



Office of the City Clerk

# The City of Morgantown

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**AGENDA  
MORGANTOWN CITY COUNCIL  
REGULAR MEETING  
July 1, 2014  
7:00 p.m.**

1. **CALL TO ORDER**
2. **ELECTION OF MAYOR AND DEPUTY MAYOR**
3. **OATH OF OFFICE FOR MAYOR AND DEPUTY MAYOR**
4. **ROLL CALL**
5. **PLEDGE TO THE FLAG**
6. **APPROVAL OF MINUTES: Regular Meeting – June 17, 2014**
7. **CORRESPONDENCE:**
8. **PUBLIC HEARINGS:**
  - A. **AN ORDINANCE BY THE CITY OF MORGANTOWN REPEALING SECTION 155.05 OF ITS ADMINISTRATIVE CODE, AS THE SAME APPLIES TO BONDING REQUIREMENTS FOR MEMBERS OF THE MORGANTOWN PARKING AUTHORITY.**
  - B. **AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN IT AND WEST VIRGINIA RESEARCH CORPORATION ON BEHALF OF WEST VIRGINIA UNIVERSITY AS THE SAME APPLIES TO THE FUNDING OF THE CITY'S WEST RUN PASSIVE TREATMENT INSTALLATION PROJECT AT THE MORGANTOWN MUNICIPAL AIRPORT.**

9. **UNFINISHED BUSINESS:**

- A. Consideration of **APPROVAL** of **(SECOND READING)** and **(ADOPTION)** of **AN ORDINANCE BY THE CITY OF MORGANTOWN REPEALING SECTION 155.05 OF ITS ADMINISTRATIVE CODE, AS THE SAME APPLIES TO BONDING REQUIREMENTS FOR MEMBERS OF THE MORGANTOWN PARKING AUTHORITY.** (First Reading June 17, 2014)
  
- B. Consideration of **APPROVAL** of **(SECOND READING)** and **(ADOPTION)** of **AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN IT AND WEST VIRGINIA RESEARCH CORPORATION ON BEHALF OF WEST VIRGINIA UNIVERSITY AS THE SAME APPLIES TO THE FUNDING OF THE CITY'S WEST RUN PASSIVE TREATMENT INSTALLATION PROJECT AT THE MORGANTOWN MUNICIPAL AIRPORT.** (First Reading June 17, 2014)
  
- C. Consideration of **APPROVAL** of **(SECOND READING)** of **AN 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.** (First Reading June 3, 2014)

**D. BOARDS AND COMMISSIONS**

- 10. **PUBLIC PORTION WHICH SHALL BE SUBJECT TO RULES ESTABLISHED BY COUNCIL AND ADOPTED BY RESOLUTION**
  
- 11. **SPECIAL COMMITTEE REPORTS**

**12. NEW BUSINESS:**

- A. Consideration of APPROVAL of FIRST READING of AN ORDINANCE PROVIDING FOR THE ANNEXATION OF 13.40 ACRES, MORE OR LESS, OF ADDITIONAL TERRITORY INTO THE CITY OF MORGANTOWN PURSUANT TO SECTION 8-6-4 OF THE WEST VIRGINIA CODE.**
- B. Consideration of APPROVAL of FIRST READING of AN ORDINANCE AMENDING SECTION 929.05 AND 929.06 OF THE CITY OF MORGANTOWN'S STREETS, UTILITIES AND PUBLIC SERVICES CODE BY SETTING FORTH THE RATES, FEES AND CHARGES FOR SERVICE TO CUSTOMERS OF THE MUNICIPAL SEPARATE STORMWATER SEWERAGE SYSTEM OF THE CITY OF MORGANTOWN.**
- C. Consideration of APPROVAL of FIRST READING of AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 386.08 OF ITS TRAFFIC CODE, AS THE SAME APPLIES TO PARKING FEES.**
- D. Consideration of APPROVAL of FIRST READING of AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING AND EXPANDING THE BOUNDARIES OF THE WILES HILL DESIGNATED PARKING DISTRICT, AND ALSO AMENDING THE PERMIT REQUIREMENTS AND WORDING OF THE DISTRICT'S PERMIT PARKING SIGNAGE.**
- E. Consideration of APPROVAL of FIRST READING of AN ORDINANCE BY THE CITY OF MORGANTOWN REPEALING ARTICLE 170 OF ITS ADMINISTRATIVE CODE, AS THE SAME APPLIES TO THE GREATER MORGANTOWN METROPOLITAN AREA YOUTH COMMISSION.**
- F. Consideration of APPROVAL of FIRST READING of AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING ARTICLE 129 OF ITS ADMINISTRATIVE CODE BY ADDING A NEW SECTION 129.16 PERTAINING TO THE CITY FINANCE DIRECTOR'S AUTHORITY TO REQUEST INFORMATION FROM THE WEST VIRGINIA STATE TAX DEPARTMENT.**

**G. Consideration of APPROVAL of FIRST READING and ADOPTION of A RESOLUTION STATING THE REASONABLE EXPECTATION OF THE CITY COUNCIL OF THE CITY OF MORGANTOWN TO REIMBURSE THE MORGANTOWN UTILITY BOARD FOR CAPITAL EXPENDITURES IN CONNECTION WITH THE DESIGN, ACQUISITION AND CONSTRUCTION OF COMBINED UTILITY SYSTEM FACILITIES AND IMPROVEMENTS TO THE STORMWATER PORTION OF THE SYSTEM MADE PRIOR TO THE ISSUANCE OF TAX-EXEMPT REVENUE BONDS OR OTHER OBLIGATIONS.**

**13. CITY MANAGER'S REPORT:**

**NEW BUSINESS:**

- 1. FY 2015 Capital Escrow Budget Revision #1**

**14. REPORT FROM CITY CLERK**

**15. REPORT FROM CITY ATTORNEY**

**16. REPORT FROM COUNCIL MEMBERS**

**17. EXECUTIVE SESSION: Pursuant to West Virginia Code Section 6-9A-4 in order to discuss attorney and client privileges.**

**18. ADJOURNMENT**

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

**REGULAR MEETING JUNE 17, 2014:** The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers of City Hall on Tuesday, June 3, 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, Mike Fike, and Nancy Ganz.

The Meeting was called to order by Mayor Selin.

**APPROVAL OF MINUTES:** The minutes of the regular meeting of June 3, 2014 were approved as corrected.

**CORRESPONDENCE:**

Chief Preston announced that the Morgantown Police Department was one of the top agencies in the State for enforcement of DUI offenders. Officer Dull, Officer Viola, Officer Murphy, Officer Poremba, and Officer Patterson were recognized for being five of the top fifty-two Officers in the State for being "Top Enforcers" for DUI offenders. Also, Chief Preston announced that due to the 340 arrest made this past year the Police Department received a grant in the amount of \$3,000 from the Government Highway Safety Program and the money will go towards highway safety equipment to further enhance DUI enforcement and traffic safety. Chief Preston stated that this is the second year in a row that they have received such honor.

Mayor Selin presented Terry Hough with a proclamation giving thanks for her service to Morgantown for 26 years.

**PUBLIC HEARING – 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.**

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

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

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

**PUBLIC HEARING – 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.**

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

**UNFINISHED BUSINESS:**

**AN ORDINANCE AMENDING SECTION 752.02 OF ITS CITY BUSINESS AND TAXATION CODE:** The below entitled ordinance was presented for second reading.

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.

After explanation from City Manager, Jeff Mikorski, motion by Shamberger, second by Ganz, to adopt the above entitled Ordinance. Motion carried 7-0.

**AN ORDINANCE ESTABLISHING THE RATES OF COMPENSATION:** The below entitled ordinance was presented for second reading.

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

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

**AN ORDINANCE AMENDING AND ADDING SECTIONS OF THE PERSONNEL RULES OF THE CITY OF MORGANTOWN:** The below entitled ordinance was presented for second reading.

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.

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

**BOARDS AND COMMISSIONS:** City Clerk reported under her report and requested the following appointments. By acclamation Helene Friedberg, Elizabeth Finklea, and Rosalyn Becker were reappointed to Sister Cities Commission. Amelia Garcia and Zhengjun Wang are newly appointed members of Sister Cities Commission. The Urban Landscape Committee by acclamation reappointed Kara Hurst as chair of Urban Landscape Commission and appointed Diane Tominga to serve in second ward position.

**PUBLIC PORTION:**

Brian McAllister, 349 Cobun Avenue, stated that he represented Safe Streets Morgantown. On the group's behalf, Mr. McAllister read a proposed ordinance regulating heavy truck traffic in the downtown area and asked that it be made part of record in its entirety. He stated that our downtown business district is detrimental to the health and vitality of nearby neighborhoods as well as the downtown business district itself. He expressed that he and Mr. Evan Hansen will attend the Committee of the Whole Meeting on June 24, 2014, so that Council can make inquiry on this topic as they see fit. **(Exhibit A Attached)**

Bob Milvet, 105 Forest Drive, stated that he is not in opposition of the annexation that has been brought forth to Council; he is in opposition of the storm water management project that relates to the annexation. He briefly addressed his top five concerns on why he opposes project and concluded his point by stating that he asks Council to please hear his concerns and the concerns of others who oppose this project and annexation process for the sake of a better solution for the entire community. (**Exhibit B Attached**)

**SPECIAL COMMITTEE REPORTS:**

On behalf of BOPARC, Councilor Ganz announced that Sundays are discount days at Marilla and Krepps Pools for groups of four at a cost of \$15. She stated that you can have a group up to six people with each additional person at a cost of \$2 to make the total cost of six people \$19. She noted that slides will still cost \$3 in addition to the discount. Councilor Ganz also announced that Krepps Pool hosts a water play program on select Mondays from 10 a.m. to 11:45 a.m. prior to the pool opening at 12 p.m. and the cost for that will be \$5. She also noted to visit Boparc.org for schedules and updates.

**NEW BUSINESS:**

**AN ORDINANCE REPEALING SECTION 155.05 OF ITS ADMINISTRATIVE CODE:**

The below entitled Ordinance was presented for first reading.

AN ORDINANCE BY THE CITY OF MORGANTOWN REPEALING SECTION 155.05 OF ITS ADMINISTRATIVE CODE, AS THE SAME APPLIES TO BONDING REQUIREMENTS FOR MEMBER OF THE MORGANTOWN PARKING AUTHORITY.

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

**AN ORDINANCE AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT THAT APPLIES TO WEST RUN PASSIVE TREATMENT INSTALLATION PROJECT:**

The below entitled Ordinance was presented for first reading.

AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN IT AND WEST VIRGINIA RESEARCH CORPORATION ON BEHALF OF WEST VIRGINIA UNIVERSITY AS THE SAME APPLIES TO THE FUNDING OF THE CITY'S WEST RUN PASSIVE TREATMENT INSTALLATION PROJECT AT THE MORGANTOWN MUNICIPAL AIRPORT.

After explanation from City Manager, Jeff Mikorski, and discussion, motion by Bane, second by Fike to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**A RESOLUTION APPROVING MORGANTOWN MUNICIPAL AIRPORT FUNDS 2014-2015:**

The below entitled resolution was presented for first reading and adoption.

A RESOLUTION APPROVING THE 2014-2015 BUDGET FOR THE MORGANTOWN MUNICIPAL AIRPORT FUND AND AIRPORT IMPROVEMENT FUND.

After explanation from City Manager, Jeff Mikorski, and discussion, motion by Kawecki, second by Bane, to adopt the above entitled Resolution. Motion carried 7-0.

## **CITY MANAGERS REPORT:**

### NEW BUSINESS:

#### 1. Capital Escrow Budget Revision #7

Mr. Mikorski stated that there were three projects that needed to be clarified and revised in the Capital Escrow fund based on revenues and expenditures that are expected for the projects:

1. Metropolitan Theater Motorized Rigging project Grant
2. Urban Forestry Grant
3. Morgantown Market Place

After explanation from City Manager, Jeff Mikorski, and discussion, motion by Ganz, second by Bane. Motion carried 7-0.

**REPORT FROM CITY CLERK:** City Clerk reported under her report and requested the following appointments. By acclamation Helene Friedberg, Elizabeth Finklea, and Rosalyn Becker were reappointed to Sister Cities Commission. Amelia Garcia and Zhengjun Wang are newly appointed members of Sister Cities Commission. The Urban Landscape Committee by acclamation reappointed Kara Hurst as chair of Urban Landscape Commission and appointed Diane Tominga to serve in second ward position.

**REPORT FROM CITY ATTORNEY:** Mr. Fanok corrected Terry Hough's years of service from 17 years to 26 years.

### **REPORT FROM COUNCIL MEMBERS:**

Councilor Bane:

Councilor Bane stated that he attended the Planning Commission Meeting held on June 12, 2014 and it was a marathon. He noted that the meeting was five hours long and wanted to thank those who serve on the Planning Commission because it was a tough night and had to take a lot in from both sides. Councilor Bane stated that the Planning Commission did vote against the proposed eleven story building and would hope that the City of Morgantown does not project that we are not welcoming to outside ideas. He noted that there is a lot of opportunity at different sites specifically the site off of University across from the bus depot as it would be more suitable for the eleven story building. Councilor Bane reiterated that the Council members really do appreciate the time and effort that the Planning Commission has put in and wanted to publicly say that we are not neigh sayers; we are just very cautious and want to move forward in a positive way.

Councilor Kawecki:

No Report

Councilor Nugent:

Councilor Nugent announced that there will be a Wiles Hill - Highland Park Neighborhood Association meeting and will meet on June 18, 2014 at 7 p.m. and also the meeting will fall in line with an open neighborhood forum that will be discussing the blue curb parking issue in the neighborhood and also noted that city staff will be on hand at the meeting. Councilor Nugent reviewed parking issues due to the new construction of University Place on University Avenue. Councilor Nugent received two complaints with one being that the grass is quite tall at the old armory and would like to see that issue be addressed. Secondly, he is still receiving complaints on the timing of the Campus Drive and Beechurst light. He expressed that he notified the Division of Highways on the issue and also informed them that the lack of maintenance on Beechurst needs to be addressed since it is a State route. Councilor Nugent stated that he wanted to give kudos to the new Streets and Public Works employee, Casey Osborne, and Police Officer Bennett, for providing such outstanding service to our community and taking on the role of ambassadors for the downtown community. Councilor Nugent expressed his appreciation to the City Clerk, Linda Little, for implementing the process of updated agendas and minutes from Boards and Commissions. He also noted that he appreciated the Chairs, Boards and Commissions for keeping the public informed of such meetings. Councilor Nugent announced that it was National Small Business Week and encouraged the public to shop local.

Councilor Shamberger:

Councilor Shamberger reminded the public that the Farmer's Market will be held Saturday June 21<sup>st</sup> from 8:30 a.m. to 12:00 p.m. on the corner of Spruce and Fayette Street. She also announced that Young Eagles Day will be held at the Morgantown Municipal Airport Saturday, June 21<sup>st</sup> and registration will begin at 8:00 a.m. Flights around Morgantown will then start at 10:00 a.m. and run until 4:00 p.m. Councilor Shamberger announced on June 28<sup>th</sup> there will be a tour hosted by George Longenecker at the Botanical Gardens located at 1061 Tyrone Road.

The Tour will start at the lower level parking area and will run from 9:30 a.m. to 11:00 a.m. Councilor Shamberger thanked the street crews for their hard work in patching up the potholes and also inquired to see if the City Manager knew when the State will be painting lines on Willey Street and University Avenue. The City Manager responded and said that he will contact the State to see if they have any dates for the lines. She also inquired to see if the proposed Heavy Truck Traffic Ordinance will be put on the Agenda for the Committee of the Whole Meeting on June 24, 2014. By acclamation the item was moved to the Committee of the Whole under Presentation.

Councilor Fike:

Councilor Fike stated that he enjoyed the Corporate Cup this year and also appreciated the city staff that was involved. He also announced that the Greenmont Neighborhood Association will be having its annual block party on June 28<sup>th</sup> from 4:00 p.m. to 7:00 p.m. and the Norwood Neighborhood will be hosting their block party at the Norwood Fire Station on July 12<sup>th</sup> at 6:00 p.m. Councilor Fike stated that he speaks as an individual who, at this point in his life, has no direct connection to WVU, unless you count the OLLI participation that means so much to him. All of his immediate family did, however, achieve degrees at WVU and we are loyal Mountaineers. Councilor Fike expressed that he daresay that this Council would not be compromised of the seven of us here this evening if it hadn't been for WVU and cannot disagree with the fact that open, upfront, early consultation, collaboration, and planning are vital to progress. He stated that growth is not achieved without facing some issues and that we should be very thankful this evening that we have that problem. Councilor Fike asked the question, how many cities and towns in our state would gladly trade places with us and yes, we face traffic snarls, yes we complain about Grumbien's Island but would much rather hear complaints about slowness of moving through town than see the anguish of people leaving town because loss of industry and employment options. He stated that we simply don't have those problems, unlike so many other cities and towns, and he credits WVU in large part of that. Councilor Fike expressed that if we have a

thousand more students, that ciphers into hundreds more professionals to teach them, house them, feed them, provide merchandise for them and yes that brings more into our downtown to party but will most likely participate in other activities in our downtown area as well and also bring Mom and Dad to one of our many restaurants or unique shops that we have downtown. Councilor Fike noted while it would have been courteous and respectful to include the city in any and all WVU projects, he is not convinced that anything would have turned out any differently. He also asked why are we finding fault with the very institution that makes Morgantown great and we also made the top ten lists of small cities in practically every category there is. Councilor Fike stated that the issue of public/private partnerships aside, for the moment, the products of those partnerships, we must admit, are impressive and will add beauty and esthetic value to our city. He noted that the buildings are architecturally pleasing and include commercial space that we have yearned for and promised the voters a little over a year ago that there will be more business growth. Councilor Fike stated that he is one of the 20% of the people who depend on pedestrian or bicycle modes of moving about the city and would go out of his way to walk on WVU sidewalks and corridors because they are of the highest quality. He expressed that he is greeted with wide, welcoming sidewalks at University Place and he also noted that when he buys his frozen drink at Sheetz and pays his 1% sales tax, a new business is generating revenue for us. Councilor Fike reiterated about cooperation with WVU and that we had promising early discussions about a joint venture between WVU and a host of other entities, agencies and organizations that are in the beginning stages of coming up with some very viable and enticing options for recreational opportunities possibly established in various locations, not just one central place. Councilor Fike also stated that Council needs to support our city administration in the gallant effort being made to consult frequently with WVU officials and perhaps by supporting a community dynamic, we can show President Gee that we are, and always have been, ready to do what he has called for – working together. He stated that again, he

supports and encourages mutual planning and consultation but in our demands for that to happen, let's not lose sight of the fact that we enjoy a certain level of municipal prosperity that other less fortunate towns and cities would give just about anything to possess.

Councilor Ganz:

Councilor Ganz announced that the Arts in the Park Summer Program will start June 23<sup>rd</sup> through June 27<sup>th</sup> from 8:00 a.m. -5:00 p.m. at the newly renovated art studio located at the Wiles Hill Community Center. Councilor Ganz inquired to the City Manager about the PSC rate increase and would like to know if a letter was sent out to notify the public and also was concerned about the time frame of making a decision. The City Manager's response was that there was no letter sent out but he can look into the matter and also a possible date on which the rate increase issue can be placed on the Agenda. Councilor Ganz thanked all volunteers and also thanked the Police and Fire Departments for working so hard. She pointed out that as the City continues to grow their jobs are becoming increasingly more difficult. Councilor Ganz expressed her concerns on the budget and equipment and hopes that we can continue to work with the University and Public/Private Partnerships so our Police and Fire Departments have the best and enough equipment. She noted that we need to be aware of unintended consequences due to Morgantown's growth and that we need to find a way to be compensated for or taken into consideration when we review the budget. Councilor Ganz stated that there are some important health and safety issues that have to be addressed. Councilor Ganz noted that she hopes we can work with the entities that are increasing so we can increase and provide the public service necessary to protect the citizens of Morgantown and once again she thanked the Police and Fire Department for their service. Councilor Ganz also thanked all entities involved with the Oakview annexation.

Mayor Selin:

Mayor Selin announced the unveiling of a wooded sculpture, created by Ben Gazi, which replicated the red tailed hawk and took place at the Botanical Gardens Saturday evening. She encouraged everyone to visit the sculpture. Mayor Selin stated that there was a very large pothole at the intersection of Laurel Street and Patteson Drive and would like the pothole to be addressed as soon as possible. Mayor Selin announced that she will be attending an event on June 18<sup>th</sup> at the White House as a representative of the City of Morgantown. The event is called the Makers Fair and all the representatives will be educated on the modern styles of inventing. Mayor Selin noted that she would also like to mark the passing of Greg Van Camp.

**EXECUTIVE SESSION:** Motion by Bane, second by Nugent and carried by unanimous consent. Council moved to Executive Session, pursuant to West Virginia Code Section 6-9A-4(2) (9) as it pertains to personnel matters. Time 8:20 p.m.

**ADJOURNMENT:** There being no further items of business or discussion, the meeting adjourned by unanimous consent at 10:00 p.m.

