportation planning, which serves as the foundation for three plans – the City of Morgantown's Comprehensive Plan, the Town of Star City's Comprehensive Plan, and the Morgantown-Monongalia Metropolitan Planning Organization's Long-Range Transportation Plan; and,

WHEREAS, the Morgantown Planning Commission has caused to be prepared a Comprehensive Plan Update and has duly recommended said plan to City Council for consideration and action thereon.

NOW, THEREFORE, BE IT ORDAINED by the Morgantown City Council that Article 1301 of the Morgantown Planning and Zoning Code be amended as follows (deleted matter struck through; new matter underlined):

ARTICLE 1301  
Comprehensive Plan

1301.01 TITLE.

This article shall be known and may be cited as, the "Comprehensive Plan".

1301.02 PURPOSE OF ARTICLE.

The purpose of this article is to establish a single unified code consisting of all plans, reports and regulations and supplemental details as contained and specifically referred to in the reports of the Planning Commission as described in Section 1301.03, that deals with the subject of planning and zoning, as a comprehensive guide for the future growth and development of the City.

1301.03 PLAN COMPOSED OF REPORTS ADOPTED BY REFERENCE.

The Comprehensive Plan consists of:

- (a) A report entitled "The City of Morgantown Comprehensive Plan, 1998 2013", dated ~~November 23, 1998~~ April 25, 2013.
- (b) The above report is hereby adopted as the "Comprehensive Plan Ordinance of Morgantown, West Virginia, ~~1998 2013~~", by reference and made a part hereof as if fully set forth in this article in accordance with West Virginia Code 8-11-3 and ~~8-24-21~~ 8A-3-8.

1301.04 INCORPORATION OF OTHER ORDINANCES.

All ordinances which have heretofore or may be hereafter enacted concerning the subjects of the Comprehensive Plan as described in West Virginia Code ~~8-24-17~~ 8A-3-4 and 8A-3-5 shall also be deemed to be parts of the "Comprehensive Plan of Morgantown, West Virginia, ~~1998 2013~~".

1301.05 CONFORMITY TO PLAN.

The layout, the location, relocation, extension or widening of thoroughfares; the general design of neighborhoods and their street patterns; the use of land; and the location of sites for schools, parks, recreation and other public uses, shopping centers and community facilities and other recommendations shall conform to the principles, policies and provisions of the Comprehensive Plan.

1301.06 CONSIDERATION OF PLAN PRIOR TO CONSTRUCTION OF PUBLIC INSTALLATIONS.

Council and all municipal boards, commissions and all other agencies of the City shall be guided by and give consideration to the general policy and pattern of development set out in the Comprehensive Plan prior to the authorization, construction, alteration and abandonment of any public installation, required or necessitated in the interest of the physical development of the City.

1301.07 AMENDMENTS.

The Planning Commission shall from time to time consider and review proposals with respect to changes and amendments in the Comprehensive Plan and upon conclusion of such consideration, including a public hearing thereon, shall certify to Council their report on such matters. Amendments shall be in accordance with West Virginia Code ~~8-24-23~~ 8A-3-11.

1301.08 WHERE COPIES KEPT ON FILE.

The Office of the City Clerk shall, upon adoption, file the Comprehensive Plan in the Office of the Clerk of Monongalia County in accordance with West Virginia State Code 8A-3-9. Two copies of the Comprehensive Plan as set forth in Section 1301.03 shall be kept on file in the offices of the City Planning Commission and City Clerk and be available for public inspection during the regular office hours.

1301.09 COOPERATION OF OTHER BODIES IN EFFECTUATION OF PLAN.

The Planning Commission is hereby directed to solicit the cooperation of the legislative and administrative bodies of the County, the State and agencies of the Federal Government in the effectuation of the Comprehensive Plan as it applies in the official jurisdictional area of the Commission and in the unofficial planning area outside of this City, as shown in the Plan.

This ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_  
Mayor

ADOPTED:

FILED:

RECORDED:

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

# *City of Morgantown*

## *Finance Department*

*389 Spruce Street*

*Morgantown, WV 26505*

*Phone (304) 284-7407/Fax 7418*

*jsabatelli@cityofmorgantown.org*

# MEMO

**DATE:** May 15, 2013

**TO:** Jeff Mikorski, ICMA-CM, City Manager

**FROM:** J.R. Sabatelli, CPA, Finance Director 

**RE:** General Fund Budget Revision 4

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Included herewith you will find the proposed ordinance and "Request for Revision to Approved Budget" for the FY2013 General Fund Budget. An explanation of the proposed changes follows:

The adjustments to revenue reflect changes in projections for the remainder of the fiscal year based on activity through the date of this memo. The "Request for Revision to Approved Budget" is required to include and combine various revenue accounts; however, the attached summary provides the detail breakdown for the specific revenue lines affected. The "Request for Revision to Approved Budget" reflects the adjustments as they were submitted to the Auditor's Office, while the accompanying detail reflects the appropriate internal adjustment.

The adjustments to expenditures reflect various changes necessary for operating activities within the City, as well as adjustments for the reallocation of Hotel/Motel Tax to the Convention and Visitors Bureau (50% of the tax as required by State Code) and to BOPARC (25% of the tax as dedicated from previous councils).

**AN ORDINANCE AMENDING THE FY 2012-2013 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND.**

The City of Morgantown hereby ordains:

That the FY 2012-2013 Annual Budget of the General Fund of the City of Morgantown is amended as shown in the revised budget (Revision 04) attached hereto and made a part of this ordinance.

First Reading:

Adopted:

\_\_\_\_\_  
Mayor

Filed:

Recorded:

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

Ora Ash, Director  
 West Virginia State Auditor's Office  
 200 West Main Street  
 Clarksburg, WV 26301  
 Phone: 627-2415 ext. 5114  
 Fax: 627-2417

**REQUEST FOR REVISION TO APPROVED BUDGET**

Subject to approval of the state auditor, the governing body requests that the budget be revised prior to the expenditure or obligation of funds for which no appropriation or insufficient appropriation currently exists. (§ 11-8-26a)

CONTROL NUMBER

2012-2013

FY

General Fund

FUND

4

REV. NO.

1 of 2

PG. OF NO.

City of Morgantown  
 GOVERNMENT ENTITY

389 Spruce Street  
 STREET OR PO BOX

Municipality

Government Type

Person To Contact Regarding  
 Budget Revision: **J.R. Sabatelli**  
 Phone: **304-284-7407**  
 Fax: **304-284-7418**

Morgantown  
 CITY  
 26505  
 ZIP CODE

**REVENUES: (net each acct.)**

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
301-02-05	Prior Year Taxes	170,000	25,000		195,000
305	Business and Occupation Tax	12,790,704		622,000	12,168,704
304	Excise Tax on Utilities	1,009,000	33,000		1,042,000
306	Wine & Liquor Tax	550,000	43,000		593,000
308	Hotel Occupancy Tax	820,000	96,000		916,000
329	Inspection Fees	66,700		13,000	53,700

**NET INCREASE/(DECREASE) Revenues (ALL PAGES)** -286,700

**Explanation for Account # 378, Municipal Specific:**  
**Explanation for Account # 369, Contributions from Other Funds:**

**EXPENDITURES: (net each account category)**

(WV CODE 7-1-9)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
415	City Clerk	152,115	11,000		163,115
700	Police Department	6,468,937	276,560		6,745,497
706	Fire Department	4,320,972	81,120		4,402,092
699	Contingencies*	13,621	2,912		16,533
900	Parks & Recreation	1,284,453	24,000		1,308,453
901	Visitors Bureau	410,000	48,000		458,000
754	Central Garage	737,163	47,025		784,188
444	Contributions / Transfers to Other Funds	2,435,704		800,000	1,635,704
416	Police Judge's Office	234,738	7,500		242,238
417	City Attorney	285,549	10,687		296,236
420	Engineering	457,448	4,496		461,944

**NET INCREASE/(DECREASE) Expenditures** -286,700

APPROVED BY THE STATE AUDITOR

BY: Director, Local Government Services Division Date

AUTHORIZED SIGNATURE OF ENTITY

APPROVAL DATE



City of Morgantown  
 General Fund  
 Budget Revision #4  
 Fiscal Year 2013

Wage related adjustments:

Department 417

City Attorney:

	Current	New	Revision
Salaries & Wages	179,889.00	182,389.00	2,500.00
Social Security	11,153.00	11,308.00	155.00
Employee Pension	20,777.00	21,072.00	295.00
Medicare	2,608.00	2,645.00	<u>37.00</u>
			2,987.00

Department 420

Engineering:

