



Office of the City Clerk

# The City of Morgantown

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**AGENDA**  
**MORGANTOWN CITY COUNCIL**  
**REGULAR MEETING**  
**September 20, 2016**  
**7:00 p.m.**

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **PLEDGE TO THE FLAG**
4. **APPROVAL OF MINUTES: COW MEETING MINUTES AUGUST 30, 2016, SPECIAL MEETING MINUTES SEPTEMBER 6, 2016, AND REGULAR MEETING MINUTES SEPTEMBER 6, 2016.**
5. **CORRESPONDENCE:**  
  
**PROCLAMATION: RETIREMENT FOR CAPTAIN HAROLD SPERRINGER.**  
  
**PROCLAMATION: NATIONAL RECOVERY MONTH.**  
  
**FIRE CHIEF MARK CARAVASOS – UPDATE ON THE PAINTING OF THE CURBS IN SUNCREST.**
6. **PUBLIC HEARINGS:**  
  
**A. AN ORDINANCE AUTHORIZING EXECUTION WITH THE WEST VIRGINIA BOTANICAL GARDEN, INC. FOR AN 82-ACRE PARCEL KNOWN AS THE TIBBS RUN PROPERTY.**
7. **UNFINISHED BUSINESS:**  
  
**A. Consideration of APPROVAL of (SECOND READING) and (ADOPTION) of AN ORDINANCE AUTHORIZING EXECUTION WITH THE WEST VIRGINIA BOTANICAL GARDEN, INC. FOR AN 82-ACRE PARCEL KNOWN AS THE TIBBS RUN PROPERTY. (First reading September 6, 2016)**

B. Consideration of **APPROVAL** of (**SECOND READING**) of **AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION AND IMPROVEMENTS TO THE SANITARY SEWER PORTION OF THE CITY OF MORGANTOWN AND FINANCING COST THEREOF THROUGH THE ISSUANCE OF NOT MORE THAN 30,000,000 IN AGGREGATE AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS SERIES 2016C.** (First reading September 6, 2016)

**C. BOARDS AND COMMISSIONS**

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

9. **SPECIAL COMMITTEE REPORTS:**

10. **NEW BUSINESS:**

A. Consideration of **APPROVAL** of (**FIRST READING**) of **AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF TWO (2) PARCELS OF REAL ESTATE IN THE SIXTH WARD OF THE CITY OF MORGANTOWN FROM R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT TO R-1A, SINGLE-FAMILY RESIDENTIAL DISTRICT BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH HEREIN.**

B. Consideration of **APPROVAL** of (**FIRST READING**) of **AN ORDINANCE AMENDING THE FY 2016-2017 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND.**

C. Consideration of **APPROVAL** of (**FIRST READING**) of **AN ORDINANCE AMENDING SECTIONS 521.07 AND 521.09 TO PERMIT ALCOHOL SALES FOR ON-PREMISES CONSUMPTION BEGINNING AT TEN O'CLOCK IN THE MORNING ON SUNDAYS.**

D. Consideration of **APPROVAL** of **A RESOLUTION AUTHORIZING AN AGREEMENT WITH THE MONONGALIA COUNTY COMMISSION FOR EMPLOYMENT OF AN ANIMAL CONTROL OFFICER.**

**E. Consideration of APPROVAL of A RESOLUTION UTILIZING VARIOUS BANKING FACILITIES AS DEPOSITORIES FOR CITY FUNDS.**

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

**New Business:**

- 1. Truck Bid – Bid Call 2017-02**
- 2. Yellow Curb Painting Project**
- 3. Downtown Lighting with Main Street**
- 4. Fiscal year 2016 Police & Fire Pension Fund Reports**

**12. REPORT FROM CITY CLERK:**

**13. REPORT FROM CITY ATTORNEY:**

**14. REPORT FROM COUNCIL MEMBERS:**

**15. EXECUTIVE SESSION: Pursuant to WV State Code Section 6-9A-4(b) (2) (A)  
In order to discuss Personnel Matters in considering recruitment for a new City Manager.**

**16. ADJOURNMENT:**

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



**Office of the City Manager**

# The City of Morgantown

Interim City Manager  
COL (Ret) Glen Kelly  
389 SPRUCE STREET  
MORGANTOWN, WEST VIRGINIA 26505  
(304) 284-7404 FAX: (304) 284-7430  
[www.morgantownwv.gov](http://www.morgantownwv.gov)

**September 9, 2016**

## **City Manger's Report for City Council Meeting on September 20, 2016**

### **New Business:**

#### **1. Truck Bid – Bid Call 2017-02**

Truck Bids were opened on September 1, 2016. Attached is the Memorandum from the Public Works Department. I recommend you approve the awarding of this contract as listed to Matheny Motor Trucks.