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

\_\_\_\_\_  
Mayor

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

SAFE STREETS MORGANTOWN  
[safestreetsmorgantown@gmail.com](mailto:safestreetsmorgantown@gmail.com)

June 17, 2014

**BY HAND AND EMAIL**

Morgantown City Council  
389 Spruce Street  
Morgantown, West Virginia 26505

RE: Proposed Ordinance Regulating Heavy Truck Traffic in the Downtown Business District

Mayor Selin, Deputy Mayor Shamberger, Members of City Council:

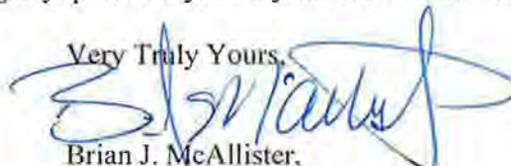
For many years, we acquiesced in believing that our City is powerless to regulate the movement of large trucks traveling through our downtown business district on state roads. Because a fair reading of West Virginia Code §§ 17-4-27 and 17C-17-12 justifies the opposite conclusion, and because we in Morgantown concluded that the movement of large trucks through our downtown business district is detrimental to the health and vitality of nearby neighborhoods as well as to the downtown business district itself, we include herewith a proposed ordinance regulating heavy truck traffic through our City's downtown. We also include the applicable statutory provisions, which grant Morgantown the authority to regulate traffic in this manner.

Please place this proposal on the Committee of the Whole agenda for June 24. At that time, we will ask that you immediately advance the proposed ordinance to the regular agenda and that you pass and enact the proposed ordinance as efficiently as possible. By regulating the movement of heavy trucks through and within the City's downtown business district, this Council will not only act in conformity with the authority specifically bestowed upon it by our Legislature, but you will simultaneously advance the collective will of our fellow citizens, as clearly expressed within our Comprehensive Plan, the Downtown Strategic Plan, the Morgantown Monongalia Metropolitan Planning Organization Long-Range Transportation Plan, the Morgantown Pedestrian Safety Plan, and designations in our Planning and Zoning Code. Additionally, you will erase years of frustration borne of our unsuccessful attempts to satisfactorily resolve this issue by negotiation.

Downtown businesses will benefit by the enactment and enforcement of this ordinance. Neighborhoods and residents will benefit by the enactment and enforcement of this ordinance. Accordingly, Morgantown will unquestionably benefit by the enactment and enforcement of the ordinance we now present for your consideration.

Mr. Evan Hansen and I will attend the Committee of the Whole meeting on June 24, 2014, so that you can make inquiry on this topic as you see fit. We thank you for your attention to this very important proposal, and we look forward to answering any questions you may have on the 24<sup>th</sup> of June.

Very Truly Yours,



Brian J. McAllister,  
Cobun Avenue

BJM

Enclosures: Downtown Business District Heavy Truck Limitation Proposal;  
W. Va. Code §§ 17-4-27 and 17C-17-12.

Cc: Jeff Mikorski, ICMA-CM  
Steve Fanok, Esquire  
Linda Little, CMC

## **DOWNTOWN BUSINESS DISTRICT HEAVY TRUCK LIMITATION**

**WHEREAS**, the 2013 Comprehensive Plan identifies the reduction of freight trucks within city limits as a community priority<sup>1</sup>; and

**WHEREAS**, key findings from the Comprehensive Plan's public input process revealed that "[t]he presence of large trucks within the city evoked frustration from many respondents. The community wants to see truck traffic rerouted around the city and prohibited within the city's core"<sup>1</sup>; and

**WHEREAS**, the Morgantown Monongalia Metropolitan Planning Organization's 2013-2040 Long Range Transportation Plan recommends reduction of "truck traffic in residential neighborhoods and on other streets where significant numbers of bicycles and pedestrians are present"<sup>2</sup>; and

**WHEREAS**, the City of Morgantown Planning and Zoning Code classifies the City of Morgantown into districts according to their intended function<sup>3</sup>; and

**WHEREAS**, the purpose of the General Business District (B-4) is to "promote development of a compact, pedestrian-oriented central business district..."<sup>3</sup>; and

**WHEREAS**, the 2010 Morgantown Pedestrian Safety Plan advises that "the most serious compromises to a safe walking environment are a) sidewalk designs which provide little or no barrier between pedestrians and heavy and/or fast moving vehicles; b) noxious emissions from truck engines and other exhausts; and c) loud noise from trucks and other heavy vehicles beginning before daylight and continuing late into the afternoon. Each of the three conditions seriously compromises the walkability, the livability and the desirability of the City and the sense of safety which is important to pedestrians" and furthermore, that "driving of large truck vehicles over curbs and sidewalks" has been reported as "troubling to pedestrians"<sup>4</sup>.

**WHEREAS**, the Downtown Strategic Plan aims to enhance the cultural, environmental, historic, educational, economic, recreational, and transportation elements of downtown Morgantown in part by enhancing pedestrian access<sup>5</sup>; and

**WHEREAS**, the Downtown Strategic Plan recommends improved pedestrian connections through the creation of enhanced streetscaping and setbacks, pedestrian streets, enhanced alleys and multipurpose trails<sup>5</sup>; and

**WHEREAS**, the City of Morgantown and the State of West Virginia continue to invest significant public resources in streetscaping, pedestrian crosswalks, pedestrian access, and curbing in the Downtown Business District;

**BE IT THEREFORE RESOLVED** that the City Traffic Code is amended as follows:

**Article 301 shall be amended to include:**

**301.071: Downtown Business District**

“Downtown Business District” means the entirety of the B-4 General Business District as defined in the City of Morgantown’s Planning and Zoning Code, but does not include Beechurst Avenue, University Avenue south of Beechurst Avenue, and Don Knotts Boulevard south of University Avenue.

**301.111: Heavy Truck**

“Heavy Truck” means any vehicle which is designed or operated for the transportation of property and 1) has combined declared gross weight of over 20,000 pounds as combined declared gross weight is defined in W. Va. Code § 17A-3-3(c), and 2) has three or more axles in total.

**Article 347.01(a) shall be amended to read:**

(a) General Prohibition. No person shall operate or move a vehicle or combination of vehicles of a size or weight of vehicle or load exceeding the maximum specified in West Virginia Code Article 17C-17 upon any street or highway within the Municipality, except pursuant to special written permit issued by the Commissioner of Highways or the City Manager. Every such permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer.

No holder of a permit issued by the Commissioner of Highways shall be required to obtain any local permit or license or pay any local fee or charge for movement on any State route within the Municipality; however, it shall be unlawful **1) to operate any such vehicle or combination of vehicles upon any roadway within the Municipality which is not a State route, except as provided in subsection (c) hereof; and 2) to operate any Heavy Truck within the Downtown Business District, except as provided in subsections (c) and (d) hereof.**

**Article 347.01(c) shall be amended to read:**

(c) Local Permit and Conditions. Upon application and for good cause, the City Manager may issue a local permit authorizing an applicant to move an oversize or overweight vehicle or combination of vehicles upon local streets **or to operate a Heavy Truck on streets and highways located within the Downtown Business District.**

No permittee shall be required to obtain a special permit from the Commissioner of Highways for the movement of the vehicle or combination of vehicles on streets or highways under local jurisdiction **or for the movement of Heavy Trucks within the Downtown Business District;** however, the approval of the Commissioner of Highways shall be required for movement upon State routes as provided in subsection (a) hereof.

The City Manager may grant a permit for a single or round trip, or for such period of time, not to exceed one year, as the City Manager in his discretion deems advisable, or for the duration of any construction project. The City Manager may limit or prescribe terms or conditions of operation for such vehicle or combination of vehicles by designating the route, hours, speed or such other restrictions as may be necessary for the preservation of the public peace, property, health and safety. The City Manager may require the posting of bond or other security necessary to compensate for any damage to a roadway or road structure. **Every such permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer.**

For each such permit, the City Manager shall charge five dollars (\$5.00) and for each hour of time or any part thereof spent by each police officer in supervising the movement of such vehicle, the applicant shall pay the sum of ten dollars (\$10.00).

Signs shall be posted indicating "no thru trucks - gross weight 5 tons" or words of similar import to apprise drivers of the limitations imposed by subsection (b) hereof. No driver shall disobey the instructions indicated on any such sign.

Violation of any of the limitations, terms or conditions of the permit granted by the City Manager shall be cause for immediate revocation or suspension of such permit, and denial of request for any future permit. Such violation shall also subject the violator to the penalty prescribed by Section 303.99.

**Article 347.01(d) shall be added to read:**

**347.01(d) Heavy Truck Limitation in Downtown Business District.**

No person shall operate a Heavy Truck in the Downtown Business District.

This provision does not limit or restrict:

- (1) The operation of any Heavy Trucks in the Downtown Business District when that operation is necessary to conduct business at a destination within the Downtown Business District where merchandise or material is loaded or unloaded during the normal course of business;
- (2) The operation of emergency or military vehicles;
- (3) The operation of any governmental or quasi-governmental vehicle in the performance of any official function or duty;
- (4) The operation of solid waste disposal vehicles;
- (5) The operation of vehicles lawfully engaged in the business of towing, hauling or carrying wrecked or disabled vehicles;
- (6) The operation of trucks upon any officially established detour in any case where a truck could lawfully be operated on the street for which such detour was established;

(7) The issuance of a special permit by the City Manager as provided in subsection (c).

**Article 347.01(e) shall be added to read:**

Signs shall be posted indicating “no thru trucks – limit 10 tons” or words of similar import to apprise drivers of the limitations imposed by subsection (d) hereof.

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<sup>1</sup>**Comprehensive Plan Ordinance of Morgantown, West Virginia, 2013**, available at <http://www.morgantownwv.gov/about/crossroads-2012-comprehensive-plan/>, Section 4, Transportation.

<sup>2</sup>**Morgantown Monongalia Metropolitan Planning Organization 2013-2040 Long Range Transportation Plan**, available at <http://plantogether.org/LRTP%20Chapter%203%20Transportation%20Goals%20and%20Objectives.pdf>.

<sup>3</sup>**Morgantown Planning and Zoning Code**, Section 1349.01 available at <http://www.morgantownwv.gov/wp-content/uploads/Planning-and-Zoning-Code-2012.pdf>; see also the **Morgantown Zoning Map**, available at [http://www.morgantownwv.gov/wp-content/uploads/official\\_zoning\\_map\\_07-01-2012.pdf](http://www.morgantownwv.gov/wp-content/uploads/official_zoning_map_07-01-2012.pdf).

<sup>4</sup>**2010 Morgantown Pedestrian Safety Plan**, available at [http://www.morgantownwv.gov/wp-content/uploads/MPSB-Plan-8\\_13\\_2010.pdf](http://www.morgantownwv.gov/wp-content/uploads/MPSB-Plan-8_13_2010.pdf).

<sup>5</sup>**Morgantown Downtown Strategic Plan**, available at <http://www.morgantownwv.gov/government/reports/>.

West's Annotated Code of West Virginia
Chapter 17. Roads and Highways
Article 4. State Road System

W. Va. Code, § 17-4-27

§ 17-4-27. Same--Control of connecting parts of state road system within municipalities

Currentness

The state road commissioner shall exercise the same control over connecting parts of the state road system in municipalities, except the regulation of traffic, that he exercises over such system generally, but he shall assume no greater duty or obligation in the construction, reconstruction and maintenance of streets which are part of the state road system than he is required to assume in the case of state roads outside of municipalities. In order, however, to promote the safe and efficient utilization of such streets, the location, form and character of informational, regulatory and warning signs, curb and pavement or other markings, and traffic signals installed or placed by any municipality on any highway or street hereafter constructed with state or federal aid shall be subject to the approval of the state road commissioner.

#### Credits

Acts 1933, Ex. Sess., c. 40; Acts 1945, c. 109; Acts 1967, c. 175.

<Acts 1995, c. 169 repealed the state road commission, and transferred powers and duties to the West Virginia commissioner of highways. See § 17-1-2.>

Notes of Decisions (9)

W. Va. Code, § 17-4-27, WV ST § 17-4-27

Current with laws of the 2014 Regular and First Ex. Sess. with effective dates through June 2, 2014

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End of Document

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West's Annotated Code of West Virginia
Chapter 17C. Traffic Regulations and Laws of the Road
Article 17. Size, Weight and Load (Refs & Annos)

W. Va. Code, § 17C-17-12

§ 17C-17-12. When state road commission or local authorities may restrict right to use highways

Currentness

(a) Local authorities with respect to highways under their jurisdiction may by ordinance or resolution prohibit the operation of vehicles upon any such highway or impose restrictions as to the weight of vehicles to be operated upon any such highway, for a total period of not to exceed ninety days in any one calendar year, whenever any said highway by reason of deterioration, rain, snow, or other climatic conditions will be seriously damaged or destroyed unless the use of vehicles thereon is prohibited or the permissible weights thereof reduced.

(b) The local authority enacting any such ordinance or resolution shall erect or cause to be erected and maintained signs designating the provisions of the ordinance or resolution at each end of that portion of any highway affected thereby, and the ordinance or resolution shall not be effective unless and until such signs are erected and maintained.

(c) Local authorities with respect to highways under their jurisdiction may also, by ordinance or resolution, prohibit the operation of trucks or other commercial vehicles, or may impose limitations as to the weight thereof, on designated highways, which prohibitions and limitations shall be designated by appropriate signs placed on such highways.

(d) The state road commission shall likewise have authority as hereinabove granted to local authorities to determine by resolution and to impose restrictions as to the weight of vehicles operated upon any highway under the jurisdiction of said commission and such restrictions shall be effective when signs giving notice thereof are erected upon the highway or portion of any highway affected by such resolution.

**Credits**

Acts 1951, c. 129.

<Acts 1995, c. 169, repealed the state road commission and transferred powers and duties to the West Virginia commissioner of highways. See § 17-1-2.>

W. Va. Code, § 17C-17-12, WV ST § 17C-17-12  
Current with laws of the 2014 Regular and First Ex. Sess. with effective dates through June 2, 2014

June 17, 2014

Morgantown City Council  
Attn: Linda Little, City Clerk  
389 Spruce Street  
Morgantown, WV 26505

Re: Oakview Annexation Process

Dear Linda:

I am Bob Milvet from 105 Forest Drive, part of the Oakview subdivision making press lately regarding stormwater and sanitary sewer concerns. With respect to the latter, I am grateful the WV Public Service Commission has mandated a correction to the sewer concerns to address public health and safety issues in this area. With respect though to the stormwater management concerns, I would like to voice my opposition to this project, especially as it relates to the annexation process necessary to commence this project. I fully understand there remains financial risk of cost escalation in this project; however, I think it is vital the community and this council understand this project and process has a lot of unanswered questions and concerns that need addressed. Here are my top 5 reasons for opposition:

- 1) The annexation process conducted by a voluntary "club" referred to as the Oakview Property Owner's Association (OPOA) is causing confusion among some of the "yea" voting homeowners who appear to be disconnected as to the scope of the project and the results of annexation:
  - a. Dues will go away.
  - b. City taxes will pay for snow removal.
  - c. Our homeowner's insurance will go down.
  - d. Our property values will stop declining.
  - e. We will have better police and fire services than today
  - f. The project will fix the water issues coming from Schubert Place and Poplar Woods Drive onto /across Poplar Drive and Forest will be fixed.

Some of these items were presented as selling points supporting annexation.

- 2) As a result of #1 above, the annexation process naturally has caused a divide among the neighborhoods. Oakview road owners have pulled out completely, and this should not be ignored. This divide is putting the OPOA at enough financial risk to effectively end the association as we know it, voluntary or not. This effective termination will result in:

- a. Snow removal ceasing at the association level
  - b. Fire hydrant maintenance fees going unpaid
  - c. Current road maintenance (e.g., pot hole repairs) will be on the City's waiting list.
  - d. Current president even indicated in 6/8/14 meeting that he would stop paying dues if the association neighbors, even in part, would not support paying the fee to the annexation boundary surveyor.
- 3) There remain questions among several homeowner's, including me, about the legitimacy of the annexation procedures conducted by the OPOA.
- a. Contiguous road concerns - Oakview vs. Poplar
  - b. Do we have a valid boundary survey in place to understand who is in and who is out?
  - c. Definition of eligible homeowner and freeholder is at question
    - i. Slice of land vs. buildable property
    - ii. All eligible voting members versus name of land deed
  - d. Signature issues
  - e. Inclusion of prior "nays" to "yeas" but not v/v
  - f. Who is part of the 243 +/- homeowners / businesses who the OPOA through this process will be subjecting to new stormwater surcharge, and does this create legal risk that is currently unknown
    - i. MUB threats to shut off water for those who don't pay the surcharge (cruel and unusual punishment?)
- 4) This entire process is being done for the sake and benefit of ~ 4 homeowners who are in a floodplain. The water AND sewer issues experienced by these homes are not a result of any activities conducted by the 27 other homes in the OPOA nor the majority of the 243 +/- homes and business in the watershed. Yet it is this latter audience who is being asked to pay the bill to fix a specific stormwater issue affecting only these homes.
- 5) In my opinion, most importantly as respects bullet 4 this project is not a comprehensive stormwater remediation project for the benefit of the entire district. If the scope of the project was expanded to include stormwater runoff problems encountered all throughout Oakview, I believe an overwhelming majority of the homeowners on Oakview, Poplar, Forest and Morgan drives would support annexation to fix the problem. I am not against paying a surcharge on my MUB bill to pay for an appropriate project. However, I would rather see a more comprehensive plan and a more comprehensive strategy to include and remediate all of the surrounding stormwater water issues in Oakview district.
- a. We have learned that there is ~ \$127,000 in the current project budget to fix the roads after the project is complete, yet we have not seen "for construction drawings" showing what this includes? If Forest is further damaged by prohibited truck traffic > 5 tons, is this part of the \$127? If so, why repair the surface and not underneath? If not, will be able to protect Forest from this traffic?

- b. Without a comprehensive project, water will continue to undermine/erode the earth and road from Ms. Cooper's property at Forest / Poplar and will continue to provide flood water to the basin at the bottom of Forest. It will also continue freezing in the winter which currently prevents garbage removal several months a year. This problem is equal to if not greater than the stormwater problem behind the homes of Susan Morgan and Rich Brooks.
- c. Morgan drive continues to deteriorate due to stormwater drainage problems, yet this does not appear to be part of the plan either.

In conclusion, I personally believe in helping my neighbors and being part of a neighborhood. I am outraged that members of this community have been harmed and continue to be harmed by uncontrolled development. However, it is not my fault, nor is it the fault of the homeowner's in the association. Yet we are being asked to bear the brunt of this financial burden for a long period of time while at the same time being asked to give up certain property liberties by forcing annexation upon many of us who are simply concerned about this process.

I ask that you please hear my concerns and the concerns of others who oppose this project and annexation process for the sake of a better solution for the entire community.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bob Milvet', with a long horizontal flourish extending to the right.

Bob Milvet  
105 Forest Drive



**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 July 1, 2014

### New Business

#### 1. FY 2015 Capital Escrow Budget Revision #1

With the beginning of the FY2015 there are a number of projects that need to be modified in the Capital Escrow fund for the upcoming year, including the carryover of grant and donated funds for projects and the initiation of the purchase of additional equipment and funding for new projects. As seen in the attached memo from Finance Director, JR Sabatelli, the net change in the Capital Escrow fund is \$285,200. I recommend City Council authorize the changes in the Capital Escrow budget as identified.

Jeff Mikorski ICMA-CM,  
Morgantown City Manager

# City of Morgantown

Finance Department

389 Spruce Street

Morgantown, WV 26505

Phone 304-284-7407/Fax 304-284-7418

[jsabatelli@cityofmorgantown.org](mailto:jsabatelli@cityofmorgantown.org)

## MEMO

**DATE:** June 25, 2014

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

**FROM:** JR Sabatelli, CPA  
Finance Director

**RE:** Capital Escrow Budget Revision #1

The City of Morgantown has received 2 contributions during the fiscal year ending June 30, 2014 that will be expended during the coming fiscal year beginning July 1, 2014. The City received funds from AllState Insurance for the Bike Board as well as a contribution for traffic control improvements along the University Avenue corridor near the Evansdale Campus. The adjustment below allocates the funds received based on the respective restrictions and increases the prior year carryover due to the timing of receipt of the donations. Additionally, FY15 contingency funds are requested to be reallocated for an administrative vehicle, a downtown retail study, office space improvements at the airport, and to fund the employee tuition reimbursement program.

Budget Line	Current Unencumbered Balance	Current Budget	Proposed Revised Budget	Net Change
Revenues:				
Prior Year Carryover		-	258,200	258,200
Expenses:				
Traffic	-	-	250,000	250,000
Bike Board	-	-	8,200	8,200
Administrative Vehicle	-	-	35,000	35,000
MSM Downtown Retail Study	-	-	5,000	5,000
Airport Office Space Improvements	-	-	5,000	5,000
Tuition Reimbursement Program	-	-	25,000	25,000
Contingencies	-	140,005	70,005	(70,000)
				<u>258,200</u>
Net Revision				-

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

**URBAN LANDSCAPE:**

**Nicole Panaccione, Fourth Ward and Jerry Stekete, Seventh Ward are resigning terms expire on 7/1/2014. Will advertise for applicants.** Nominated by CM, one from each wd, 13 members with staggered terms and 1 Councilor.