	Current	New	Revision
Salaries & Wages	263,412.00	266,112.00	2,700.00
Social Security	16,394.00	16,561.00	167.00
Employee Pension	31,227.00	31,546.00	319.00
Medicare	3,834.00	3,890.00	<u>56.00</u>
			3,242.00

Department 700

Police:

	Current	New	Revision
Wages	3,415,885.00	3,390,885.00	(25,000.00)
Overtime	394,500.00	600,500.00	206,000.00
Employee Pension	32,365.00	63,300.00	30,935.00
Medicare	54,441.00	57,066.00	<u>2,625.00</u>
			214,560.00

Department 706

Fire:

	Current	New	Revision
Overtime	135,000.00	195,000.00	60,000.00
Medicare	34,924.00	35,794.00	<u>870.00</u>
			60,870.00

Department 754

Equipment Maintenance:

	Current	New	Revision
Overtime	8,000.00	19,000.00	11,000.00
Social Security	16,464.00	17,146.00	682.00
Employee Pension	31,361.00	32,660.00	1,299.00
Medicare	3,851.00	4,011.00	<u>160.00</u>
			13,141.00

Total wage related items

294,800.00

Non-wage items requiring adjustment:

	Current	New	Revision
Dept 415 City Clerk			
Civil Service Expense	12,000.00	23,000.00	11,000.00
Dept 416 Municipal Court			
Telephone	3,000.00	8,000.00	5,000.00
Travel & Training	850.00	3,350.00	<u>2,500.00</u>
			7,500.00
Dept 417 Attorney			
Telephone	2,000.00	2,700.00	700.00
Professional Services	10,000.00	17,000.00	<u>7,000.00</u>
			7,700.00
Dept 420 Engineering			
Liability Insurance	3,746.00	5,000.00	1,254.00
Dept 700 Police			
Contracted Services	17,000.00	31,000.00	14,000.00
Telephone	25,000.00	38,000.00	13,000.00
Vehicle Maintenance	55,000.00	65,000.00	10,000.00
Vehicle Supplies	120,000.00	145,000.00	<u>25,000.00</u>
			62,000.00
Dept 706 Fire			
Utilities/Electric	8,500.00	15,750.00	7,250.00
Utilities/Gas	10,000.00	14,000.00	4,000.00
Vehicle Supplies	31,000.00	40,000.00	<u>9,000.00</u>
			20,250.00
Dept 754 Equip Maint			
Telephone	500.00	11,000.00	10,500.00
Liability Insurance	16,776.00	18,160.00	1,384.00
Monongalia Co. Gasoline	240,000.00	262,000.00	<u>22,000.00</u>
			33,884.00
Dept 50 Contributions			
Greater Morgantown CVB	410,000.00	458,000.00	48,000.00
Dept 70 Operating Transfers			
BOPARC-Hotel/Motel Contrib	205,000.00	229,000.00	24,000.00
Contrib to Capital Escrow	2,435,704.00	1,635,704.00	(800,000.00)
Total nonwage	248,596.00	338,050.00	(584,412.00)
Total Increase overall			(289,612.00)

Totals by Department	
Dept 415 City Clerk	11,000.00
Dept 416 Municipal Court	7,500.00
Dept 417 Attorney	10,687.00
Dept 420 Engineering	4,496.00
Dept 700 Police	276,560.00
Dept 706 Fire	81,120.00
Dept 754 Equip Maint	47,025.00
Dept 50 Contributions	48,000.00
Dept 70 Operating Transfers	(776,000.00)
Contingencies	<u>2,912.00</u>
	(286,700.00)

Revenue Adjustment

	Current	New	Revision
Prior Year Taxes	170,000.00	195,000.00	25,000.00
Supplemental Taxes	32,000.00	40,000.00	8,000.00
Electric Utility Tax	405,000.00	424,000.00	19,000.00
MUB Utility Tax	115,000.00	129,000.00	14,000.00
B&O Taxes	10,600,000.00	10,778,000.00	178,000.00
B&O Taxes - Construction	2,190,704.00	1,390,704.00	(800,000.00)
Liquor Taxes	550,000.00	593,000.00	43,000.00
Hotel/Motel Taxes	820,000.00	916,000.00	96,000.00
Housing Inspection	61,000.00	48,000.00	(13,000.00)
Fire Fee Residential	1,059,000.00	1,104,000.00	45,000.00
Fire Fee Commercial	536,000.00	478,000.00	(58,000.00)
Contribution from TIF	16,800.00	33,600.00	16,800.00
Sale of Fixed Assets	<u>2,500.00</u>	<u>142,000.00</u>	<u>139,500.00</u>
	16,558,004.00	16,271,304.00	(286,700.00)