#### **2. Yellow Curb Painting Project**

We have suspended the yellow curb painting in Suncrest pending further public input. I know that this is a project that has been in the works for over three years; however the lack of communication from the City to our citizens has to be dealt with. It is my plan to sit down with the Fire Chief, City Engineer and Public Works Director on Monday the 19<sup>th</sup> with collated data on what the concerns are and then try to move forward with what must be done (Fire/EMS-Football, etc.). I hope this alleviates some consternation on your parts and gives our citizens an opportunity to voice their concerns.

#### **3. Downtown Lighting Project with Main Street.**

We still have some steps to complete before we can move forward on this project. As of this date we do not have the DOH approval of the new lights and how well they are working. We have been working to purchase the light poles from MON Power and we have finished paying for them but do not have the release paper work stating they we now own them. I am sure these issues will be resolved soon.

**4. Fiscal Year 2016 Police and Fire Pension Fund Reports**

As included in the attached report by Jim Goff, Finance Director, the Police and Fire Pension reports are submitted to City Council for approval. The Municipal Pensions Oversight Board require approval from the governing body before the State portion of funding can be invoiced and deposited into the accounts. I agree with the reports, and recommend City Council approve the reports as provided/



**Glen Kelly**

**Interim City Manager**

**Morgantown, West Virginia**

# ***City of Morgantown***

## ***Finance Department***

*389 Spruce Street*

*Morgantown, WV 26505*

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

# **MEMO**

**DATE:** October 1, 2015

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

**FROM:** Lori Livengood, Acting Finance Director

**RE:** FY15 Annual Reports of Police & Fire Pension Funds

Attached are copies of the Annual Reports for the fiscal year ended June 30, 2015 for the Morgantown Police and Fire Pension Funds required by the WV Municipal Pensions Oversight Board. Please include this item on the agenda for the October 20th City Council meeting as part of your City Manager's report. Once Council approves the reports, we will be able to make requests for the State's insurance tax allocation.

The most recent actuarial valuation is the 7/1/13 valuation. Pension fund balances have changed as follows:

	<u>FY13</u>	<u>FY14</u>	<u>FY15</u>
Policemen's Pension	\$12,600,466	\$14,427,833	\$14,434,407
Firemen's Pension	\$10,083,656	\$11,447,092	\$11,510,863

The funded ratio for the two plans decreased from the previous actuarial valuation as follows:

	<u>7/1/11</u>	<u>7/1/12</u>	<u>7/1/13</u>
Policemen's Pension	31.79%	28.29%	28.37%
Firemen's Pension	31.48%	28.43%	28.61%

Please let me know if you have any questions or need additional information.

**Annual Report of Policemen's and Firemen's Pension and Relief Funds  
to the Municipal Pensions Oversight Board  
as required by WV Code §8-22-19(d)(1)(B) and §8-22-22a(a)**

Pension Fund	Morgantown Firemen's Pension & Relief Fund
Treasurer	Lori Livengood, Acting Finance Director
Municipality	City of Morgantown, West Virginia
Fiscal Year (July 1 - June 30)	July 1, 2014 - June 30, 2015
Actuarial Funding Method	<input type="checkbox"/> Standard Funding Method <input type="checkbox"/> Optional Funding Method <input checked="" type="checkbox"/> Alternative Funding Method (107%) <input type="checkbox"/> % Necessary to Maintain Plan Solvency for 15 Years <input type="checkbox"/> Conservation Funding Method

PART I		Item	Amount
<b>Beginning Fair Value of Pension Plan</b>		<b>July 1</b>	<b>\$ 11,447,092.32</b>
<b>I. Revenue During Fiscal Year</b>			
1. Employee Contributions for employees hired prior to Jan. 1, 2010	Percent of Gross Salary	7.00%	
Total amounts contributed by employees or withheld from their salaries			\$ 135,141.56
2. Employee Contributions for employees hired on or after Jan. 1, 2010	Percent of Gross Salary	9.50%	
Total amounts contributed by employees or withheld from their salaries			\$ 56,188.61
3. Employee Contributions for Plans utilizing the Conservation Funding Method	Percent of Gross Salary	1.50%	
Total amounts contributed by employees or withheld from their salaries			\$ -
4. Government Contributions			
a. From Parent Local Government			
Required employer contributions from your municipality			\$ 585,139.34
b. Additional employer contributions from your municipality			
			\$ 33,673.66
c. From State Government			
Municipal Pensions Oversight Board (premium surcharges on fire and casualty insurance)			\$ 451,492.01
5. Earnings on Investments			
a. Net Appreciation/(Depreciation) of Fair Value of Investments			\$ (481,732.64)
b. Short Term & Fixed Income Interest			\$ 149,611.42
c. Dividends			\$ 114,912.10
d. Net Realized Gain (Loss) on Sale or Exchange of Assets			\$ 608,450.31
e. Other			\$ 166.44
f. Less Investment Expense			\$ (90,996.86)
Net Investment Income			\$ 300,410.77
6. All Other Revenues			
Please Specify			
<b>Total Revenues</b>			<b>\$ 1,562,045.95</b>
The sum of Items I.1. through I.6.			