**\*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.***

**6/24/14**

**AN ORDINANCE BY THE CITY OF MORGANTOWN REPEALING SECTION 155.05 OF ITS ADMINISTRATIVE CODE, AS THE SAME APPLIES TO BONDING REQUIREMENTS FOR MEMBERS OF THE MORGANTOWN PARKING AUTHORITY.**

The City of Morgantown hereby ordains that Section 155.05 of its Administrative Code is repealed in its entirety, as indicated below (deleted matter struck through):

~~155.05 MEMBERS' BONDS:~~

~~Each member of the Parking Authority shall furnish a bond in the sum of five thousand dollars (\$5,000) with proper corporate surety of a bonding company authorized to do business within the State, such bond to be payable to the City with such conditions as Council may require. Such bonds shall be filed with the City Clerk and the premiums thereon shall be paid out of the funds of the Parking Authority.~~

This Ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_  
MAYOR

ADOPTED:

FILED:

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

RECORDED:

# *City of Morgantown*

## *Finance Department*

*389 Spruce Street*

*Morgantown, WV 26505*

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

*jsabatelli@cityofmorgantown.org*

# MEMO

**DATE:** 5/23/2014

**TO:** Jeff Mikorski, City Manager

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

**CC:** Morgantown Parking Authority and  
Tom Arnold, MPA Executive Director  
Steve Fanok, City Attorney

**RE:** Parking Authority Members' Bonds

---

City Code Section 155.05 requires that each member of the Morgantown Parking Authority furnish a bond in the sum of \$5,000 to be paid from the funds of MPA. I have consulted with our Insurance Agent, the City Attorney's Office, my colleagues in the WV GFOA and MPA Director Tom Arnold related to this code section and the requirements thereof. The Authority members are covered under the City's insurance for acts of officials, a requirement in state code does not (or no longer) exists requiring these bonds, and the Authority members are not and have not been bonded as Section 155.05 requires. As Finance Director, I am responsible for insurance related matters in the City and as such, due to the coverage from our insurance and the lack of a code state requirement, I recommend that City Code Section 155.05 be repealed. Please let me know if you have any questions.

**AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN IT AND THE WEST VIRGINIA RESEARCH CORPORATION ON BEHALF OF WEST VIRGINIA UNIVERSITY AS THE SAME APPLIES TO THE FUNDING OF THE CITY'S WEST RUN PASSIVE TREATMENT INSTALLATION PROJECT AT THE MORGANTOWN MUNICIPAL AIRPORT.**

The City of Morgantown hereby ordains that its City Manager is authorized to execute in duplicate the 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:

**Subcontract Between  
West Virginia University Research Corporation  
on behalf of  
West Virginia University  
and  
City of Morgantown**

This Subcontract, entered into as of \_\_\_\_\_, 2014, by and between the West Virginia University Research Corporation on behalf of West Virginia University (hereinafter referred to as "WVURC") and the City of Morgantown. (hereinafter referred to as Subcontractor").

**Project Specifications**

**Subcontract No. 14-682-COM**

**Project Sponsor: WV Department of Environmental Protection (Grant No. NPS 1379)**

**Project Title: West Run Passive Treatment Installation – Airport Portals Phase II**

**Period of Performance: May 15, 2014 through September 30, 2015**

**Subcontract Type and Amount: Cost Reimbursable - \$ 216,553.00**

**WVURC Representatives:**

**Technical: Jennifer Hause**

**Administrative: Margaux Johnson**

**Subcontractor Representatives:**

**Technical: Stephen Fanok**

**Administrative:**

This Agreement is subject to all terms and conditions appended hereto, including General Terms and Conditions, and Special Terms and Conditions, if any.

**West Virginia University Research  
Corporation on behalf of  
West Virginia University**

**City of Morgantown**

\_\_\_\_\_  
Signature

Mary Jane Buckland  
Name

Assistant Secretary  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## **Terms and Conditions**

### **Article 1 - Statement of Work**

The work to be performed by the Subcontractor is set forth in Attachment 1 attached hereto and incorporated herein. The Subcontractor will meet the schedules and activities outlined in the Statement of Work.

### **Article 2 - Period of Performance**

The project period of performance under this Subcontract shall commence on May 15, 2014, and continue through September 30, 2015. This includes the submission of any and all draft and final reports.

### **Article 3 - Program Officials**

Jennifer Hause has been designated as the WVURC Technical Representative. As the Technical Representative, Ms. Hause will be the point of contact between WVURC and the WV DEP for technical matters.

### **Article 4 - WVURC's Contracting Officer**

WVURC has designated Ms. Mary Jane Buckland to be the Contracting Officer with sole responsibility for all administrative and budgetary matters and the single point of contact with the WV DEP for such matters.

### **Article 5 - Financial Support**

The total cost for work performed under this Subcontract payable to Subcontractor \$ 216,553.00. The Subcontractor agrees to provide matching funds in the amount of \$ 176,456.00 for the total project cost of \$ 393,009.00. A detailed budget for these costs is attached hereto and incorporated herein as Attachment 1. Subcontractor is expected to bring the activities outlined in Attachment 1 to a conclusion within the funds provided. Costs in excess of \$ 216,553.00 require prior written approval in the form of an amendment to this agreement.

### **Article 6 - Payment**

WVURC shall reimburse the Subcontractor, not more often than monthly for allowable costs actually incurred and chargeable to WVURC in accordance with the budget categories outlined in Attachment 2. The Subcontractor shall submit invoices to:

Jennifer Hause  
WV Water Research Institute  
West Virginia University  
PO Box 6064  
Morgantown, WV 26506-6064  
[jhause@wvu.edu](mailto:jhause@wvu.edu)

All invoices shall include the following:

- Name and address of subcontractor

- Invoice date
- Project No. 13-724, West Virginia University Research Corporation
- Period of Performance
- Current and cumulative costs
- Description of service and price
- Name and address of official to whom payment is to be sent
- Name (where practicable), title, phone number and mailing address of person to be notified in the event of a defective invoice
- Statement as to truth and accuracy of invoice
- Any other information or documentation as may be required
- will provide a written progress update report detailing activities completed

Subcontractor will submit the DEP Request for Reimbursement from along with supporting documentation to WVURC to obtain reimbursement for allowable expenses. Supporting documentation includes a spreadsheet or other budget breakdown of expenses incurred during the specified period and based on budget categories as outlined in the original project proposal.

A detail of the cost-sharing provided shall also be submitted with each invoice. Invoices will not be paid without proper cost sharing documentation.

An invoice marked "final" must be submitted within thirty (30) days of the expiration of this Subcontract. Failure to submit said invoice may result in nonpayment.

**Article 7 -- Financial Considerations**

The cost of this Subcontract, including both the direct and indirect costs, will not exceed the amount set forth in this Subcontract. The total cost is to be based upon on the following:

1. Direct cost for salaries and wages and associated fringe benefits for all personnel to be assigned to work on the Subcontract;
2.
  - a. F&A costs at the rate of 10% of MTDC –consisting of all salaries and wages fringe benefits, materials, supplies, services, travel and subcontracts up to the first \$ 25,000 of each subcontract(regardless of the period covered by the subcontract). MTDC shall exclude equipment, capital expenditures, charges for patient care, tuition remission, rental costs of off-sit facilities, scholarships and fellowships as well as the portion each subcontract in excess of \$ 25,000; or
  - b. For Subcontracts directly funded through federal subgrants, the F&A costs at the percent established by the U.S. DHHS Audit Agency for the Subcontractor during the official period of the Subcontract beginning and ending dates, but provisionally as stated in the Subcontract for each Subcontract and subject to final audit adjustments;
3. Cost of special equipment essential to the Subcontract and usable only on the Subcontract;
4. Cost of materials used on the project;
5. Travel expenses;
6. Telephone and information technology charges, tuition;
7. Subcontracts, books, computer software, facility rentals, and manuals;
8. Reimbursement for costs of travel an subsistence will be made in accordance with WV State Travel Regulations and will be limited to travel within the State of West Virginia

(except for out-of-state travel which is considered essential to the effective execution of the project and which is either specifically itemized in the approved Research proposal or is approved in advance in writing by the WV DEP through WVURC one month prior to the travel).

9. The Subcontractor is expected to limit purchase of non-expendable equipment to purchases authorized by the subcontract as approved by WVURC. Titles of non-expendable equipment will be vested in the Subcontractor unless otherwise provided for in the Subcontract.
10. The Subcontractor will include with each requisition and invoice submitted to the WVURC a certification that the items included therein as direct costs have been excluded from all indirect costs.
11. The Subcontractor will pay all costs incurred in conducting the work on this Subcontract and will be reimbursed upon approval by WVURC.
12. WVURC will retain 10 % of the total invoiced amount until the acceptance of the draft final report and the final report by WVURC. Upon acceptance of the draft final report, the Department will process payment for the final 10 % of the total invoice amount.
13. The Subcontractor will immediately reimburse WVURC for any and all overpayments made by WVURC to the Subcontractor pursuant to the Subcontract and agrees that the statute of limitations will not commence to run against WVURC for such overpayments until the same is discovered and made know to WVURC.

#### **Article 8 – Prior Approval**

The Subcontractor is required to obtain prior approval by WV DEP through WVURC prior to assigning, subletting, or transferring any of the work provided for under this Subcontract.

#### **Article 9 – Equipment**

All apparatus and equipment approved for purchase in the Subcontract will be used exclusively on the project and will be at the disposal of the Subcontractor for the duration of the specific project. Title to non-expendable equipment purchased by projects funds will be vested in the Subcontractor upon completion of the project, unless the parties agree otherwise prior to acquisition of the equipment. Purchase of minor items of apparatus and equipment listed as a lump sum in the Subcontract will not exceed the amount itemized in the budget unless approved in writing in advance by the WV DEP through WVURC.

#### **Article 10 – Records**

WVURC and WV DEP will exercise general supervision over the work completed under this Subcontract. The Subcontractor will maintain accounting records and other evidence pertaining to the costs incurred on the Subcontract. These data will be made available for inspection by WVURC/WV DEP at all reasonable times at the office of the Subcontractor during the period of the Subcontract and for three years after the date of the final payment by WVURC with respect to the Subcontract. Copies thereof will be furnished if requested.

WVURC and WV DEP will at all times be accorded proper facilities for review and inspection of work hereunder, and will at all reasonable times have access to the premises and to all data, notes, records, correspondence, instructions and memoranda of every description pertaining to the work hereunder.

Costs allowable and administrative rules under this Subcontract shall be determined in

accordance with OMB Circular A-87 and A-102.

**Article 11 -- Audit Requirements**

Requirement for the conduct, oversight, scope, and frequency of financial and compliance audits shall be established in accordance with 10 CFR 600.120.

The Subcontractor also agrees to abide by OMB Circular A-133, which implements the Single Audit Act, the Subcontractor agrees to obtain a single audit from an independent auditor if it is expends \$ 500,000.00 or more in total in Federal funds in any fiscal year.

**Article 12 -- Propriety Rights/Ownership of Data**

The parties under this Subcontract agree that if patentable discoveries or inventions should result from the work of the Subcontractor hereunder, all rights accruing from such discoveries or inventions will be the sole property of the Subcontractor. For Subcontracts funded solely with State funds, only WVURC/ WV DEP will be an irrevocable, nonexclusive, nontransferable and royalty-free license to practice such invention in the manufacture, use and disposition, according to law and any article or mutual and the in the use of any that may be developed as part of the under this Subcontract.

The ownership of data collected under this Subcontract together with summaries and charts derived there from, will be vested in WVURC with the proviso that the Subcontractor has a royalty free license to use the data for research, teaching, and other academic purposes.

**Article 13 -- Governing Laws**

The conduct of work under this Subcontract is subject to pertinent State and Federal laws, regulations and policy procedure directives. This Subcontract is further subject to any constitutional prohibition, either Federal or State.

Further, it is understood that the Subcontractor is qualified and able to conduct the research, but is unable to do as contemplated under the provisions of WV Code 17-2A-9 without charge or compensation because of budget limitations, and in order to obtain research, WVURC and WV DEP agrees to compensate the Subcontractor as herein provided by this Subcontract.

All disputes between the parties of this Subcontract will be settled in accordance with the Constitution and laws of the State of West Virginia.

**Article 14 -- Reporting and Deliverables**

The Subcontractor will submit deliverables according to the approved Statement of Work, under otherwise provided by WVURC. Deliverables are to be submitted in two hardcopies and one electronic version, in MS-WORD compatible format. Deliverables shall be submitted on or before the last day of the Subcontract and shall be accompanied with an invoice. If the time frames and work schedules outlined in the Statement of Work are deviated from, a summary stating the reasons why the project is not on schedule and the impact on the estimated completion date shall be included with the deliverable. Additionally, a new time schedule shall be submitted for review and approval by WVURC. Failure to submit deliverables will result in withholding of all future payments for the project until the deliverables are submitted and approved, and may subsequently result in termination of the project. All deliverables will be reviewed by WVURC

within ninety days of submission.

The Subcontractor agrees to submit progress reports when any request for payments is made to WVURC. The Subcontractor also agrees to submit semi-annual and annual reports of progress for all projects identified in this agreement. The reports must contain the elements described on the program's website (<http://www.dep.wv.gov/nonpoint>).

Reporting periods are as follows:

- October 1 – March 30 with the report due May 1
- April 1 – September 30 with the report due on November 1
- A final report is due following the completion of the grant.

A final report, satisfactory to the WVURC Technical Representative, must be submitted for review by WVURC. When approved, two bound paper copies; an electronic copy in Portable Document Format; and one copy of the final report in MS-WORD compatible format, as well as all additional data/files will be submitted to WVURC unless stated otherwise by the Subcontract. Acceptance of the final report by WVURC is a requirement for fulfillment of the Subcontract; however, no report will be arbitrarily rejected. The test of the above-designated report and software must be written in a manner that will be intelligible to their intended audiences.

Final reports will be reviewed and comments provided or the report accepted within thirty days of receipt by WVURC.

#### **Article 15 – Publication**

Papers, interim or final reports, forms or other materials that are a part of any Subcontract will not be formally registers as copyrights with the Library of Congress except with the written approval of WV DEP through WVURC. The Subcontractor is free to publish or use the data and results without restriction after acceptance and publication of the final report.

Neither party will release, either orally or in writing, information, forms or other material developed on this Subcontract prior to publication of all final reports except with the prior written approval of all parties involved. However, there is no intent to limit discussion of the project with small technical groups or lectures to employees or students. Lectures to other groups which describe the research plans but disclose neither data nor results are permissible without advance approval by WVURC. It is understood that WVURC, WV DEP and Subcontractor will comply with the requirements of the WV FOIA.

The Subcontractor will advise WV DEP through WVURC in writing of any proprietary or patentable information contained therein and may, as necessary, formally request that WVURC or WV DEP delay the information's publication or dissemination. WVURC will refrain from publishing any such information categorized by the Subcontractor as proprietary or patentable for a period not to exceed 180 days from the date of such written request, to enable Subcontractor to appropriately coordinate with WVURC and WV DEP to file for protection of any proprietary or patentable Intellectual Property interests.

All published reports of projects will, unless stated otherwise in the Subcontract, contain the following statements within the document: "Prepared for the WVURC and the West Virginia Department of Environmental Protection," and

"The contents of this report reflect the views of the author who is responsible for the facts

and the accuracy of the data presented herein. The contents do not necessary reflect the official views or policies of the State or WVURC. This report does not constitute a standard, specification, or regulation. Trade or manufacturers' names which may appear herein are cited only because they are considered essential to the objectives of this report. Neither the State of West Virginia or WVURC, endorses products or manufacturers."

#### **Article 16 – Supplies and Services**

The Subcontractor shall furnish all personnel, facilities, equipment, material, supplies, and services and otherwise do all things necessary for, or incident to, the performance of the work outlined in Attachment 1 hereto.

#### **Article 17– Acceptance**

Acceptance of all technical work and effort under this Subcontract shall be accomplished by the Program Manager.

#### **Article 18 – Equal Employment Opportunity and Nondiscrimination**

During the performance of this Subcontract, the Subcontractor and any of its subcontractors agree that there shall be no discrimination against any individual employed in work covered by this Subcontract, or who is employed in other work or against any application for such employment, because of race, color, religion, sex, age, national origin or handicap. This provision shall include, but not limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Further, the Subcontractor agrees that they, along with any lower tier subcontractors, will comply with the EO of the Governor of the State of West Virginia, dated October 16, 1963, and December 15, 1965, and the Civil Rights Act of 1964. During the performance of this Subcontract, the Subcontractor, for itself, its assignees and successors in are as follows.

WVURC will cooperate with the Subcontractor in meeting its commitments and goals with regard to the maximum utilization of minority business enterprises, and will use its best efforts to insure that minority business enterprise shall have the maximum practicable opportunity to compete for any subcontract under this Subcontract.

Additionally, the Subcontractor will comply with all Federal statutes relating to nondiscrimination. These include, but are not limited to: (a) Title VI of the Civil Rights Act of 1964 which prohibits discrimination on the basis of race, color, or national origin; (b) Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972, as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, relation to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912, as amended, relating to the confidentiality of alcohol and drug abuse patient records; (h) Title VIII of Civil Rights Act of 1968, as amended, relating to nondiscrimination in the sale, rental, or financing of housing; (i) Intergovernmental Personnel Act of 1970 ( 42 U.S.C. ?? 4728-4763) relating to prescribed

standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration; (j) any other nondiscrimination provision in the specific statute(s) under which application for Federal assistance is being made; and (k) the requirements of any other nondiscrimination statutes which may apply to this application.

The Subcontractor will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

The Subcontractor will not discriminate on the grounds of race, color or nation origin in the selection and retention of subcontractors, including procurement of materials and lease of equipment. The Subcontractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Federal Regulations, including employment practices when this Subcontract covers a program set forth in Appendix B of the Regulations.

The Subcontractor certifies that it will or continue to provide a drug-free workplace by:

- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- b. Establishing an ongoing drug-free awareness program to inform employees about –
  1. The dangers of drug abuse in the workplace;
  2. The Subcontractor's policy of maintaining a drug-free workplace;
  3. Any available drug counseling, rehabilitation and employee assistance programs; and
  4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- c. Making it a requirement that each employee to be engaged in the performance of the Subcontract be given a copy of the statement required by paragraph (a);
- d. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will –
  1. Abide by the terms of the statement, and
  2. Notify the employer in writing of their conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;
- e. Notifying WVURC in writing, within ten (10) calendar days after receiving notice under subparagraph (d)(2), from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the State agency has designated a central point for the receipt of such notices. Notice shall include the identification numbers of each affected subcontract;
- f. Taking one of the following actions, within thirty (30) calendar days of receiving under subparagraph (d)(2), with respect to any employee who is so convicted –
  1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;
- g. Making a good faith effort to continue to maintain a drug-free workplace through

implementation of paragraphs (a), (b), (c), (d), (e), and (f).

All solicitations made by the Subcontractor for work to be performed under a subcontract (including procurement of materials and equipment), each potential subcontractor or supplier shall be notified by the Subcontractor of the Subcontractor's obligations under this Subcontract and the regulations relative to nondiscrimination on the grounds of race, color, religion, sex, age, national origin, or handicap.

The Subcontractor will provide all the information and reports required by the Regulations, orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, and other sources of information and its facilities as may be determined by the WVURC and WV DEP if pertinent to the ascertaining compliance with such regulations, orders and instructions. Where any information required of the Subcontractor is in the exclusive possession of another who fails or refuses to furnish this information, the Subcontractor shall also certify to WV DEP through WVURC, and shall set forth what efforts it has made to obtain the information.

In the event of the Subcontractor's noncompliance with the nondiscrimination provisions of the Subcontract, these sanctions may include, but not limited to:

1. Withholding of payments to the contractor under this Subcontract until the Subcontractor complies; and/or
2. Cancellation, termination or suspension of the Subcontract, in whole or in part.

The Subcontractor will include all of the above provisions in this article in every subcontract, including procurement of materials and lease of equipment, unless exempt by the regulations, orders or instructions issues pursuant thereto. This Subcontractor will take such action with respect to any subcontractor or procurement as WV DEP through WVURC may direct as a means of enforcing such provisions including sanctions for noncompliance; provided however, that in the event the Subcontractor becomes involved in or is threatened in or is threatened with litigation by a subcontractor or vendor, the Subcontractor may request the WV DEP through WVURC to enter into such litigation to protect the interests of the United States.

**These provisions shall be fully and effectively enforced, and failure to comply therewith shall be regarded as a material breach of this Subcontract.**

#### **Article 19 – Lead-Based Paint Poisoning**

The Subcontractor agrees to comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. ?? 4801 et seq.), which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

#### **Article 20 – Compliance**

The Subcontractor will comply, as applicable, with the following Acts:

- Hatch Act provisions (5 U.S.C. ?? 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with State or Federal funds.
- Davis-Bacon Act ( 40 U.S.C. ?? 276a to 276a-7)
- Copeland Act (40 U.S.C. ?? 276c and 18 U.S.C. ? 874)
- The Contract Work Hours and Safety Standards Act (40 U.S.C.?? 327-333) regarding

- labor standards for federally assisted construction sub agreements.
- Flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234), which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$ 10,000.00 or more.
- Environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and EO 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with 11988; (e) assurance of project consistency with the approved State management programs developed under the Coastal Zone Management Act of 1972 (16 U.S.C. ?? 1451 et seq.); (f) conformity of Federal actions of State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. ? 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
- The Wild and Scenic Rivers Act of 1968 (16 U.S.C. ?? 1271 et seq.) relating to protecting components or potential components of the national wild and scenic rivers system.
- Provide assurance in compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470), EO 11593 (identification and preservation of historic properties), and the Archaeological Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

**Article 21 -- Termination**

This Subcontract may be terminated by either party with sufficient cause, by providing thirty (30) days written notice to the other party.

