



Office of the City Clerk

# The City of Morgantown

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

**AGENDA  
MORGANTOWN CITY COUNCIL  
REGULAR MEETING  
June 3, 2014  
7:00 p.m.**

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **PLEDGE TO THE FLAG**
4. **APPROVAL OF MINUTES: Regular Meeting – May 20, 2014**
5. **CORRESPONDENCE:**
6. **PUBLIC HEARINGS:**
  - A. AN ORDINANCE AMENDING THE FY 2013-2014 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE COAL SEVERANCE FUND.
  - B. AN ORDINANCE AMENDING THE FY 2013-2014 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND.
  - C. AN ORDINANCE BY THE CITY, AS LESSOR, AND MORGANTOWN JET CENTER, LLC, AS LESSEE, REGARDING WHAT IS KNOWN AS THE MYLAN HANGER LOCATED AT THE MORGANTOWN MUNICIPAL AIRPORT.
7. **UNFINISHED BUSINESS:**
  - A. Consideration of **APPROVAL** of **SECOND READING (ADOPTION)** of AN **ORDINANCE AMENDING THE FY 2013-2014 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET**

**ATTACHED HERETO AND MADE PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE COAL SEVERANCE FUND. (First Reading on 5/20/2014)**

**B. Consideration of APPROVAL of SECOND READING (ADOPTION) of AN ORDINANCE AMENDING THE FY 2013-2014 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND. (First Reading on 5/20/2014)**

**C. Consideration of APPROVAL of SECOND READING (ADOPTION) of AN ORDINANCE BY THE CITY, AS LESSOR, AND MORGANTOWN JET CENTER, LLC, AS LESSEE, REGARDING WHAT IS KNOWN AS THE MYLAN HANGER LOCATED AT THE MORGANTOWN MUNICIPAL AIRPORT. (First Reading on 5/20/2014)**

**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 BY THE CITY OF MORGANTOWN AMENDING SECTION 752.02 OF ITS CITY BUSINESS AND TAXATION CODE, AS THE SAME APPLIES TO SPARKLER AND NOVELTY REGISTRATION BUSINESS REGISTRATION.**

**B. Consideration of APPROVAL of (FIRST READING) of AN ORDINANCE ESTABLISHING THE RATES OF COMPENSATION FOR THE CITY OF MORGANTOWN EMPLOYEES FOR THE FISCAL YEAR 2014-2015.**

**C. Consideration of APPROVAL of (FIRST READING) of AN ORDINANCE AMENDING SECTIONS III-1(B) (LONGEVITY PAY), III-3(B) (SHIFT DIFFERENTIAL), AND III-4 (HAZARDOUS DUTY PAY) AND ADDING III-5 (SPECIAL SUPERVISION DIFFERENTIAL) OF THE PERSONNEL RULES OF THE CITY OF MORGANTOWN BY INCREASING THE MONETARY AMOUNTS WITHIN EACH.**

D. Consideration of Consideration of **APPROVAL** of (FIRST READING) of A BOND ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE STORMWATER PORTION OF THE COMBINED SYSTEM OF THE CITY OF MORGANTOWN AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$850,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2014 B; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BOND; AND AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

11. CITY MANAGER'S REPORT:

INFORMATION:

1. Reimbursement Request for Arts Collaborative
2. EPA Brownfields Community-wide Hazardous Assessment Grant

NEW BUSINESS:

1. Declaration Networks Group Inc. (DNG) Agreement

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 (304) 284-7439\*

**REGULAR MEETING MAY 20, 2014:** The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers of City Hall on Tuesday, May 20, 2014 at 7:00 P.M.

**PRESENT:** City Manager Jeff Mikorski, City Attorney Steve Fanok, City Clerk Linda Little, Mayor Jenny Selin and Council Members: Ron Bane, Bill Kawecki, Wes Nugent, Marti Shamberger and Mike Fike. (Nancy Ganz Absent)

The Meeting was called to order by Mayor Selin.

**APPROVAL OF MINUTES:** The minutes of the regular meeting of May 6, 2014 were approved as presented.

**CORRESPONDENCE:**

Eldon Callen, Mon County Commissioner, spoke to Council about potholes and the need to have a local solution and partner with the State. Mayor Selin suspended the rules for further discussion from Council with Commissioner Callen on the funding and future expectations of this partnership. Mr. Mikorski, City Manager, clarified the paving process.

Mayor Selin read a letter as part of the record from Main Street Morgantown recommending that the VFW project not be allowed. **(Exhibit A attached)**

**PUBLIC HEARING - AN ORDINANCE BY THE CITY APPROVING THE SALE OF CITY OWNED REALTY (5.11 ACRES, MORE OR LESS, AND KNOWN AS THE MILEGROUND ARMORY), AND AUTHORIZING THE CITY MANAGER TO EXECUTE A DEED CONSUMMATING SAID SALE.**

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

**PUBLIC HEARING - AN ORDINANCE BY THE CITY OF MORGANTOWN, WEST VIRGINIA, AUTHORIZING THE SUBMISSION OF A HOME RULE PILOT PROGRAM APPLICATION AND PLAN PURSUANT TO SECTION 8-1-5a OF THE WEST VIRGINIA CODE, TO THE WEST VIRGINIA DEVELOPMENT OFFICE, WEST VIRGINIA HOME RULE PILOT PROGRAM.**

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

**UNFINISHED BUSINESS:**

**AN ORDINANCE BY THE CITY APPROVING THE SALE OF CITY OWNED REALTY:** The below entitled ordinance was presented for second reading.

AN ORDINANCE BY THE CITY OF MORGANTOWN APPROVING THE SALE OF CITY OWNED REALTY (5.11 ACRES, MORE OR LESS, AND KNOWN AS THE MILEGROUND ARMORY), AND AUTHORIZING THE CITY MANAGER TO EXECUTE A DEED CONSUMMATING SAID SALE.

Motion by Shamberger, second by Kawecki, to adopt the above entitled Ordinance. Motion carried 6-0.

**AN ORDINANCE BY THE CITY OF MORGANTOWN, WEST VIRGINIA, AUTHORIZING THE SUBMISSION OF A HOME RULE PILOT PROGRAM APPLICATION AND PLAN:** The below entitled ordinance was presented for second reading.

AN ORDINANCE BY THE CITY OF MORGANTOWN, WEST VIRGINIA, AUTHORIZING THE SUBMISSION OF A HOME RULE PILOT PROGRAM APPLICATION AND PLAN, PURSUANT TO SECTION 8-1-5a OF THE WEST VIRGINIA CODE, TO THE WEST VIRGINIA DEVELOPMENT OFFICE, WEST VIRGINIA HOME RULE PILOT PROGRAM.

Motion by Fike, second by Shamberger, to adopt the above entitled Ordinance. City Manager, Jeff Mikorski, explained the Home Rule Application and the five parts of the process that will be sent to the Home Rule Board by June 1, 2014. Motion carried 6-0.

**BOARDS AND COMMISSIONS:** By acclamation the following reappointed: Human Rights Commission; Mike Fike, Frances Whiteman, Marlene Savino, and Don Spencer. Metropolitan Theatre: Richard McEwuen, Keith Reed, Joshua Williamson, Tina Tallaksen, Patricia Watson, Kacy Weidebusch, and Connie Merandi. Museum Commission: Richard McEwuen, Aaron Hawley, and Pam Casto. Parking Authority: Shane Mardis.

**PUBLIC PORTION:**

Patrick Meighen, 1288 Fairlawns Avenue, stated that MUB is a very powerful entity. Mr. Meighen noted about ongoing issues regarding the storm drain in his backyard. He also noted that he has been dealing with MUB and other government entities for over a year and there has been no solution as of yet. Mr. Meighen is asking for an amicable and timely settlement.

Daniel McMullen, 486 Hite Street, stated that there has been garbage dumping on various sites in the First Ward area and requested the City to address this issue. He also mentioned that White Park Trails are expanding and he is working with Mel Burch at BOPARC on the development and growth of this area.

**SPECIAL COMMITTEE REPORTS:** Councilor Shamberger announced that the BOPARC schedule is out and that the pools open Memorial Day weekend.

**NEW BUSINESS:**

**AN ORDINANCE AMENDING THE FY 2013-2014 ANNUAL BUDGET AS IT APPLIES TO THE COAL SEVERANCE FUND:** The below entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING THE FY 2013-2014 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE COAL SEVERANCE FUND.

Motion by Nugent, second by Bane to pass the above entitled Ordinance to second reading. After explanation by the City Manager, motion carried 6-0.

**AN ORDINANCE AMENDING THE FY 2013-2014 ANNUAL BUDGET AS IT APPLIES TO THE GENERAL FUND:**

AN ORDINANCE AMENDING THE FY 2013-2014 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND.

Motion by Nugent, second by Bane to pass the above entitled Ordinance to second reading. After explanation by the City Manager and discussion, motion carried 6-0.

**AN ORDINANCE APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF MORGANTOWN AND MORGANTOWN JET CENTER, LLC.:**

AN ORDINANCE BY THE CITY, AS LESSOR, AND MORGANTOWN JET CENTER, LLC, AS LESSEE, REGARDING WHAT IS KNOWN AS THE MYLAN HANGER LOCATED AT THE MORGANTOWN MUNICIPAL AIRPORT.

Motion by Nugent, second by Bane to pass the above entitled Ordinance to second reading. After explanation from the City Attorney on the minor amendment in the lease, motion carried 6-0.

**CITY MANAGERS REPORT:**

INFORMATION:

1. Walnut Street Streetscape:

The City Manager explained the schedule and process of the Streetscape project. Mr. Mikorski announced that there will be a delay in construction. He stated that the West Virginia Department of Highways has to conduct a full environmental impact study and that has not taken place yet so therefore due to it being so late in the season it would be best to start the project next year early in the season. Mr. Mikorski also stated that this extra time will give us an opportunity to relook at some designs and also work with the utility companies for the possibility of replacing old utility lines.

NEW BUSINESS:

1. Metropolitan Theater rigging bid results:

Motion by Nugent, second by Kawecki, to approve the bid to Pittsburgh Stage in the amount of \$214,487.00. Motion carried 6-0.

2. Request for festival permit

Motion by Shamberger, second by Nugent, to approve permit for the 2014 Jim Dunn Memorial Scholarship Twilight 5-Miler Run on July 18, 2014. Motion carried 6-0.

**REPORT FROM CITY CLERK:** The City Clerk gave notice to Council of two liquor license applications for Mutt's at 263 Beechurst Avenue and the Wine Bar at 510 Burroughs Street.

**REPORT FROM CITY ATTORNEY:** No report.

**REPORT FROM COUNCIL MEMBERS(Roll reversal):**

Councilor Fike:

Councilor Fike stated that he was very pleased with the grant funding of the Greenmont/South Park pedestrian bridge and that this project will provide access to the rail trail across Decker's Creek and will no doubt stimulate business and trail use. Councilor Fike expressed that he shares the excitement with the Greenmont Neighborhood Association as he met with the group last evening and can assure you that they are thrilled with the good news of the grant award. Councilor Fike stated that he has been a loyal supporter of Habitat for Humanity's homebuilding projects in Jerome Park. Councilor Fike stated that recent conversations with the staff called attention to the ongoing successes of that organization and it was decided that we would ask for Committee of the Whole agenda time for Habitat to bring a status report as well as what is planned for the future. Councilor Fike requested that the presentation be included in the July 29 Committee of the Whole Meeting.

Councilor Shamberger:

Councilor Shamberger stated that there will be a Safe Communities meeting at 10:00am on June 6, 2014. She congratulated the 1000 plus girls that ran on the trail this past Saturday from Girls on the Run. Councilor Shamberger wished all the High School graduates good luck. She also stated that on June 7, 2014 from 8:00am-1:00pm there will be a Woodburn Neighborhood Association yard sale.

Councilor Nugent:

Councilor Nugent expressed sympathy to the Dalton Family and also to the Police Department. He also reported that the Wiles Hill/Highland Park Association meeting will be held on May 21, 2014. He commended City staff and City Attorney on Home Rule application. Councilor Nugent commented that it may be tough driving down High St. but finally High Street is being paved. Councilor Nugent stated to please do not forget to put in the pedestrian signs. He also mentioned a problem near Decker's Creek under the Wall Street Bridge that there is a dumpster placed there that could be a potential hazard.

Councilor Kawecki:

Councilor Kawecki agreed with Councilor Nugent about the hazardous dumpster that has been an ongoing problem and job well done for repairing High Street.

Councilor Bane:

Councilor Bane expressed that retired Police Officer Joe Billotti passed also and he served the City as Police Officer for 27 years. Councilor Bane stated that he was a motorcycle cop and that he enjoyed his job and will be missed by all. Councilor Bane stated that University High School boys and girls Lacrosse team were both awarded State Championship and that Morgantown High School were in the semifinals. He also stated that First Ward Neighborhood Association will be on May 31, 2014 from 10:00am-1:00pm with a cleanup and social.

Mayor Selin:

Mayor Selin reported that the Suncrest Neighborhood Association Meeting will be on May 29, 2014 at 7:00pm; Evansdale Neighborhood Association Meeting will be held on May 31, 2014 from 5:00pm-7:00pm; Convention Visitors Bureau ribbon cutting will be held on June 2, 2014; Botanical Garden event will be held on June 14, 2014; Farmers Market will be held on Saturdays from 8:00am-12:00pm; first BOPARC Concerts in the Park will be held on June 10, 2014; and she stated to mark your calendars for kids day on July 19, 2014 from 10:00am-2:00pm.

**EXECUTIVE SESSION:** Motion by Fike, second by Shamberger to go into Executive Session Pursuant to West Virginia Code Section 6-9A-4(2) (9) in order to discuss personnel matters. Motion carried by unanimous consent. Present: Councilmembers. Time 8:30 p.m.

**ADJOURNMENT:** There being no further items of business or discussion, the meeting adjourned by unanimous consent at 9:15 p.m.

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

\_\_\_\_\_  
Mayor

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



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Main Street Morgantown, Inc. • 201 High Street Suite 2 • Morgantown, WV 26505 • (304) 292-0168

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Morgantown Planning Commission  
May 8, 2014

Commissioners,

The proposed residential project on the current VFW site at the corner of Willey and Spruce Street represents a tremendous economic opportunity to Morgantown generally, and the downtown, specifically.

By all indications, the developers' plans are to revitalize an underutilized property in a thoughtful and cooperative way adding a much desired facet to our downtown economic mix.

The Board of Directors of Main Street Morgantown recognizes that this opportunity falls well within the spirit and intent of our Mission Statement:

*"Main Street Morgantown, a tax exempt not-for-profit organization, is dedicated to the betterment of the Downtown and Wharf Districts through thoughtful revitalization. To this end, our focus is:*

- *a safe and welcoming physical design in the district,*
- *active recruitment, retention and promotion of our district.*
- *preservation of local history through architecture and design,*
- *partnering with local stakeholders, both public and private to achieve a vibrant and successful business community."*

As such, Main Street Morgantown, (MSM) would like the following insights and recommendation to be read into the official records of this Planning Commission meeting for May 8th, 2014.

Our final recommendation, presented at the end of this narrative, will be based on specific, quoted excerpts from the **Visions** and **Desired Outcomes** of three distinct sources:

1. **The City of Morgantown Downtown Strategic Plan, adopted July 2010**
2. **The City of Morgantown Comprehensive Plan, adopted June 2013**
3. **The Downtown Housing Needs Assessment, Preliminary Draft, 11/2013**

(It is important to note that both the Strategic Plan as well as the Comprehensive Plan involved input from a wide demographic including business, government, board and commission members and residents.

The Housing Needs Assessment data was garnered from a random survey performed by the consultant.)

## **1. The City of Morgantown Downtown Strategic Plan, adopted July 2010**

### **1.5 Goals**

The goal of this Strategic Plan update is to focus attention on:

- "Developing new clusters of twenty-first century businesses and small industries downtown;"
- "Improving the supply, quality, and choice of downtown housing;"
- "Enhancing the downtown pedestrian experience by improving public spaces, transportation, and safety;"
- "Conserving natural resources by boosting the occupancy of downtown buildings and land."

### **1.6 How to Use This Strategic Plan**

"...this Strategic Plan will ensure that residents, property owners, business owners, and developers have a clear understanding of the community's vision, expected outcomes, strategies, and implementation processes."

### **1.8 Strategic Plan Recommendations**

- "Realign downtown Morgantown's public identity to reflect its expanded market position."
- "Make the downtown a stronger residential community by adding more housing, attracting new residents, and offering a full range of amenities to meet downtown residents' needs."
- "Boost the downtown's occupancy rate"

### **4.8 Housing**

"The opportunities to create a variety of housing types and price levels in the downtown are vast"

"In addition, there a number of empty lots that could be developed with new mixed-use buildings."

### **6.0 Downtown Strategies**

"The Strategic Plan update for downtown Morgantown incorporates the themes pulled from public involvement and work sessions into nine strategic components with

accompanying strategies in order to work towards achieving the vision for downtown Morgantown."

- "Transportation: Expand diverse and convenient choices for downtown access and mobility.
- "Marketing and Promotion: Nurture a sustainable and resilient downtown economy through active management of the downtown and its businesses."
- "Housing and Redevelopment: Redevelop vacant and underperforming properties throughout the downtown and promote a variety of mixed-use housing in order to diversify the demographics of downtown residents."