PART II		Item	Amount
<b>II Expenditures During Fiscal Year</b>			
Does not include Investment Expenses, see IS I. on first page			
1. Benefits Paid			
Retirement, disability, survivor and any other benefits			\$ 1,496,332.20
2. Withdrawals			
Amount paid to employees or former employees or their survivors, representing return of contributions made by employees during the period of their employment			\$ -

**Annual Report of Policemen's and Firemen's Pension and Relief Funds  
to the Municipal Pensions Oversight Board  
as required by WV Code §8-22-19(d)(1)(B) and §8-22-22a(a)**

<b>3. Other Payments</b>			
Administrative expenses and other costs or payments not representing benefit payments or withdrawals			
<b>a. Administration</b>	Municipal administration fees		\$ -
<b>b. Other</b>	Example: Pension Secretary's salaries, Rent, etc.		\$ 1,943.00
<b>Total Expenditures</b> The sum of items II.1. through II.3.b.			\$ 1,498,275.20
<b>Net Income/(Loss)</b>			\$ 63,770.75
<b>Ending Fair Value of the Pension Plan June 30</b>			\$ 11,510,863.07
<b>III Asset Allocation at End of Fiscal Year</b>			
<b>1. Cash and Cash Equivalents - Short Term</b>		<b>Percent of Total Assets</b>	<b>11.68%</b>
<b>Financial Institution or Money Manager</b>	<b>Type of Account</b>	<b>Fair Value</b>	
a. Huntington Bank	Checking	\$	9,957.98
b.	Treasury Bills	\$	-
c. Morgan Stanley	Savings or Money Market Account	\$	1,334,440.69
d.	Short Term Investment Funds	\$	-
e.	Re-Purchase Agreements	\$	-
f.	Commercial Paper	\$	-
g.	CDs and Bankers' Acceptances	\$	-
			Fair Value
<b>Total Cash and Cash Equivalents</b> The sum of items 1 a through 1 g			\$ 1,344,398.67
<b>2. Fixed Income - Long Term</b>		<b>Percent of Total Assets</b>	<b>29.39%</b>
<b>Financial Institution or Money Manager</b>	<b>Type of Account</b>	<b>Fair Value</b>	
a. Morgan Stanley	US Govt Agencies & Instruments	\$	1,440,532.67
b.	Foreign Govt, Subdivisions, Agencies or Enterprise	\$	-
c.	International agencies or supranational entities	\$	-
d.	Mortgage-related or others asset back securities	\$	-
e. Morgan Stanley	Corporate Debt Securities	\$	1,942,373.55
f.	Corporate Inflation-index bonds	\$	-
g.	Bank CD's, fixed time deposits, Bankers Acceptance	\$	-
h.	State & Local Govt Debt Securities	\$	-
i.	Mutual Funds (Bonds)	\$	-
j.	International Mutual Funds - Bonds	\$	-
k.	Exchange Traded Funds (ETF) - Bonds	\$	-
l.	International Exchange Traded Funds (ETF) - Bonds	\$	-
			Fair Value
<b>Total Fixed Income (at fair value)</b> The sum of items 2 a through 2 l			\$ 3,382,906.22
<b>3. Equity Investments</b>		<b>Percent of Total Assets</b>	<b>58.93%</b>
<b>Financial Institution or Money Manager</b>	<b>Type of Account</b>	<b>Fair Value</b>	
a. Morgan Stanley	Individual Stocks Held	\$	6,783,558.18
b.	Mutual Fund Shares (Equities)	\$	-
c.	Exchange Traded Funds (ETF)	\$	-
d.	International Stocks Held	\$	-
e.	International Mutual Funds - Equities	\$	-
f.	International Exchange Traded Funds (ETF)	\$	-
			Fair Value
<b>Total Equity Investments (at fair value)</b> The sum of items 3 a through 3 f			\$ 6,783,558.18