**AN ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN AND MONONGALIA COUNTY COMMISSION AS THE SAME APPLIES TO CERTAIN ANIMAL CONTROL SERVICES TO BE PROVIDED BY THE COUNTY TO THE CITY.**

The City of Morgantown hereby ordains that it's City Manager is authorized to execute the attached Agreement 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:

## INTERGOVERNMENTAL AGREEMENT

This Agreement made and entered into this 8<sup>th</sup> day of May, 2013, by and between the City of Morgantown, hereinafter referred to as "CITY", and the Monongalia County Commission, hereinafter referred to as "COMMISSION", witnesseth

Whereas, the CITY deems it necessary to provide the municipality with the services of an Animal Control Officer who will be responsible for enforcing all CITY ordinances related to the regulation of animals; specifically, Articles 505 and 507 of the Morgantown Municipal Code:

Whereas, the COMMISSION has agreed to provide the foregoing animal control services to the CITY subject to the terms and conditions hereinafter contained within this Agreement:

Now, therefore, the parties hereto agree as follows:

- (1) The COMMISSION agrees to assume the responsibility for employing and supervising a qualified individual(s) who will enforce the animal control ordinances of the CITY.
- (2) The COMMISSION shall continue providing such animal control services to the CITY effective with the date of this Agreement.
- (3) That the individual(s) employed by the COMMISSION to perform the services contemplated herein shall not be employees of the CITY.
- (4) That the individual(s) employed by the COMMISSION to perform the services contemplated herein shall be available seven days each week to respond to animal control service needs of the CITY.
- (5) That the COMMISSION employee(s) shall respond to calls for assistance regarding wild animals within the CITY in which a resident may be threatened by said animal, and if the employee is not capable of handling the situation, the employee will refer the property owner to the professional services of a private business that is qualified to handle the situation. Should the services of any such professional be necessary, the professional will contract for such service with the property owner.
- (6) That the COMMISSION'S employee(s) will respond to calls regarding small dead animals within the public right of ways within the CITY and

on private property within the CITY and will dispose of any such carcass. The COMMISSION will pay for any costs that may be associated with the disposal of any such carcass.

- (7) That the COMMISSION will provide a phone number to the Morgantown City Manager, at the time this Agreement is executed, which the CITY may call to request specific animal control assistance pursuant to this Agreement.
- (8) The COMMISSION shall provide the City Manager with periodic reports, as requested by the City Manager, summarizing animal control incidents within the municipality and responsive action taken by the COMMISSION'S employee(s).
- (9) The COMMISSION'S employee(s) will issue citations for violations of the CITY'S animal control ordinances and will be available to testify in the Morgantown Municipal Court regarding the same.
- (10) That the COMMISSION shall be responsible for the actions of its employee(s) while they are performing services within the municipality pursuant to this Agreement.
- (11) That the term of this Agreement shall be for twelve consecutive months beginning with the first day of July and ending June 30 of the following year.
- (12) As consideration for the animal control services provided by the COMMISSION, CITY agrees to pay the COMMISSION \$38,245.35 for the 12 month term of this agreement in installment payments of \$3,187.11 for each of the 12 months, payable by the 15<sup>th</sup> day of each month that the Agreement is in effect. If this Agreement is terminated by either party hereto, per paragraph 12 below, the balance of the above \$38,245.35 due the COMMISSION will be reduced by \$3,187.11 for each and every month which would have remained on the term of the agreement had it not been terminated by the party doing so. (This paragraph includes a 3% cost of living increase).
- (13) Either party hereto has the right to terminate this Agreement at any time by providing 30 days prior written notice of the same to the other party.
- (14) At the conclusion of the twelve month term this Agreement will automatically be renewed for an additional twelve month period with a standard increase of 3% per year.

(15) This document shall constitute the entire Agreement between the parties and any amendment or additions hereto shall be by written agreement of the parties, which shall be subject to approval by the governing bodies of both parties.

THE MONONGALIA COUNTY COMMISSION,

By:   
Eldon A. Callen

It's: President

THE CITY OF MORGANTOWN,

By: \_\_\_\_\_

It's: \_\_\_\_\_