If at any time West Virginia Department of Environmental Protection Grant No. NPS 1464 is terminated by the West Virginia Department of Environmental Protection Agreement shall also be terminated upon receipt by the Subcontractor of written notice to that effect from the WVURC. The Subcontractor shall be reimbursed for uncancellable obligations properly incurred prior to the date of notice of termination. If through any cause the Subcontractor shall fail to fulfill in a timely and proper manner its obligations under this Subcontract, or in the event of violation of any of the covenants contained herein, the WVURC shall thereupon have the right to terminate this Subcontract by giving written notice to the Subcontractor specifying the effective date of termination.

The Subcontractor will insure that its contractor procure, from a reputable surety, a performance bond and payment bond for the total amount of the contract. If the Subcontractor defaults and the surety waives its right to perform the contract or otherwise arrange for completion of the contract, the Subcontractor will reimburse WVURC on a pro rate share, from the funds distributed by the Subcontractor by the surety.

**Article 22 – Direct and Indirect Costs**

The Subcontractor may charge overhead at the percent established by their federal cognizant audit agency for the Subcontractor during the official period of the Subcontract beginning and end dates, but provisionally and subject to final audit.

In accordance with section 319 (h) of the Clean Water Act, administrative costs in the form of salaries, overhead, or indirect costs shall not exceed in any fiscal year 10 % of the amount of the Subcontract.

Further, the Subcontractor agrees that management fees or similar charges in excess of direct and indirect costs are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this Subcontract.

#### **Article 23 -- Export Control**

WVURC and Subcontractor are subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities, and that its obligations hereunder are contingent on compliance with applicable U.S. export laws and regulations (including the Arms Export Control Act, as amended, and the Export Administration Act of 1979). The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States Government and/or written assurances by the Subcontractor that the Subcontractor will not re-export data or commodities to certain foreign countries without prior approval of the cognizant government agency. While WVURC agrees to cooperate in securing any license which the cognizant agency deems necessary in connection with this Agreement, WVURC cannot guarantee that such licenses will be granted.

#### **Article 24-- Indemnification**

To the extent permitted by law, Subcontractor shall at all times defend, indemnify and save harmless WVURC, WVU and the Project Sponsor and their respective employees, agents, successors and assigns ("Indemnified Entities"), from and against any and all claims, liability, loss, cost or expense of whatsoever kind or nature, including without limitation attorneys' fees, court costs and interest, which may be sustained or incurred by the Indemnified Entities arising out of or attributable to the performance of the Subcontract, whether or not caused in part by the negligence of the Indemnified Entities, or a third party, except where such liability is caused by the sole negligence of the Indemnified Entities. Subcontractor's indemnity obligations under this Subcontract shall not be limited by the provisions of any workers' compensation or similar act.

#### **Article 25-- Insurance**

Subcontractor shall maintain at its sole cost and expense all insurance of any kind or nature which may be required by the laws, regulations and/or ordinances applicable thereto. Subcontractor shall, at a minimum, maintain statutory workers' compensation insurance and comprehensive general liability insurance, including contractual liability coverage, with limits of a minimum amount of one million dollars (\$1,000,000) covering all of its operations in connection with the performance of this Subcontract. Subcontractor shall also maintain motor vehicle liability insurance with limits of liability in the minimum amount of one million dollars (\$1,000,000), covering any and all automobiles, trucks or other motor vehicles used by the Subcontractor for or in connection with the performance of this Subcontract. WVURC, WVU and the Project Sponsor shall be named as additional insured's on the comprehensive general liability and motor vehicle liability insurance policies of the Subcontractor. The Subcontractor's failure to maintain said insurance shall constitute a default by the Subcontractor under this Subcontract.

**Article 26 -- Liability**

Each party shall be responsible for its own negligent or intentional acts or omissions in the performance of this Subcontract.

Neither party to this Subcontract shall be held liable by the other party for personal injury or property damage in connection with the performance of this Subcontract. The Subcontractor shall maintain adequate liability insurance during the life of this Subcontract.

**Article 27 -- Independent Contractor**

Subcontractor, acting as an independent contractor and not as an agent of WVURC, is willing to perform said work upon the terms hereinafter provided.

**Article 28 -- Force Majeure**

Neither WVURC nor Subcontractor shall be liable or deemed to be in default for any delay or failure in performance under this Contract or interruption of services resulting directly or indirectly, from acts of God, civil or military authority, acts of public enemy war, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, or any similar cause beyond the reasonable control of WVURC or Subcontractor.

**Article 29 -- Conflict of Interest**

By signing this Agreement the Subcontractor certifies that the institution has an active and enforced Conflict of Interest policy which complies with the awarding agency's guidelines. It also certifies that the relevant investigator(s) are in compliance with the Subcontractor's Conflict of Interest policy. In the event the Subcontractor does not have such a policy, it shall request a copy of WVURC's Conflict of Interest policy and shall comply with the WVURC's policy.

Subcontractor shall provide FCOI reports to the WVURC Administrative Representative regarding all financial conflicts of interest of all subrecipients' investigators prior to the expenditure of funds and within 30 days of any subsequently identified FCOI.

**Article 30 -- Modifications**

This Subcontract may be amended from time-to-time by written mutual agreement of the parties. Said modifications shall take the form of numbered amendments to this Subcontract.

**Article 31 -- Certification Regarding Debarment, Suspension, and Other Responsibility Matters**

1. Subcontractor, by signing this agreement, certifies to the best of its knowledge and belief, that it and its principles:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any State department or agency.
  - b. Have not within a three-year period preceding this proposal been convicted of or had civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State or local) transaction or contract under a public transaction, violation of Federal

or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

- c. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local).
2. The Subcontractor agrees by submitting the proposal of work that it will include the clauses under Part B: Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transactions, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
3. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

### **Article 32 – Lobbying**

The Subcontractor certifies, to the best of their knowledge and belief, that:

1. No State or Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of the State Legislature, a Member of Congress and other officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any State or Federal contract, the making of any State or Federal grant, the making of any State or Federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any State or Federal contract, grant, loan, or cooperative agreement.
2. The Subcontractor shall require that the language of this agreement be included in the agreements of all sub agreements at all tiers (including subcontracts, sub grants, and contracts under grants, loans and cooperative agreements) and that all sub recipients shall certify accordingly.

Subcontractors understands that the funds for this project (including funds contributed by the recipient as their cost share) may not be used to pay for the travel of Federal employees, or for other costs associated with Federal participation in this project unless the Federal agency is performing special technical assistance to this recipient.

### **Article 33 – Clean Water Act Section 319 Nonpoint Source Program**

The Subcontractor agrees to ensure that all conference, meeting, convention or training space funded in whole or in part with Federal funds, complies with the Hotel and Motel Fire Safety Act (PL 101 – 391 as amended). The Subcontractor also agrees to comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532. In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certifications or lobbying forms shall be subject to a civil penalty of not less than \$ 10,000 and not more than \$ 100,000 for each such expenditure. The Subcontractor agrees that no grant funds have been or will be used to engage in lobbying the Federal Government, other political activities, or in litigation against the United States. See OMB Circulars A-21, A-87, or A-122. In accordance with EPA Order 1000.25 and Executive Order (EO) 13423, the Subcontractor agrees to use recycled paper and double-side printing for all reports that are prepared as a part of this grant award and delivered to EPA.

The Subcontractor understands that they, as a Subcontractor, their employees, sub-recipients under this award, and subrecipients' employees may not engage in severe forms of trafficking in persons during the period of time that the Subcontract is in effect; procure a commercial sex act during the period of time that the Subcontract is in effect; or use force labor in the performance of the award or subcontracts under this Subcontract.

Subcontractors are encouraged to consider, and report to WVURC, the use of companies under Disadvantage Business Enterprise (DBE) program for purchases of products or services. The purpose of the DBE program is to encourage, cultivate and support equal opportunities for firms owned and controlled by socially and economically disadvantaged individuals. The DBE contractor and consultant lists can be found at; [http://dsbs.sba.gov/dsbs/search/dsp\\_dsbs.cfm](http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm)  
[www.bpn.gov/CCRSearch/Search.aspx](http://www.bpn.gov/CCRSearch/Search.aspx)  
<http://cfpub.epa.gov/sbvps/index.cfm?fuseaction=app.search>  
<http://www.transportation.wvu.gov/eco/DBE/Pages/default.aspx>

The Subcontractor agrees to work with WVURC and WV DEP to enter or provide water quality monitoring data, for data collected in a waterbody pursuant to the implementation of Section 319 project, into EPA's "storage and retrieval" (STORET) data system using either the Water Quality Exchange (WQX) or WQX web. All funds awarded by this agreement and identified as watershed project (WP) funds shall be used to implement best management practices and/or programs that will result in direct measurable environmental results such as load reductions and/or water quality improvements and which implement a specific goal, action or project clearly identified in the Watershed Based Plans (WBPs).

Subcontractor understands that in regards to payment of consultants, that the EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by Subcontractor or by Subcontractor's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule, to be adjusted annually. The limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2013, the limit is \$ 596.00 per day and \$ 74.50 per hour.

Funding and/or technical assistance provided from this agreement to any agriculture operation shall be used in accordance with either:

- a. USDA NRCS Nutrient Management Standard Code (NM) 590 as adopted at the state level and as such time that NRCS adopts guidelines at the state level for "Comprehensive Nutrient Management Plans (CNMPs)," all funding for such purpose will have to adhere to NM Std. 590 and CNMP guidelines or ;
- b. State program requirements and technical standards that are functionally equivalent to those identified in the final USDA NRCS "Comprehensive Nutrient Management Guidance."

Engineering costs for design work shall be capped at the following:

- a. Projects less than \$ 100,000 for construction, 13-15 % cap on design costs
- b. Projects between \$ 100,001 and \$ 500,000 for construction, 8-12% cap on design costs
- c. Projects over \$ 500,000 for construction, 6-8 % cap on design costs.

The Subcontractor agrees to ensure the continued proper operation and maintenance (O&M) of all management practices that have been implemented for projects funded under this grant. Such practices shall be operated and maintained in accordance with commonly accepted standards.

#### **Article 34 – Titles II and III**

The Subcontractor will comply, or has already complied, with the requirements of Title II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of the State and Federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of State participation in purchases.

#### **Article 35 – Food and Refreshments**

The Subcontractor agrees, that unless the event(s) and all of its components are specified in the approved work plan, the Subcontractor will obtain prior approval from WVURC for the use of grant funds for light refreshments and/or meals served at meetings, conference, training workshops, and outreach activities (events). The Subcontractor must send requests for approval to WVURC and include: an estimated budget and description of the light refreshments, meals, and/or beverages to be served at the event(s); a description of the purpose, agenda, location, length and timing of the event; an estimated number of participants in the event and a description of their roles. Note: U.S. General Services Administration regulations define light refreshments for morning afternoon or evening breaks to include, but not limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips or muffins (41 CFR 301 -- 74.11).

#### **Article 36 – Quality Assurances**

In accordance with 40 CFR 30.45 and 31.45, the Subcontractor must develop and implement quality assurance and quality control procedures, specifications and documentation that are sufficient to produce data of adequate quality to meet project objectives. The Quality Assurance Project Plan (QAPP) should be prepared in accordance with EPA QA/R-5: EPA Requirements for Quality Assurance Project Plans. The QAPP must be submitted to WVURC at least 90 days prior to the initiation of data collection or data compilation. Prior to the data collection or compilation, the QAPP must be approved by WVURC.

#### **Article 37 – Permits**

The Subcontractor agrees to ensure that all permits are obtained prior to implementation of any grant funded activity that may fall under applicable federal, state, or local laws. The project implantation plan must identify permits that may be needed to complete work plan activities. The Subcontractor must keep documentation regarding necessary permits in the project file.

#### **Article 38 -- Entire Agreement**

Upon acceptance of this Subcontract, Subcontractor agrees that the provisions under this Subcontract, including all documents incorporated by reference , shall constitute the entire Agreement between the parties hereto and supersede all prior agreements relating to the subject matter hereof. This Subcontract may not be modified or terminated orally, and no modification nor any claimed waiver of any of the provisions hereof shall be binding unless in writing and signed by the party against whom such modification or waiver is sought to be enforced.

The following are hereby incorporated and made a part of this Subcontract:

Attachment 1 -- Statement of Work

Attachment 2 -- Budget

Attachment 3 -- Prime Award

**End of Section**

# Attachment 1

## **Statement of Work**

The City of Morgantown will be responsible for project administration and oversight of construction to meet project goals and mitigation requirements of the City. Additional duties will include performing routine site visits and providing project status reports to WVWRI when submitting invoices on a monthly or quarterly basis, whichever is convenient for the City of Morgantown. Reports will be reviewed by WVWRI staff and shared with the funding agency, West Virginia Department of Environmental Protection (WVDEP), by incorporating information into the semi-annual reports required as part of the WV Nonpoint Source Pollution program. Additionally, cost share obligations will need to be included as part of the City of Morgantown's regular reporting to WVWRI. WVWRI will monitor and report cost share to WVU and WVDEP on a semi-annual basis.

## **Attachment 2**

### Budget

Item	Cost
Mobilization/Demobilization	\$ 5,000.00
Open Limestone Channels	\$ 33,281.00
Limestone Leach Beds (4)	\$ 250,000.00
Steel Slag Leach Bed	\$ 49,000.00
Settling Basin	\$ 20,000.00
Incidentals (10 %)	\$ 35,728.00
Total Construction	\$ 393,009.00
Engineering	0
Total Construction & Engineering	\$ 393,009.00

WVURC will contribute \$ 216,553.00 to the overall budget.  
City of Morgantown will provide \$ 176,456.00 in cost sharing to the overall budget.

## **Attachment 3**

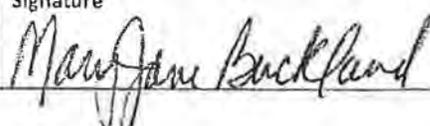


West Virginia  
Department of  
Environmental Protection

<b>Recipient Type:</b>	<b>WV CODE</b>	<b>NPS Number</b>	<b>Grant Year:</b>	<b>Date of Award:</b>
Higher Education	§22.1.14 (SRF)	NPS1379	2012	4/1/14
<b>Sub Recipient: (Include FEIN)</b>		<b>Sub Recipient Contact:</b>		
WVU Research Corp. FEIN #550665758 886 Chestnut Ridge Road/P.O. Box 6845 Morgantown, WV 25506-6845		Mary Jane Buckland, Assistant Secretary Jennifer Hause, Project Manager Mary Jane Buckland, Grant Administrator		
<b>Project Title and Description:</b>				
West Run AMD Remediation, Morgantown Airport				
<b>Performance Period:</b>			<b>Total Sub Grant Award:</b>	
4/1/14-6/30/15			\$264,685	
<b>NOTICE OF AWARD</b>				
<p>The West Virginia Department of Environmental Protection (WVDEP), Division of Water and Waste Management (DWWM), Nonpoint Source Program has determined, based on the project proposal identified above and made a part hereof by reference, to award a sub-grant to the Sub Recipient identified above in the amount of \$264,685.00. This award is being granted from state <u>Stream Restoration Fund</u> monies. The monies are to be used for the restoration and enhancement of the streams and water resources of West Virginia that have been affected by coal mining or acid mine drainage.</p> <p>This sub-grant may be terminated by WVDEP without further cause if the sub-recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section, as well as signing all included certifications and assurances, and returning all pages of this agreement to the WVDEP Sub Grant Unit listed below within 21 days after receipt. This agreement is subject to all applicable state statutory provisions, the referenced project proposal, and all terms and grant conditions of this agreement and any attachments.</p>				
<b>AWARD APPROVAL OFFICE</b>				
<b>ORGANIZATION / ADDRESS</b>				
Scott G. Mandirola, Director West Virginia Department of Environmental Protection Division of Water and Waste Management 601 57 <sup>th</sup> Street, S.E. Charleston, WV 25304				
<b>WVDEP Sub Grant Unit:</b>			<b>WVDEP (Project Manager):</b>	
Teresa M. Koon, Assistant Director WVDEP Division of Water and Waste Management Nonpoint Source Program 601 57 <sup>th</sup> Street, S.E. Charleston, WV 25304 Phone: 304-926-0499 ext 1020			Tim Craddock, NPS Coordinator WVDEP Division of Water and Waste Management Nonpoint Source Program 601 57 <sup>th</sup> Street, S.E. Charleston, WV 25304 Phone: 304-926-0499 ext 1040	
<b>WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION</b>				
<b>Signature of Award Official</b>		<b>Typed Name and Title</b>		<b>Date</b>
		Scott G. Mandirola, Director Division of Water and Waste Management		4/1/14
<b>AFFIRMATION OF AWARD</b>				
<b>BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION</b>				
<b>Signature</b>		<b>Typed Name and Title</b>		<b>Date</b>
		Mary Jane Buckland, Assistant Secretary, WVU Research Corp.		4/1/14



West Virginia  
Department of  
Environmental Protection

<b>Recipient Type:</b>	<b>WV CODE</b>	<b>NPS Number</b>	<b>Grant Year:</b>	<b>Date of Award:</b>
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<b>WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION</b>				
<b>Signature of Award Official</b>		<b>Typed Name and Title</b>		<b>Date</b>
		Scott G. Mandirola, Director Division of Water and Waste Management		
<b>AFFIRMATION OF AWARD</b>				
<b>BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION</b>				
<b>Signature</b>		<b>Typed Name and Title</b>		<b>Date</b>
		Mary Jane Buckland, Assistant Secretary, WVU Research Corp.		4/5/14

## ASSURANCES – CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the West Virginia Department of Environmental Protection. Further, certain state or federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for State or Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-State share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the West Virginia Department of Environmental Protection (DEP), or the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the State interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with State assistance funds to assure nondiscrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable timeframe after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. ?? 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5. C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. ?? 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
10. Will comply with all State and Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. ?? 1681-1683, and 1685-1686) which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. ? 794) which prohibit discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. U.S.C. ?? 6101-6107) which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255), as amended, relating to non-discrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) ?? 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of Civil Rights Act of 1968 (42 U.S.C. ? 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other non-discrimination provisions in the specific statute(s) under which application for State or Federal assistance is being made, and (j) the requirements on any other non-discrimination Statute(s) which may apply to the application.

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of the State and Federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of State participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. ?? 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with State or Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. ?? 276a to 276a-7), the Copeland Act (40 U.S.C. ? 276c and 18 U.S.C. ? 874), the Contract Work Hours and Safety Standards Act (40 U.S.C. ?? 327-333) regarding labor standards for federally assisted construction sub agreements.
14. Will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514;(b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. ?? 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. ? 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (g) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. ?? 1271 et seq.) related to protecting components or potential components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and preservation of historic properties), and the Archaeological Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
18. Will cause to be performed annually the required financial and compliance audits in accordance with the Single Audit Act of 1984. Copies of audit reports are to be provided to WVDEP annually.
19. Will comply with all applicable requirements of all other State and Federal laws, Executive Orders, regulations and policies governing this program.
20. Will be required to follow guidelines as stated in the OMB Circulars: A-102, Uniform Administrative Requirements; A-87, Cost Principles for State, Local, and Indian Tribal Governments; A-133, Audits of States, Local Governments, and Non-Profit Organizations. Will submit Performance Reports as prescribed in OMB Circular A-102 and in an approved electronic Microsoft Word format..
21. Will insure that its contractor procures, from a reputable surety, a performance bond and payment bond for the total amount of the contract. If the contractor defaults and the surety waives its right to perform the contract or otherwise arrange for completion of the contract, the Grantee will reimburse Grantor on a pro rate share, from the funds distributed to the Grantee by the surety.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL <i>Mary Jane Buckland</i>	TITLE Mary Jane Buckland, Assistant Secretary
APPLICANT ORGANIZATION West Virginia University Research Corporation	DATE SUBMITTED <i>4/4/14</i>

EPA Project Control Number

**CERTIFICATION REGARDING LOBBYING**  
**CERTIFICATION FOR CONTRACTS, GRANTS,**  
**LOANS AND COOPERATIVE AGREEMENTS**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

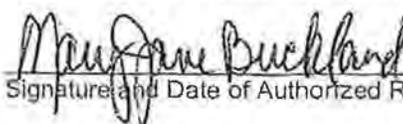
(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Mary Jane Buckland, Assistant Secretary, WVU Research Corp

Typed Name & Title of Authorized Representative

 4/4/14  
Signature and Date of Authorized Representative

### **Grant Conditions for Clean Water Act Section 319 Nonpoint Source Program Grants**

1. The recipient agrees to ensure that all conference, meeting, convention or training space funded in whole or in part with Federal funds, complies with the Hotel and Motel Fire Safety Act (PL 101 – 391 as amended).
2. The recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532 regarding Suspension and Debarment. Recipients may access suspension and debarment information <http://www.sam.gov>.
3. Recipients who receive awards exceeding \$100,000 agree to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
4. Recipient agrees that no grant funds under this award will be used to engage in lobbying the Federal Government, other political activities, or in litigation against the United States, unless authorized under existing laws. See OMB Circulars A-21, A-87, or A-122.
5. In accordance with EPA Order 1000.25 and Executive Order 13423, recipient agrees to use recycled paper and double-side printing for all reports that are prepared as a part of this grant award and delivered to EPA.
6. In accordance with OMB Circular A-133, which implements the Single Audit Act, the recipient agrees to obtain a single audit from an independent auditor if it expends \$500,000 or more in total in Federal funds in any fiscal year. For more information visit the Federal Audit Clearinghouse Web site at <http://harvester.census.gov/fac/>.
7. The recipient agrees that management fees or similar charges in excess of direct and indirect costs are not allowable. The term “management fees or similar charges” refers to expenses added to the direct costs in order accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this award.
8. Trafficking Victim Protection Act. Provisions applicable to a recipient that is a private entity. You, as the recipient, your employees, sub-recipients under this award, and sub-recipients’ employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or sub-awards under the award.
9. Recipients are encouraged to consider, and report to DEP, the use of companies under the Disadvantaged Business Enterprise (DBE) program for purchases of products or services. The purpose of the DBE program is to encourage, cultivate and support equal opportunities for firms owned and controlled by socially and economically disadvantaged individuals. The

DBE contractor and consultant lists can be found at  
[http://dsbs.sba.gov/dsbs/search/dsp\\_dsbs.cfm](http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm)  
[www.bpn.gov/CCRSearch/Search.aspx](http://www.bpn.gov/CCRSearch/Search.aspx)  
<http://cfpub.epa.gov/sbvps/index.cfm?fuseaction=app.search>  
<http://www.transportation.wv.gov/eo/DBE/Pages/default.aspx>

10. Recipient understands that the funds for this project (including funds contributed by the recipient as their cost share) may not be used to pay for the travel of Federal employees, or for other costs associated with Federal participation in this project unless the Federal agency is performing special technical assistance to the recipient.
11. Payment to consultants. EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule, to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2013, the limit is \$596 per day and \$74.50 per hour.
12. Recipient will submit the DEP Request for Reimbursement form along with supporting documentation to obtain reimbursement for allowable expenses. Supporting documentation includes a spreadsheet or other budget breakdown of expenses incurred during the specified period and based on budget categories as outlined in the original project proposal.
13. The recipient agrees to submit progress reports when any request for payment is made. The recipient also agrees to submit semi-annual and annual reports of progress for all projects identified in this grant award document. . The reports must contain the elements described on the program's website (<http://www.dep.wv.gov/nonpoint>).