**Annual Report of Policemen's and Firemen's Pension and Relief Funds  
to the Municipal Pensions Oversight Board  
as required by WV Code §8-22-19(d)(1)(B) and §8-22-22a(a)**

4. Alternative Investments		Percent of Total Assets	0.00%
Financial Institution or Money Manager	Type of Account	Fair Value	
a.	Real Estate Investment Trust	\$	
b.	Private Equity Fund	\$	
c.	Hedge Funds	\$	
d.	Other Alternative Investments	\$	
<b>Total Alternative Investments (at fair value)</b>		The sum of items 4 a through 4 d	\$ -
<b>Total Assets</b>		Sum of III.1. through III.4.	\$ 11,510,863.07

III.5 Total return on investments for the period of July 1 thru June 30	(Obtain from financial institution or money manager)	
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**PART II**

**Membership and Beneficiaries**

\* Please report the figures requested below, for the fiscal year reported on page 1. To figure the Average Monthly Number of Persons, add figures for each month and divide by 12. Please round to two decimal places. An employee must have been paid for 100 hours in any month to be included in that month.

\*\* Please report the total number of disability applications received during the fiscal year, the status of each application at the end of the fiscal year, the total applications granted and denied, and the percentage of disability benefit recipients to the total number of active members of the fund. This requirement satisfies §8-22-23a(a) of the WV Code if the report is submitted to the Municipal Pensions Oversight Board prior to August 1st of each year.

Item	Avg. Monthly #
<b>I. Members of your Pension Fund</b> <i>Exclude Beneficiaries</i>	
1. Active Members <i>Current number of employees contributing to the pension fund</i>	47.67
2. Inactive Members <i>Non-active vested members and employees on extended leave without pay</i>	
<b>II. Beneficiaries Receiving Periodic Benefit Payments During Fiscal Year</b>	
1. Retirees	53.83
2. Disability Retirees <i>Includes the new applications approved during reporting period</i>	2.00
a. Number of Disability Applications received during the fiscal year	
b. Status of each Disability Application at end of fiscal year - please attach separate sheet with details	
(1.) Disability Applications Approved during Fiscal Year	
(2.) Disability Applications Denied during Fiscal Year	
3. Percentage of Disability Benefit Recipients to the Total of Active Members in the fund	4.20%
4. Survivors (of Deceased Members) Drawing Benefits	14.00

**PART III**

**Legal Thresholds for Investments**

	(1)	(2)	(3)
	%	Maximum % and \$	(Over) Under

Equity Investments	59%	75%	16%
International Securities	0%	30%	30%
Alternative Investments	0%	25%	25%
Cash/Cash Equivalents and Fixed Income (Low 25%; High 75%)	41%	75%	-16%
Short Term Investment - (90 days of expenses)		\$ 374,568.80	\$ (969,829.87)

**Annual Report of Policemen's and Firemen's Pension and Relief Funds  
to the Municipal Pensions Oversight Board  
as required by WV Code §8-22-19(d)(1)(B) and §8-22-22a(a)**

<b>Pension Fund</b>	<u>Morgantown Policemen's Pension &amp; Relief Fund</u>
<b>Treasurer</b>	<u>Lori Livengood, Acting Finance Director</u>
<b>Municipality</b>	<u>City of Morgantown, West Virginia</u>
<b>Fiscal Year (July 1 - June 30)</b>	<u>July 1, 2014 - June 30, 2015</u>
<b>Actuarial Funding Method</b>	<input type="checkbox"/> Standard Funding Method <input type="checkbox"/> Optional Funding Method <input checked="" type="checkbox"/> Alternative Funding Method (107%) <input type="checkbox"/> % Necessary to Maintain Plan Solvency for 15 Years <input type="checkbox"/> Conservation Funding Method