#### **6.3.1.4 Character Area C4 – Forest Avenue**

##### **Challenges:**

- "Poorly designed, planned and managed □ student housing."
- "Underutilized existing properties"

##### **Opportunities:**

- "New mixed-use student housing village with live-work units for young professionals."
- **"Additional mixed-use infill at the north end of Spruce Street."**
- "Promote the redevelopment of derelict student housing into new attractive student housing near campus."

##### **Vision / Development Theme**

"A neighborhood with mixed-use live-work opportunities interspersed throughout, that is directly adjacent to downtown and the Farmer's Market."

#### **6.6 Housing and Redevelopment**

##### **Goal:**

"Redevelop vacant and underperforming properties throughout the downtown and promote a variety of mixed-use housing in order to increase density and diversify the demographics of downtown residents."

##### **Objectives:**

"Increase the supply, diversity, range, and affordability of housing opportunities within the downtown."

##### **Actions:**

6.6.1 "Grow the downtown resident population by creating more, and a broader range

of, housing opportunities. The following downtown and community-wide benefits are expected from the increase in housing:"

- "Boost the captive market for community-serving retail goods and services downtown that will support new downtown residents and the residents of nearby neighborhoods."
- "Increase occupancy and mixed-uses of underutilized downtown buildings."
- "24/7/365 living, activity, commerce, and energy will create a safer downtown."

6.6.3 "Stimulate infill development of mixed-use buildings on vacant lots throughout the downtown."

## **2. The City of Morgantown Comprehensive Plan, adopted June 2013**

### **Principles of Land Management**

"Eleven Principles describe the intent about "how" and "where" growth and development in Morgantown should occur."

"These principles should be used to help guide the city on how to use land resources in a more efficient and effective manner to foster a high quality community with a distinct sense of place."

Four of these are directly applicable to the development in question and are presented in the order in which they appear in the Comprehensive Plan:

- "1. Infill development and redevelopment of underutilized and/or deteriorating sites takes priority."
- "2. Expansion of the urban area will occur in a contiguous pattern that favors areas already served by existing infrastructure."
- "3. Downtown"...will be the primary focus for revitalization efforts."
- "6. Development that integrates mixed-uses and connects with existing urban fabric is encouraged."

## **3. The Downtown Housing Needs Assessment, November 2013**

### **Purpose:**

- "Present and evaluate past, current and projected detailed demographic characteristics of Morgantown."
- "Determine current characteristics of all major housing components within Morgantown."
- "Calculate a housing gap by tenure and income segment within Morgantown."

## **Housing Needs Assessment Recommendations:**

“Based on the preceding analysis, it is estimated that at a minimum there is potential support for 360 new off-campus housing beds, assuming the project is competitively designed and in a marketable location. A larger project with as many as 899 beds could be supported and should be further evaluated.”

## **Main Street Morgantown Insight and Recommendation:**

It is not the mission of Main Street Morgantown to pick winners and losers. It is within our envelope to seek an ever-better downtown district experience through sound economic development.

MSM could have easily presented any number of opinions based on reams of documentation in support of this type of development and economic opportunity from sources readily available on the Internet.

We didn't do that.

**We chose instead to present exclusively a distillation of the thoughts, visions and priorities of the citizens of our own community that took a leadership role in crafting the direction that our community would travel.**

- The information I have quoted is the result of public forums begun in 2009. Members of this commission took an active part in the process.
- We have inquired about this development entity from trusted sources and have received impressive references.
- With the exception of the Housing Needs Assessment, all of the quoted information is available on the official City of Morgantown website.

Projects of this scale and quality do not come along often.

- This developer has worked with the Planner as well as the Design Review committee to make their project fit within our required design guidelines.
- From all indications, they have worked closely with the VFW to honor the Veterans that this property has been dedicated to for decades.
- **This specific location is identified in the Strategic Plan for this exact use.**

Aren't these the type of developers and projects that we aspire to **ATTRACT** to Morgantown?

Students deserve options in quality housing in our downtown district. This project offers amenities previously unavailable at this level downtown:

- Fully furnished apartments, eliminating the need for a loading staging area,
- onsite, secure monitored 24/7 access,
- LEED certified
- 101 bicycle parking spaces, addressing Morgantown's desire to enrich the urban biking experience as well as lessen the dependence on automobiles,
- dedicated motorcycle parking,
- a dedicated fitness area,
- a screened in, professionally maintained pool,
- an indoor/outdoor clubroom social area,
- three floors of secure, onsite monitored interior parking, consisting of 126 spaces,
- space available for a bicycle sharing/rental facility,
- 3,000+ square feet commercial space designed for up to 2 commercial uses.

Isn't this the type of **QUALITY COMPETITION** that we aspire to recruit to our downtown?

#### **Recommendation:**

It is the recommendation of the Board of Directors of Main Street Morgantown that this project, at this location and with this developer not only be allowed, but be encouraged to move forward with this project as presented to this commission as soon as possible.

We further recommend that this project be given every thoughtful consideration reasonably granted to historical applicants for variances should any be needed to allow this project to proceed.

Respectfully submitted,

The Board of Directors,  
Main Street Morgantown  
by Terri R. Cutright, CMSM  
Executive Director



**Office of the City Manager**

# The City of Morgantown

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 June 3, 2014

### Information:

#### 1. Reimbursement Request for Arts Collaborative

A request was presented to City Council from the Chamber of Commerce to pay for half of the cost for a facilitator to speak to a group of arts organizations. As noted at the City Council Committee of the Whole meeting on May 27, the meeting was facilitated by the Division of Culture and History and provided valuable information that will have an impact on the City's art groups. The request was to contribute \$250.00 toward the reimbursement of the facilitator. Funds in the Civic Promotions line will be used to reimburse provided invoice.

#### 2. EPA Brownfields Community-wide Hazardous Assessment Grant

The City of Morgantown applied for a \$200,000 2014 EPA Community-Wide Assessment grant for hazardous substances, which can be used on multiple eligible brownfields properties within city limits. We plan to use the majority of the funding for Phase I and II Environmental Site Assessments with a small portion for redevelopment planning and have selected a Community-Wide grant because it will allow us to apply the funding to multiple sites throughout Morgantown and the city limits with the target area focusing on the Sunnyside neighborhood. Hazardous substances assessment funding will allow the City to assess sites for hazardous substances, pollutants, contaminants, and/or controlled substances.

### New Business

#### 1. Declaration Networks Group, Inc. (DNG) Agreement

In February the City contracted with Declaration Networks Group, Inc. (DNG) to develop a feasibility study on the use of a new technology to provide a wireless municipal level network. This network would be available to employees as an extension of the City's computer network allowing access to the programs needed to carryout their work more effectively in the field. Other opportunities this network would provide would be surveillance cameras and public wifi hotspots in certain parts of the City. In the process of developing the feasibility study, DNG requested to place an antenna on a light pole near the Krepps Park swimming pool. This antenna will allow DNG engineers to evaluate the equipment. It will also allow for Krepps Park to be services with free wifi during the study and operations period. I recommend City Council to authorize the City Manager the sign the agreement, along with BOPARC, to DNG to utilize the pole location.

  
Jeff Mikorski ICMA-CM,  
Morgantown City Manager



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III- OFFICE OF PUBLIC AFFAIRS  
1650 Arch Street Philadelphia, Pennsylvania 19103-2029  
Phone - 215/814-5100 Fax - 215/814-5102

## EPA Environmental News

Contact: Bonnie Smith, 215-814-5523 [smith.bonnie@epa.gov](mailto:smith.bonnie@epa.gov)

### **EPA Selects West Virginia Communities for New Brownfields Investments**

*Funding will clean up and redevelop contaminated sites, boost local economies*

**PHILADELPHIA (May 28, 2014)** Several West Virginia communities will share in a nationwide total of \$67 million in brownfields funding announced today by the U.S. Environmental Protection Agency to support cleanup and redevelopment of contaminated properties. In West Virginia, five grants totaling \$1 million will help communities conduct environmental assessments of properties, review cleanup options, and initiate cleanup at a contaminated site.

“EPA is proud to support West Virginia communities in assessing and cleaning up abandoned properties, especially in rural areas where environmental cleanup and new jobs are needed,” said EPA Regional Administrator Shawn M. Garvin. “West Virginia has many successful brownfields projects underway, and this new funding will help more of its communities leverage resources for creating a healthier future.”

Nationwide, 171 communities in 44 states are receiving 264 EPA brownfields grants, giving communities and businesses a chance to reuse properties that have been laying idle and turn them into useful assets. These brownfields investments boost local economies and create new opportunities for economic development.

-more-

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<http://yosemite.epa.gov/opa/admpress.nsf/Press%20Releases%20From%20Region%203!OpenView>

## **EPA Brownfields grants to WV/Page 2**

The grants to West Virginia include:

- **The Wayne County Economic Development Authority** was awarded a \$200,000 brownfields assessment grant to expand and inventory brownfields, conduct up to 15 environmental site assessments and evaluate sites for cleanup opportunities. The Development Authority will also inform and involve the community in its efforts.
- **The City of Morgantown** was awarded a \$200,000 brownfields assessment grant to conduct up to 10 environmental site assessments. The funds also will be used to review cleanup strategies and conduct community education and involvement.
- **The West Virginia Department of Environmental Protection (WVDEP)** was awarded a \$200,000 brownfields assessment grant to investigate potential petroleum contamination at eight sites and evaluate the sites' environmental risks. WVDEP's grant will focus on Nicholas, Fayette, and Raleigh Counties and will work with communities to help prioritize which sites to assess.
- **In Tucker County, the City of Thomas** was awarded a \$200,000 brownfields assessment grant to conduct 11 environmental site assessments, develop five cleanup plans and inform and involve the community.
- **The Wyoming County Economic Development Authority** was awarded a \$200,000 brownfields cleanup grant to help in cleaning up what is now referred to as the Barkers Creek Industrial Park in the small community of Tralee. The site has had a variety of industrial uses and the shallow soil is contaminated with heavy metals and petroleum. The 10.9 acre property on State Route 10 has been abandoned since 2000.

Since the inception of EPA's brownfields program, West Virginia has received more than \$17 million in brownfields funding. Nationwide, EPA's brownfields program has made cumulative investments leveraging more than \$21 billion from a range of public and private sources for cleanup and redevelopment activities, resulting in approximately 93,000 jobs.

More information on EPA's brownfields grants:

[http://www.epa.gov/brownfields/grant\\_info/index.htm](http://www.epa.gov/brownfields/grant_info/index.htm)

-more-

**To View All Press Releases: <http://www.epa.gov/region3/r3press/r3press.htm>**

### **EPA Brownfields grants to WV/Page 3**

More information on today's grants,

Wayne County:

[http://cfpub.epa.gov/bf\\_factsheets/gfs/index.cfm?xpg\\_id=8747&display\\_type=HTML](http://cfpub.epa.gov/bf_factsheets/gfs/index.cfm?xpg_id=8747&display_type=HTML)

Morgantown:

[http://cfpub.epa.gov/bf\\_factsheets/gfs/index.cfm?xpg\\_id=8608&display\\_type=HTML](http://cfpub.epa.gov/bf_factsheets/gfs/index.cfm?xpg_id=8608&display_type=HTML)

West Virginia Department of Environmental Protection:

[http://cfpub.epa.gov/bf\\_factsheets/gfs/index.cfm?xpg\\_id=8748&display\\_type=HTML](http://cfpub.epa.gov/bf_factsheets/gfs/index.cfm?xpg_id=8748&display_type=HTML)

City of Thomas:

[http://cfpub.epa.gov/bf\\_factsheets/gfs/index.cfm?xpg\\_id=8648&display\\_type=HTML](http://cfpub.epa.gov/bf_factsheets/gfs/index.cfm?xpg_id=8648&display_type=HTML)

Wyoming County:

[http://cfpub.epa.gov/bf\\_factsheets/gfs/index.cfm?xpg\\_id=8750&display\\_type=HTML](http://cfpub.epa.gov/bf_factsheets/gfs/index.cfm?xpg_id=8750&display_type=HTML)

More information on EPA's brownfields program: <http://www.epa.gov/brownfields/>

###

**To View All Press Releases:**

<http://yosemite.epa.gov/opa/admpress.nsf/Press%20Releases%20From%20Region%203!OpenView>

## Equipment/Utility Usage Agreement

This agreement entered into on April 10, 2014 by and between the Board of Parks and Recreation Commissioners (BOPARC), as property owner and Declaration Networks Group Inc. (DNG), as service provider and usage entity.

WITNESSETH: BOPARC hereby agrees to grant temporary usage of a designated electric pole structure located at the diving board end of the pool in Krepps Park (located at 1235 Parkview Drive in Morgantown, West Virginia) for purposes of establishing a Wi-Fi enabled area to include Krepps Park, the Nursery and related parking lots as part of the AIR.U white space broadband pilot program with WVU and feasibility study for the City of Morgantown being conducted by DNG. The study and operational period would begin May 25, 2014 through December 31<sup>st</sup>, 2014 and would be extended for operations unless cancelled in writing with City Manager and DNG.

Usage would include access to the utility and access to the pole for purposes of evaluation and monitoring of the equipment installed and determination of any equipment failure, needed repairs, etc. during the designated study and operational period. BOPARC or the City of Morgantown will be responsible for any additional incremental electric charges for the equipment and will maintain the power during the year for the equipment to provide service.

Usage entity is responsible for any and all repairs to BOPARC fixtures and/or structures that may sustain damage as a result of installed equipment. Usage entity agrees to not impede park usage, traffic, park events, maintenance or hinder the ability of patrons to enjoy the park and its amenities while maintaining equipment and/or conducting the study, making repairs, monitoring equipment, etc.

Usage entity agrees that when the study or operational period is complete all BOPARC property and components will be restored to the state of repair and maintenance prior to equipment installation with the exception of new electrical outlets that will be installed for the equipment.

Usage entity shall indemnify and hold harmless BOPARC and the City of Morgantown for and against any and all claims, losses, causes, damages and expenses arising from injury to person or damage to property that is caused by the sole negligence of usage entity, its agents, contractors or employees and in the case of any such action or proceeding being brought against either the City of Morgantown or BOPARC by reason of such claim, usage entity shall resist and defend such action.

Usage entity shall provide a certificate of insurance accompanying this signed agreement that indicates that it will maintain in full force and effect a comprehensive liability insurance policy with a minimum amount of \$1,000,000 combined single limits of bodily injury and property damage liability, with an aggregate limit of \$2,000,000 for more than one occurrence or accident, covering liability that may arise during the term of the agreement.

Both parties agree that this document constitutes the entire understanding and agreement between the parties and there are no other agreed upon or implied terms, conditions, covenants or duties. This agreement may only be modified by similar written agreement between the parties hereto.

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BOPARC  
Melissa Burch  
BOPARC Director

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City of Morgantown  
Jeff Mikorski  
Morgantown City Manager

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Declaration Networks Group Inc.  
Keith J Montgomery  
Chief Financial Officer

## BOARDS AND COMMISSIONS - TERMS EXPIRED AND CURRENT VACANCIES

### LIBRARY BOARD:

**Patrica Heins term expires 7/30/14. She does wish to continue to serve. (See e-mail from Library Director)** Residents appointed by Mayor, confirmed by Council to serve at large

### PARKING AUTHORITY:

**Charles McEwuen term will expire on 6/30/2014. He wishes to continue to serve.** Residents; 3 at large; appt. by Mayor; 1 elected; 1 appointed

### SISTER CITIES COMMISSION:

**Terms for Helene Friedberg, Elizabeth Finklea and Rosalyn Becker expired on 5/31/14. Helene, Elizabeth and Rosalyn will continue to serve. Sister Cities Commission did not have a meeting on 5-20-14 due to lack of quorum. They will inform Council once they have invited candidates to their meeting to make sure who is most interested in volunteering. (Attached is information on candidates for reference). These candidates will be replacing a vacancy on the board and also a member that was inactive.**

**\*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, that they will not interview; 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,  
5/23/14***

## APPLICATIONS FOR SISTER CITIES COMMISSION

*MSCC has one vacancy for unexpired term and one inactive Commissioner as of March 10, 2014.*

*UPDATE: April 15, 2014 Meeting – Applicants Selected for 2 Vacancies (Pending Acceptance)*

*Update Submitted May 9, 2014 to City Clerk*

### **Selected to Fill Vacancy – Waiting for Acceptance**

#### **1. Amelia Garcia**

**garciaslatinmarket@yahoo.com**

Telephone: ???

**1133 Andrew Dr. Morgantown, WV 26508**

Are you a Morgantown resident?: YES (14 years living in city)

Owner, Garcia's Latin Market - Native Spanish speaker

Southwest Regional Medical Center

Serves on Planning Committee for Main Street, Morgantown

### **Selected to Fill Inactive Commissioner – Waiting for Acceptance**

#### **2. Zhengjun Wang**

**zwang3@mix.wvu.edu**

Telephone: 304-906-1462

**521 Posten Ave**

**Morgantown WV 26501**

Are you a Morgantown resident?: YES (4year resident)

Former President, WVU Chinese Students and Scholars Association, March 2013 to Feb 2014. Attended Commission meetings for one year+, made reports.