Reporting periods are as follows:

- October 1 – March 30 report is due May 1
  - April 1 – September 30 report is due November 1
  - A final report is due following the completion of the grant
14. The recipient agrees to perform the activities identified and specified in the project proposal that is made a part of the agreement.
  15. The recipient agrees to work with WV DEP to enter or provide water quality monitoring data, for data collected in a waterbody pursuant to the implementation of a Section 319 project, into EPA's "storage and retrieval" (STORET) data system using either the Water Quality Exchange (WQX) or WQXweb.
  16. Funds awarded by this grant and identified as watershed project (WP) funds shall be used to implement best management practices and/or programs that will result in direct measurable environmental results such as load reductions and/or water quality improvements and which implement a specific goal, action or project clearly identified in the Watershed Based Plans (WBPs).

16. Engineering costs for design work shall be capped at the following:
  - a. Projects less than \$100,000 for construction, 15-20% cap on design costs
  - b. Projects between \$100,001 and \$500,000 for construction, 10-15% cap on design costs
  - c. Projects over \$500,000 for construction, 6-10% cap on design costs.
  
17. Recipient shall ensure the continued proper operation and maintenance (O&M) of all management practices that have been implemented for projects funded under this grant. Such practices shall be operated and maintained for the expected lifespan of the specific project in accordance with commonly accepted standards. The recipient shall include a provision in every applicable sub-grant or contract awarded under this grant requiring that the management practices of the project be properly operated and maintained.
  
18. In accordance with section 319(h) of the Clean Water Act, administrative costs in the form of salaries, overhead, or indirect costs shall not exceed in any fiscal year 10% of the amount of the grant.
  
19. Food and Refreshments. Unless the event(s) and all of its components are specified in the approved workplan, the recipient agrees to obtain prior approval from DEP for the use of grant funds for light refreshments and/or meals served at meetings, conferences, training workshops, and outreach activities (events). The recipient must send requests for approval to the DEP Nonpoint Source Coordinator and include: an estimated budget and description of the light refreshments, meals, and/or beverages to be served at the event(s); a description of the purpose, agenda, location, length and timing of the event; an estimated number of participants in the event and a description of their roles. Note: U.S. General Services Administration regulations define light refreshments for morning, afternoon or evening breaks to include, but not limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips or muffins (41 CFR 301-74.11).
  
20. In accordance with 40 CFR 30.54 and 31.45, the recipient must develop and implement quality assurance and quality control procedures, specifications and documentation that are sufficient to produce data of adequate quality to meet project objectives. The Quality Assurance Project Plan (QAPP) should be prepared in accordance with EPA QA/R-5: EPA Requirements for Quality Assurance Project Plans. The QAPP must be submitted to the DEP Nonpoint Source Coordinator at least 60 days prior to the initiation of data collection or data compilation. Prior to the data collection or compilation, the QAPP must be approved by DEP.
  
21. The recipient agrees to ensure that all permits are obtained prior to implementation of any grant funded activity that may fall under applicable federal, state or local laws. The project implementation plan must identify permits that may be needed to complete work plan activities. The recipient must keep documentation regarding necessary permits in the project file.
  
21. If you are not a state agency and would like to receive reimbursement through electronic deposit into your bank account, complete the paperwork for an eVendor agreement – Vendors at <http://www.wvsao.gov/electronicpayments/DirectDepositForms.aspx>.

West Virginia Department of Environmental Protection

Certifications Regarding Debarment, Suspension and Other Responsibility Matters, Drug-Free Workplace Requirements and Lobbying

**PART A: Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions**

CHECK IF THIS CERTIFICATION IS FOR A PRIMARY COVERED TRANSACTION AND IS APPLICABLE

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principles:
  - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any State department or agency.
  - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
  - (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local)
2. The prospective primary participant agrees by submitting this proposal that it will include the clauses under Part B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
3. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**PART B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions**

CHECK IF THIS CERTIFICATION IS FOR A LOWER TIER COVERED TRANSACTION AND IS APPLICABLE.

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any State department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**PART C: Certification Regarding Drug Free Workplace Requirements**

CHECK IF THIS CERTIFICATION IS FOR AN APPLICANT WHO IS NOT AN INDIVIDUAL.

1. The grantee certifies that it will or continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an ongoing drug-free awareness program to inform employees about --
  - (1) The dangers of drug abuse in the workplace;
  - (2) The grantee's policy of maintaining a drug-free workplace;
  - (3) Any available drug counseling, rehabilitation and employee assistance programs; and
  - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will --
  - (1) Abide by the terms of the statement and
  - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the State agency has designated a central point for the receipt of such notices. Notice shall include the identification numbers(s) of each affected grant;
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted --
  - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

2. The grantee shall provide below the site(s) of the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)  
West Run, Morgantown, WV 26505

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Check if there are workplaces on file that are not identified here.

<b>PART D: Certification Regarding Lobbying</b>
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The undersigned certifies, to the best of his or her knowledge and belief, that:

- 1. No State or Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of the State Legislature, a Member of Congress and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any State or Federal contract, the making of any State or Federal grant, the making of any State or Federal loan, the entering

into of any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any State or Federal contract, grant, loan, or cooperative agreement.

2. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants and contracts under grants, loans and cooperative agreements) and that all sub recipients shall certify accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction. Any person who fails to file the required certification shall be disqualified from program participation.

As the authorized certifying official, I hereby certify that the above-specified certifications are true.

*Mary Jane Buckland*

*4/4/14*

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SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL

Mary Jane Buckland, Assistant Secretary, West Virginia University Research Corporation

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TYPED NAME AND TITLE

DATE

**MASTER RESEARCH AGREEMENT**  
**BETWEEN**  
**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL**  
**PROTECTION**  
**AND**  
**WEST VIRGINIA UNIVERSITY**

THIS MASTER AGREEMENT, made this 29<sup>th</sup> day of February, 2012, by and between the WEST VIRGINIA DEPARTMENT OF Environmental Protection, hereinafter called the "Department," and West Virginia University, hereinafter called the "Contractor."

**WITNESSETH:**

WHEREAS, the Department has a continuing interest to cooperate with the Contractor in its conduct and pursuit of certain research and special studies, hereinafter individually called "Project," where in the determination of Department such research and special studies are calculated to meet the present or future needs of the Department; and

WHEREAS, the Contractor is qualified and able to conduct said research and special studies and agrees to do so, and the Department agrees to compensate the Contractor as hereinafter provided; and,

WHEREAS, the Department and the Contractor both believe it to be mutually beneficial to operate under a Master Agreement establishing certain responsibilities/conditions.

NOW, THEREFORE, for the considerations stated hereinafter, Department and Contractor agree as follows:

- I. Project Agreement: Each project shall be authorized by execution of a Project Agreement specifying the cost, the time frame, the Project Manager, deliverables, and other provisions as may be necessary for the Project and shall be deemed to include the agreed upon Research Project Proposal and the terms of this Master Agreement.
- II. Coordination of Documents: These provisions and those of a Project Agreement and Research Project Proposal are intended to be mutually complementary. In case of any discrepancy, the provisions of the Master Agreement and the Project Agreement will

prevail over the Research Project Proposal and Sections XV, XVI, XVII, XVIII, XIX, XX and XXI of the Master Agreement will prevail over all other terms and conditions of the Project Agreement and the Research Project Proposal.

- III. Purpose, Scope and Methods: The purpose, scope of work and method of each project or study undertaken will be described in the Project Agreement and Research Project Proposal. This Master Agreement will include all research and special studies conducted at West Virginia University pursuant to this agreement.
- IV. Project Deliverables:
  - A. The Contractor shall meet the schedules and activities outlined in the Project Proposal.
  - B. The Contractor will submit deliverables according to the approved Project Proposal, unless otherwise provided by the Department. Deliverables are to be submitted in two (2) hardcopies and one (1) electronic version, in MS-WORD compatible format. Deliverables shall be submitted on or before the last day of the month in which they are scheduled for completion and shall be accompanied by an invoice. If the time frames and work schedules outlined in the Project Proposal are deviated from, a summary stating the reasons why the project is not on schedule and the impact on the estimated completion date shall be included with the deliverable. Additionally, a new time schedule shall be submitted for review and approval from the Department. Failure to submit deliverables will result in withholding of all future payments for the project until the deliverables are submitted and approved, and may subsequently result in termination of the project. All deliverables will be reviewed by the Department within sixty (60) days of submission.
  - C. A final report, satisfactory to the Department's Project Manager, must be submitted for review by the Department. When approved, two (2) bound paper copies; an electronic copy in Portable Document Format; and one (1) copy of the final report in MS-WORD compatible format, as well as all additional data/files will be submitted to the Department unless stated otherwise in the Project Agreement. Acceptance of the final report by the Department is a requirement for fulfillment of the Project Agreement; however, no report will be arbitrarily rejected. The text of the above-designated report and software must be written in a manner that will be intelligible to their intended audiences. Final reports will be reviewed and comments provided or the report accepted within sixty (60) days of receipt by the Department.
- V. Time: This Master Agreement will be in effect from the date it is executed by the parties

hereto and will continue in force until terminated. The time period of a Project Agreement will be stated therein. Insofar as it has the right to do so under the laws and the Constitution of the State of West Virginia, the Department may, at its option, extend a Project Agreement for such reasonable time as it deems necessary. Failure of the Contractor to proceed with the work of the Project contracted for in a Project Agreement within thirty (30) days after the written notice to proceed by the Department may result in a termination notice from the Department as set forth in Section XV. The Department will complete its review of preliminary or final reports submitted by the Contractor within sixty (60) calendar days of receipt.

**VI. Financial Considerations:**

- A. The project cost, including both the direct and indirect costs, will not exceed the amount set forth in the Project Agreement. The total cost is to be based upon the following:
1. Direct cost for salaries and wages and associated fringe benefits for all personnel to be assigned to work on the Project;
  - 2a. Facilities and Administrative costs at the rate of 10% of Modified Total Direct Cost (MTDC) -consisting of all salaries and wages fringe benefits, materials, supplies services, travel and subgrants and subcontracts up to the first \$25,000 of each subgrant or subcontract (regardless of the period covered by the subgrant or subcontract). Modified total direct costs shall exclude equipment, capital expenditures, charges for patient care, tuition remission, rental costs of off-site facilities, scholarships and fellowship as well as the portion each subgrant and subcontract in excess of \$25, 000; or
  - 2b. For projects directly funded through federal subgrants, the Facilities and Administrative costs at the percent established by the US Department of Health and Human Services' Audit Agency for the Contractor during the official period of the Project beginning and ending dates, but provisionally as stated in the Project Agreement for each Project and subject to final audit adjustment;
  3. Cost of special equipment essential to the Project and usable only on the Project;
  4. Cost of materials used in the Project;
  5. Travel expenses;
  6. Telephone and information technology (IT) charges;
  7. Subcontracts;

8. Books and manuals
9. Computer software;
10. Facility Rentals; and
11. Tuition

- B. Reimbursement for costs of travel and subsistence will be made in accordance with West Virginia State Travel Regulations and will be limited to travel within the State of West Virginia (except for out-of-state travel which is considered essential to the effective execution of the Project and which is either specifically itemized in the approved Research Proposal or is approved in advance in writing by the Department one month prior to the travel).
- C. The Contractor is expected to limit purchase of non-expendable equipment to purchases authorized by the Project Agreement as approved by the Department. Titles of non-expendable equipment will be vested in the Contractor unless otherwise provided for in the Project Agreement and Research Project Proposal.
- D. The Contractor will include with each requisition and invoice submitted to the Department a certification that the items included therein as direct costs have been excluded from all indirect costs.
- E. The Contractor will pay all costs incurred in conducting the work of each Project and will be reimbursed upon approval by the Department of the Contractor's billing. Invoices detailing the charges and expenses incurred may be submitted electronically or as an original and three (3) copies on a schedule determined in the notice to proceed and with deliverables. Reimbursement will be made for costs clearly supported by the Contractor's records and upon acceptance of the deliverable. Progress billings for each Project Agreement and Research Project Proposal must be identified by the designation "Progress" and the final billing by the designation "Final." The Department will pay legitimate and uncontested invoices within sixty (60) days of approval by the Project Monitor. In no event shall Department delay payment later than ninety (90) days after receipt of a legitimate, uncontested invoice and approval by the Project Monitor.
- F. The Department will retain ten percent (10%) of the total invoiced amount until the acceptance of the draft final report and the final report by the Department. Upon acceptance of the draft final report, the Department will process payment for the final ten percent of the total invoiced amount.
- G. The Contractor will immediately reimburse the Department for any and all overpayments made by said Department to the Contractor pursuant to the Project

Agreement and agrees that the statute of limitations will not commence to run against the Department for such overpayments until the same is discovered and made known to the Department.

- VII. Subcontracting and Special Services: The services of the Contractor under each Project Agreement are to be directed by a Principal Investigator or such other individuals as are mutually acceptable to the Department and the Contractor. The Contractor will not assign, sublet, or transfer any of the work provided for under the Agreement without prior approval, as noted in the Research Project Proposal.
- VIII. Proprietary Rights: The parties of the Master Agreement agree that if patentable discoveries or inventions should result from the work of the Contractor hereunder, all rights accruing from such discoveries or inventions will be the sole property of the Contractor. For Projects funded solely with State funds, only the Department will be granted an irrevocable, nonexclusive, nontransferable and royalty-free license to practice such invention in the manufacture, use and disposition, according to law and any article or mutual and in the use of any that may be developed as a part of the work under the Master Agreement.
- IX. Inspection of Work: The Department will at all times be accorded proper facilities for review and inspection of work hereunder, and will at all reasonable times have access to the premises and to all data, notes, records, correspondence, instructions and memoranda of every description pertaining to the work hereunder.
- X. Records
- A. The Department will exercise general supervision over the work completed under each Project Agreement. The Contractor will maintain accounting records and other evidence pertaining to the costs incurred on the Project. These data will be made available for inspection by the Department at all reasonable times at the office of the Contractor during the time period of the Project Agreement and for three years after the date of the final payment by the Department with respect to the Project. Copies thereof will be furnished if requested.
- B. Charges for salaries and wages of all individuals working on the Project will be maintained in conformity with the U. S. Office of Management and Budget Circulars A-21 and A-110. These records will be verified by the Principal Investigator and submitted with appropriate invoices.

- XI. Ownership of Data: The ownership of the data collected under the Project Agreement, together with summaries and charts derived there from, will be vested in the Department with the proviso that the Contractor has a royalty free license to use the data for research, teaching, and other academic purposes.
- XII. Equipment and Instrumentation:
- A. All apparatus and equipment approved for purchase in the Project Agreement will be used exclusively on the Project and will be at the disposal of the Contractor for the duration of the specific Project. Title to non-expendable equipment purchased by Project funds will be vested in the Contractor upon completion of the project, unless the parties agree otherwise prior to acquisition of the equipment.
  - B. Purchase of minor items of apparatus and equipment listed as a lump sum in the Project Agreement will not exceed the amount itemized in the Project Agreement and Research Project Proposal unless approved in writing in advance by the Department.
- XIII. Publication
- A. Papers, Interim or final reports, forms or other materials that are a part of any Project will not be formally registered as copyrights with the Library of Congress except with the written approval of the Department. Contractor is free to publish or use the data and results without restriction after acceptance and publication of the final report.
  - B. Neither party will release, either orally or in writing, information, forms or other material developed on any Project prior to publication of all final reports except with the prior written approval of the other party. However, there is no intent to limit discussions of the study with small technical groups or lectures to employees or students. Lectures to other groups which describe the research plans but disclose neither data nor results are permissible without advance approval by the other party. It is understood that the Department and Contractor will comply with the requirements of the West Virginia Freedom of Information Act.
  - C. The Contractor will advise the Department in writing of any proprietary or patentable information contained therein and may, as necessary, formally request that the Department delay the information's publication or dissemination.
  - D. The Department shall refrain from publishing any such information categorized by the Contractor as proprietary or patentable for a period not to exceed one hundred eighty (180) days from the date of such written request, to enable Contractor to

appropriately coordinate with the Department to file for the protection of any proprietary or patentable Project Intellectual Property interests.

- E. Nothing in the Master Agreement or the Project Agreement will be construed to affect the preparation and filing of a thesis by students working on any Project in accordance with the practices normally followed or required by the Contractor's regulations.
- F. All published reports of projects will, unless stated otherwise in the Project Agreement, contain the following statements on the frontispiece:

"Prepared for the West Virginia Department of Environmental Protection and,

- 2. "The contents of this report reflect the views of the author who is responsible for the facts and the accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the State. This report does not constitute a standard, specification, or regulation. Trade or manufacturers' names which may appear herein are cited only because they are considered essential to the objectives of this report. The State of West Virginia does not endorse products or manufacturers".

XIV. Amendment: A Project Agreement may be amended to extend the time, change the Agreement price, or change the scope of the work of the Project. Amendments will be mutually agreed upon in writing prior to undertaking any work under the change or incurring additional costs.

XV. Termination of Agreement: If it is considered to be in the best interest of the Department, the Department may terminate either the Master Agreement or a Project Agreement upon thirty (30) days notice in writing to the Contractor. The Master Agreement or a Project Agreement may also be terminated by the Contractor by thirty (30) days written notice to the Department. If the Master Agreement or the Project Agreement is so terminated prior to fulfillment of the terms stated herein, the Contractor will be reimbursed only for actual expenses and non-cancellable obligations, both direct and indirect, incurred to the date of termination.

XVI. General Provisions

- A. The conduct of the work is subject to pertinent State and Federal laws, regulations and policy procedure directives. This Master Agreement is further subject to any constitutional prohibition, either Federal or State.

- B. It is understood that the Contractor is qualified and able to conduct the research and special studies but is unable to do as contemplated under the provisions of West Virginia Code 17-2A-9 without charge or compensation because of budget limitations, and in order to obtain said research and special studies, the Department agrees to compensate the Contractor as herein provided by this Master Agreement.
  - C. All disputes between the Department and the Contractor will be settled in accordance with the Constitution and laws of the State of West Virginia.
- XVII. Equal Employment Opportunity: During performance of any Project under this Master Agreement, the contractor and any of its subcontractors agree that there shall be no discrimination against any individual employed in work covered by this Master Agreement, or who is employed in other work or against any applicant for such employment, because of race, color, religion, sex, age, national origin or handicap. This provision shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- XVIII. Disadvantaged Business Enterprise: The Department shall cooperate with the Contractor in meeting its commitments and goals with regard to the maximum utilization of minority business enterprises, and will use its best efforts to insure that minority business enterprises shall have the maximum practicable opportunity to compete for subcontract work under this Agreement.
- XIX. Nondiscrimination of Employees: The Contractor and its subcontractors shall comply with the Executive Orders of the Governor of the State of West Virginia, dated October 16, 1963, and December 15, 1965, and the Civil Rights Act of 1964. During the performance of the Master Agreement, the Contractor, for itself, its assignees and successors in interest are as follows:
- XX. Compliance with Regulations:
- A. The Contractor will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 5794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of

1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

- B. Nondiscrimination: the Contractor, with regard to the work performed by it after award and prior to completion of the work, will not discriminate on the grounds of race, color or national origin in the selection and retention of subcontractors, including procurement of materials and lease of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Federal Regulations, including employment practices when this Agreement covers a program set forth in Appendix B of the Regulations.
- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations made by the Contractor (either by competitive bids or negotiation) for work to be performed under a subcontract (including procurement of materials and equipment), each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the regulations relative to nondiscrimination on the grounds of race, color, religion, sex, age, national origin or handicap.
- D. Information and Reports: The Contractor will provide all the information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, and other sources of information and its facilities as may be determined by the West Virginia Department of Environmental Protection if pertinent to ascertaining compliance with such regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor

shall so certify to the Department, and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of the Master Agreement, the Master Agreement sanctions may include, but not be limited to:

1. Withholding of payments to the contractor under the Project Agreement until the Contractor complies; and/or
2. Cancellation, termination or suspension of the Project Agreement, in whole or in part.