PART I		Item	Amount
<b>Beginning Fair Value of Pension Plan</b>		<b>July 1</b>	<b>\$ 14,427,833.20</b>
<b>I. Revenue During Fiscal Year</b>			
1.	Employee Contributions for employees hired prior to Jan. 1, 2010	Percent of Gross Salary	7.00%
	Total amounts contributed by employees or withheld from their salaries		\$ 280,599.67
2.	Employee Contributions for employees hired on or after Jan. 1, 2010	Percent of Gross Salary	9.50%
	Total amounts contributed by employees or withheld from their salaries		\$ 62,844.78
3.	Employee Contributions for Plans utilizing the Conservation Funding Method	Percent of Gross Salary	1.50%
	Total amounts contributed by employees or withheld from their salaries		\$ -
4.	Government Contributions		
	a. From Parent Local Government		
	Required employer contributions from your municipality		\$ 720,777.96
	b. Additional employer contributions from your municipality		\$ -
	c. From State Government	Municipal Pensions Oversight Board (premium surcharges on fire and casualty insurance)	\$ 578,714.45
5.	Earnings on Investments		
	a. Net Appreciation/(Depreciation) of Fair Value of Investments		\$ (605,139.20)
	b. Bond Interest		\$ 188,255.69
	c. Dividends		\$ 154,060.31
	d. Net Realized Gain (Loss) on Sale or Exchange of Assets		\$ 748,159.30
	e. Other		\$ 228.18
	f. Less Investment Expense		\$ (112,676.35)
	Net Investment Income		\$ 372,887.93
6.	All Other Revenues		
	Please Specify		
<b>Total Revenues</b>	<b>The sum of Items I.1. through I.6.</b>		<b>\$ 2,015,824.79</b>

**Annual Report of Policemen's and Firemen's Pension and Relief Funds  
to the Municipal Pensions Oversight Board  
as required by WV Code §8-22-19(d)(1)(B) and §8-22-22a(a)**

Item		Amount
<b>II Expenditures During Fiscal Year</b> <small>Does not include Investment Expenses, see 1.5 f on first page</small>		
<b>1. Benefits Paid</b>	<small>Retirement, disability, survivor and any other benefits</small>	\$ 1,974,706.95
<b>2. Withdrawals</b>	<small>Amount paid to employees or former employees or their survivors, representing return of contributions made by employees during the period of their employment</small>	\$ 33,200.18
<b>3. Other Payments</b>	<small>Administrative expenses and other costs or payments non representing benefit payments or withdrawals</small>	
<b>a. Administration</b>	<small>Municipal administration fees</small>	\$ -
<b>b. Other</b>	<small>Example: Pension Secretary expenses; Rent; etc.</small>	\$ 1,344.00
<b>Total Expenditures</b>	<small>The sum of Items II.3. through II.3.b.</small>	\$ 2,009,251.13
<b>Net Income/(Loss)</b>		\$ 6,573.66
<b>Ending Fair Value of the Pension Plan</b>	<b>June 30</b>	\$ 14,434,406.86
<b>III Asset Allocation at End of Fiscal Year</b>		
<b>1. Cash and Short-Term Investments</b>	<b>Percent of Total Assets</b>	<b>12.11%</b>
<small>Institution or Money Manager</small>	<small>Type of Account</small>	<small>Fair Value</small>
a. Huntington Bank	Checking	\$ 15,046.76
b.	Non-Interest Bearing	\$ -
c. Morgan Stanley	Savings or Money Market Account	\$ 1,733,338.48
d.	Certificates of Deposit	\$ -
e.	Re-Purchase Agreements	\$ -
<b>Total Cash and Short-Term Investments</b>	<small>The sum of Items 1.a through 1.e</small>	<b>\$ 1,748,385.24</b>
<b>2. Government Securities</b>	<b>Percent of Total Assets</b>	<b>12.44%</b>
<small>Institution or Money Manager</small>	<small>Type of Account</small>	<small>Fair Value</small>
a. Morgan Stanley	Treasury Notes and Bonds	\$ 1,795,063.87
b.	State and Municipal Bonds	\$ -
c.	Mutual Funds (Government Bonds)	\$ -
<b>Total Government Securities (at fair value)</b>	<small>The sum of Items 2 a. through 2 c.</small>	<b>\$ 1,795,063.87</b>
<b>3. Corporate Bonds</b>	<b>Percent of Total Assets</b>	<b>17.13%</b>
<small>Institution or Money Manager</small>	<small>Type of Account</small>	<small>Fair Value</small>
a. Morgan Stanley	Bonds	\$ 2,472,898.60
b.	Mortgage-backed Securities	\$ -
c.	Debentures	\$ -
d.	Mutual Funds (Corporate Bonds)	\$ -
<b>Total Corporate Bonds (at fair value)</b>	<small>The sum of Items 3 a. through 3 d</small>	<b>\$ 2,472,898.60</b>
<b>4. Corporate Stocks</b>	<b>Percent of Total Assets</b>	<b>58.32%</b>

**Annual Report of Policemen's and Firemen's Pension and Relief Funds  
to the Municipal Pensions Oversight Board  
as required by WV Code §8-22-19(d)(1)(B) and §8-22-22a(a)**

Institution or Money Manager	Type of Account	Fair Value
a. Morgan Stanley	Individual Stocks Held	\$ 8,418,059.15
b.	Mutual Fund Shares (Equities)	
<b>Total Corporate Stocks (at fair value)</b>		Fair Value \$ 8,418,059.15
<b>Total Assets</b>		Sum of III.1. through III.5. \$ 14,434,406.86