### **Forthcoming Invitations to Applicants – for Working Groups (Alternate Commissioner, Future)**

#### **1. Holly Hildreth**

**hollykhildreth@gmail.com**

Telephone: 724-678-0619

**209 Birds Eye View Drive**

**Morgantown State: WV 26501**

Are you a Morgantown resident?: No

West Virginia Junior College (Higher Education): Background in public relations, marketing and journalism, "which could be a valuable asset to the board". Has traveled abroad, multiple times.

Career Management Director at West Virginia Junior College

Adjunct Instructor at WVU. Past: Communications Coordinator at Morgantown Utility Board, Public Health Educator, Mon County Health Dept. Places students in externships, find post-degree employment.

#### **2. Romy Hilloowala**

**rhilloowala@hsc.wvu.edu**

Telephone: 599-3334 / 293-0592

**1505 Woodland Dr.**

**Morgantown WV 26505**

Are you a Morgantown resident?: YES (44 years living in city)

Retired - Prof. Emeritus WVU Faculty, Ph.D., D.D.S.

Interests: Anatomy, Art - Greek to Renaissance.

Multiple travel in Italy and India. Short travels to Greece, France, Turkey, Tunisia, U.K., Spain.

Zimbra

llittle@cityofmorgantown.org

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**RE: Patricia Hein**

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**From :** Sharon Turner <turnersl@clark.lib.wv.us>

Wed, May 21, 2014 12:09 PM

**Subject :** RE: Patricia Hein**To :** 'Linda Little' <llittle@cityofmorgantown.org>

Linda,

You're ahead of me!! Yes, at the Board meeting last Thursday, Patricia did indicate that she would like to continue serving on our board.

Thanks,

Sharon

-----Original Message-----

From: Linda Little [mailto:llittle@cityofmorgantown.org]

Sent: Wednesday, May 21, 2014 11:41 AM

To: Turner, Sharon

Subject: Patricia Hein

Patrica Heins term expires 7/30/14. Checking with Sharon Turner, Library Director to see if she wishes to continue to serve. Residents appointed by Mayor, confirmed by Council to serve at large. Sharon let me know:)

Linda Little, CMC  
City Clerk  
City of Morgantown  
389 Spruce St.  
Morgantown WV. 26505  
304-284-7434  
304-284-7525(fax)  
llittle@cityofmorgantown.org

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**AN ORDINANCE AMENDING THE FY 2013-2014 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 COAL SEVERANCE FUND.**

The City of Morgantown hereby ordains:

That the FY 2013-2014 Annual Budget of the Coal Severance Fund of the City of Morgantown is amended as shown in the revised budget (Revision 02) attached hereto and made a part of this ordinance.

First Reading:

Adopted:

\_\_\_\_\_  
Mayor

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 14, 2014

**TO:** Jeff Mikorski, City Manager

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

**RE:** Coal Severance Budget Revision 2

---

Included herewith you will find the proposed ordinance and “Request for Revision to Approved Budget” for the FY2014 Coal Severance Budget. An explanation of the proposed changes follows:

The Coal Severance Tax revenue is adjusted to reflect a decrease in revenues to date coupled with an expected decrease in the final quarterly remittance expected to be received in late June or early July. This decrease appears to be due in part to lower overall coal prices.

The decrease of \$26,800 in the Contributions/Transfers to Other Funds and decrease of \$1,200 in the Contingencies are a result of lower than budgeted Coal Severance Taxes received to date during the fiscal year ending June 30, 2014 as noted above.

**REQUEST FOR REVISION TO APPROVED BUDGET**

CONTROL NUMBER

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

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)

**2013-2014**

FY

**Coal Severance**

FUND

**2**

REV. NO

**1 of 1**

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 26505  
 CITY ZIP CODE

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

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
310	Coal Severance Tax	132,000		28,000	104,000
	#N/A				

**NET INCREASE/(DECREASE) Revenues (ALL PAGES)**

-28,000

**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
444	Contributions / Transfers to Other Funds	150,000		26,800	123,200
699	Contingencies*	14,714		1,200	13,514
	#N/A				

**NET INCREASE/(DECREASE) Expenditures**

-28,000

APPROVED BY THE STATE AUDITOR

BY: Director, Local Government Services Division Date

AUTHORIZED SIGNATURE OF ENTITY

APPROVAL DATE

**AN ORDINANCE AMENDING THE FY 2013-2014 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 2013-2014 Annual Budget of the General Fund of the City of Morgantown is amended as shown in the revised budget (Revision 03) attached hereto and made a part of this ordinance.

First Reading:

Adopted:

\_\_\_\_\_  
Mayor

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, 2014

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

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

**RE:** General Fund Budget Revision 3

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Included herewith you will find the proposed ordinance and “Request for Revision to Approved Budget” for the FY2014 General Fund Budget. An explanation of the proposed changes follows:

The adjustments to revenue reflect a net increase from the projected and approved budget through General Fund Budget Revision 2. The net changes are based on actual amounts received to date along with projections of the remaining 1 ½ months of the fiscal year. Wine and Liquor Tax distributions have increased substantially over the last year, in part due to the final installment of a refund claim. Overall B&O taxes are expected to increase due to additional onetime revenues from major projects; however regular B&O taxes have decreased significantly. Regular B&O appears to have decreased in part due to contractors working on the larger projects and the harsher winter.

The adjustments to expenditures include increases necessary for departments to complete the fiscal year including vehicle maintenance, utility costs and additional funds for street repairs as needed. Contributions to the Greater Morgantown CVB and BOPARC reflect expected increases in Hotel/Motel and Amusement Tax revenues specifically dedicated or required to be provided to these organizations. The wage adjustment in the City Clerk department reflects the addition of staff necessary to cover the absence of an employee and the adjustment to Municipal Court wages provide for a part-time employee and additional hours needed for the Deputy Municipal Court Clerks due to increases in arrests. Equipment Maintenance overtime increases is due to after-hours maintenance of equipment during the winter months while the Police Department required additional overtime for this fiscal year. The contribution to the Capital Escrow Fund has been increased due to the expected increase in the onetime B&O revenues. A slightly more detailed breakdown of individual lines affected in each department is included as supplementary information.

**REQUEST FOR REVISION TO APPROVED BUDGET**

CONTROL NUMBER

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

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)

2013-2014

FY

General Fund

FUND

3

REV. NO.

1 of 3

PG. OF NO.

Municipality

Government Type

City of Morgantown  
 GOVERNMENT ENTITY

389 Spruce Street  
 STREET OR PO BOX

Morgantown 26505  
 CITY ZIP CODE

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

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

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
304	Excise Tax on Utilities	982,000	30,000		1,012,000
305	Business and Occupation Tax	13,200,000	945,000		14,145,000
306	Wine & Liquor Tax	320,000	260,000		580,000
308	Hotel Occupancy Tax	825,000	55,000		880,000
309	Amusement Tax	2,500	10,000		12,500
330	IRP Fees (Interstate Registration Plan)	36,000	28,000		64,000

**NET INCREASE/(DECREASE) Revenues (ALL PAGES)**

1,319,200

**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
409	Mayor's Office	10,108	2,600		12,708
410	City Council	53,506	1,950		55,456
412	City Manager's Office	518,335	10,450		528,785
415	City Clerk	160,991	17,067		178,058
416	Police Judge's Office	230,800	6,328		237,128
420	Engineering	467,368	5,243		472,611
436	Building Inspection	940,115	10,000		950,115
700	Police Department	6,612,721	228,355		6,841,076
706	Fire Department	4,396,829	22,300		4,419,129
750	Streets and Highways	2,383,217	50,000		2,433,217
752	Signs and Signals	601,206	37,000		638,206

**NET INCREASE/(DECREASE) Expenditures**

1,319,200

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 #3  
 Fiscal Year 2014

Wage related adjustments:

Department 415

City Clerk:

	Current	New	Revision
Wages	88,993.00	101,306.00	12,313.00
Social Security	5,580.00	6,344.00	764.00
Medicare	11,987.00	12,166.00	179.00
Retire	1,305.00	2,946.00	<u>1,641.00</u>
			14,897.00

Department 416

Municipal Court:

	Current	New	Revision
Wages	124,276.00	129,852.00	5,576.00
Social Security	7,767.00	8,113.00	346.00
Medicare	1,817.00	1,898.00	81.00
Retire	13,494.00	13,819.00	<u>325.00</u>
			6,328.00

Department 700

Police:

	Current	New	Revision
Overtime	364,500.00	544,500.00	180,000.00
Social Security	18,642.00	21,742.00	3,100.00
Medicare	56,573.00	59,328.00	<u>2,755.00</u>
			185,855.00

Department 754

Equipment Maintenance:

	Current	New	Revision
Overtime	8,000.00	28,000.00	20,000.00
Social Security	16,421.00	17,661.00	1,240.00
Medicare	3,840.00	4,130.00	290.00
Retire	35,278.00	37,942.00	<u>2,664.00</u>
			24,194.00

Total wage related items

231,274.00

Non-wage items requiring adjustment:

	Current	New	Revision
Dept 409 Mayor			
Travel & Training	850.00	3,450.00	2,600.00
Dept 410 City Council			
Travel & Training	4,250.00	6,200.00	1,950.00
Dues and Subscriptions	7,000.00	7,200.00	200.00
Operating Supplies	200.00	-	(200.00)
Dept 412 City Manager			
Travel & Training	2,550.00	13,000.00	10,450.00
Dept 415 City Clerk			
Travel & Training	1,530.00	3,700.00	2,170.00
Dept 420 Engineering			
Liability Insurance	4,932.00	10,175.00	5,243.00
Dept 436 Code Enforcement			
Vehicle Maintenance	6,000.00	16,000.00	10,000.00
Dept 700 Police Department			
Telephone	22,500.00	40,000.00	17,500.00
Equipment Maintenance	15,000.00	20,000.00	5,000.00
Vehicle Maintenance	70,000.00	90,000.00	20,000.00
Dept 706 Fire Department			
Utilities/Electric	8,500.00	16,000.00	7,500.00
Utilities/Gas	10,000.00	14,000.00	4,000.00
Utilities/Water	2,000.00	3,000.00	1,000.00
Utilities/Storm Water	1,400.00	2,000.00	600.00
Equipment Maintenance	16,000.00	18,000.00	2,000.00
Vehicle Maintenance	45,000.00	50,000.00	5,000.00
Operating Supplies	2,000.00	4,200.00	2,200.00
Dept 750 Street Department			
Vehicle Maintenance	85,000.00	115,000.00	30,000.00
Contracted Services	5,500.00	15,500.00	10,000.00
Street Repair Materials	50,000.00	60,000.00	10,000.00
Dept 752 Signs and Signals			
Utilities/Traffic Signals	45,000.00	52,000.00	7,000.00
Utilities/Street Lighting	199,000.00	225,000.00	26,000.00
Street Lighting Maint.	7,000.00	11,000.00	4,000.00

Dept 754 Equipment Maintenance			
Telephone	450.00	11,450.00	11,000.00
Dept 952 Urban Landscape			
Telephone	-	360.00	360.00
Vehicle Maintenance	-	2,000.00	2,000.00
Dept 50 Contributions			
Greater Morgantown CVB	412,500.00	440,000.00	27,500.00
Dept 70 Operating Transfers			
Contrib to Capital Escrow	1,600,000.00	2,450,000.00	850,000.00
BOPARC-Hotel/Motel	206,250.00	220,000.00	13,750.00
BOPARC-Amusement	2,500.00	12,500.00	10,000.00
Public Safety Bldg	258,888.00	260,388.00	1,500.00
Northside Fire Station Lease	328,719.00	313,719.00	(15,000.00)
Total nonwage	3,420,519.00	4,505,842.00	1,085,323.00
Total Increase overall			1,316,597.00
Totals by Department			
Dept 409 Mayor			2,600.00
Dept 410 City Council			1,950.00
Dept 412 City Manager			10,450.00
Dept 415 City Clerk			17,067.00
Dept 416 Municipal Court			6,328.00
Dept 420 Engineering			5,243.00
Dept 436 Code Enforcment			10,000.00
Dept 700 Police			228,355.00
Dept 706 Fire			22,300.00
Dept 750 Street			50,000.00
Dept 752 Signs and Signals			37,000.00
Dept 754 Equipment Maintenance			35,194.00
Dept 952 Urban Landscape			2,360.00
Dept 50 Contributions			27,500.00
Dept 70 Operating Transfers			860,250.00
			<u>1,316,597.00</u>
Contingencies			2,603.00
			<u>1,319,200.00</u>

Revenue Adjustment

	Current	New	Revision
Electric Utility Tax	405,000.00	420,000.00	15,000.00
MUB Utility Tax	110,000.00	125,000.00	15,000.00
B&O Taxes	10,800,000.00	10,065,000.00	(735,000.00)
B&O Construction Taxes	2,400,000.00	4,080,000.00	1,680,000.00
Wine and Liquor Tax	320,000.00	580,000.00	260,000.00
Hotel Motel Tax	825,000.00	880,000.00	55,000.00
Amusement Tax	2,500.00	12,500.00	10,000.00
Video Lottery	114,000.00	102,000.00	(12,000.00)
Building Permits	179,000.00	144,000.00	(35,000.00)
Franchise Fees	380,000.00	400,000.00	20,000.00
IRP Truck Fees	36,000.00	64,000.00	28,000.00
Grant-Police Personnel	304,301.00	349,301.00	45,000.00
Contrib from Coal Severeance	150,000.00	123,200.00	(26,800.00)
	<u>16,025,801.00</u>	<u>17,345,001.00</u>	<u>1,319,200.00</u>

**AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING A LEASE AGREEMENT BY AND BETWEEN THE CITY, AS LESSOR, AND MORGANTOWN JET CENTER, LLC, AS LESSEE, REGARDING WHAT IS KNOWN AS THE MYLAN HANGAR LOCATED AT THE MORGANTOWN MUNICIPAL AIRPORT.**

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

This Ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_  
MAYOR

ADOPTED:

FILED:

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

RECORDED:

## LEASE AGREEMENT

**THIS AGREEMENT**, made this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between **THE CITY OF MORGANTOWN**, a municipal corporation, hereinafter referred to as the “**CITY**”, and Morgantown Jet Center, LLC, (hereinafter referred to as “**LESSEE**”).

**WITNESSETH, THAT WHEREAS**, the “**CITY**” owns, controls and operates the Morgantown Municipal Airport; and

**WHEREAS**, “**CITY**” desires to lease and grant certain premises and facilities on said “**AIRPORT**”, and “**LESSEE**” desires to hire and obtain certain premises and facilities on said “**AIRPORT**”, together within the certain rights, licenses and privileges thereon.

**NOW THEREFORE**, in consideration of the mutual covenants hereinafter contained, the parties hereto agree as follows:

### ARTICLE I – PREMISES

1.1 The “**CITY**” hereby grants the “**LESSEE**” the right to utilize the former Mylan hangar with office space within the hangar at the Morgantown Municipal Airport which shall include the following, hereinafter referred to as “**Premises**”

(a) **General Aviation Office Space**

An area comprising seven thousand seven hundred and fifty five (7,755) square feet of lounge area, public restrooms, training areas, flight planning areas, and office space.

(b) **Hangar Space**

An area comprising fifteen thousand two hundred and ten (15,210) square feet.

(c) **Ramp and Apron Area**

An area comprising approximately twenty one thousand five hundred and fifty (21,550) square feet situated at the aforementioned “former Mylan Hangar.”

(d) **Automobile Parking Lot**

An area comprising between fourteen thousand four hundred (14,400) square feet of automobile parking space.

The exhibit attached hereto shows the location of the Leased Premises upon the Airport realty.

- 1.2 “LESSEE” may utilize the Hangar Bay to house corporate aircraft and conduct aviation related activities only. Lessee may utilize office space for other business activities.

## **ARTICLE II – CONSTRUCTION/INSTALLATION OF IMPROVEMENTS**

- 2.1 The “LESSEE” shall not, without prior written consent of the “CITY”, make any permanent improvements to the assigned area such as the demolition of existing walls, the construction of new permanent walls, the installation of electrical outlets or lighting, or any modifications to the heating/air conditioning systems. The CITY shall not unreasonably withhold consent to make said improvement and shall not impose unreasonable conditions upon its consent.
- 2.2 The “LESSEE” may place furniture, property, and equipment in the assigned area as is necessary for the conduct of its business. Installed equipment, which requires electrical or natural gas power shall be subject to the conditions outlined in ARTICLE VII, paragraph 7.1 of this Agreement. The “LESSEE” shall have the right to remove the same upon termination of this Agreement, providing the premises are repaired to the satisfaction of the “CITY” or restored to their original condition after such removal.

## **ARTICLE III – TERM OF AGREEMENT**

- 3.1 The “LESSEE” shall have and hold said premises, facilities, rights, licenses, and privileges set forth herein for a term of ten (10) years commencing the 16<sup>th</sup> day of         June        , 2014, and terminating the 15<sup>th</sup> day of         June        , 2024, unless sooner terminated as herein provided.
- 3.2 It is the mutual intent of the parties that this Agreement shall remain in effect for the full term, subject to each party’s right on breach.