F. Incorporation of Provisions: The contractor will include the provisions of Paragraphs A through F in every subcontract, including procurement of materials and lease of equipment, unless exempt by the regulations, orders or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontractor or procurement as the Department may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in or is threatened with litigation by a subcontractor or vendor, the Contractor may request the Department to enter into such litigation to protect the interest of the Department; and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

These provisions shall be fully and effectively enforced, and failure to comply therewith shall be regarded as a material breach of the Master Agreement.

XXI. Agreement Exceptions and/or Variances: The Department reserves the right to provide exceptions and/or variances to any item contained in this Master Agreement. Said exceptions and/or variances shall be specifically identified in the Project Agreement.

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

ATTEST:

Mary Burdette

WEST VIRGINIA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

By: [Signature]  
Its: Cabinet Secretary

ATTEST:

[Signature]

WEST VIRGINIA UNIVERSITY

By: [Signature]  
Its: Assistant Vice President

**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 1.04. 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.

[Remainder of Page Intentionally Blank]

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

---

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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**AN ORDINANCE PROVIDING FOR THE ANNEXATION OF 13.40 ACRES, MORE OR LESS, OF ADDITIONAL TERRITORY INTO THE CITY OF MORGANTOWN PURSUANT TO SECTION 8-6-4 OF THE WEST VIRGINIA CODE.**

WHEREAS, petitions have been filed with the City of Morgantown pursuant to Section 8-6-4 of the West Virginia Code requesting the annexation of 13.40 acres, more or less, more specifically shown and described on the exhibit and metes and bounds description hereto attached and made a part of this ordinance;

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

WHEREAS, Morgantown City Council is of the opinion that the City of Morgantown should annex said 13.40 acres, more or less, into its corporate limits.

NOW, THEREFORE, THE CITY OF MORGANTOWN HEREBY ORDAINS that the 13.40 acres, more or less, as more particularly shown and described on the exhibit and metes and bounds description hereto attached are annexed into the corporate limits of the City of Morgantown; that the minutes of City Council shall indicate the same; that the Mayor and City Manager are hereby authorized to execute and forward the attached certificate to the Monongalia County Commission.

This Ordinance shall be effective upon adoption.

FIRST READING:

\_\_\_\_\_  
MAYOR

ADOPTED:

FILED:

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

RECORDED:

# **WILLIAMS ENGINEERING COMPANY**

ENGINEERS & SURVEYORS

211 FAYETTE STREET, SUITE 11  
MORGANTOWN, WV 26505  
304-292-8794

Re: AREA OF PROPOSED ANNEXATION BY PETITION  
Preliminary Parcel Description  
About 13.4 Acres, More Or Less  
Morgan District, Monongalia County, West Virginia

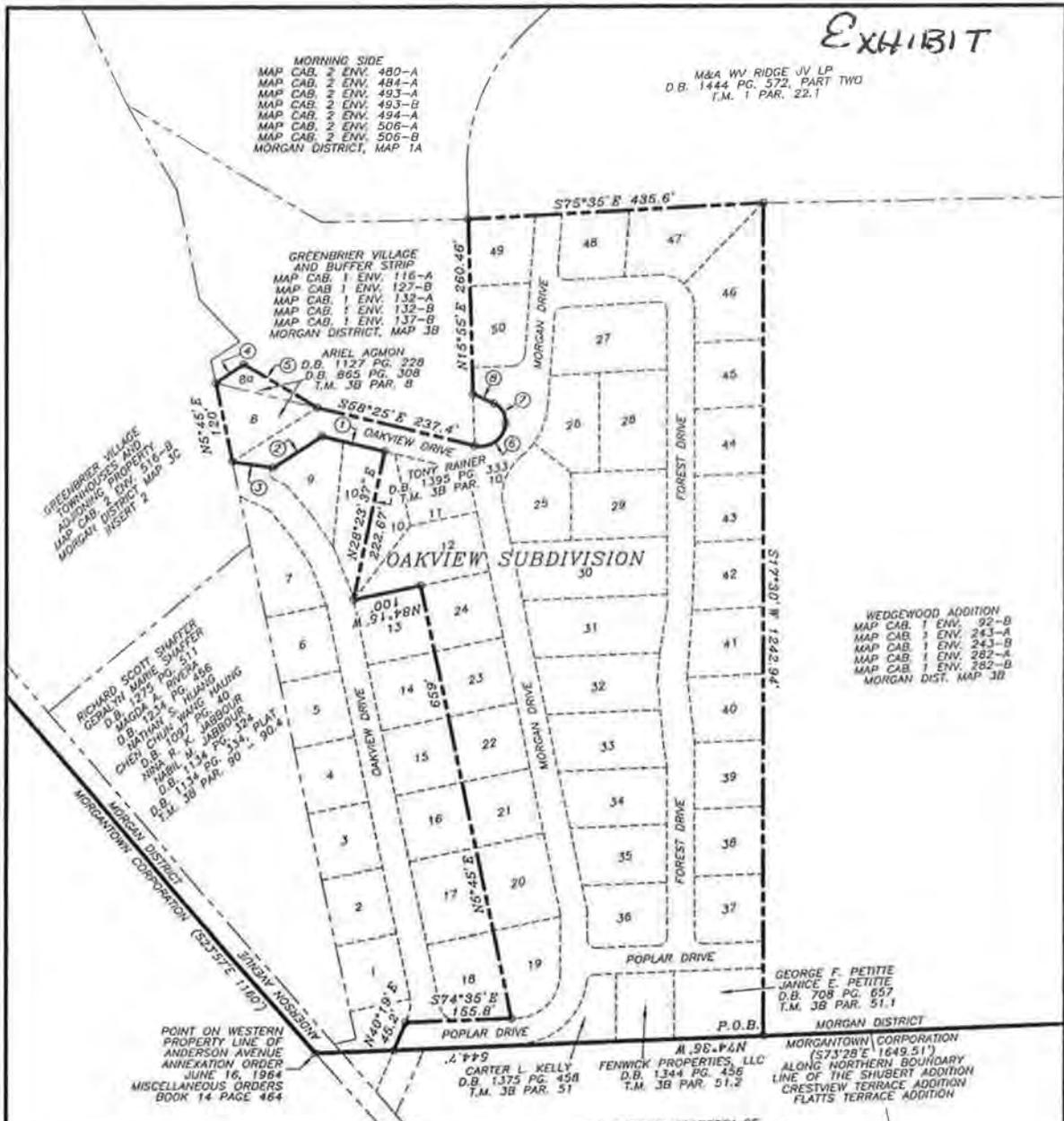
Beginning at a point on the present Corporation Line of the City Of Morgantown (Miscellaneous Orders, Book 14 Page 464), at a corner common to Oakview Subdivision (Deed Book 669 Page 472) and Wedgewood Addition (Map Cabinet 1 Envelopes 92-B, 243-A, 243-B, 282-A, and 282-B) and on line of lands now or formerly of Mr. and Mrs. Oscar E. Schubert (Deed Book 611 Page 338 and Map Cabinet 1 Envelope 57-B); thence with the present Corporation Line of the City Of Morgantown, lands now or formerly of Mr. and Mrs. Oscar E. Schubert, N74°35'W, 544.7', more or less, to a point on the eastern right-of-way line of Poplar Drive; thence through Oakview Subdivision (Deed Book 669 Page 472) with the eastern right-of-way line of Poplar Drive, N40°19'E, 45.2', more or less, to a point; thence crossing Oakview Drive with the northern right-of-way line of Poplar Drive, S74°35'E, 155.8', more or less, to a point, corner common to Lot 18 and Lot 19 of Oakview Subdivision; thence with the rear line common to Lot 13 through Lot 24 of said Oakview Subdivision, N5°45'E, 659', more or less, to a point on line of Lot 12; thence with Lot 12, N84°15'W, 100', more or less, to a point on the eastern right-of-way line of Oakview Drive; thence leaving Oakview Drive and running with an arbitrary line through Lot 10 of Oakview Subdivision, with the lands of Tony Rainer (Deed Book 1395 Page 333), N28°23'37"E, 222.67', more or less, to a point on the southern right-of-way line of Oakview Drive; thence with said Oakview Drive right-of-way line, N58°25'W, 102.55', more or less, to a point, corner to Lot 9 of said Oakview Subdivision; thence with same, S73°05'W, 84.44', more or less, to a point; thence crossing Oakview Drive, N63°48'W, 59.9', more or less, to a point on line of lands of, Greenbrier Village Townhouses (Map Cabinet 1 Envelopes 127-B, 132-A, 132-B, and 137-B), corner to Lot 8 of said Oakview Subdivision; thence the lands of said Greenbrier Village Townhouses, N5°45'E, 120', more or less, to a point, corner Lot 8a, lands of Ariel Agmon (Deed Book 1127 Page 228, Plat Deed Book 865 Page 308); thence with Lot 8a, N73°05'E, 50', more or less, to a point; thence with same, S40°56'E, 124.63', more or less, to a point on the northern right-of-way line of Oakview Drive, corner common to Lot 8 and Lot 8a; thence with the northern right-of-way line of Oakview Drive, lands of Greenbrier Village (Map Cabinet 1 Envelopes 127-B, 132-A, and 132-B), S58°25'E, 237.4', more or less, to a point at the intersection of the northern right-of-way line Oakview Drive with the western right-of-way line of Morgan Drive; thence through Oakview

Subdivision, with the western right-of-way line of Morgan Drive (with three lines scaled from the Oakview Subdivision drawing), with a curve to the left, radius = about 37.1', arc length = about 64.6', chord = about, N71°38'E, 56.8', more or less, to a point; thence by same, with a curve to the left, radius = about 30.6', arc length = about 36.7', chord = about, N12°42'W, 34.6', more or less, to a point; thence by same, about N47°05'W, 34.0', more or less, to a point on line of lands of Greenbrier Village; thence with the lands of Greenbrier Village, N15°55'E, 260.46', more or less, to a point, corner to lands of M&A WV Ridge JV LP (Deed Book 1444 Page 272, Part Two); thence with the lands of M&A WV Ridge JV LP, S75°35'E, 435.60', more or less, to a point, corner to Wedgewood Addition; thence with Wedgewood Addition, S17°30'W, 1242.94', more or less, to the point of beginning. Containing about 13.4 acres, more or less.

OAKVIEW 140528.DOC

M&A WY RIDGE JV LP  
D.B. 1444 PG. 572, PART TWO  
T.M. 1 PAR. 22.1

MORNING SIDE  
MAP CAB. 2 ENV. 480-A  
MAP CAB. 2 ENV. 484-A  
MAP CAB. 2 ENV. 493-A  
MAP CAB. 2 ENV. 493-B  
MAP CAB. 2 ENV. 494-A  
MAP CAB. 2 ENV. 506-A  
MAP CAB. 2 ENV. 506-B  
MORGAN DISTRICT, MAP 1A



WEDGEWOOD ADDITION  
MAP CAB. 1 ENV. 92-B  
MAP CAB. 1 ENV. 243-A  
MAP CAB. 1 ENV. 243-B  
MAP CAB. 1 ENV. 262-A  
MAP CAB. 1 ENV. 282-B  
MORGAN DIST. MAP 3B

**NOTE:** 1. ALL OF THE BEARINGS AND DISTANCES SHOWN HEREON SHOULD BE CONSIDERED APPROX. AND ARE FOR REFERENCE ONLY.  
2. THIS DRAWING WAS DEVELOPED FROM RECORDED INFORMATION, NO FIELD SURVEY WAS PERFORMED.

TAX MAP NO. 3B PARCEL NOS. 8 AND 10 - 51.2  
**AREA = 13.4 ACRES, MORE OR LESS**  
TITLE REF.: OAKVIEW, SUBDIVISION OF THE MORGAN DEVELOPMENT CORP.  
D.B. 654 PG. 37  
D.B. 659 PG. 316  
D.B. 669 PG. 472

MAP SHOWING PROPERTY OF MR. AND MRS. OSCAR E. SCHUBERT  
MAP CABINET 1 ENV. 57 B  
DEED BOOK 611 PAGE 338  
MORGANTOWN CORPORATION  
MAP 54 PAR. 135 - 135.13

**LINE TABLE**

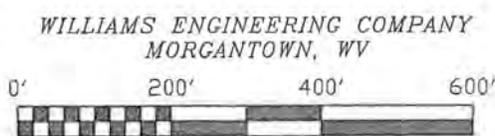
- ① N58°25' W 102.55'
- ② S73°05' W 84.44'
- ③ N63°48' W 59.9'
- ④ N73°05' E 50'
- ⑤ S40°56' E 124.63'

Lines 6, 7, and 8 were scaled from the Oakview Subdivision drawing.

- ⑥ R=37.1' L=64.6'  
CHORD N71°38' E 56.8'
- ⑦ R=30.6' L=36.7'  
CHORD N12°42' W 34.6'
- ⑧ N47°05' W 34.0'



DRAWING OF  
**AREA OF PROPOSED ANNEXATION BY PETITION**  
MORGAN DISTRICT, MONONGALIA COUNTY, WV  
SCALE: 1" = 200'      MAY 13, 2014



## **CITY OF MORGANTOWN**

AN ORDINANCE AMENDING SECTION 929.05 AND 929.06 OF THE CITY OF MORGANTOWN'S STREETS, UTILITIES AND PUBLIC SERVICES CODE BY SETTING FORTH THE RATES, FEES AND CHARGES FOR SERVICE TO CUSTOMERS OF THE MUNICIPAL SEPARATE STORM WATER SEWERAGE SYSTEM OF THE CITY OF MORGANTOWN.

THE COUNCIL OF THE CITY OF MORGANTOWN HEREBY ORDAINS: The following rules, rates and charges are hereby fixed, determined and established for services provided to all users and customers of the City of Morgantown's Municipal Separate Storm Sewer System, commencing upon the effective date as hereinafter provided, and in accordance with the following Rates and Schedules:

### 929.05 FLAT RATE CHARGES

The monthly service charge for users occupying a single family residential dwelling, as defined by the Director, shall ~~be five dollars and thirty cents (\$5.30). After April 1, 2012, the monthly service charge for single family residential dwelling shall be five dollars and eighty eight cents (\$5.88).~~ City Council may, from time to time, by ordinance, change these service charges. Residential dwellings in the Forest-Poplar watershed, as defined by the Director, shall monthly pay, in addition to the monthly service charge, a debt service surcharge of \$ 13.28, which amount shall be solely dedicated to the cost of capital improvements for stormwater management completed in this watershed under and/or related to MUB Contract 1-2014 A. The debt service surcharge will be evaluated annually and in the event that a change in the number of customers results in a five percent (5%) change in the rate, the rate will be adjusted. Ten (10) years following the effective date of this surcharge, and/or upon full funding of the debt service reserve, the surcharge shall be reduced by ten per cent (10%). Upon full satisfaction of the debt, this surcharge shall expire.

### 926.06 CHARGES BASED ON LAND AREA

The monthly service charge for properties other than described in Section 929.05 shall be computed in the following manner: ~~Two dollars and twelve cents (\$2.12) per 1,000 square feet of impervious area upon the property, as determined by the Director. After April 1, 2012, the monthly service charges for properties other than described in 929.05 shall be computed in the following manner: Two dollars and thirty five cents (\$2.35) per 1,000 square feet of impervious area upon the property, as determined by the Director. Properties in the Forest-Poplar watershed, as defined by the Director, shall monthly pay, in addition to the monthly service charge, an additional debt service surcharge of \$ 5.31, per 1,000 square feet of impervious area upon the property, which amount shall be solely dedicated to the cost of capital improvements for stormwater management completed in this watershed under and/or related to MUB Contract 1-2014 A. The debt service surcharge will be evaluated annually and in the event that a change in the number of customers results in a five percent (5%) change in the rate, the rate will be adjusted. Ten (10) years following the effective date of this~~

surcharge, and/or upon full funding of the debt service reserve, the surcharge shall be reduced by ten per cent (10%). Upon full satisfaction of the debt, this surcharge shall expire.

First Reading:

\_\_\_\_\_  
MAYOR

Second Reading  
and Public Hearing:

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

Filed:

Recorded:



OAKVIEW / FOREST / MORGAN

1	PETER KLEMKOWSKY	101	FOREST DR
2	BERNARD COOPER	102	FOREST DR
3	MAXIM SOKOLOV	103	FOREST DR
4	ROBERT MILVET	105	FOREST DR
5	ROBERT GRIFFITH	106	FOREST DR
6	ALAN POFFENBERGER	107	FOREST DR
7	ANGEL SMOTHERS	110	FOREST DR
8	JOHN FISHER II	111	FOREST DR
9	RICH BROOKS	112	FOREST DR
10	ELLISON PONZURICK	113	FOREST DR
11	DAVID HANNA	115	FOREST DR
12	KATHY MARION	116	FOREST DR
13	BILL POFFENBERGER	117	FOREST DR
14	JEFFREY KREITZER	118	FOREST DR
15	DAVID LINN	119	FOREST DR
16	JUDITH MC DONNELL	120	FOREST DR
17	ALDO ROMERO	122	FOREST DR
18	KARA SAMAJ	124	FOREST DR
19	CARTER GROCOTT	102	MORGAN DR
20	H. ILKIN BILGESU	104	MORGAN DR
21	KNOX VAN DYKE	106	MORGAN DR
22	LELAND BYRD	108	MORGAN DR
23	CHRISTINE WANG	110	MORGAN DR
24	ROGER LOHMANN	112	MORGAN DR
25	RAZI GASKARI	114	MORGAN DR
26	DAVID HOOD	118	MORGAN DR
27	ANNA LEE	121	MORGAN DR
28	ZACH MENDELSON	124	MORGAN DR
29	JAMIE MANGOLD	101	OAKVIEW DR
30	CHALLENGE ICE	102	OAKVIEW DR
31	KEITH ZULLIG	103	OAKVIEW DR
32	AMANDA GRIFFITH	104	OAKVIEW DR
33	MARTHA POWER	105	OAKVIEW DR
34	XUEFANG REN	106	OAKVIEW DR
35	LUN-YI ZANG	107	OAKVIEW DR
36	KENNTTEH JABBOUR	108	OAKVIEW DR
37	ANNA HARVEY	109	OAKVIEW DR
38	MARK ROHANNA	110	OAKVIEW DR
39	KATIE WIGGIN	111	OAKVIEW DR
40	ALBERT SCUDIERS JR	112	OAKVIEW DR
41	MAURO SPINA	113	OAKVIEW DR
42	LEO SHAY	114	OAKVIEW DR
43	TONY RAINER	117	OAKVIEW DR
44	CARTER KELLY	510	POPLAR WOODS DR
45	GEORGE PETITTE	530	POPLAR WOODS DR

Doesn't drain to Morgan / Forest Intersection

1	REGAN BRUNI	126	MORGAN DR
2	ARIEL AGMON	116	OAKVIEW DR

Doesn't drain to Morgan / Forest Intersection

1	NATHAN HUANG	100	OAKVIEW DR
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POPLAR WOODS

1	GAIL VANVOORHIS	606	POPLAR WOODS DR
2	SAMUEL MAZZA	612	POPLAR WOODS DR
3	LAURA BONSALE	615	POPLAR WOODS DR
4	BRANDON BYRON	624	POPLAR WOODS DR
5	TAMMY FAMOURI	627	POPLAR WOODS DR
6	ONDA JENKS	639	POPLAR WOODS DR
7	DANIEL TAYLOR	642	POPLAR WOODS DR
8	WILLIAM WELTON	656	POPLAR WOODS DR
9	JENNIFER STOLL-JOHNS	657	POPLAR WOODS DR
10	HEATHER CYPHERT	659	POPLAR WOODS DR
11	HAROLD REED	671	POPLAR WOODS DR
12	HONG LI	672	POPLAR WOODS DR
13	ABDULLAH KASSAR	680	POPLAR WOODS DR
14	FONDA HOLEHOUSE	681	POPLAR WOODS DR
15	PATRICE ANDERSEN	691	POPLAR WOODS DR
16	KAY KELLY	703	POPLAR WOODS DR
17	JACK FULLER	710	POPLAR WOODS DR
18	LOC NGUYEN	714	POPLAR WOODS DR
19	RANDY TALERICO	715	POPLAR WOODS DR
20	GUS HASBANI	722	POPLAR WOODS DR
21	DEBRA MOORE	723	POPLAR WOODS DR
22	JAIYOUNG RYU	746	POPLAR WOODS DR
23	ELAINE D'ALESSANDRI	756	POPLAR WOODS DR
24	PATRICIA FORD	758	POPLAR WOODS DR
25	HOTA GANGARAO	760	POPLAR WOODS DR
26	DAVID BURTNER	762	POPLAR WOODS DR