PART II		
Membership and Beneficiaries		
* Please report the figures requested below, for the fiscal year reported on page 1. To figure the Average Monthly Number of Persons, add figures for each month and divide by 12. Please round to two decimal places. An employee must have been paid for 100 hours in any month to be included in that month.		
** Please report the total number of disability applications received during the fiscal year, the status of each application at the end of the fiscal year, the total applications granted and denied, and the percentage of disability benefit recipients to the total number of active members of the fund. This requirement satisfies §8-22-23a) of the WV Code if the report is submitted to the Municipal Pensions Oversight Board prior to December 31st of each year.		
Item		Avg. Monthly #
<b>I. Members of your Pension Fund</b>	<b>Exclude Beneficiaries</b>	
1. Active Members	Current number of employees contributing to the pension fund	65.08
2. Inactive Members	Non-active vested members and employees on extended leave without pay	1.00
<b>II. Beneficiaries Receiving Periodic Benefit Payments During Fiscal Year</b>		
1. Retirees		67.58
2. Disability Retirees	Includes the new applications approved during reporting period	7.00
a. Number of Disability Applications received during the fiscal year		0.00
b. Status of each Disability Application at end of fiscal year - please attach separate sheet with details		
( 1.) Disability Applications Approved during Fiscal Year		0.00
( 2.) Disability Applications Denied during Fiscal Year		0.00
3. Percentage of Disability Benefit Recipients to the Total of Active Members in the fund		10.76%
4. Survivors (of Deceased Members) Drawing Benefits		11.00

# *City of Morgantown*

## *Finance Department*

*389 Spruce Street*

*Morgantown, WV 26505*

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

*jgoff@morgantownwv.gov*

# MEMO

**DATE:** September 9, 2016

**TO:** Glen Kelly, Interim City Manager

**FROM:** James Goff, Finance Director

**RE:** FY16 Annual Reports of Police & Fire Pension Funds

Attached are copies of the Annual Reports for the fiscal year ended June 30, 2016 for the Morgantown Police and Fire Pension Funds required by the WV Municipal Pensions Oversight Board. Please include this item on the agenda for the September 20th City Council meeting as part of your City Manager's report. Once Council approves the reports, we will be able to make requests for the State's insurance tax allocation. These fiscal year 2017 State allocations amount to approximately \$630,000 for the Police Pension Fund and \$485,000 for the Fire Pension Fund.

The pension fund balances have changed as follows:

	<u>FY14</u>	<u>FY15</u>	<u>Unaudited FY16</u>
Policemen's Pension	\$14,427,833	\$14,434,407	\$13,826,768
Firemen's Pension	\$11,447,092	\$11,510,863	\$11,138,652

The 7/1/15 actuarial valuation is currently in process and is unavailable at this time. From previous actuarial valuations, the funded ratio has been increasing as follows:

	<u>7/1/12</u>	<u>7/1/13</u>	<u>7/1/14</u>
Policemen's Pension	28.29%	28.37%	29.92%
Firemen's Pension	28.43%	28.61%	31.16%

Please let me know if you have any questions or need additional information.



**FINANCE DEPARTMENT**

# The City of Morgantown

389 SPRUCE STREET

MORGANTOWN, WEST VIRGINIA 26505

PHONE: (304) 284-7407 FAX: (304) 284-7418

[jgoff@morgantownwv.gov](mailto:jgoff@morgantownwv.gov)

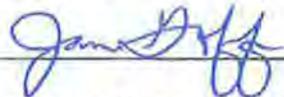
[www.morgantownwv.gov](http://www.morgantownwv.gov)

Municipal Pensions Oversight Board  
301 Eagle Mountain Road, Suite 251  
Charleston, West Virginia 25311

Under penalty for false swearing (West Virginia Code §61-5-3), I hereby certify the foregoing information in this annual report of the Morgantown Firemen's Pension and Protection Fund for fiscal year ended June 30, 2015 to be true and accurate in all respects. I further certify (per §8-22-19(d)(1) and §8-22-19(d)(1)(B)) the Board of Trustees of the pension and relief fund has made a report to the governing body of the municipality and to the oversight board on the condition of its fund with respect to the fiscal year. This Annual Report has been presented to the City of Morgantown city council on September 20, 2016.