## **ARTICLE IV – RENTAL FEES AND OTHER CONSIDERATION**

- 4.1 Subject to the terms and conditions set forth herein, the “LESSEE” agrees to pay the “CITY” an annual rental fee of seventy two thousand dollars (\$72,000.00), which shall be paid to City at the rate of six thousand dollars (\$6,000.00) per month for the first twelve months of the lease agreement. Payment will be made in advance, on or before the first business day of each month during the terms hereto and any extension thereof.
- (a) Failure to remit payment as to the prescribed time will result in an additional charge of 1.5% of all unpaid rents and fees. “LESSEE” will have the right to cure within thirty (30) days.

(b) All sums due hereunder shall be paid by check or electronic equivalent such as an ACH, payable to the City of Morgantown and mailed to the “Morgantown Municipal Airport, 100 Hart Field Road, Morgantown, WV 26505” unless otherwise directed in writing by the “CITY”.

4.2 Beginning with month thirteen of the lease agreement, the monthly rental fee shall increase to seven thousand dollars based upon a combination of rent and jet fuel credits. “LESSES” has the right to have tenants utilize the hangar space, any and all such tenants will be referred to as “SUBLESSES”. Starting in month fourteen, the “City” shall provide to “LESSEE” by the 15<sup>th</sup> of the month, the accounting for the jet fuel credits (\$1.00 per gallon of jet fuel purchased) generated by the “LESSEE” or “SUBLESSES” from the previous month. Beginning with month fifteen of the lease agreement and continuing until the lease ends; the monthly rental cost will be reduced by the jet fuel credits as per the accounting provided by the “CITY” associated with jet fuel credits from two months prior. Under no condition will the monthly rental payment less aforementioned credit be less than four thousand dollars per month. Parties will meet annually to reconcile values associated with fuel usage.

Example 1 of a rent and jet fuel credit scenario:

In Month 13, “LESSES” and “SUBLESSES” purchase 3,000 gallons of jet fuel. Therefore, accounting provided by the “CITY” by the 15<sup>th</sup> of Month 14 for jet fuel credits from Month 13 will equal \$3,000. This will result in a rent payment due of \$4,000 for Month 15, netting a combined monthly rent equivalent to the “CITY” of \$7,000.

Example 2 of a rent and jet fuel credit scenario:

In Month 24, “LESSES” and “SUBLESSES” purchase 6,000 gallons of jet fuel. Therefore, accounting provided by the “CITY” by the 15<sup>th</sup> of Month 25 for jet fuel credits from Month 24 will equal \$6,000. Due to the floor rent payment established, this will result in a rent payment due of \$4,000 for Month 26. Therefore netting the “CITY” a combined monthly rent equivalent of \$8,000.

4.3 Commencing January 1, 2016, base rental payments shall increase as of the first day of each calendar year (January 1) during the entire term, by the same percentage increase (if any) in the Consumer Price Index (revised) for Urban Wage Earners and Clerical Workers in Pittsburgh, PA, as published by the Bureau of Labor Statistics of the US Department of Labor (CPI) during the prior calendar

year, but no more than three percent (3%). Base rents shall be fixed between annual adjustments. Each calendar year's recalculated rent shall be the basis for the adjustment for the next calendar year base rent. The base rent shall be recalculated as soon as the CPI is published. The increase shall be effective as of January 1 of each year. In no event shall adjustment be a negative amount. If the base rental rate increases, Lessee shall, within thirty (30) days of receipt of notice from City, pay to City any additional base rent caused by the increase in CPI, divided by twelve (12), multiplied by the number of base rental payments made by Lessee since the effective date of rental adjustment.

- 4.3 "LESSEE" has the right to assign, transfer or sublease this Lease Agreement in part or in whole with the prior written consent of the "CITY". However, City shall not withhold consent unreasonably and shall not impose unreasonable conditions upon its consent.
- 4.4 In the event, Lessee subleases, pursuant to the provisions of this Agreement, any portion of the leased premises to a third party, Lessee shall pay to City each month in addition to the monthly rent, an additional rent of two percent (2.00%) of the amount of revenue collected above the monthly rental fee by Lessee for the month in question from any such third party.

#### **ARTICLE V – INSTALLATION OF IMPROVEMENTS**

- 5.1 The Lessee may, without cost to the City, make improvements and provide and install all trade fixtures as are necessary for the customary operation of its business. Prior to doing so, Lessee shall submit plans to the City for review and comment. Lessee shall not proceed with any such improvement without receiving prior written approval from the City. However, City shall not withhold consent unreasonably and shall not impose unreasonable conditions upon its consent.
- 5.2 The Lessee shall have the right, at its sole expense, to install and maintain signs advertising its business, however, Lessee must first obtain prior written approval of the Airport Director, as the City's Representative, both as to size and location. However, the Airport Director shall not withhold consent unreasonably and shall not impose unreasonable conditions upon its consent.
- 5.3 Lessee shall not suffer or permit any mechanic or other forms of liens to be levied or filed against the City. All improvements, equipment, fixtures, and interior decor constructed by the Lessee, its agents, or contractors, shall conform in all respects to all applicable statutes, ordinances, building codes, and rules and regulations. Lessee shall be responsible for applying for and obtaining any

permits required to complete improvements. Any approval given by the City shall not constitute a representation or warranty as to conformity; responsibility therefore shall at all times remain with the Lessee.

- 5.4 All structural improvements and alterations shall, upon termination of this Agreement, become property of the Airport. All non-structural improvements and property of the Lessee must be removed upon termination of this Agreement.
- 5.5 The Lessee shall not remove or demolish, in whole or in part, any improvements within the Leased Premises without the express prior written consent of the City, which consent may be conditioned upon the obligation of the Lessee to replace the same by an improvement specified in the consent. However, City shall not withhold consent unreasonably and shall not impose unreasonable conditions upon its consent.

#### **ARTICLE VI – MAINTENANCE OF PREMISES**

- 6.1 **“LESSEE”** shall be responsible for grass manicuring and cutting, and general housekeeping of the leased area. **“LESSEE”** shall keep and maintain the leased premises in good condition, order and repair and shall surrender the same upon the expiration of this Agreement in an as leased/as found condition reasonable wear and tear and damage by the elements not caused by **“LESSEE’S”** negligence excepted. It is understood by the parties that **LESSEE** shall be responsible for all maintenance and repairs to the structure, upon the leased premises at its sole cost, including the maintenance of the structure’s backup, emergency generator. **“CITY”** shall be responsible for snow removal on the premises.

#### **ARTICLE VII – QUIET ENJOYMENT**

- 7.1 **CITY** covenants that **LESSEE** may quietly enjoy the Premises without hindrance by **CITY** or any party claiming under **CITY**, so long as Lessee is not in default of the performance of any of its obligations under this lease.

#### **ARTICLE VIII – UTILITIES**

- 8.1 **“LESSEE”** shall be responsible for contracting individually with the utility companies for water, gas, electricity, telephone, cable, etc. and **“LESSEE”** shall be responsible for any installation or repair charges and shall pay all charges for such services, including late penalties, as they become due. In the event **“LESSEE”** fails to pay any utility bills when due, **“CITY”** may, at its option, pay the same and collect from **“LESSEE”**.

#### **ARTICLE IX – RIGHT TO INSPECT AND MAKE REPAIRS**

- 9.1 The “CITY” shall have the right to enter “LESSEE’S” assigned area to:
- (a) Inspect the assigned area at reasonable intervals, , during the “LESSEE’S” regular business hours, to determine if the “LESSEE” is in compliance with the terms and conditions of this Agreement,. The “CITY” will provide “LESSEE” reasonable notice and opportunity to appear at the time of inspection due to the fact that the “LESSEE” may be involved in classified work.. The foregoing provision shall not be construed as a limitation on City’s right to enter anytime in the case of an emergency. The “CITY” may, at its discretion, require the “LESSEE” to effect any required maintenance or repairs at the “LESSEE’S” own costs; and
  - (b) Perform any and all things, which the “LESSEE” is obligated to, and has failed to do, after providing the “LESSEE” with thirty(30) days prior written notice to act, including maintenance, repairs and replacements to “LESSEE’S” assigned area. The cost of all labor, materials and overhead charges required for the performance of such work will be paid by the “LESSEE” to the “CITY” within ten (10) days following receipt of invoice for said charges by “LESSEE”.

#### **ARTICLE X – GENERAL PROVISIONS**

- 10.1 The “LESSEE” hereby covenants and agrees:
- (a) That the facilities and space hereby leased shall be maintained and left in a neat and clean condition and the “LESSEE” shall conduct its business in such a manner as not to interfere with the normal operations of the Airport.
  - (b) That personnel performing services for the “LESSEE” shall be neat, clean, and courteous, and the “LESSEE” shall not permit its agents, servants or employees so engaged to conduct business in a loud, boisterous, offensive or objectionable manner.
  - (c) That the “LESSEE” shall abide by and be subject to all reasonable Airport Rules and Regulations, which are now, or may be from time to time be, promulgated by the “CITY”, concerning management, operation or use of the Airport and which are communicated to “LESSEE” in writing.
  - (d) That the “LESSEE” will meet all expenses in connection with the use of the leased premises hereunder and the rights and privileges herein granted, including without limitation by reason of enumeration, taxes, permit fees,

license fees, and assessments lawfully levied or assessed against it or assessed because of its operations hereunder, and that it will secure all required permits and licenses for its operation hereunder.

- (e) That, should the “CITY” be required by any department of the Federal Government to take any action in order to be eligible for any federal funds, and this action be related to the rights, privileges, and premises covered hereunder, the “LESSEE” agrees to allow the City to take such action necessary to comply at City’s expense.
- (f) That the “LESSEE” will not on the grounds of race, color, national origin, sex, handicap, religion, or age discriminate, or permit discriminations, against any person or group of persons in any manner prohibited by Part 21 of the Regulations of the Office of the Secretary of Transportation and Title XI of the Civil Rights Act of 1964.

#### **ARTICLE XI – AIRPORT SECURITY**

- 11.1 The City is responsible for the safety and security of the Airport premises. Access is controlled by keys and key cards. Lessee, its employees and tenants, will be granted access as necessary to conduct Lessee/Tenant’s business. Key and key cards are issued to individual persons and each person issued a key or key card is solely authorized to use same. Key and key cards are not to be loaned or used to allow unauthorized persons access to the Airport Aircraft Operating Area. The City reserves the right to cancel and/or revoke access immediately for any violation involving life, limb, safety, airport security or law. In the event of other violations, notice would be given and an opportunity to cure. In the event a person’s access is terminated for any reason, all keys and key cards must be returned to the Airport Director within five (5) business days. Keys or key cards that are lost and require replacement or are not returned when requested will result in a payment of fifty-dollars (\$50.00) per key or key card by Lessee to the Airport.
- 11.2 Lessee is responsible for controlling all access and security relating to the “Premises.”

#### **ARTICLE XII – INDEMNIFICATION AND INSURANCE**

- 12.1 “LESSEE” shall protect, defend, indemnify and hold the “CITY” and its representatives and employees completely harmless from and against any and all liabilities, demands, suits, claims, losses, fines or judgments arising by reason of the injury or death of any person or damage to or loss of any property, including all reasonable costs for investigation and defense thereof, (including, but not

limited to, attorneys fees, court costs and expert fees), of any nature whatsoever arising out of, or incidental to this Lease Agreement or “LESSEE’S” use or occupancy of the leased premises, or the acts or omissions of “LESSEE’S” officers, employees, agents, representatives, contractors, sub-contractors, licensees or invitees, except to the extent such injury, death, loss or damage may occur, unless such injury, death or loss or damage is caused by the negligence or intentional misconduct of the “CITY” or its employees, agents, officers, or representatives. The “CITY” shall give “LESSEE” reasonable notice of any such claims or actions. The provisions of this Article shall survive the expiration or earlier termination of this Lease Agreement.

- 12.2 Without limiting its liability as aforesaid, the “LESSEE” shall carry combined single limit general liability coverage in the minimum amount of \$1,000,000.00 and name the City of Morgantown as an additional insured. “CITY” will maintain insurance on the building structure.
- 12.3 “CITY” is responsible for property taxes on the Premises.
- 12.4 “LESSEE” shall at all times maintain Hangar Keeper’s Insurance in an amount sufficient to cover damages to or replacement of any aircraft kept in such leased premises or obtain waivers of subrogation from the insurance carriers of such aircraft preventing any and all claims against “CITY”. “LESSEE” shall also maintain Building Fire and Extended Coverage Insurance on the contents of the leased premises.

The “LESSEE” shall provide the “CITY” with certification of insurance throughout the term of this agreement, evidencing such coverage to be in force.

- 12.5 The “CITY” agrees to notify the “LESSEE” in writing, as soon as practicable of any claims, demands or action arising out of an occurrence covered hereunder of which the “CITY” has knowledge, and to cooperate with the “LESSEE” in the investigation and defense thereof.

### ARTICLE XIII – CANCELLATION/TERMINATION

- 13.1 It is understood and agreed by the parties hereto that this agreement may be terminated by “LESSEE”, for any reason, by giving the “CITY” sixty (60) days advanced written notice. It is further understood and agreed by and between the parties hereto that any one of the following occurrences will result in cancellation of this agreement:
  - (a) In the event the “LESSEE” shall make default in any of the provisions of this agreement, and said default shall continue for a period of thirty (30)

days, then and in that event, this agreement may be canceled and held for naught by the “CITY”, and the “LESSEE” shall immediately surrender possession of the leased space.

- (b) A national emergency results in the Airport being substantially occupied by the United States Government so as to materially interfere with the “LESSEE’S” operations.
- (c) In the event the Airport, or a material portion thereof, is destroyed by fire or other cause, resulting in material interference with the “LESSEE’S” operations.

13.2 Upon termination or cancellation of this Agreement, the “LESSEE” shall remain liable for any rental fee and/or custodial fee payments, if any, then due up to the date of termination, and the “LESSEE” shall immediately surrender possession of the leased premises.

#### **ARTICLE XIV – MISCELLANEOUS PROVISIONS**

14.1 Any notice or other communication to the parties hereunder shall be deemed validly given, served or delivered upon deposit in the United States Mail, registered and with proper postage and registration fee paid, addressed as follows:

**THE “CITY”**

**OFFICE OF THE AIRPORT DIRECTOR  
Morgantown Municipal Airport  
100 Hart Field Road  
Morgantown, West Virginia 26505**

**“LESSEE”**

**Morgantown Jet Center, LLC  
3168 Collins Ferry Road  
Morgantown, WV 26505**

Or other address as may be designated by either party, in writing, from time to time.

14.2 To the extent not prohibited by law, the “CITY” shall attempt to protect the rights and privileges granted to the “LESSEE” under this agreement.

- 14.3 The failure of the “CITY” to insist, in any one or more instance, upon the strict performance by the “LESSEE” of any of the provisions, terms, covenants, reservations, conditions or stipulations contained in this Lease Agreement shall not be considered as a waiver or relinquishment thereof for the future, but the same remain and continue in full force and effect, and no waiver of the conditions or stipulations hereof shall be deemed to have been made in any instance unless expressly in writing.
- 14.4 If any term, clause or provision of this Lease Agreement shall be adjudged by any court or government agency to be invalid or contrary to any applicable law or regulation or state government agency, such invalidation or determination shall not affect the validity and enforceability of the of the remaining portions of the Lease Agreement, and, to this end, the terms, clauses and provisions of this Lease Agreement are hereby agreed to be severable.
- 14.5 Both parties hereto acknowledge and agree that this document contains the entire agreement between the parties and that they have not relied upon any statements, representations, agreements or warranties, except such as are expressed herein, and that no amendment or modification of the Lease Agreement shall be valid or binding unless expressed in writing and executed by the parties hereto within the amended Lease Agreement in the same manner as the execution of this Lease Agreement.
- 14.6 This Lease Agreement shall be deemed to have been made in and construed in accordance with the laws of the State of West Virginia
- 14.9 The foregoing Articles contain the entire Agreement between the parties and shall supersede all previous communications, representations or agreements, if any, between the parties with respect to the subject matter thereof.

**IN WITNESS WHEREOF**, the parties have caused this agreement to be executed by their duly authorized officer and their respective seats to be hereunto affixed, the day and year first above written.

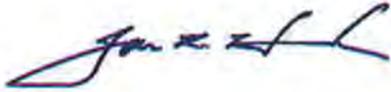
CITY OF MORGANTOWN

BY: \_\_\_\_\_  
Jeff Mikorski, City Manager

In the presence of:

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

ATTEST:

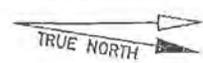
A handwritten signature in blue ink, appearing to read "Jon Hammock", written over a horizontal line.