WINDSOR ESTATES

<b>EXISTING</b>	1	JONATHAN SOCHA	102	IDACORE LN
	2	SONAL BHATT	100	IDACORE LN
	3	KEITH WEBER	104	IDACORE LN
	4	ANDREW SMITH	112	IDACORE LN
	5	HUI SU	12	MADORA DR
	6	AMY KOSINSKI	14	MADORA DR
	7	MELISSA HANCOX	22	MADORA DR
	8	JOSE SOLIS	24	MADORA DR
	9	JASON TURAK	26	MADORA DR
	10	DAWN DILLON	28	MADORA DR
	11	SOUMYA PRASAD	30	MADORA DR
	12	HODJAT GHADIMI	300	VILLA VIEW DR
	13	WENDELL CHRISTOPHER	301	VILLA VIEW DR
	14	YONGLAK PARK	302	VILLA VIEW DR
	15	DARLENE BERES	303	VILLA VIEW DR
	16	JENNY LICCIARDI	304	VILLA VIEW DR
	17	SCOTT SHAFFER	305	VILLA VIEW DR
	18	MARC HYRE	306	VILLA VIEW DR
	19	MEGAN CASEY	307	VILLA VIEW DR
	20	BETHANY HONCE	308	VILLA VIEW DR
	21	PETER NGAN	310	VILLA VIEW DR
	22	DANELLE CUTRIGHT	311	VILLA VIEW DR
	23	GUODONG GUO	312	VILLA VIEW DR
	24	ADEEM AKBAR	314	VILLA VIEW DR
	25	SCOTT PROPERTIES LLC	316	VILLA VIEW DR
	26	HO PARK	317	VILLA VIEW DR
	27	UMA SALIGRAM	318	VILLA VIEW DR
	28	SCOTT PROPERTIES LLC	320	VILLA VIEW DR
	29	MARC HYRE	321	VILLA VIEW DR
	30	GLENN BOYLES	322	VILLA VIEW DR
	31	SCOTT PROPERTIES LLC	324	VILLA VIEW DR
	32	NIANQUIANG WU	325	VILLA VIEW DR
	33	MUGE KESEN	326	VILLA VIEW DR
	34	MATTHEW HARRIS	328	VILLA VIEW DR
	35	BARIS POLAT	329	VILLA VIEW DR
	36	KATHLEEN WOLFLEY	330	VILLA VIEW DR
	37	SCOTT PROPERTIES LLC	332	VILLA VIEW DR
	38	TARA SCATTERDAY	333	VILLA VIEW DR

<b>UNDEVELOPED</b>	1	UNDEVELOPED LOT 9	???	MADORA DR
	2	UNDEVELOPED LOT 10	???	IDACORE LN
	3	UNDEVELOPED LOT 17	???	IDACORE LN
	4	UNDEVELOPED LOT 19	???	IDACORE LN
	5	UNDEVELOPED LOT 20	???	IDACORE LN
	6	UNDEVELOPED LOT 36	???	VILLA VIEW DR
	7	UNDEVELOPED LOT 37	???	VILLA VIEW DR
	8	UNDEVELOPED LOT 38	???	VILLA VIEW DR
	9	UNDEVELOPED LOT 39	???	VILLA VIEW DR
	10	UNDEVELOPED LOT 40	???	VILLA VIEW DR
	11	UNDEVELOPED LOT 41	???	VILLA VIEW DR
	12	UNDEVELOPED TOWNHOME 1 - LOTS PT 33, 34, 35	???	VILLA VIEW DR
	13	UNDEVELOPED TOWNHOME 2 - LOTS PT 33, 34, 35	???	VILLA VIEW DR
	14	UNDEVELOPED TOWNHOME 3 - LOTS PT 33, 34, 35	???	VILLA VIEW DR
	15	UNDEVELOPED TOWNHOME 4 - LOTS PT 33, 34, 35	???	VILLA VIEW DR
	16	UNDEVELOPED TOWNHOME 5 - LOTS PT 33, 34, 35	???	VILLA VIEW DR

WINDSOR APARTMENTS

<b>EXISTING</b>	1	ROD FERRUSO	101	TREYSON LN
	2	CORINNE AKOUN	102	TREYSON LN
	3	BRIAN WHITING	103	TREYSON LN
	4	JONATHAN KIMBLE	104	TREYSON LN
	5	TRAVIS BRITTON	105	TREYSON LN
	6	JOSH DURHAM	106	TREYSON LN
	7	SCOTT PROPERTIES LLC	107	TREYSON LN
	8	ROBERT OLDHAM	108	TREYSON LN
	9	NINA BRATHWAITE	201	TREYSON LN
	10	SCOTT PROPERTIES LLC	202	TREYSON LN
	11	AMY SARDONE	203	TREYSON LN
	12	DAMON COGDELL	204	TREYSON LN
	13	MICHAEL MCKENZIE	206	TREYSON LN
	14	CAITLIN PHILYAW	206	TREYSON LN
	15	SCOTT PROPERTIES LLC	207	TREYSON LN
	16	BETHANY NEWMAN	208	TREYSON LN
	17	JENNIE JAMES	301	TREYSON LN
	18	CHRISTOPHER ROBERTSON	302	TREYSON LN
	19	SAMUEL MCLAUGHLIN	303	TREYSON LN
	20	TAMI ALLEN	304	TREYSON LN
	21	SARA KHOURY	305	TREYSON LN
	22	ROSE LAIGNEL	306	TREYSON LN
	23	DONNA ALLEY	307	TREYSON LN
	24	WEDGEWOOD LOFTS	308	TREYSON LN
	25	MARC SANKO	401	TREYSON LN
	26	XINFENG XIE	402	TREYSON LN
	27	BRIEANNA HARKEY	403	TREYSON LN
	28	DAVID WHITTAKER	404	TREYSON LN
	29	MADINA ALI	405	TREYSON LN
	30	DAVID KANIOS	406	TREYSON LN
	31	MATT CUMMINGS	407	TREYSON LN
	32	MISHAL ALSAMEA	408	TREYSON LN
	33	CANDACE MCGOWAN	501	TREYSON LN
	34	LANNY MEADOWS	502	TREYSON LN
	35	LYLE LEONG	503	TREYSON LN
	36	PAMELA WILLIAMS	504	TREYSON LN
	37	KRIS MOODY	505	TREYSON LN
	38	RUCHI SINGLA	506	TREYSON LN
	39	HASSAN NAGEM	507	TREYSON LN
	40	LAUREN JOHNSON	508	TREYSON LN

51,364 Ft<sup>2</sup> / 2,500 Ft<sup>2</sup> = 20.55 Equiv.

<b>UNDER CONSTRUCTION</b>	1		201	WEDGEWOOD FLATTS
	2		202	WEDGEWOOD FLATTS
	3		203	WEDGEWOOD FLATTS
	4		204	WEDGEWOOD FLATTS
	5		205	WEDGEWOOD FLATTS
	6		206	WEDGEWOOD FLATTS
	7		207	WEDGEWOOD FLATTS
	8		208	WEDGEWOOD FLATTS
	9		209	WEDGEWOOD FLATTS
	10		210	WEDGEWOOD FLATTS
	11		211	WEDGEWOOD FLATTS
	12		101	WEDGEWOOD FLATTS
	13		102	WEDGEWOOD FLATTS
	14		103	WEDGEWOOD FLATTS
	15		104	WEDGEWOOD FLATTS
	16		105	WEDGEWOOD FLATTS
	17		106	WEDGEWOOD FLATTS
	18		107	WEDGEWOOD FLATTS
	19		108	WEDGEWOOD FLATTS
	20		109	WEDGEWOOD FLATTS
	21		110	WEDGEWOOD FLATTS
	22		111	WEDGEWOOD FLATTS
	23		112	WEDGEWOOD FLATTS

11,496 Ft<sup>2</sup> / 2,500 Ft<sup>2</sup> = 4.60 Equiv.

OTHERS BEYOND SUBDIVISIONS

	MGTN MEDICAL ARTS BLD	200	WEDGEWOOD DR	<b>111,000 Ft<sup>2</sup> / 2,500 Ft<sup>2</sup> = 44.4 Equiv.</b>
	CARDIAC AND VASCULAR ASSOC OF MGH	300	WEDGEWOOD DR	<b>61,000 Ft<sup>2</sup> / 2,500 Ft<sup>2</sup> = 24.4 Equiv.</b>
<b>BARRINGTON NORTH</b>	JOSEPH CERNELLI	104-APT 1	WEDGEWOOD DR	
	STEPHEN GRISWOLD	104-APT 2	WEDGEWOOD DR	
	SEAN HEALY	104-APT 3	WEDGEWOOD DR	
	BARRINGTON NORTH LLC	104-APT 4	WEDGEWOOD DR	
	VISHAL YADAV	104-APT 5	WEDGEWOOD DR	
	KARA HAUGHT	104-APT 6	WEDGEWOOD DR	
	BAQIYYAH CONWAY	104-APT 7	WEDGEWOOD DR	
	JASON CLARK	104-APT 8	WEDGEWOOD DR	
	BARRINGTON NORTH LLC	104-APT 9	WEDGEWOOD DR	
	EVAN ABELE	104-APT 10	WEDGEWOOD DR	
	BARRINGTON NORTH LLC	104-APT 11	WEDGEWOOD DR	
	JOSE SOTO	104-APT 12	WEDGEWOOD DR	
	DOUGLAS HENNEN	106-APT 1	WEDGEWOOD DR	
	DAVID SMITH	106-APT 2	WEDGEWOOD DR	
	CHRISTOPHER FRIEND	106-APT 3	WEDGEWOOD DR	
	BARRINGTON NORTH LLC	106-APT 4	WEDGEWOOD DR	
	ADRIANA HANSEN	106-APT 5	WEDGEWOOD DR	
	BARRINGTON NORTH LLC	106-APT 6	WEDGEWOOD DR	
	WENDELL HOFER	106-APT 7	WEDGEWOOD DR	
	MELANIE VUNJAK	106-APT 8	WEDGEWOOD DR	
	HICHAN LAEVI	106-APT 9	WEDGEWOOD DR	
	CHRIS SCARPINITI	106-APT 10	WEDGEWOOD DR	
	ERIN DIBBERN	106-APT 11	WEDGEWOOD DR	
	BARRINGTON NORTH LLC	106-APT 12	WEDGEWOOD DR	
	BARRINGTON NORTH LLC	108-APT 1	WEDGEWOOD DR	
	ALLISON BOOTHBY	108-APT 2	WEDGEWOOD DR	
	RACHEL DELEVETT	108-APT 3	WEDGEWOOD DR	
	ASHLEY ONUFRAK	108-APT 4	WEDGEWOOD DR	
	FRANCIS CURRAN III	108-APT 5	WEDGEWOOD DR	
	BARRINGTON NORTH LLC	108-APT 5	WEDGEWOOD DR	
	BARRINGTON NORTH LLC	108-APT 6	WEDGEWOOD DR	
	CORD SCOTT	108-APT 8	WEDGEWOOD DR	
	BARRINGTON NORTH LLC	108-APT 9	WEDGEWOOD DR	
	JOHN SINSEL	108-APT 10	WEDGEWOOD DR	
	RACHEL BALDRIGE	108-APT 11	WEDGEWOOD DR	
	JUSTIN PAULEY	108-APT 12	WEDGEWOOD DR	
	SARAH PERCONTE	110-APT 1	WEDGEWOOD DR	
	GBEMINIYI SAMUEL	110-APT 2	WEDGEWOOD DR	
	TYLER BRUMLEY	110-APT 3	WEDGEWOOD DR	
	BARRINGTON NORTH LLC	110-APT 4	WEDGEWOOD DR	
MANAL ALNATOUR	110-APT 5	WEDGEWOOD DR		
KALA GOLDEN	110-APT 6	WEDGEWOOD DR		
NAGA SRINIVAS SIRIKONDA	110-APT 7	WEDGEWOOD DR		
JAMES TOLLEY	110-APT 8	WEDGEWOOD DR		
MICHAEL COMER	110-APT 9	WEDGEWOOD DR		
DIANA BLACK	110-APT 10	WEDGEWOOD DR		
BARRINGTON NORTH LLC	110-APT 11	WEDGEWOOD DR		
BEACON RECOVERY COMPANY	110-APT 12	WEDGEWOOD DR		
MOHAMEAD BAKIR	112-APT 1	WEDGEWOOD DR		
JOSEPH RODRIGUEZ	112-APT 2	WEDGEWOOD DR		
CHENG-HSIEN WU	112-APT 3	WEDGEWOOD DR		
BARRINGTON NORTH LLC	112-APT 4	WEDGEWOOD DR		
PO-SHEG LIN	112-APT 5	WEDGEWOOD DR		
BELACHEW AMAROE	112-APT 6	WEDGEWOOD DR		
ELVONNA ATKINS	112-APT 7	WEDGEWOOD DR		
LDS CHURCH-WVC MISSION	112-APT 8	WEDGEWOOD DR		
RITA DANIELS	112-APT 9	WEDGEWOOD DR		
BARRINGTON NORTH LLC	112-APT 10	WEDGEWOOD DR		
ROBERT MNATSAKANOV	112-APT 11	WEDGEWOOD DR		
ANTHONY VENUSOV	112-APT 12	WEDGEWOOD DR		

**48,000 Ft<sup>2</sup> / 2,500 Ft<sup>2</sup> = 19.2 Equiv.**

OTHERS INSIDE CITY, PAYING STORM FEE - MUB TO PAY SURCHARGE

JAN FORD	659	KENWOOD PL
KIMBERLY DEEVERS	663	KENWOOD PL
DORSEY JACOBS	667	KENWOOD PL
CHRISTINE WANG	668	KENWOOD PL
GEORGE HARPER	671	KENWOOD PL
EVER BARBERO	672	KENWOOD PL
ROGER BARCLAY	675	KENWOOD PL
MARK REASOR	676	KENWOOD PL
OSCAR SCHUBERT	1428	ANDERSON AVENUE
TINA BLAND	603	SCHUBERT PLACE
JOHN DEMPSEY	609	SCHUBERT PLACE
ROBERT GRAVES	617	SCHUBERT PLACE
BETSY ELSWICK	649	NUEVA DRIVE



June 26, 2014

Dear Resident and/or Property Owner:

As you probably know, the residents of Oakview continue to work to have the portions of their sub-division suffering surface water drainage problems annexed into the City of Morgantown. Although their success is not yet certain, they appear to be making significant progress.

If approved, this annexation will allow MUB to construct a 48" storm culvert in Forest Drive and Morgan Street. That construction is proposed in order to reduce the significant and frequent flooding of the low lying areas of the Oakview subdivision. The estimated cost of the project is \$655,421, based upon bids that were received by MUB on February 5, 2014.

The attachments to this letter describe how the cost of the project will be funded. Please note that the funding plan will implement both standard MUB stormwater fees and a project specific surcharge applicable to your address. Only properties served by the new stormwater infrastructure will pay the surcharge that funds those improvements.

The current terms of the financing of the project are 3.16% interest, for 20 years. The surcharge is meant only to cover the debt service on the loan, and will end upon retirement of the debt.

The standard stormwater fee is currently \$5.88 per month for single family residences, or \$2.35 per month per 1000 sq ft (of impervious area) for all other properties. The proposed surcharge will be \$13.28 per month for single family residences, or \$5.31 per month per 1000 sq ft (of impervious area) for all other properties. The surcharge will apply in addition to the standard fee. A copy of the proposed Stormwater Ordinance establishing these charges is attached.

The fees and surcharge will be charged to all residents / property owners whose stormwater discharges flow to the intersection of Forest and Morgan (see the red star on the attached address map). Those areas include Poplar Woods, Windsor Estates (homes, townhomes and apartments), and the commercial / non-residential properties along Wedgewood Dr. Please note that the red boundary shown on the map is a watershed boundary, and is not the proposed annexation boundary. Properties that are annexed, but are located outside of the watershed boundary will be charged only the standard stormwater fee.

Reviewing the address map, several items deserve clarification:

1. Although they are located within the Oakview subdivision, and may or may not be within the area to be annexed, three properties do not discharge stormwater to the intersection of Forest / Morgan. The applicable charges for these properties will be:
  - a. 126 Morgan – will be annexed, standard fee: yes, surcharge: no
  - b. 116 Oakview - will be annexed, standard fee: yes, surcharge: no
  - c. 100 Oakview - will not be annexed, already pays standard fee, surcharge: no
2. Townhomes and apartments currently under construction at Treyson Lane and Wedgewood Flatts (both near Windsor Estates) have already been included in the customer count and the related calculation of the proposed surcharge. Future construction at currently vacant lots (indicated in blue font labels) have not been included; they will be included, and the surcharge will be re-calculated as provided by the Ordinance, if / when construction occurs.
3. Existing apartment buildings at Barrington North along Wedgewood Drive (104-112) discharge part of their stormwater to the subject area, and part of their stormwater to a different drainage area that is beyond the scope of this project. Accordingly, we have included only the areas that discharge into the problematic watershed in the calculation of stormwater charges for this customer group.
4. Eight homes along Kenwood Place, and five others at Anderson, Nueva, and Schubert Place are already in the City. They have been included in the customer count for the purpose of calculating the stormwater surcharge. Because they are already in the City and discharge into the problematic watershed, MUB will pay the stormwater surcharge on their behalf. The standard stormwater fee will continue to apply to these residents.

Upon completion of the proposed annexation, the stormwater collection systems of the respective areas (Oakview, Poplar Woods, Windsor Estates, and Wedgewood Dr) within the served watershed will become eligible to be acquired by MUB. However, these acquisitions will not occur automatically. Each acquisition will need to be documented by a Bill of Sale and a Right of Way and Easement, to be executed separately by each of the HOA's / POA's. MUB will agree to accept the systems "as is", but we will not accept liability for any damages sustained prior to the conveyance. We expect such conveyances to move forward smoothly; the only likely complication being if the HOA fails to possess adequate land rights for its system as it runs through or upon the property of private lots within the HOA.

MUB will operate and maintain any facilities that it acquires. MUB will not acquire any ponds, or other detention / retention structures; such facilities will remain the private property of the HOA / POA.

Unrelated to the annexation and the storm water project, MUB will perform a sanitary sewer replacement along the open stream from Forest Drive, upstream to a point approaching the dead end cul-de-sac of Poplar Woods Drive. For the purposes of maximizing construction efficiency and minimizing disruption of the neighborhoods, we have postponed the sanitary sewer construction so that it may be performed at the same time as the proposed storm work. The sanitary sewer work will be performed completely at MUB's expense. The proposed stormwater surcharge will not be used to fund any part of the sanitary sewer work.

The attached information will be provided to City Council at its meeting on July 1, 2014. It is expected that City Council will act at that time upon all matters related to the proposed annexation and the related stormwater project.

If the annexation and related Ordinances are not approved by City Council by July 15, 2014, it is nearly certain that both the construction bids and the funding interest rate quotes will expire before the delayed annexation can be completed. In that case, renewal of those items may increase the project cost, and in turn, cause the surcharge to be re-calculated and increased.

In addition, if the annexation is delayed until September or beyond, MUB will be required to begin the sanitary sewer replacement regardless of the status of the stormwater project. In that case, the inefficiencies of doing the two projects separately would likely add even more to the cost of the delayed stormwater project.

While it is assumed that you and your neighbors will support the limited annexation and related improvement plans, it is certainly your prerogative to disagree. In either case, I encourage your group to voice its support or opposition as City Council considers these matters.

I will be happy to answer any questions that you might have. Please feel free to call me at (304) 292-8443, or email at [tball@mub.org](mailto:tball@mub.org).

Respectfully

**MORGANTOWN UTILITY BOARD**



Timothy L. Ball, P.E.  
General Manager

Encl: Address map  
Mailing list  
Stormwater surcharge ordinance  
Surcharge calculation

X:\Eng\Projects\Work Orders\H\_WORK ORDERS\H-806 - Oakview Drive Homeowners Assoc - Forest Drive\Estimate\Alternatives - Surcharge\Mailing\Letter to Residents 6-26- FINAL.doc

Funding Plan

Forest / Poplar 48" Stormwater Culvert as MUB project with only Oakview annexed.

Residential equivalents based on impervious square feet	652,068.05
Bid Extension	3,353.00
Estimated Project Cost	655,421.05

Location	Number of Homes
Oakview	45
Poplar Woods	26
Morningside	
Greenbrier	
Windsor Ests	38
Windsor Ests Apts	25 res equiv Sq ft
Others Beyond 5 Subdiv's	88 res equiv Sq ft
Kenwood Place	8
Schubert Place	3
Anderson / Nueva	2
<b>Total</b>	<u>235</u>

County pays:	Residents pay:
\$150,000	\$505,421
Financing Terms	
Years	20
Interest	3.16%

SURCHARGE CALCULATION: Monthly

Financing Terms

Interest rate Years	Residential		Non Residential	
	Flat fee		Per 1000 Sq Ft	
After 10 years *		\$12.07		\$4.83
First 10 years *		\$13.28		\$5.31

\* Payments 10% higher in first 10 years to build debt service reserve (DSR) over time, rather than borrowing to pre-fund the DSR account.

**AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 386.08 OF ITS TRAFFIC CODE, AS THE SAME APPLIES TO PARKING FEES.**

The City of Morgantown hereby ordains that Section 363.08 of its Traffic Code is amended as follows (new matter underlined, deleted matter struck through):

**363.08 PARKING TIME LIMITS AND FEES.**

The hereinafter designated parking fees, regulations and fines shall become effective upon entry and recordation in the journal of the City, pursuant to Section 363.09:

- (a) Rate - \$0.50/hour - Two hour limit.  
Court Street - High to Chestnut  
~~Walnut Street - High to University~~  
Foundry Street - High to University  
Chestnut Street - Foundry to Willey  
Brockway Avenue - Walnut to Kingwood  
~~High Street - Willey to Foundry~~  
~~Fayette Street - High to Spruce~~  
~~Walnut Street - Spruce to Chestnut~~  
Donley Street - Don Knotts Blvd. to Clay Street
  
- (b) Rate - \$0.75/hour - Ten hour limit.  
North Spruce Street - Willey to Fife  
North High Street - Willey to Fife  
Prospect Street - Willey to University  
University Avenue - Willey to Fayette  
Reid Street - Chestnut to University  
Fife Street - North High to Price
  
- (c) Rate - \$1.00/hour - Two hour limit.  
High Street - Willey to Foundry  
Walnut Street - Spruce to Chestnut  
Fayette Street - High to Spruce
  
- (c) (d) Off-Street Parking.  
"J" Lot (Wesley Methodist Church)  
Rate: \$0.75/hr.  
"G" Lot (Trinity Episcopal Church)  
Rate: \$0.75/hr.  
"K" Lot (University Avenue Garage)  
Rate: \$0.75/hr.  
"A" Lot (Spruce Street Pavilion)  
Rate: \$1.25/hr 6:00 p.m. - 6:00 a.m.  
Permit Lot Only 6:00 a.m. - 6:00 p.m.

- "B" Lot (Behind Daniels)  
Rate: \$0.75/hr. 6:00 a.m. - 6:00 p.m.  
\$1.25/hr. 6:00 p.m. - 6:00 a.m.
- "E" Lot (Across from Bent Willeys)  
Rate: \$0.75/hr. 6:00 a.m. - 6:00 p.m.  
1.25/hr. 6:00 p.m. - 6:00 a.m.
- "C" Lot (Next to Hastings Funeral Home)  
Rate: \$0.75/hr.
- "D" Lot (Corner of Pleasant and Chestnut)  
Rate: \$0.75/hr.
- "F" Lot (Spruce Street Methodist Church)  
Rate: \$0.75/hr.
- "H" Lot (Spruce Street Garage)  
Rate: \$0.75/hr.
- "O" Lot (First Baptist Church)  
Rate: \$0.75/hr.

(d) (e) Overtime.

1. Long-term spaces (10 hr.) and short term spaces (2 hr.) at the following locations:

Foundry Street - High to University  
 Brockway Avenue - Walnut to Kingwood  
 North Spruce Street - Willey to Fife  
 North High Street - Willey to Fife  
 Prospect Street - Willey to University  
 University Avenue - Willey to Fayette  
 Reid Street - Chestnut to University  
 Fife Street - North High to Price

First violation - \$5.00

Each subsequent violation - \$5.00

If any of the above fines are not paid within ten days from date of issue, then in such an event the fines will be increased to \$10.00, plus municipal court costs, if any.

2. Short-term spaces (2 hr.) at the following locations between the hours of 11:00 p.m. through 6:00 p.m.:

Court Street - High to Chestnut  
 Walnut Street - High to University  
 Chestnut Street - Foundry to Willey  
 High Street - Willey to Foundry  
 Fayette Street - High to Spruce  
 Walnut Street - Spruce to Chestnut  
 First violation - \$5.00

Second violation for same incident for which first violation was issued - \$10.00.  
Third violation for same incident for which first and second violations were issued - \$25.00

If any of the above fines are not paid within ten (10) days from date of issue, then in such an event the fines will be increased by \$5.00, plus municipal court costs, if any.

There shall not be a 2 hour parking time limit upon the streets listed in this subparagraph (d) (2) between the hours of 6:00 p.m. through 11:00 p.m.

This Ordinance shall be effective August 1, 2014.

FIRST READING:

\_\_\_\_\_  
MAYOR

ADOPTED:

FILED:

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

RECORDED:

**AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING AND EXPANDING THE BOUNDARIES OF THE WILES HILL DESIGNATED PARKING DISTRICT, AND ALSO AMENDING THE PERMIT REQUIREMENTS AND WORDING OF THE DISTRICT'S PERMIT PARKING SIGNAGE.**

WHEREAS, the City of Morgantown, by ordinance adopted October 1, 1991, pursuant to authority set forth in Article 367 of the Morgantown City Code, established the Wiles Hill Designated Parking District;

WHEREAS, City Administration has recently recommended to Morgantown City Council that the boundaries of the Parking District be expanded, and that modifications be made not only to the parking permit requirements, but also the parking permit signage within the Parking District;

WHEREAS, Morgantown City Council is of the opinion that the Parking District's ordinance should be amended to incorporate the foregoing, recommended changes; and

NOW, THEREFORE, the City of Morgantown hereby ordains that the Wiles Hill Designated Parking District ordinance is amended as follows (new matter underline, deleted matter struck through):

WILES HILL DESIGNATED PARKING DISTRICT

**ESTABLISHMENT OF DISTRICT:**

There is hereby established within the City of Morgantown a Designated Parking District to be bounded as described below, and to be identified as the "Wiles Hill Designated Parking District".

~~This ordinance shall be immediately evaluated by Morgantown City Council six (6) months after the date of its adoption, and if as a result it is Council's opinion that it should be amended or repealed, that will be done immediately.~~

**BOUNDARIES OF DISTRICT:**

The District shall be bounded as follows:

~~Beginning at the Southwest corner of the intersection of Morgan Street and Highland Avenue (adjacent to Assessor's Parcel 301), extending Southwesterly to the intersection of Morgan Street and Duquesne Avenue, then in an Easterly direction to the intersection of Duquesne Avenue and Raymond Street, then in a Northeasterly direction to the intersection of Raymond Street and Highland Avenue, then in a Westerly direction along Highland Avenue to the point of beginning.~~

Beginning at the southeast corner of the intersection of University Avenue and North Street (adjacent to Assessor's tax map 14 parcel 35) extending East along North Street to the intersection of North Street and Grove Street, then in an south easterly direction along Grove Street to the intersection with Afton Street, then in an easterly direction to the intersection of Grove Street and Willowdale Road, following Willowdale Road south to the intersection of Willowdale Road and Stewart Street, then following Stewart Street south to the intersection of

Stewart Street and Lorentz Avenue, then along Lorentz Avenue to a point adjacent to Tax Map 20, Parcel 253, then along Lorentz Avenue including only parcels along the right side to the intersection of Lorentz Avenue and Sharon Avenue, along Sharon Avenue (excluding Tax Map 20, Parcel 274) to the intersection with Jones Avenue, then in a northwesterly direction to the intersection of Jones Avenue and Highview Place, then in a westerly direction along Highview Place to the dead end at Tax Map 14, Parcel 51, then following the parcel boundary in a westerly direction of parcel 51 to the intersection with parcel 48, then following the parcel boundary in a westerly direction of parcel 51 to the intersection with parcel 48, then following the parcel boundary of parcel 48 in a northerly direction along the rear parcel boundaries of parcels 49, 50, 46, 45,44,43 to the intersection with the right-of-way of Beaver Street, then along the northern property line of Tax Map 14, Parcel 55.1 to a point on Warrick Street adjacent to Tax Map 14, Parcel 62, then in a northerly direction along Warrick Street to the intersection of Warrick Street and University Avenue, then in a northerly direction along University Avenue to the point of beginning. The boundaries are shown on the Exhibit hereto attached.

**PERMITS AVAILABLE:**

Not more than two (2) residential occupant parking permits and one (1) visitor parking permit per individual property residential structure will be issued..

**SIGNING OF STREETS:**

The City Manager shall cause all streets within the above Designated Parking District to be signed as follows:

~~TWO HOUR PARKING, EXCEPT BY PERMIT~~  
8:00 a.m. - 6:00 p.m., ~~MONDAY THRU SATURDAY~~  
PARKING BY PERMIT ONLY  
MONDAY THRU SATURDAY  
7:00 a.m. - 7:00 p.m.

**APPLICABILITY OF OTHER PARKING RESTRICTIONS:**

Nothing contained herein shall be construed as permitting the parking of any vehicle in any property marked "no parking" or restricted parking area or in violation of any other City ordinance or law.

This Ordinance shall be effective August 1, 2014.

FIRST READING:

\_\_\_\_\_  
MAYOR

ADOPTED:

FILED:

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

RECORDED:

**Legend**

**EXHIBIT A**



Proposed Wiles Hill Parking District Boundary



Included Parcels



**Legend**

*EXHIBIT B*



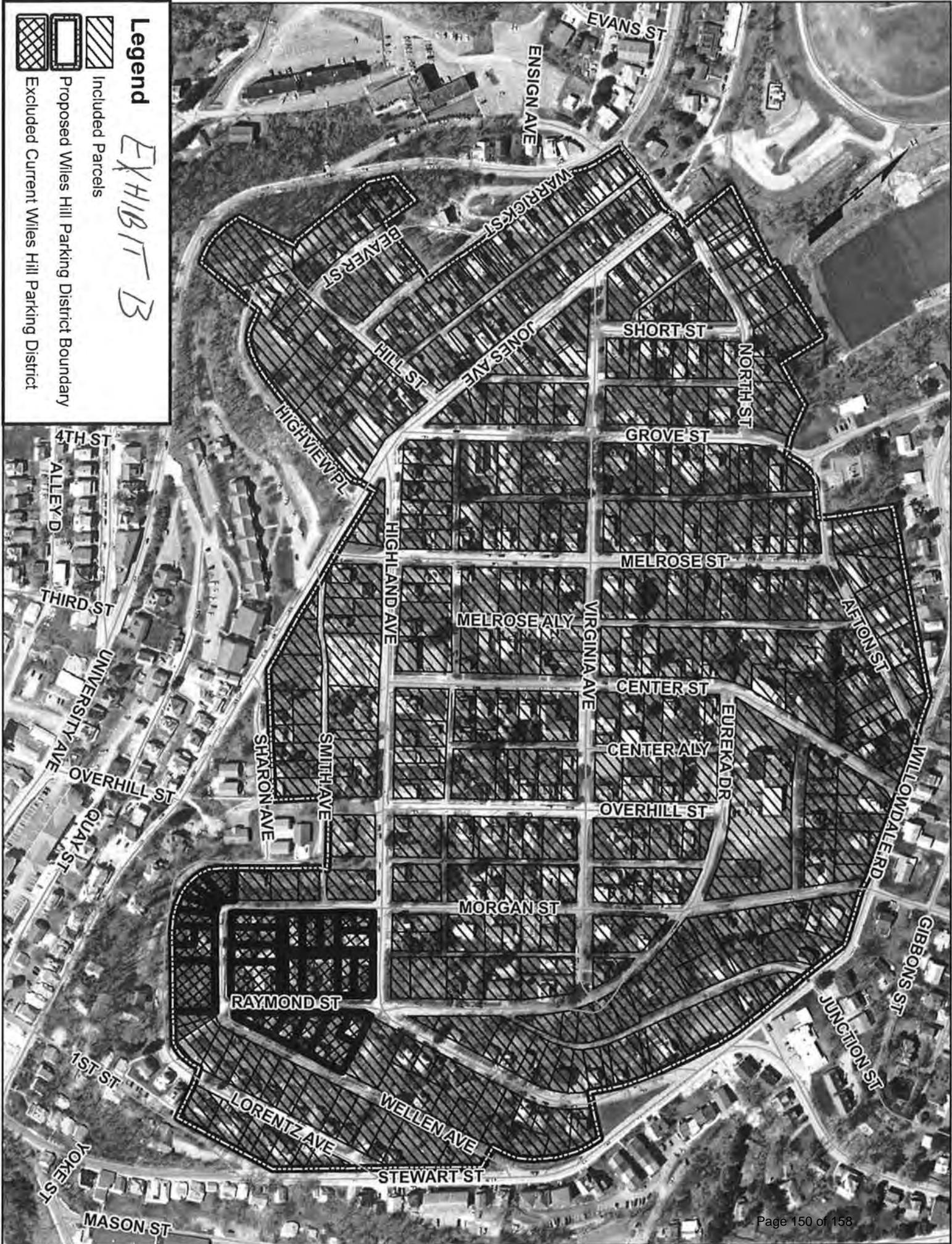
Included Parcels



Proposed Wiles Hill Parking District Boundary



Excluded Current Wiles Hill Parking District



**AN ORDINANCE BY THE CITY OF MORGANTOWN REPEALING ARTICLE 170 OF ITS ADMINISTRATIVE CODE, AS THE SAME APPLIES TO THE GREATER MORGANTOWN METROPOLITAN AREA YOUTH COMMISSION.**

The City of Morgantown hereby ordains that Article 170 of its Administrative Code, titled Greater Morgantown Metropolitan Area Youth Commission is repealed in its entirety.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_  
MAYOR

ADOPTED:

FILED:

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

ARTICLE 170  
Greater Morgantown Metropolitan  
Area Youth Commission

- |        |  |        |                         |
|--------|--|--------|-------------------------|
| 170.01 | Established.   | 170.07 | Officers.               |
| 170.02 | Cooperation of other local<br>governmental entities. | 170.08 | Meetings.               |
| 170.03 | Purpose and mission.                                 | 170.09 | Membership training.    |
| 170.04 | Membership.  | 170.10 | Powers and duties.      |
| 170.05 | Term.  | 170.11 | Appropriation of funds. |
| 170.06 | Vacancies.   |        |                         |

CROSS REFERENCES

Authority to establish - see CHTR. 4.02

170.01 ESTABLISHED.

There is hereby established a Greater Morgantown Metropolitan Area Youth Commission (hereinafter "Youth Commission").  
(Ord. 05-08. Passed 4-5-05.)

170.02 COOPERATION OF OTHER LOCAL GOVERNMENTAL ENTITIES.

The City shall seek the cooperation and assistance of local governmental entities, so as to make the efforts of the Youth Commission a success.  
(Ord. 05-08. Passed 4-5-05.)

170.03 PURPOSE AND MISSION.

The purpose of this article is to acknowledge this community's youth as an integral part of our society and to give youth a voice in government, thus enabling them to help shape the future of the greater Morgantown metropolitan area and thereby benefit all of its citizenry.  
(Ord. 05-08. Passed 4-5-05.)

170.04 MEMBERSHIP.

The Youth Commission shall consist of twenty-two members and all shall be of high school age and reside within the greater Morgantown metropolitan area. Initial appointments to the Youth Commission shall be made by the Morgantown City Council after having received nominations.

Subsequent appointments shall be made by Morgantown City Council after having received nominations from a nominating committee comprised of five Youth Commission members and the Commission's adult advisors.

(Ord. 05-08. Passed 4-5-05.)

**170.05 TERM.**

Youth Commission members shall be appointed for a one-year term and may be reappointed. (Ord. 05-08. Passed 4-5-05.)

**170.06 VACANCIES.**

Vacancies shall be filled in the same manner as appointments, but only for the remainder of the unexpired term.  
(Ord. 05-08. Passed 4-5-05.)

**170.07 OFFICERS.**

The Youth Commission shall select from its own membership a chairperson, vice-chairperson and secretary.  
(Ord. 05-08. Passed 4-5-05.)

**170.08 MEETINGS.**

The Youth Commission shall have one regularly scheduled meeting each month. Special meetings may be called by the chairperson.  
(Ord. 05-08. Passed 4-5-05.)

**170.09 MEMBERSHIP TRAINING.**

Training, which will assist the individual members of the Youth Commission in performing their Commission duties, will be provided.  
(Ord. 05-08. Passed 4-5-05.)

**170.10 POWERS AND DUTIES.**

It shall be the duty of the Youth Commission to advise and recommend to the City, such programs or projects which, in the opinion of the Youth Commission, will improve the quality of life for youth within the greater Morgantown area.  
(Ord. 05-08. Passed 4-5-05.)

**170.11 APPROPRIATION OF FUNDS.**

City Council may appropriate any funds that it deems necessary to carry out any of the proposals set forth by the Youth Commission.  
(Ord. 05-08. Passed 4-5-05.)

**AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING ARTICLE 129 OF ITS ADMINISTRATIVE CODE BY ADDING A NEW SECTION 129.16 PERTAINING TO THE CITY FINANCE DIRECTOR'S AUTHORITY TO REQUEST INFORMATION FROM THE WEST VIRGINIA STATE TAX DEPARTMENT.**

The City of Morgantown hereby ordains that a new Section 129.16 is created within its Administrative Code which reads as follows (all new matter is underlined):

129.16 FINANCE DIRECTOR'S AUTHORITY TO REQUEST INFORMATION.

Pursuant to Section 11-10-5d of the West Virginia Code, Morgantown City Council, as the governing body of Morgantown, West Virginia hereby appoints the Finance Director of the City as the duly authorized agent of the municipality to inspect and make copies of the State business and occupation tax returns filed by taxpayers of the municipality and any other state tax returns (includes, but not limited to, consumers sales and services tax return information and health care provider tax return information) as may be reasonably requested by the municipality. Such inspection or copying shall include disclosure to the Finance Director of the municipality for tax administration purposes of all available return information from files of the tax department relating to taxpayers who transact business within the municipality. As the City's agent in such financial matters, the Finance Director is hereby granted authority to request in writing all such information at his/her discretion, on a case by case basis, in lieu of receiving specific instructions from either the Mayor or City Council for each such case.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_  
MAYOR

ADOPTED:

FILED:

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

RECORDED:

Reimbursement Resolution  
Forest Drive / Morgan Drive Stormwater Project

**REIMBURSEMENT RESOLUTION**

**RESOLUTION STATING THE REASONABLE EXPECTATION OF THE CITY COUNCIL OF THE CITY OF MORGANTOWN TO REIMBURSE THE MORGANTOWN UTILITY BOARD FOR CAPITAL EXPENDITURES IN CONNECTION WITH THE DESIGN, ACQUISITION AND CONSTRUCTION OF COMBINED UTILITY SYSTEM FACILITIES AND IMPROVEMENTS TO THE STORMWATER PORTION OF THE SYSTEM MADE PRIOR TO THE ISSUANCE OF TAX-EXEMPT REVENUE BONDS OR OTHER OBLIGATIONS.**

**WHEREAS**, The City of Morgantown (the “City”), acting through the Morgantown Utility Board (“MUB”), has determined to acquire and construct certain improvements to the stormwater portion of the existing combined utility system of MUB (the “System”), including, but not limited to 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; and the cost thereof is estimated not to exceed \$850,000;

**WHEREAS**, the City will finance all or a portion of the costs of design, acquisition and construction of the Project through the issuance of tax-exempt revenue bonds or other obligations in one or more series, in an aggregate amount estimated not to exceed \$850,000 (the “Bonds”);

**WHEREAS**, the City expects MUB to make certain capital expenditures relating to the Project prior to issuance of the Bonds;

**WHEREAS**, such costs will be paid from MUB’S operating account (the “Operating Account”) or MUB’s payroll account (the “Payroll Account”); and

**WHEREAS**, the City Council reasonably expects that the City will reimburse MUB for a portion of the cost of the Project in an amount not to exceed \$350,000, for costs incurred prior to issuance of the Bonds, from the proceeds of sale of the Bonds.

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

Section 1. The City Council of The City of Morgantown reasonably expects that the City will reimburse MUB for certain capital expenditures made not more than 60 days prior to the date of adoption of this resolution (and after the date of such adoption, but prior to the issuance of the Bonds) in connection with the Project, such capital expenditures to be undertaken or incurred prior to the execution and delivery of the Bonds, from the proceeds of such Bonds, which Bonds are reasonably expected to be executed and delivered within 18 months from the later of (i) the expenditure for payment of said costs or (ii) the placing of the Project in service.

Section 2. This Resolution is intended to constitute a “declaration of official intent” pursuant to Section 1.150-2 of the Treasury Regulations promulgated under Section 103 of the Internal Revenue Code of 1986, as amended (the “Reimbursement Regulations”).

Section 3. The source of payment for such capital expenditures will be MUB’s Operating Account and/or MUB’s Payroll Account, and upon issuance of the Bonds, proceeds thereof not to exceed the amount of such capital expenditures will be applied by the City to MUB for the reimbursement of such Operating Account and Payroll Account, such allocation not exceed \$350,000.

Section 4. The maximum principal amount of Bonds expected to be issued for the Project is \$850,000.

Section 5. The City, through MUB, shall provide written evidence of all reimbursement allocations.

Section 6. This Resolution shall become effective on the date of its adoption.

Adopted: \_\_\_\_\_, 2014.

THE CITY OF MORGANTOWN

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

CERTIFICATION

I, Linda Little, City Clerk of The City of Morgantown, do hereby certify that the foregoing is a true and accurate copy of a Reimbursement Resolution adopted by the City Council of The City of Morgantown at a regular meeting of City Council held \_\_\_, 2014, pursuant to proper notice, at which meeting a quorum was present and acting throughout.

Dated this \_\_\_ 2014.

[SEAL]

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