Date: September 9, 2016

Name: James M. Goff

Signed: 

Title: Municipal Treasure and Custodian of the Firemen's Pension and Relief Fund

Municipality: City of Morgantown

**Annual Report of Policemen's and Firemen's Pension and Relief Funds  
to the Municipal Pensions Oversight Board  
as required by WV Code §8-22-19(d)(1)(B) and §8-22-22a(a)**

Pension Fund	Morgantown Firemen's Pension & Relief Fund
Treasurer	James Goff, Finance Director
Municipality	City of Morgantown, West Virginia
Fiscal Year (July 1 - June 30)	July 1, 2015 - June 30, 2016
Actuarial Funding Method	<input type="checkbox"/> Standard Funding Method <input type="checkbox"/> Optional Funding Method <input checked="" type="checkbox"/> Alternative Funding Method (107%) <input type="checkbox"/> % Necessary to Maintain Plan Solvency for 15 Years <input type="checkbox"/> Conservation Funding Method

PART I		Item	Amount
<b>Beginning Fair Value of Pension Plan</b>		<b>July 1</b>	<b>\$ 11,510,264.07</b>
<b>I. Revenue During Fiscal Year</b>			
1. Employee Contributions for employees hired prior to Jan. 1, 2010	Percent of Gross Salary	7.00%	
Total amounts contributed by employees or withheld from their salaries			\$ 138,652.46
2. Employee Contributions for employees hired on or after Jan. 1, 2010	Percent of Gross Salary	9.50%	
Total amounts contributed by employees or withheld from their salaries			\$ 64,177.37
3. Employee Contributions for Plans utilizing the Conservation Funding Method	Percent of Gross Salary	1.50%	
Total amounts contributed by employees or withheld from their salaries			\$ -
<b>4. Government Contributions</b>			
a. From Parent Local Government			
Required employer contributions from your municipality			\$ 626,099.09
b. Additional employer contributions from your municipality			\$ 102,243.01
c. From State Government		Municipal Pensions Oversight Board (premium surcharges on fire and casualty insurance)	\$ 460,023.19
<b>5. Earnings on Investments</b>			
a. Net Appreciation/(Depreciation) of Fair Value of Investments			\$ (533,109.30)
b. Short Term & Fixed Income Interest			\$ 84,708.57
c. Dividends			\$ 167,744.36
d. Net Realized Gain (Loss) on Sale or Exchange of Assets			\$ 117,379.78
e. Other			\$ -
f. Less Investment Expense			\$ (87,064.26)
Net Investment Income			\$ (250,340.85)
<b>6. All Other Revenues</b>			
Please Specify			
<b>Total Revenues</b>			<b>\$ 1,140,855.17</b>
The sum of items I.1. through I.6.			

PART II		Item	Amount
<b>II Expenditures During Fiscal Year</b>			
Does not include Investment Expenses, see I 5 f. on first page:			
1. Benefits Paid			
Retirement, disability, survivor and any other benefits			\$ 1,509,424.46
2. Withdrawals			
Amount paid to employees or former employees or their survivors, representing return of contributions made by employees during the period of their employment			\$ -

**Annual Report of Policemen's and Firemen's Pension and Relief Funds  
to the Municipal Pensions Oversight Board  
as required by WV Code §8-22-19(d)(1)(B) and §8-22-22a(a)**