( LESSEE)

BY: Jon Hammock

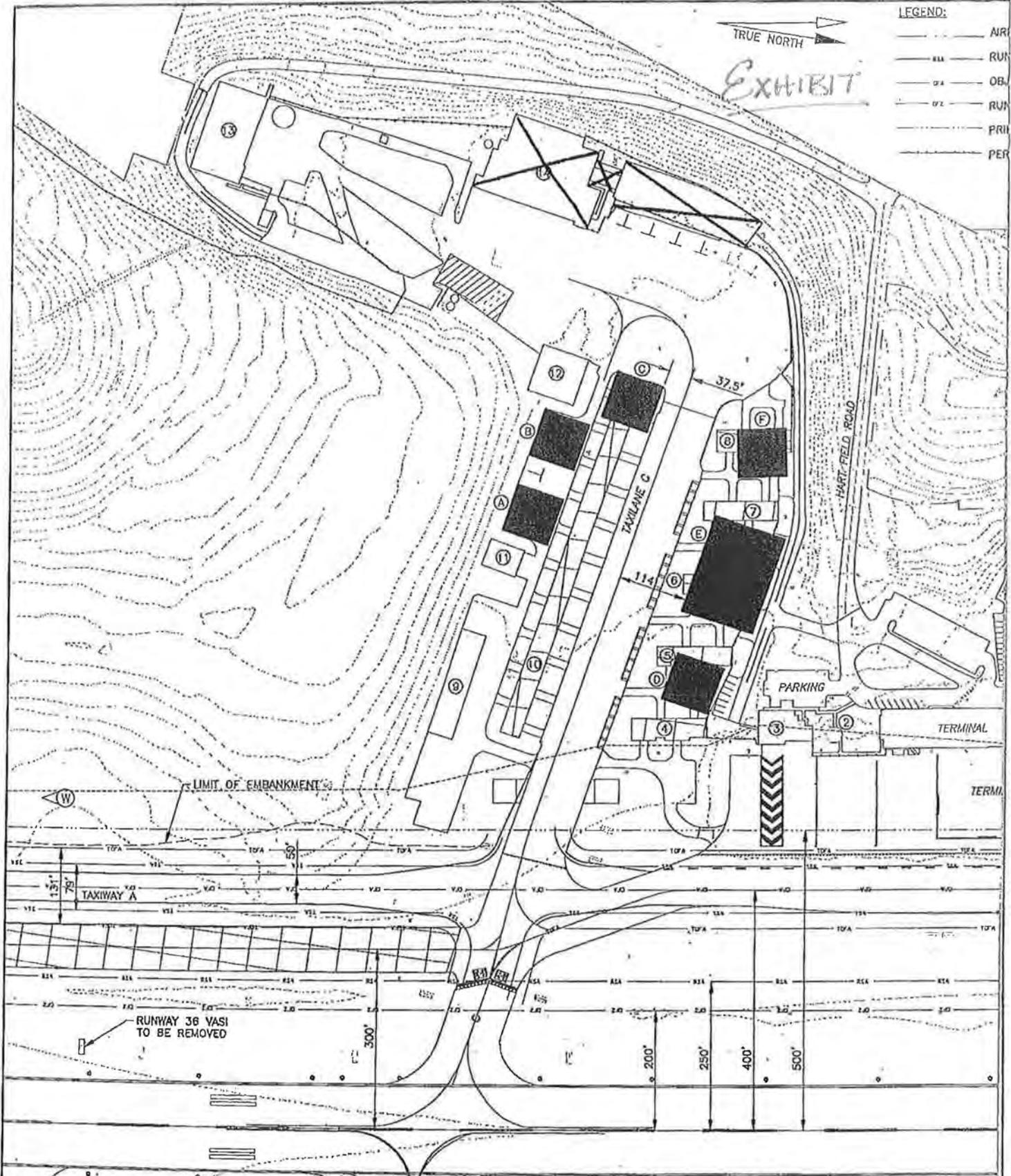
TITLE: Managing Member

WITNESS: Ken Brissett



EXHIBIT

- LEGEND:
- AIR
  - RUN
  - OB
  - RUN
  - PRI
  - PER



NO.	DATE	BY	DESCRIPTION OF REVISION	DATE APPROVED	APPROVED BY

**Baker** Michael Baker Jr.  
 a unit of Baker Engineering  
 10000 West 134th Ave  
 10000 West 134th Ave  
 Moon Township, Pennsylvania 15108

Aug 27, 2012 - 2:17pm L:\PROJECTS\WagonTown Municipal Airport\119775 -MGW Master Plan Update\3.0 Design\Drawings\Plot\12MGWcp-TAP.dwg

**AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 752.02 OF ITS CITY BUSINESS AND TAXATION CODE, AS THE SAME APPLIES TO SPARKLER AND NOVELTY REGISTRATION BUSINESS REGISTRATION.**

The City of Morgantown hereby ordains that Section 752.02 of its Business and Taxation Code is amended as follows (new matter underlined, deleted matter struck through):

**752.02 BUSINESS REGISTRATION.**

Any person or business desiring to sell sparklers and novelties within the City, as authorized by West Virginia Code 29-3-23 and Section 545.10(a) of the Morgantown Municipal Code shall submit evidence to the City's Finance Department that he or she has properly registered with the State of West Virginia, pursuant to West Virginia Code 11-12-86, for the sale of the same.

Upon payment of an ~~annual~~ fifteen dollar (\$15.00) registration fee to the City, the City's Finance Director shall issue to the registrant a sticker, card or business registration certification which shall be posted in a conspicuous position, next to like registration stickers, cards or business registration certificates issued by the State Tax Commissioner, at the location of the business which has paid the registration fee. This City registration fee shall run concurrent with the business license issued by the State, and shall not be prorated. This fee shall be collected for each separate location within the City where sparklers and novelties are sold.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_  
MAYOR

ADOPTED:

FILED:

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

RECORDED:

**AN ORDINANCE ESTABLISHING THE RATES OF COMPENSATION FOR THE CITY OF MORGANTOWN EMPLOYEES FOR THE FISCAL YEAR 2014-2015**

WHEREAS, the City of Morgantown is of the opinion it should adjust the rates of compensation for City of Morgantown employees for the fiscal year 2014-2015, as reflected on the attached exhibit:

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF MORGANTOWN THAT:**

1. Employees of the City of Morgantown designated by title or position shall receive the base salary or compensation for fiscal year 2014-2015, as set forth in the attached exhibit.
2. That the attached exhibit shall be considered as the Pay Plan for the City of Morgantown and shall replace Appendix A of the City's Personnel Rules in its entirety.
3. That where there may be errors, omissions, or other irregularities of pay for a given position, the City Manager shall be authorized and directed to correct such errors.

This ordinance for said wages and salaries shall be for fiscal year 2014-2015 and thereafter until amended or repealed and its effective date of operation shall be on and after July 1, 2014.

Any ordinance or the provisions of any ordinance heretofore passed by the City of Morgantown and now in effect which is in conflict with the provisions of this ordinance is hereby repealed insofar as it conflicts with the provisions hereof.

This Ordinance shall be effective July 1, 2014.

FIRST READING:

ADOPTED:

FILED:

RECORDED:

\_\_\_\_\_  
MAYOR

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

**APPENDIX A  
CITY PAY PLAN**

<b>TITLE</b>	<b>Base Annual Salary</b>	<b>Base Hourly Rate</b>
<b>FLSA Exempt Employees:</b>		
City Manager		61.00
Assistant City Manager of Operations		46.36
Police Chief		43.24
City Attorney		41.19
Finance Director		39.40
Airport Director		39.40
Fire Chief		39.40
Public Works Director		39.40
Director of Development Services		39.40
Assistant City Attorney		33.05
City Clerk		29.87
Community Development Administrator		28.48
Assistant Public Works Director		28.06
Treasury Manager - Full Time		26.92
Budget & Accounting Manager		26.92
Principal Planner		26.84
Assistant City Engineer		26.81
Chief Code Enforcement Officer		26.17
Staff Engineer		24.15
Municipal Court Clerk		19.43
Communications Manager		18.64
Municipal Court Judge - Part Time	22,305.56	
<b>FLSA NonExempt Employees:</b>		
Treasury Manager - Part Time		26.92
Superintendent II		21.53
Information Technology Specialist II		20.27
Commercial Building Inspector I		19.70
Commercial Building Inspector II		19.70
Commercial Building Inspector III		19.70
Electrical Inspector I		19.70
Electrical Inspector II		19.70
Technician III		19.70
Equipment Operator		18.92
Superintendent I		18.92
Urban Landscape Superintendent		18.92
Master Mechanic		17.89

Executive Assistant for City Manager	17.19
Accounting Clerk IV	16.94
Truck Driver	16.94
Technician II/Maintenance	16.94
Executive Secretary	16.94
Personnel Specialist	16.94
Information Technology Specialist I	16.61
Residential Building Inspector I	16.11
Residential Building Inspector II	16.11
Residential Building Inspector III	16.11
Housing Inspector	16.11
Property Maintenance Inspector	16.11
Mechanic	16.11
Secretary III	15.39
Building Permit Technician	15.39
Rental Housing Technician	15.39
Accounting Clerk III	15.39
Technician II	15.39
Records Supervisor	15.39
Deputy Clerk	15.39
Accounting Clerk II	14.65
Secretary II	14.65
Skilled Laborer	14.65
Accounting Clerk I	13.98
Secretary I	13.98
Laborer	13.98
Clerk	10.96

Fire Department (based on 2912 Hours/Year)

Captain	14.96
Lieutenant	13.85
FFFC	12.20
FF	11.49
Apprentice FFII	11.18
Apprentice FFI	10.99
Recruit	10.75
Probationary FF	10.62

Fire Department (based on 2080 Hours/Year)

Captain	23.97
Lieutenant	22.16
FFFC	19.53

Police Department

Captain	27.60
Lieutenant	23.95
First Sergeant	22.18
Sergeant	21.15
Police Officer First Class	19.49
Police Officer	18.44
Probationary Police Officer	16.60

In addition to the above rates, all employees as of December 1<sup>st</sup>, whether active or on leave, will receive a \$60.00 gross enhancement paycheck (approximately \$50.00 after required deductions).

**AN ORDINANCE AMENDING SECTIONS III-1(B) (LONGEVITY PAY), III-3(B) (SHIFT DIFFERENTIAL), AND III-4 (HAZARDOUS DUTY PAY) AND ADDING III-5 (SPECIAL SUPERVISION DIFFERENTIAL) OF THE PERSONNEL RULES OF THE CITY OF MORGANTOWN BY INCREASING THE MONETARY AMOUNTS WITHIN EACH**

WHEREAS, the City of Morgantown has previously adopted a ~~2012-2013~~ 2014-2015 which includes monies to increase the longevity pay, shift differential, and hazardous duty pay, effective July 1, ~~2012~~ 2014.

THE CITY OF MORGANTOWN HEREBY ORDAINS that Sections III-1(B), III-3(B), and III-4 of the Personnel Rules of the City of Morgantown are amended as follows (new matter underlined, deleted matter struck through):

**Section III-1: LONGEVITY PAY**

- (B) Longevity pay will be granted to regular full-time employees according to the following schedule. One half the longevity pay will be granted to regular part-time employees.

Continuous Years of Service	Yearly Amount
3	<del>183.34</del> <u>186.09</u>
5	<del>457.90</del> <u>464.77</u>
7	<del>732.45</del> <u>743.44</u>
9	<del>1,085.33</del> <u>1,102.62</u>
11	<del>1,382.39</del> <u>1,403.13</u>
13	<del>1,876.24</del> <u>1,904.38</u>
15	<del>2,370.06</del> <u>2,405.61</u>
17	<del>2,666.51</del> <u>2,706.51</u>
19	<del>2,962.56</del> <u>3,007.00</u>
21	<del>3,258.64</del> <u>3,307.52</u>
23	<del>3,555.04</del> <u>3,608.37</u>
25	<del>3,851.13</del> <u>3,908.90</u>
27	<del>4,147.57</del> <u>4,209.78</u>

**Section III-3: Shift Differential**

(B) Establishment of Rate.

For each hour worked by a City employee on the afternoon shift as defined hereinabove, the employee shall be paid, in addition to the other compensation for work performed, the amount of ~~sixty-two (62)~~ sixty-three (63) cents.

For each hour worked by a City employee on the evening shift as defined hereinabove, the employee shall be paid, in addition to all other compensation for work performed, the amount of ~~one dollar (\$1.00)~~ one dollar and two cents (\$1.02).

**Section III-4: Hazardous Duty Pay**

There is hereby established a hazardous duty pay differential for all fire and police civil service employees, as well as the Police Chief. In addition to their regular hourly rates of pay, which are set forth in Appendix B of these Personnel Rules, all fire civil service employees (excluding those who work standard 8 hour shifts, five days per week) shall receive an additional ~~73~~ 74 cents per hour; those fire civil service employees who work standard eight hour shifts five days a week shall receive an additional ~~\$1.06~~ \$1.08 per hour; and all police civil service employees and the Police Chief shall receive an additional ~~\$1.06~~ \$1.08 per hour.

**Section III-5: Special Supervision Differential**

There is hereby established a supervision pay differential of \$1.00 per hour for employees where the primary duty is the supervision of prisoners from the Federal Correction Institute or other like entity for a full 8 hour shift. Supervisors will authorize employees to receive the additional pay for the supervision of the prisoners, but lunch periods remain unpaid.

This Ordinance shall be effective July 1, ~~2012~~ 2014.

FIRST READING:

\_\_\_\_\_  
MAYOR

ADOPTED:

FILED:

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

RECORDED:

**BOND ORDINANCE**

**THE CITY OF MORGANTOWN**

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE STORMWATER PORTION OF THE COMBINED SYSTEM OF THE CITY OF MORGANTOWN AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$850,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2014 B; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; AND AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

**ARTICLE I**

**STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS**

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 8, Article 20 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

Section 1.02. Findings. It is hereby found, determined and declared that:

A. The City of Morgantown (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Monongalia County of said State.

B. The Issuer presently owns and operates a public combined waterworks, sewerage and stormwater system. It is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed certain additions, betterments and improvements to the stormwater portion of the existing combined system of the Issuer, consisting of installation of approximately 1012 ft of 48 inch diameter storm pipe, and approximately 317 ft of 24 inch diameter storm pipe, and associated

appurtenances; with related restoration of the affected area; for the purposes of collecting and conveying stormwater, and reducing flooding impacts in the newly annexed areas of Forest Drive, Morgan Drive, and their environs; in the general area of the Oakview sub-division, of Morgantown, Monongalia County, West Virginia (collectively, the "Project"), (the existing public combined waterworks, sewerage and stormwater system of the Issuer, the Project and any further additions, betterments and improvements thereto are herein called the "System"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer.

C. It is deemed necessary for the Issuer to issue its Combined Utility System Revenue Bonds, Series 2014 B, in the total aggregate principal amount of not more than \$850,000 (the "Series 2014 B Bonds"), initially to be represented by a single bond, to permanently finance the costs of acquisition and construction of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest upon the Series 2014 B Bonds prior to and during construction or acquisition and for a period not exceeding 6 months after completion of construction of the Project; amounts which may be deposited in the Series 2014 B Bonds Reserve Account (as hereinafter defined); engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expense; commitment fees; discount; initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2014 B Bonds and such other expenses as may be necessary or incidental to the financing herein authorized; the acquisition or construction of the Project and the placing of same in operation; and the performance of the things herein required or permitted, in connection with any thereof, provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2014 B Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

D. The period of usefulness of the System after completion of the Project is not less than 22years.

E. It is in the best interests of the Issuer that its Series 2014 B Bonds be sold to the Purchaser (as hereinafter defined) pursuant to this Bond Legislation.

F. There are outstanding obligations of the Issuer which will rank on a parity with the Series 2014 B Bonds as to liens, pledge, source of and security for payment, being the Issuer's:

(1) Combined Utility System Revenue Bonds, Series 1995 (West Virginia SRF Program), dated April 27, 1995, issued in the original aggregate principal amount of \$1,601,477 (the "Series 1995 Bonds");

(2) Combined Utility System Revenue Bonds, Series 2000 A (West Virginia SRF Program), dated February 29, 2000, issued in the original aggregate principal amount of \$7,842,000 (the "Series 2000 A Bonds");

(3) Combined Utility System Revenue Bonds, Series 2000 B (West Virginia Infrastructure Fund), dated February 29, 2000, issued in the original aggregate principal amount of \$2,488,000 (the "Series 2000 B Bonds");

(4) Combined Utility System Revenue Bonds, Series 2001 A (West Virginia Infrastructure Fund), dated February 8, 2001, issued in the original aggregate principal amount of \$3,812,470 (the "Series 2001 A Bonds");

(5) Combined Utility System Revenue Bonds, Series 2006 A (West Virginia SRF Program), dated June 30, 2006, issued in the original aggregate principal amount of \$6,410,191 (the "Series 2006 A Bonds");

(6) Combined Utility System Revenue Bonds, Series 2007 A (West Virginia SRF Program), dated August 14, 2007, issued in the original aggregate principal amount of \$8,500,000 (the "Series 2007 A Bonds");

(7) Combined Utility System Revenue Bonds, Series 2010 A (Direct Payment Build America Bonds), dated January 28, 2010, issued in the original aggregate principal amount of \$37,950,000 (the "Series 2010 A Bonds");

(8) Combined Utility System Revenue Bonds, Series 2010 B (West Virginia SRF Program/ARRA), dated January 28, 2010, issued in the original aggregate principal amount of \$81,600 (the "Series 2010 B Bonds");

(9) Combined Utility System Revenue Bonds, Series 2010 C (West Virginia SRF Program), dated January 28, 2010, issued in the original aggregate principal amount of \$15,380,227 (the "Series 2010 C Bonds");

(10) Combined Utility System Revenue Bonds, Series 2010 D (West Virginia DWTRF Program), dated January 28, 2010, issued in the original aggregate principal amount of \$9,317,286 (the "Series 2010 D Bonds");

(11) Combined Utility System Revenue Bonds, Series 2010 E (West Virginia DWTRF Program/ARRA), dated January 28, 2010, issued in the original aggregate principal amount of \$100,000 (the "Series 2010 E Bonds");

(12) Combined Utility System Revenue Bonds, Series 2010 F (Bank Qualified), dated January 28, 2010, issued in the original aggregate amount of \$7,250,000 (the "Series 2010 F Bonds");

(13) Combined Utility System Revenue Bonds, Series 2012 A (West Virginia DWTRF Program), dated August 24, 2012, issued in the original aggregate principal amount of \$570,000 (the "Series 2012 A Bonds");

(14) Combined Utility System Revenue Bonds, Series 2012 B (West Virginia DWTRF Program), dated August 24, 2012, issued in the original aggregate principal amount of \$444,835 (the "Series 2012 B Bonds");

(15) Combined Utility System Revenue Bonds, Series 2012 C (Bank Qualified), dated October 5, 2012, issued in the original aggregate principal amount of \$2,330,000 (the "Series 2012 C Bonds");

(16) Combined Utility System Revenue Bonds, Series 2013 A (West Virginia Infrastructure Fund), dated August 22, 2013, issued in the original aggregate principal amount of \$4,605,260 (the "Series 2013 A Bonds"), and

(17) If issued, Combined Utility System Revenue Bonds, Series 2013 A (West Virginia SRF Program), proposed to be issued in the original aggregate principal amount not to exceed \$1,250,000 to finance the Sunshine Estates sewerage project (the "Series 2014 A Bonds"), (collectively, the "Prior Bonds").

Prior to the issuance of the Series 2014 B Bonds , the Issuer will obtain (i) the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met, and (ii) the written consent of the Holders of the Series 1995 Bonds, Series 2000 A Bonds, Series 2000 B Bonds, Series 2001 A Bonds, Series 2006 A Bonds, Series 2007 A Bonds, Series 2010 B Bonds, Series 2010 C Bonds, Series 2010 D Bonds, Series 2010 E Bonds, Series 2012 A Bonds, Series 2012 B Bonds, Series 2013 A Bonds and, if issued, the Series 2014 A Bonds to the issuance of the Series 2014 B Bonds on a parity with the Prior Bonds. The Series 2010 A Bonds, Series 2010 F Bonds and Series 2012 C Bonds do not require consent. Other than the Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System. The Issuer is in compliance with all the covenants of the Prior Bonds and the Prior Ordinances.

G. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all costs of operation and maintenance of the System, the principal of and interest on the Bonds (as hereinafter defined) and to make all payments into all funds, accounts and other payments provided for herein.

H. The Issuer has complied with all requirements of West Virginia law relating to authorization of the acquisition and construction of the Project and the operation of the System and issuance of the Series 2014 B Bonds , or will have so complied prior to issuance of any thereof.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2014 B Bonds by those who shall be the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Registered Owners of any and all of such Series 2014 B Bonds , all which shall be of equal rank and without preference, priority or distinction between any one Bond of a series and any other Bonds of the same series, and by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section I.04. Definitions. The following terms shall have the following meanings herein unless the context expressly requires otherwise:

“Act” means Chapter 8, Article 20 of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

“Authorized Officer” means the Mayor of the Issuer, or any other officer of the Issuer specifically designated by resolution of the Governing Body.

“Bondholder,” “Holder of the Bonds,” “Holder,” “Registered Owner” or any similar term whenever used herein with respect to an outstanding Bond or Bonds, means the person in whose name such Bond is registered.

“Bond Legislation,” “Ordinance,” “Bond Ordinance” or “Local Act” means this Bond Ordinance and all ordinances, orders and resolutions supplemental hereto or amendatory hereof.

“Bond Registrar” means the bank or other entity to be designated as such in the Supplemental Resolution and its successors and assigns.

“Bonds” means, collectively, the Series 2014 B Bonds , the Prior Bonds and, where appropriate, any bonds on a parity therewith subsequently authorized to be issued hereunder or by another ordinance of the Issuer.

“Bond Year” means the 12-month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year, except that the first Bond Year shall begin on the Closing Date.

“Closing Date” means the date upon which there is an exchange of the Series 2014 B Bonds for all or a portion of the proceeds of the Series 2014 B Bonds .

“City Clerk” means the City Clerk of the Issuer.

“Code” means the Internal Revenue Code of 1986, as amended, and the Regulations.

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

“Consulting Engineers” means any qualified engineer or firm of engineers, licensed by the State, that shall at any time hereafter be procured by the Issuer as Consulting Engineers for the System, or portion thereof, in accordance with Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended; provided however, that the Consulting Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions, or political subdivisions.

“Costs” or “Costs of the Project” means those costs described in Section 1.02C hereof to be a part of the cost of acquisition and construction of the Project.

“Depository Bank” means the bank designated as such in the Supplemental Resolution, and its successors and assigns, which shall be a member of FDIC.

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

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

“Governing Body” means the Council of the Issuer, as it may now or hereafter be constituted.

“Government Obligations” means direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America.

“Gross Revenues” means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that “Gross Revenues” does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined, purchased pursuant to Article 8.01 hereof) or any Tap Fees, as hereinafter defined.

“Herein,” “hereto” and similar words shall refer to this entire Bond Legislation.

“Independent Certified Public Accountants” means any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

“Investment Property” means

- (A) any security (within the meaning of Section 165(g)(2)(A) or (B) of the Code),
- (B) any obligation,
- (C) any annuity contract,
- (D) any investment-type property, or

- (E) in the case of a bond other than a private activity bond, any residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan.

Except as provided in the following sentence, the term "Investment Property" does not include any tax-exempt bond. With respect to an issue other than an issue a part of which is a specified private activity bond (as defined in section 57(a)(5)(C) of the Code), the term "Investment Property" includes a specified private activity bond (as so defined).

"Issuer" means The City of Morgantown, a municipal corporation and political subdivision of the State of West Virginia, in Monongalia County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 2014 B Bonds , plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 2014 B Bonds Reserve Account. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 2014 B Bonds , without regard to whether or not such investment is made in tax-exempt obligations.

"Net Revenues" means the balance of the Gross Revenues, remaining after deduction of Operating Expenses, as hereinafter defined.

"Nonpurpose Investment" means any Investment Property as defined in Section 148(b) of the Code, that is not a purpose investment.

"Operating Expenses" means the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the costs, fees and expenses of the Depository Bank, the Registrar and the Paying Agent (all as herein defined), other than those capitalized as part of the costs, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Outstanding," when used with reference to Bonds and as of any particular date, describes all Bonds theretofore and thereupon being authenticated and delivered, except (i) any Bond cancelled by the Bond Registrar or the registrar for Prior Bonds at or prior to said date; (ii) any Bond for the payment of which monies, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder and set aside for such payment (whether upon or prior to maturity); (iii) any Bond

deemed to have been paid as provided in Article X hereof; (iv) any Prior Bond deemed to have been paid in accordance with the resolution authorizing the issuance thereof; and (v) for purposes of consents or other action by a specified percentage of Bondholders, any Bonds registered to the Issuer.

“Parity Bonds” means additional Bonds issued under the provisions and within the limitations prescribed by Section 7.07 hereof.

“Paying Agent” means the Commission or other entity or authority designated as such for the Series 2014 B Bonds in the Supplemental Resolution.

“Prior Bonds” means, collectively, the Series 1995 Bonds, Series 2000 A Bonds, Series 2000 B Bonds, Series 2001 A Bonds, Series 2006 A Bonds, Series 2007 A Bonds, Series 2010 A Bonds, Series 2010 B Bonds, Series 2010 C Bonds, Series 2010 D Bonds, Series 2010 E Bonds, Series 2010 F Bonds, Series 2012 A Bonds, Series 2012 B Bonds, Series 2012 C Bonds, Series 2013 A Bonds and, if issued, the Series 2014 A Bonds.

“Prior Ordinances” means the ordinance of the Issuer, including all amendments and supplements thereto, authorizing the issuance of the Prior Bonds.

“Private Business Use” means use directly or indirectly in a trade or business carried on by a natural person, including all persons “related” to such person within the meaning of Section 144(a)(3) of the Code, or in any activity carried on by a person other than a natural person, including all persons “related” to such person within the meaning of Section 144(a)(3) of the Code, excluding, however, use by a state or local governmental unit and use as a member of the general public. All of the foregoing shall be determined in accordance with the Code, including, without limitation, giving due regard to “incidental use,” if any, of the proceeds of the issue and/or proceeds used for “qualified improvements,” if any.

“Project” means the Project as described in Section 1.02B hereof.

“Purchaser” means the purchaser or purchasers of the Series 2014 B Bonds directly from the Issuer, designated as such in the Supplemental Resolution and its successors and assigns.

“Qualified Investments” means and includes any of the following:

(a) Government Obligations;

(b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;

(c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives;

Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;

(d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

(f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;

(g) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (e) above, with banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the holder of such repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;

(h) The West Virginia "consolidated fund" managed by the West Virginia Board of Treasury Investments pursuant to Chapter 12, Article 6C of the West Virginia Code of 1931, as amended; and

(i) Obligations of states or political subdivisions or agencies thereof, the interest on which is excluded from gross income for federal income tax purposes, and which are rated at least "A" by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

"Registered Owner," "Bondholder," "Holder" or any similar term means whenever used herein with respect to an outstanding Bond or Bonds, the person in whose name such Bond is registered.

"Registrar" means the Bond Registrar.

"Regulations" means temporary and permanent regulations promulgated under the Code, or any predecessor thereto.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund created by the Prior Ordinances and continued hereby.

"Reserve Accounts" means, collectively, the respective reserve accounts established for the Series 2014 B Bonds and the Prior Bonds.

"Reserve Requirement" means, collectively, the respective amount required to be on deposit in any Reserve Account for the Prior Bonds and the Series 2014 B Bonds .

"Revenue Fund" means the Revenue Fund created by the Prior Ordinances and continued hereby.

"Series 1995 Bonds" means the Combined Utility System Revenue Bonds, Series 1995 (West Virginia SRF Program), of the Issuer, dated April 27, 1995, issued in the original aggregate principal amount of \$1,601,477.

"Series 2000 A Bonds" means the Combined Utility System Revenue Bonds, Series 2000 A (West Virginia SRF Program), of the Issuer, dated February 29, 2000, issued in the original aggregate principal amount of \$7,842,000.

"Series 2000 B Bonds" means the Combined Utility System Revenue Bonds, Series 2000 B (West Virginia Infrastructure Fund), of the Issuer, dated February 29, 2000, issued in the original aggregate principal amount of \$2,488,000.

"Series 2001 A Bonds" means the Combined Utility System Revenue Bonds, Series 2001 A (West Virginia Infrastructure Fund), of the Issuer, dated February 8, 2001, issued in the original aggregate principal amount of \$3,812,470.

"Series 2006 A Bonds" means the Combined Utility System Revenue Bonds, Series 2006 A (West Virginia SRF Program), of the Issuer, dated June 30, 2006, issued in the original aggregate principal amount of \$6,410,191.

"Series 2007 A Bonds" means the Combined Utility System Revenue Bonds, Series 2007 A (West Virginia SRF Program), of the Issuer, dated August 14, 2007, issued in the original aggregate principal amount of \$8,500,000.

"Series 2010 A Bonds" means the Combined Utility System Revenue Bonds, Series 2010 A (Direct Payment Build America Bonds), of the Issuer, dated January 28, 2010, issued in the original aggregate principal amount of \$37,950,000.

"Series 2010 B Bonds" means the Combined Utility System Revenue Bonds, Series 2010 B (West Virginia SRF Program/ARRA), of the Issuer, dated January 28, 2010, issued in the original aggregate principal amount of \$81,600.

"Series 2010 C Bonds" means the Combined Utility System Revenue Bonds, Series 2010 C (West Virginia SRF Program), of the Issuer, dated January 28, 2010, issued in the original aggregate principal amount of \$15,380,227.

"Series 2010 D Bonds" means the Combined Utility System Revenue Bonds, Series 2010 D (West Virginia DWTRF Program), of the Issuer, dated January 28, 2010, issued in the original aggregate principal amount of \$9,317,286.

"Series 2010 E Bonds" means the Combined Utility System Revenue Bonds, Series 2010 E (West Virginia DWTRF Program/ARRA), of the Issuer, dated January 28, 2010, issued in the original aggregate principal amount of \$100,000.

"Series 2010 F Bonds" means the Combined Utility System Revenue Bonds, Series 2010 F (Bank Qualified), of the Issuer, dated January 28, 2010, issued in the original aggregate principal amount of \$7,250,000.

"Series 2012 A Bonds" means the Combined Utility System Revenue Bonds, Series 2012 A (West Virginia DWTRF Program), dated August 24, 2012, issued in the original aggregate principal amount of \$570,000.

"Series 2012 B Bonds" means the Combined Utility System Revenue Bonds, Series 2012 B (West Virginia DWTRF Program), dated August 24, 2012, issued in the original aggregate principal amount of \$444,835.

"Series 2012 C Bonds" means the Combined Utility System Revenue Bonds, Series 2012 C (Bank Qualified), dated October 5, 2012, issued in the original aggregate principal amount of \$2,330,000.

"Series 2013 A Bonds" means the Combined Utility System Revenue Bonds, Series 2013 A (West Virginia Infrastructure Fund), dated August 22, 2013, issued in the original aggregate principal amount of \$4,605,260.

"Series 2014 A Bonds" means the Issuer's Combined Utility System Revenue Bonds, Series 2013 A (West Virginia SRF Program), proposed to be issued in the original

aggregate principal amount not to exceed \$1,250,000 to finance the Sunshine Estates sewerage project.

“Series 2014 B Bonds” means Combined Utility System Revenue Bonds, Series 2014 Bonds the Issuer, authorized by this Bond Legislation.

“Series 2014 B Bonds Construction Trust Fund” means the Series 2014 B Bonds Construction Trust Fund established by Section 5.01 hereof.

“Series 2014 B Bonds Reserve Account” means the Series 2014 B Bonds Reserve Account established by Section 5.02 hereof.

“Series 2014 B Bonds Reserve Requirement” means an amount equal to the lesser of (i) 10% of the original principal amount of the Series 2014 B Bonds, (ii) Maximum Annual Debt Service at the time of original issuance of the Series 2014 B Bonds , or (iii) 125% of average annual Debt Service at the time of original issuance of the Series 2014 B Bonds .

“Series 2014 B Bonds Sinking Fund” means the Series 2014 B Bonds Sinking Fund established by Section 5.02 hereof.

“Sinking Funds” means, collectively, the respective sinking funds established for the Series 2014 B Bonds and the Prior Bonds.

“State” means the State of West Virginia.

“Supplemental Resolution” means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article “the,” refers specifically to the supplemental resolution authorizing the sale of the Series 2014 B Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2014 B Bonds , and not so included may be included in another Supplemental Resolution.

“Surplus Revenues” means the Net Revenues not required by the Bond Legislation or the Prior Ordinances to be set aside and held for the payment of or security for the Bonds or any other obligation of the Issuer, including, without limitation, the Renewal and Replacement Fund, the Sinking Funds and the Reserve Accounts.

“System” means, collectively, the complete existing combined waterworks, sewerage and stormwater system of the Issuer, as presently existing in its entirety or any integral part thereof, and shall include the Project and any and all additions, betterments and improvements thereto hereafter acquired or constructed for the System from any sources whatsoever, both within and without the Issuer.

“Tap Fees” means the fees, if any, paid by prospective customers of the System in order to connect thereto.

Additional terms and phrases are defined in this Ordinance as they are used. Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

## **ARTICLE II**

### **AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT**

Section 2.01. Authorization of Acquisition and Construction of the Project. There is hereby authorized and ordered the acquisition and construction of the Project, at an estimated cost of not to exceed \$850,000, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2014 B Bonds hereby authorized shall be applied as provided in Article VI hereof. The Issuer will receive bids and will enter into contracts for the acquisition and construction of the Project.

The cost of the Project is estimated not to exceed \$850,000 which will be obtained from proceeds of the Series 2014 B Bonds.

## **ARTICLE III**

### **AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS**

Section 3.01. Authorization of Bonds. For the purposes of capitalizing interest, if any, on the Series 2014 B Bonds , funding a reserve account for the Series 2014 B Bonds , paying Costs of the Project not otherwise provided for and paying certain costs of issuance and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued the negotiable Series 2014 B Bonds of the Issuer. The Series 2014 B Bonds shall be issued as a single bond, designated "Combined Utility System Revenue Bonds, Series 2014 B", in the principal amount of not more than \$850,000, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2014 B Bonds remaining after funding of the Series 2014 B Bonds Reserve Account (if funded from Bond proceeds) and capitalizing interest on the Series 2014 B Bonds , if any, shall be deposited in or credited to the Series 2014 B Bonds Construction Trust Fund established by Section 5.01 hereof and applied as set forth in Article VI hereof.

Section 3.02. Terms of Bonds. The Series 2014 B Bonds shall be issued in such principal amounts; shall bear interest at such rate or rates, not exceeding the then legal maximum, payable on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution. The Series 2014 B Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Series 2014 B Bonds shall be paid by check or draft of the Paying Agent or its agent, mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Purchaser is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2014 B Bonds shall initially be issued in the form of a single bond, fully registered to the Purchaser, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 2014 B Bonds, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 2014 B Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Purchaser shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. Such Bonds shall be dated and shall bear interest, if any, as of the date specified in a Supplemental Resolution.

Section 3.03. Execution of Bonds. The Series 2014 B Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the City Clerk. In case any one or more of the officers who shall have signed or sealed the Series 2014 B Bonds shall cease to be such officer of the Issuer before the Series 2014 B Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Series 2014 B Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of the authorization of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No Series 2014 B Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 hereof shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 2014 Bond shall be deemed to have been executed by the Bond Registrar if

manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2014 B Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting the Series 2014 B Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 2014 B Bonds remain outstanding, the Issuer, through the Bond Registrar as its agent, shall keep and maintain books for the registration and transfer of the Series 2014 B Bonds.

The registered Series 2014 B Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney.

In all cases in which the privilege of exchanging Series 2014 B Bonds or transferring the registered Series 2014 B Bonds are exercised, all Series 2014 B Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 2014 B Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Series 2014 B Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of Series 2014 B Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 2014 B Bonds or, in the case of any proposed redemption of Series 2014 B Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Series 2014 B Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2014 B Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Series 2014 B Bond of the same series and of like tenor as the Series 2014 B Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Series 2014 B Bonds, upon surrender and cancellation of such mutilated Series 2014 B Bonds, or in lieu of and substitution for the Series 2014 B Bonds destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Series 2014 B Bonds so surrendered shall be cancelled

by the Bond Registrar and held for the account of the Issuer. If any such Series 2014 B Bonds shall have matured or be about to mature, instead of issuing substitute Series 2014 B Bonds, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Series 2014 B Bonds are lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 2014 B Bonds shall not, in any event, be or constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Gross Revenues derived from the operation of the System as herein provided. No Holder or Holders of the Series 2014 B Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2014 B Bonds or the interest, if any, thereon.

Section 3.08. Bonds Secured by Pledge of Gross Revenues; Lien Positions with respect to Prior Bonds. The payment of the debt service of all Series 2014 B Bonds shall be secured forthwith equally and ratably by a first lien on the Gross Revenues derived from the operation of the System, on a parity with the lien on the Gross Revenues in favor of the Holders of the Prior Bonds. Such Gross Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2014 B Bonds and the Prior Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as the same become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 2014 B Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2014 B Bonds to the original purchasers upon receipt of the documents set forth below:

- A. If other than the Purchaser, a list of the names in which the Series 2014 B Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;
- B. A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2014 B Bonds to the Purchaser;
- C. An executed and certified copy of the Bond Legislation; and
- D. The unqualified approving opinion of bond counsel on the Series 2014 B Bonds.

Section 3.10. Sale of Bonds. The Series 2014 B Bonds shall be sold to the Purchaser, pursuant to this Bond Legislation.

Section 3.11. Form of Bonds. The text of the Series 2014 B Bonds shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

[Remainder of Page Intentionally Blank]

(FORM OF SERIES 2014 B BOND)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF MORGANTOWN  
COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2014 B

No. AR-1

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

KNOW ALL MEN BY THESE PRESENTS: This \_\_\_\_ day of \_\_\_\_\_, 2014, that The City of Morgantown, a municipal corporation and political subdivision of the State of West Virginia in Monongalia County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the sources and in the manner hereinafter set forth, to the order of:

(PURCHASER)

or registered assigns (the "Registered Owner"), the principal sum of \_\_\_\_\_ (\$ \_\_\_\_\_) or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference together with interest only payable monthly on the outstanding principal amounts beginning \_\_\_\_\_, 2014 to and including \_\_\_\_\_, 20\_\_ and principal and interest payments of \$ \_\_\_\_\_ payable monthly beginning \_\_\_\_\_, 20\_\_ to and including \_\_\_\_\_, 20\_\_ at the rates per annum set forth as follows:

A. Interest on this Bond shall be payable at the rate of \_\_\_\_\_% per annum (hereinafter sometimes called the "Tax-Exempt Rate").

B. Notwithstanding any other provision herein, in the event the interest on this Bond is declared to be includible in gross income for federal income tax purposes by the Internal Revenue Service ("Determination of Taxability"), interest on this Bond shall be payable at the rate of \_\_\_\_\_% per annum (hereinafter sometimes called the "Taxable Rate"). Interest at the Taxable Rate shall commence to accrue on the date of Determination of Taxability and such interest rate shall be charged retroactively and prospectively for all periods in which interest paid on this Bond is asserted, declared or determined to be includible in gross income for federal income tax purposes, and shall continue until the entire principal of and interest on this Bond are paid, notwithstanding that the entire principal amount of this Bond may have been paid in full prior to

the Determination of Taxability. Any interest being past due on this Bond by reason of such increase shall become immediately due and payable.

C. [Redemption provisions].

The principal of and interest on this Bond are payable in any coin or currency which on the date of payment thereof is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia as Paying Agent.

This Bond is issued (i) to pay the costs of acquisition and construction of certain additions, betterments and improvements to the stormwater portion of the existing combined system of the Issuer (the "Project"); (ii) to fund the Series 2014 B Bonds Reserve Account; and (iii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The existing public combined system of the Issuer, the Project, and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 20 of the West Virginia Code of 1931, as amended (the "Act"), a Bond Ordinance duly enacted by the Issuer on \_\_\_\_\_, 2014, and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 2014 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S:

(1) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 1995 (WEST VIRGINIA SRF PROGRAM), DATED APRIL 27, 1995, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$1,601,477 (THE "SERIES 1995 BONDS");

(2) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2000 A (WEST VIRGINIA SRF PROGRAM), DATED FEBRUARY 29, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$7,842,000 (THE "SERIES 2000 A BONDS");

(3) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2000 B (WEST VIRGINIA INFRASTRUCTURE FUND), DATED FEBRUARY 29, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,488,000 (THE "SERIES 2000 B BONDS");

(4) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2001 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED FEBRUARY 8, 2001, ISSUED IN

THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$3,812,470 (THE "SERIES 2001 A BONDS");

(5) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2006 A (WEST VIRGINIA SRF PROGRAM), DATED JUNE 30, 2006, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$6,410,191 (THE "SERIES 2006 A BONDS");

(6) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2007 A (WEST VIRGINIA SRF PROGRAM), DATED AUGUST 14, 2007, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$8,500,000 (THE "SERIES 2007 A BONDS");

(7) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 A (DIRECT PAYMENT BUILD AMERICA BONDS), DATED JANUARY 28, 2010, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$37,950,000 (THE "SERIES 2010 A BONDS");

(8) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 B (WEST VIRGINIA SRF PROGRAM/ARRA), DATED JANUARY 28, 2010, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$81,600 (THE "SERIES 2010 B BONDS");

(9) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 C (WEST VIRGINIA SRF PROGRAM), DATED JANUARY 28, 2010, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$15,380,227 (THE "SERIES 2010 C BONDS");

(10) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 D (WEST VIRGINIA DWTRF PROGRAM), DATED JANUARY 28, 2010, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$9,317,286 (THE "SERIES 2010 D BONDS");

(11) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 E (WEST VIRGINIA DWTRF PROGRAM/ARRA), DATED JANUARY 28, 2010, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$100,000 (THE "SERIES 2010 E BONDS");

(12) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 F (BANK QUALIFIED), DATED JANUARY 28, 2010, ISSUED IN THE ORIGINAL AGGREGATE AMOUNT OF \$7,250,000 (THE "SERIES 2010 F BONDS");

(13) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012 A (WEST VIRGINIA DWTRF PROGRAM), DATED AUGUST 24, 2012, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$570,000 (THE "SERIES 2012 A BONDS");

(14) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012 B (WEST VIRGINIA DWTRF PROGRAM), DATED AUGUST 24, 2012, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$444,835 (THE "SERIES 2012 B BONDS");

(15) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012 C (BANK QUALIFIED), DATED OCTOBER 5, 2012, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,330,000 (THE "SERIES 2012 C BONDS");

(16) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED AUGUST 22, 2013, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$4,605,260 (THE "SERIES 2013 A BONDS"), AND

(17) IF ISSUED, COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 A (WEST VIRGINIA SRF PROGRAM), PROPOSED TO BE ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$1,250,000 TO FINANCE THE SUNSHINE ESTATES SEWERAGE PROJECT (THE "SERIES 2014 A BONDS") (COLLECTIVELY, THE "PRIOR BONDS").

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the Holders of the Prior Bonds, and from monies in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2014 B Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest, if any, hereon, except from said special fund provided from the Gross Revenues, the monies in the Series 2014 B Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds, including the Prior Bonds; provided however, that so long as there exists in the Series 2014 B Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations Outstanding on a parity with, or subordinate to, the Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the Registered Owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for

a detailed description thereof. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of \_\_\_\_\_, (the "Registrar") (as defined in the Bond Legislation), by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

This Bond is hereby designated a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended.

This Bond is, under the Act, exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision or agency thereof, except inheritance, estate and transfer taxes.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal and interest on this Bond.

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

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, THE CITY OF MORGANTOWN has caused this Bond to be signed by its Mayor, and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated the day and year first written above

[SEAL]

\_\_\_\_\_  
Mayor

ATTEST:

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

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2014 B Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: \_\_\_\_\_, 2014.

\_\_\_\_\_  
as Registrar

\_\_\_\_\_  
Authorized Officer

EXHIBIT A  
RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$		(19)	
(2)		(20)	
(3)		(21)	
(4)		(22)	
(5)		(23)	
(6)		(24)	
(7)		(25)	
(8)		(26)	
(9)		(27)	
(10)		(28)	
(11)		(29)	
(12)		(30)	
(13)		(31)	
(14)		(32)	
(15)		(33)	
(16)		(34)	
(17)		(35)	
(18)		(36)	

TOTAL \$ \_\_\_\_\_

(Form of)

ASSIGNMENT

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

Dated: \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

**ARTICLE IV**

**[RESERVED]**

**ARTICLE V**

**FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF**

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created with (or continued if previously established by the Prior Ordinances) and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank and the Issuer and from each other:

- (1) Revenue Fund (established by the Prior Ordinances);
- (2) Depreciation Fund (established by the Prior Ordinances);
- (3) Operation and Maintenance Fund (established by the Prior Ordinances); and
- (4) Series 2014 B Bonds Construction Trust Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created with (or continued if previously established by the Prior Ordinances) and shall be held by the Commission, separate and apart from all other funds or accounts of the Commission and the Issuer and from each other:

- (1) Series 1995 Bonds Sinking Fund (established by Prior Ordinances);
- (2) Series 1995 Bonds Reserve Account established by Prior Ordinances);
- (3) Series 2000 A Bonds Sinking Fund (established by Prior Ordinances);
- (4) Series 2000 A Bonds Reserve Account established by Prior Ordinances);
- (5) Series 2000 B Bonds Sinking Fund (established by Prior Ordinances);
- (6) Series 2000 B Bonds Reserve Account established by Prior Ordinances);

- (7) Series 2001 A Bonds Sinking Fund (established by Prior Ordinances);
- (8) Series 2001 A Bonds Reserve Account established by Prior Ordinances);
- (9) Series 2006 A Bonds Sinking Fund (established by Prior Ordinances);
- (10) Series 2006 A Bonds Reserve Account established by Prior Ordinances);
- (11) Series 2007 A Bonds Sinking Fund (established by Prior Ordinances);
- (12) Series 2007 A Bonds Reserve Account established by Prior Ordinances);
- (13) Series 2010 A Bonds Sinking Fund (established by Prior Ordinances);
- (14) Series 2010 A Bonds Reserve Account (established by Prior Ordinances);
- (15) Series 2010 C Bonds Sinking Fund (established by Prior Ordinances);
- (16) Series 2010 C Bonds Reserve Account (established by Prior Ordinances);
- (17) Series 2010 D Bonds Sinking Fund (established by Prior Ordinances);
- (18) Series 2010 D Bonds Reserve Account (established by Prior Ordinances);
- (19) Series 2010 E Bonds Sinking Fund (established by Prior Ordinances);
- (20) Series 2010 E Bonds Reserve Account (established by Prior Ordinances);
- (21) Series 2010 F Bonds Sinking Fund (established by Prior Ordinances);
- (22) Series 2010 F Bonds Reserve Account (established by Prior Ordinances);

- (23) Series 2012 A Bonds Sinking Fund (established by Prior Ordinances);
- (24) Series 2012 A Bonds Reserve Account (established by Prior Ordinances);
- (25) Series 2012 C Bonds Sinking Fund (established by Prior Ordinances);
- (26) Series 2012 C Bonds Reserve Account (established by Prior Ordinances);
- (27) Series 2013 A Bonds Sinking Fund; (established by Prior Ordinances);
- (28) Series 2013 A Bonds Reserve Account, (established by Prior Ordinances);
- (29) Series 2014 A Bonds Sinking Fund; (established by Prior Ordinances);
- (30) Series 2014 A Bonds Reserve Account, (established by Prior Ordinances);
- (31) Series 2014 B Bonds Sinking Fund; and
- (32) Series 2014 B Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds.A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in the Prior Ordinances and this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner provided in this Bond Legislation and in the Prior Ordinances. All revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following manner and order of priority:

- (1) The Issuer shall first, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission the amounts required by the Prior Ordinances to pay interest on the Series 1995 Bonds, Series 2001 A Bonds, Series 2006 A Bonds, Series 2007 A Bonds, Series 2010 A Bonds, Series 2010 C Bonds, Series 2010 D Bonds, Series 2010 E Bonds, Series 2010 F Bonds, Series 2012 A Bonds and Series 2010 C Bonds.; and (ii) commencing 1 month prior to the first date of payment of interest of the Series 2014 B Bonds , for deposit in the Series 2014 B Bonds Sinking Fund, an amount equal to

the amount of interest which will become due on the Series 2014 B Bonds on the next ensuing monthly interest payment date.

(2) The Issuer shall next, each month, transfer from the Revenue Fund and simultaneously remit to (i) the Commission the amount required by Prior Ordinances to pay principal on the Prior Bonds; and (ii) the Commission, commencing 1 month prior to the first date of payment of principal of the Series 2014 B Bonds, for deposit in the Series 2014 B Bonds Sinking Fund, an amount equal to the amount of principal which will mature and become due on the Series 2014 B Bonds on the next ensuing monthly principal payment date.

(3) The Issuer shall next, each month, transfer from the Revenue Fund and simultaneously remit to (i) the Commission, the amounts required by Prior Ordinances to be deposited in the respective Reserve Accounts for the Prior Bonds; and (ii) to the Commission commencing 4 months prior to the first date of payment of principal of the Series 2014 B Bonds, if not fully funded upon issuance of the Series 2014 B Bonds, for deposit in the Series 2014 B Bonds Reserve Account, an amount equal to 1/120th of the Series 2014 B Bonds Reserve Requirement; provided, that no further payments shall be made into the Series 2014 B Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2014 B Bonds Reserve Requirement.

(4) The Issuer shall next, each month, transfer from the Revenue Fund and deposit in the Operation and Maintenance Fund, an amount sufficient to pay the current Operating Expenses of the System.

(5) The Issuer shall next, each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund, an amount equal to 2.5% of the Gross Revenues each month (as previously set forth in the Prior Ordinances and not in addition thereto), exclusive of any payments for account of any Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, repairs, improvements or extensions to the System; provided, that any deficiencies in any Reserve Account (except to the extent such deficiency exists because the required payments into such accounts have not, as of the date of determination of a deficiency, funded such accounts to the maximum extent required hereof) shall be promptly eliminated with monies from the Renewal and Replacement Fund.

Monies in the Series 2014 B Bonds Sinking Fund and the Series 2014 B Bonds Reserve Account shall be used only for the purposes of paying principal of and interest, if any, on the Series 2014 B Bonds as the same shall come due and for no other purpose.

All investment earnings on monies in the Series 2014 B Bonds Sinking Fund and the Series 2014 B Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Series 2014 B Bonds Construction Trust Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment, if any, due on the Series 2014 B Bonds and then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 2014 B Bonds Reserve Account which result in a reduction in the balance of the Series 2014 B Bonds Reserve Account to below the Series 2014 B Bonds Reserve Requirement shall be subsequently restored from the first Gross Revenues available after all required payments have been made in full in the priority as set forth above.

As and when additional Bonds ranking on a parity with the Series 2014 B Bonds are issued, provision shall be made for additional payments into the respective sinking fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective reserve account in an amount equal to the requirement therefor.

The Issuer shall not be required to make any further payments into the Series 2014 B Bonds Reserve Account therein when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2014 B Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

Principal, interest or reserve payments, whether for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Prior Bonds and the Series 2014 B Bonds, in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2014 B Bonds Sinking Fund and the Series 2014 B Bonds Reserve Account, created hereunder, and all required amounts for said accounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited. The Issuer shall make the necessary arrangements whereby required payments into said accounts shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Monies in the Series 2014 B Bonds Sinking Fund and the Series 2014 B Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2014 B Bonds Sinking Fund and the Series 2014 B Bonds Reserve Account therein, shall be used solely and only for, and are hereby pledged for, the purpose of

servicing the Series 2014 B Bonds under the conditions and restrictions set forth herein.

B. The Issuer shall, on the first day of each month (if the first day is not a business day, then the first business day of each month), deposit with the Commission the required reserve account payments with respect to the Series 2014 B Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation.

C. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in the Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into such funds during the following month or such other period as required by law, such excess shall be considered Surplus Revenues. Surplus Revenues may be used for any lawful purpose of the System.

D. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay their respective charges and fees then due. The Issuer may make the necessary arrangements whereby such required payments can be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required.

E. The monies in excess of the sum insured by the maximum amounts insured by FDIC in all funds and accounts shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

F. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 5.03 and the relevant provisions of the Prior Ordinances, and the Gross Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

G. All remittances made by the Issuer to the Commission and the Depository Bank shall clearly identify the fund or account into which each amount is to be deposited.

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

## ARTICLE VI

### **BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS**

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the monies received from the sale of the Series 2014 B Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2014 B Bonds , there shall be deposited with the Commission in the Series 2014 B Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution for capitalizing interest on the Series 2014 B Bonds .

B. From the proceeds of the Series 2014 B Bonds, there shall be deposited with the Commission in the Series 2014 B Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Series 2014 B Bonds Reserve Account.

C. As the Issuer receives advances from the Series 2014 B Bonds Construction Fund such monies shall be applied solely to payment of Costs of the Project as directed by the Issuer in the manner set forth in Section 6.02 hereof, and until expended, are hereby pledged as additional security for the Series 2014 B Bonds .

Section 6.02. Disbursements From the Series 2014 B Bonds Construction Trust Fund. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Series 2014 B Bonds Construction Trust Fund shall be made only after submission to the Purchaser of written approval from the Issuer.

Pending such application, monies in the Series 2014 B Bonds Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

## ARTICLE VII

### **ADDITIONAL COVENANTS OF THE ISSUER**

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 2014 B Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 2014 B Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2014 B Bonds or the interest, if any, thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2014 B Bonds shall not be nor constitute a corporate indebtedness of the Issuer within the meaning of any

constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of any Series 2014 B Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2014 B Bonds or the interest, if any, thereon.

Section 7.03. Bonds Secured by Pledge of Gross Revenues; Lien Positions with Respect to Prior Bonds. The payment of the debt service of the Series 2014 B Bonds shall be secured forthwith equally and ratably by a first lien on the Gross Revenues derived from the System, on a parity with the lien on the Gross Revenues in favor of the Holders of the Prior Bonds. The Gross Revenues in an amount sufficient to pay the principal of and interest, if any, on the Prior Bonds and the Series 2014 B Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation are hereby irrevocably pledged, in the manner provided herein, to such payments as they become due, and for the other purposes provided in the Bond Legislation.

Section 7.04. Rates and Charges. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal and the Issuer shall supply an opinion of counsel to such effect. Such rates and charges shall be sufficient to comply with the requirements of the Bond Purchase Agreement and the Issuer shall supply a certificate of certified public accountant to such effect. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the water rate ordinance of the Issuer enacted April 15, 2014 the sewer rate ordinance of the Issuer enacted April 15, 2014 and the stormwater rate ordinance of the Issuer enacted **December 6, 2011**, which rates are incorporated herein by reference as a part hereof.

So long as the Series 2014 B Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and in compliance with the Bond Legislation. In the event the schedule of rates and charges initially established for the System in connection with the Series 2014 B Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation.

Section 7.05. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of or encumber the System, or any part thereof, except as provided in the Prior Ordinances. So long as the Series 2014 B Bonds are outstanding, the Issuer shall not sell or dispose of all, or substantially all, of the System without either defeasing, or paying in full, the Series 2014 B Bonds .

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided for in Section 7.06 and Section 7.07 hereof, the Issuer shall not issue any obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment

from such revenues with the Series 2014 B Bonds and the Prior Bonds. All obligations issued by the Issuer after the issuance of the Series 2014 B Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Series 2014 B Bonds ; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts established by this Bond Legislation have been made and are current at the time of the issuance of such subordinate obligations.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2014 B Bonds , and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Series 2014 B Bonds and the interest, if any, thereon in this Bond Legislation, or upon the System or any part thereof.

Section 7.07. Parity Bonds. So long as the Prior Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Prior Ordinances shall be applicable.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2014 B Bonds.

No such Parity Bonds shall be issued except for the purpose of financing the costs of design, acquisition or construction of additions, extensions, betterments or improvements to the System, refunding any or all outstanding Bonds, to pay claims which may exist against the revenues or facilities of the System, or all such purposes.

So long as the Series 2014 B Bonds are Outstanding, no Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the City Clerk a written statement by the Independent Certified Public Accountants reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues expected to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest, if any, on the following:

- (1) The Bonds then Outstanding;
- (2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Bond Legislation then Outstanding; and
- (3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from the additional customers to be connected to the System as a result of additions, extensions and improvements thereto, or from any increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the date of issuance of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Consulting Engineers, which shall be filed in the office of the City Clerk prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12-consecutive-month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Certified Public Accountants, as stated in a certificate, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which has expired (without successful appeal) prior to the issuance of such Parity Bonds. For purposes of this test, the terms "Gross Revenues" and "Net Revenues" shall not include proceeds from the sale of capital assets.

All covenants and other provisions of this Bond Legislation (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Bonds and the Holders of any Parity Bonds subsequently issued from time to time within the limitations of and in compliance with this section. Bonds issued on a parity, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Gross Revenues of the System and their source of and security for payment from said Gross Revenues, without preference of any Bond of one series over any other Bond of the same series. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Bond Legislation required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Bond Legislation.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior lien of the Series 2014 B Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2014 B Bonds .

No Parity Bonds shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in this Bond Legislation with respect to the Bonds then Outstanding, and any other payments provided for in this Bond Legislation, shall have been made in full as required to the date of issuance of such Parity Bonds, and the Issuer then be in full compliance with all the covenants, agreements and terms of this Bond Legislation.

No additional bonds, notes, certificates, contracts or any other obligations shall be issued by the City unless no Event of Default shall have occurred and be continuing with

respect to the Bonds.

Section 7.08. Books; Records and Audit. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project.

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

The accounting system for the System shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by the Public Service Commission of West Virginia and the Act. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by the Issuer. The Governing Body shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Issuer shall be reported to such agent of the Issuer as the Issuer shall direct.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants (and to the extent legally required, in compliance with the applicable OMB Circular, or any successor thereto, and the Single Audit Act, or any successor thereto), and shall mail and make available generally, the report of said Independent Certified Public Accountants, to any Holder or Holders of the Series 2014 B Bonds.

Subject to the terms, conditions and provisions of Act, the Issuer has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared by the Consulting Engineers. All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Issuer.

Section 7.09. Rates. Prior to the issuance of the Series 2014 B Bonds, equitable rates or charges for the use of and service rendered by the System have been established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the City Clerk, which copies will be open to inspection by all interested parties. The schedule or schedules of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule or schedules of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule or schedules of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2014 B Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with or junior to the Series 2014 B Bonds, including the Prior Bonds; provided that, in the event that, an amount equal to or in excess of the Series 2014 B Bonds Reserve Requirement is on deposit in the Series 2014 B Bonds Reserve Account and any reserve accounts for obligations on a parity with, or subordinate to, the Series 2014 B Bonds are funded at least at the requirement therefor, such sum need only equal 110% of the maximum amount required in any year for payment of principal of and interest on the Series 2014 B Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with, or subordinate to, the Series 2014 B Bonds.

All such rates and charges, if not paid when due, shall constitute a lien upon the premises served by the System. For purposes of this test, the terms "Gross Revenues" and "Net Revenues" shall not include proceeds from the sale of capital assets. In any event, the Issuer shall not reduce the rates or charges for services set forth in the rate ordinance described in Section 7.04 hereof.

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

Section 7.10. Operating Budget and Monthly Financial Report. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year.

Section 7.11. Engineering Services and Operating Personnel. The Issuer will obtain a certificate of the Consulting Engineers stating, among other things, that the Project has been or will be constructed in accordance with the plans, specifications and designs, the Project is adequate for the purposes for which it was designed, the funding plan is sufficient to pay the costs of acquisition and construction of the Project, and all permits required by federal and state laws for construction of the Project have been obtained.

The Issuer shall provide and maintain competent and adequate engineering services covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers.

Section 7.12. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 30 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services of either system until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law.

Section 7.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.15. Insurance and Construction Bonds.A. The Issuer hereby covenants and agrees that so long as the Series 2014 B Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the prime contractor and all subcontractors as their respective interests may appear, during construction of the Project on a 100% basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Issuer, the contractors and subcontractors, as their interests may appear.

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than \$1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than \$500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

(3) WORKERS' COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of 100% of the construction contract and to be required of each contractor contracting directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of construction of the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

(4) FLOOD INSURANCE, if the facilities of the System

are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.

(5) BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

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

B. The Issuer shall require all contractors engaged in the construction of the Project to furnish a performance bond and a payment bond, each in an amount equal to 100% of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract. The Issuer shall verify such bonds prior to commencement of construction.

The Issuer shall also require all contractors engaged in the construction of the Project to carry such workers' compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project. The Issuer shall verify such insurance prior to commencement of construction. Such insurance shall be made payable to the order of the Issuer, the prime contractor and all subcontractors, as their interests may appear.

Section 7.16. Mandatory Connections. The mandatory use of the sewerage portion of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and in order to assure the rendering harmless of sewage and water borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Department of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Department of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a 20 day notice of the availability of the System, pay the rates and charges established therefor.

Any such house, dwelling or building from which emanates sewage or water borne waste matter and which is not so connected with the System is hereby declared and found to be a hazard to the health, safety, comfort and welfare of the inhabitants of the Issuer and a public nuisance which shall be abated to the extent permitted by law and as promptly as possible by

proceedings in a court of competent jurisdiction.

Section 7.17. Completion and Operation of Project; Permits and Orders. The Issuer shall complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

The Issuer has obtained all permits required by State and federal laws for the acquisition and construction of the Project.

Section 7.18. Compliance with Law. The Issuer shall perform, satisfy and comply with all the terms and conditions of the Act.

The Issuer shall also comply with all applicable laws, rules and regulations issued by the State, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System. The Issuer will provide the Purchaser, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base).

Section 7.19. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. **PRIVATE BUSINESS USE LIMITATION.** The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 2014 B Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 2014 B Bonds during the term thereof is, under the terms of the Series 2014 B Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) and that, in the event that both (A) in excess of 5% of the Net Proceeds of the Series 2014 B Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 2014 B Bonds during the term thereof is, under the terms of the Series 2014 B Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Series 2014 B Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project, or if the Series 2014 B Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of that portion of the Project to which such Private Business Use is related, all of the foregoing to be determined in accordance with the Code.

B. **PRIVATE LOAN LIMITATION.** The Issuer shall assure that not in excess of

the lesser of 5% or \$5,000,000 of the Net Proceeds of the Series 2014 B Bonds are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. **FEDERAL GUARANTEE PROHIBITION.** The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 2014 B Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

D. **INFORMATION RETURN.** The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 2014 B Bonds and the interest thereon, including, without limitation, the information return required under Section 149(e) of the Code.

E. **FURTHER ACTIONS.** The Issuer will take any and all actions that may be required of it so that the interest on the Series 2014 B Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions, or fail to take any actions the result of which would adversely affect such exclusion.

Section 7.20 **Reserved.**

Section 7.21. **Contracts.** The Issuer shall, simultaneously with the delivery of the Series 2014 B Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

Section 7.22. **Statutory Mortgage Lien.** For the further protection of the Holders of the Series 2014 B Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon delivery of the Series 2014 B Bonds, and shall be on a parity with the statutory mortgage lien in favor of the Holders of the Prior Bonds.

## **ARTICLE VIII**

### **INVESTMENT OF FUNDS; NON ARBITRAGE**

Section 8.01. **Investments.** Any monies held as a part of the funds and accounts created by this Bond Legislation other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Bond Legislation, the need for such monies for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 8.01.

Any investment shall be held in and at all times deemed a part of the fund or account in which such monies were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account.

The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank may make any and all investments permitted by this section through its own investment or trust department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year (or more often if reasonably requested by the Issuer), a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2014 B Bonds are Outstanding and as long thereafter as necessary to comply with the Code and assure the exclusion of interest on the Series 2014 B Bonds from gross income for federal income tax purposes.

Section 8.02. Arbitrage and Tax Exemption. The Issuer covenants that (i) it shall not take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Series 2014 B Bonds which would cause the Series 2014 B Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Series 2014 B Bonds ) so that the interest on the Series 2014 B Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 8.03. Designation of Series 2014 B Bonds as "Qualified Tax-Exempt Obligations." The Issuer hereby designates the Series 2014 B Bonds as "qualified tax-exempt obligations" for purposes of Section 265(b)(3)(B) of the Code and covenants that the Series 2014 B Bonds do not constitute private activity bonds as defined in Section 141 of the Code, and that not more than \$10,000,000 aggregate principal amount of obligations the interest on which is excludable (under Section 103(a) of the Code) from gross income for federal income tax purposes (excluding, however, obligations issued to currently refund any obligation of the Issuer to the extent the amount of the refunding obligation does not exceed the amount of the refunded obligation and private activity bonds, as defined in Section 141 of the Code, other than qualified 501(c)(3) bonds as defined in Section 145 of the Code), including the Series 2014 B Bonds , have been or shall be issued by the Issuer, including all subordinate entities of the Issuer, during the calendar year 2014, all as determined in accordance with the Code

If the Issuer is subject to the rebate requirements of Section 148(f) of the Code, and not exempted from such requirements, the Issuer covenants to calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, unless otherwise agreed by the Purchaser, the Issuer shall deposit, or cause to be deposited, in the Rebate Fund such sums as are necessary to cause the aggregate

amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder and shall be used only for payment of rebatable arbitrage to the United States. The Issuer shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States in the time and at the address prescribed by the Regulations as the same may be from time to time in effect with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefor. In addition, the Issuer shall cooperate with the Purchaser in preparing rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Purchaser at the expense of the Issuer. The Issuer may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer may deem appropriate in order to assure compliance with this Section 8.03. The Issuer shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 8.03 in accordance with the requirements of Section 148(f) of the Code and such Regulations. In the event the Issuer fails to make such rebates as required, the Issuer shall pay the required rebate amount, any and all penalties and other amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, and take any other actions necessary, in order to maintain the exclusion of interest on the Series 2014 B Bonds from gross income for federal income tax purposes.

The Issuer shall furnish to the Purchaser, annually, and at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information relating thereto as may be requested by the Purchaser.

## **ARTICLE IX**

### **DEFAULT AND REMEDIES**

**Section 9.01. Events of Default.** Each of the following events shall constitute an “Event of Default” with respect to the Series 2014 B Bonds:

- (1) If default occurs in the due and punctual payment of the principal of or interest, if any, on the Series 2014 B Bonds;  
or

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 2014 B Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2014 B Bonds , and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Holder of a Bond; or

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

(4) If default occurs with respect to the Prior Bonds or the Prior Ordinances.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due; (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System; (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Bonds; and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners; provided, that all rights and remedies of the Holders of the Series 2014 B Bonds shall be on a parity with the Prior Bonds.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, the completion of the Project and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds, any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

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

facilities as the Issuer itself might exercise.

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

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

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the completion of the Project and the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

## **ARTICLE X**

### **PAYMENT OF BONDS**

Section 10.01. Payment of Bonds. If the Issuer shall pay or there shall otherwise be paid to the Holders of the Series 2014 B Bonds, the principal of and interest due or to become due thereon, if any, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Gross Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2014 B Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest, if any, on the Series 2014 B Bonds from gross income for federal income tax purposes.

## ARTICLE XI

### **MISCELLANEOUS**

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2014 B Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2014 B Bonds, no material modification or amendment of this Ordinance, or of any ordinance, resolution or order amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2014 B Bonds, shall be made without the consent in writing of the Registered Owners of the Series 2014 B Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest, if any, thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein pledged therefor without the consent of the respective Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Series 2014 B Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the exclusion of interest, if any, on the Series 2014 B Bonds from gross income of the holders thereof.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Series 2014 B Bonds, and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Series 2014 B Bonds.

Section 11.04. Headings, Etc. The headings and catchlines of the articles, sections and subsections hereof are for convenience of reference only, and shall not affect in any way the meaning or interpretation of any provision hereof.

Section 11.05. Conflicting Provisions Repealed. Except for the Prior Ordinances, all ordinances, orders or resolutions and or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed; provided that, in the event of any conflict between this Ordinance and the Prior Ordinances, the Prior Ordinances shall control (unless less restrictive), so long as the Prior Bonds are Outstanding.

Section 11.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the City Clerk and members of the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 11.07. Appointment. The Issuer does hereby appoint, designate and approve the hiring of Steptoe & Johnson, Charleston, West Virginia, as bond counsel to the Issuer in connection with the issuance by the Issuer of the Series 2014 B Bonds.

Section 11.08. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in the *Dominion Post* a qualified newspaper of general circulation in The City of Morgantown, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2014 B Bonds , and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

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Section 11.09. Effective Date. This Ordinance shall take effect immediately following the public hearing and final reading hereof.

Passed on First Reading: - June 3, 2014  
Passed on Second Reading: - June 17, 2014  
Passed on Final Reading  
Following Public  
Hearing: - July 1, 2014

THE CITY OF MORGANTOWN

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Mayor

CERTIFICATION

Certified a true copy of a Bond Ordinance adopted \_\_\_\_\_, 2014 as supplemented by Supplemental Resolution duly adopted by the Council of The City of Morgantown on \_\_\_\_\_, 2014.

Dated: \_\_\_\_\_, 2014.

[SEAL]

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

**CITY OF MORGANTOWN  
COMBINED UTILITY REVENUE BONDS, SERIES 2014 B**

**BOND ORDINANCE**

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