<b>3. Other Payments</b>			
Administrative expenses and other costs or payments non representing benefit payments or withdrawals			
a. Administration	Municipal administration fees		\$ 1,950.00
b. Other	Example: Pension Secretary expenses; Rent; etc.		\$ 1,092.39
<b>Total Expenditures</b>			\$ 1,512,466.85
The sum of items II.1. through II.3.b.			
<b>Net Income/(Loss)</b>			\$ (371,611.68)
<b>Ending Fair Value of the Pension Plan</b>			\$ 11,138,652.39
June 30			
<b>III Asset Allocation at End of Fiscal Year</b>			
<b>1. Cash and Cash Equivalents - Short Term</b>		<b>Percent of Total Assets</b>	<b>8.05%</b>
<b>Financial Institution or Money Manager</b>	<b>Type of Account</b>	<b>Fair Value</b>	
a.	Checking	\$	429,542.76
b.	Treasury Bills	\$	-
c.	Savings or Money Market Account	\$	466,855.43
d.	Short Term Investment Funds	\$	-
e.	Re-Purchase Agreements	\$	-
f.	Commercial Paper	\$	-
g.	CDs and Bankers' Acceptances	\$	-
			Fair Value
<b>Total Cash and Cash Equivalents</b>		<b>\$ 896,398.19</b>	
The sum of items 1.a. through 1.g.			
<b>2. Fixed Income - Long Term</b>		<b>Percent of Total Assets</b>	<b>19.29%</b>
<b>Financial Institution or Money Manager</b>	<b>Type of Account</b>	<b>Fair Value</b>	
a.	US Govt Agencies & Instruments	\$	1,001,482.39
b.	Foreign Govt, Subdivisions, Agencies or Enterprise	\$	-
c.	International agencies or supranational entities	\$	-
d.	Mortgage-related or others asset back securities	\$	-
e.	Corporate Debt Securities	\$	1,147,657.89
f.	Corporate Inflation-index bonds	\$	-
g.	Bank CD's, fixed time deposits, Bankers Acceptance	\$	-
h.	State & Local Govt Debt Securities	\$	-
i.	Mutual Funds (Bonds)	\$	-
j.	International Mutual Funds - Bonds	\$	-
k.	Exchange Traded Funds (ETF) - Bonds	\$	-
l.	International Exchange Traded Funds (ETF) - Bonds	\$	-
			Fair Value
<b>Total Fixed Income (at fair value)</b>		<b>\$ 2,149,140.28</b>	
The sum of items 2.a. through 2.l.			
<b>3. Equity Investments</b>		<b>Percent of Total Assets</b>	<b>57.65%</b>
<b>Financial Institution or Money Manager</b>	<b>Type of Account</b>	<b>Fair Value</b>	
a.	Individual Stocks Held	\$	1,227,950.75
b.	Mutual Fund Shares (Equities)	\$	-
c.	Exchange Traded Funds (ETF)	\$	2,934,690.76
d.	International Stocks Held	\$	2,258,593.89
e.	International Mutual Funds - Equities	\$	-
f.	International Exchange Traded Funds (ETF)	\$	-
			Fair Value
<b>Total Equity Investments (at fair value)</b>		<b>\$ 6,421,235.40</b>	
The sum of items 3.a. through 3.f.			

**Annual Report of Policemen's and Firemen's Pension and Relief Funds  
to the Municipal Pensions Oversight Board  
as required by WV Code §8-22-19(d)(1)(B) and §8-22-22a(a)**

4. Alternative Investments		Percent of Total Assets	15.01%
Financial Institution or Money Manager		Type of Account	Fair Value
a.		Real Estate Investment Trust	\$ -
b.		Private Equity Fund	\$ -
c.		Hedge Funds	\$ -
d.		Other Alternative Investments	\$ 1,671,878.52
Total Alternative Investments (at fair value) <small>The sum of items 4 a. through 4 d.</small>			\$ 1,671,878.52
<b>Total Assets</b> <small>Sum of III.1. through III.4.</small>			\$ 11,138,652.39

III.5 Total return on investments for the period of July 1 thru June 30	<small>(Obtain from financial institution or money manager)</small>	-2.11%
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**PART II**

**Membership and Beneficiaries**

\* Please report the figures requested below, for the fiscal year reported on page 1. To figure the Average Monthly Number of Persons, add figures for each month and divide by 12. Please round to two decimal places. An employee must have been paid for 100 hours in any month to be included in that month.

\*\* Please report the total number of disability applications received during the fiscal year, the status of each application at the end of the fiscal year, the total applications granted and denied, and the percentage of disability benefit recipients to the total number of active members of the fund. This requirement satisfies §8-22-23a(a) of the WV Code if the report is submitted to the Municipal Pensions Oversight Board prior to August 1st of each year.

Item	Avg. Monthly #
<b>I. Members of your Pension Fund</b> <small>Exclude Beneficiaries</small>	
1. Active Members <small>Current number of employees contributing to the pension fund</small>	47.92
2. Inactive Members <small>Non-active vested members and employees on extended leave without pay</small>	1.00
<b>II. Beneficiaries Receiving Periodic Benefit Payments During Fiscal Year</b>	
1. Retirees	53.58
2. Disability Retirees <small>Includes the new applications approved during reporting period</small>	2.00
a. Number of Disability Applications received during the fiscal year	0.00
b. Status of each Disability Application at end of fiscal year - please attach separate sheet with details	
(1.) Disability Applications Approved during Fiscal Year	0.00
(2.) Disability Applications Denied during Fiscal Year	0.00
3. Percentage of Disability Benefit Recipients to the Total of Active Members in the fund	4.17%
4. Survivors (of Deceased Members) Drawing Benefits	18.00

**PART III**

**Legal Thresholds for Investments**

	(1)	(2)	(3)
	%	Maximum % and \$	(Over) Under
Equity Investments	58%	75%	17%
International Securities	20%	30%	10%
Alternative Investments	15%	25%	10%
Cash/Cash Equivalents and Fixed Income (Low 25%; High 75%)	27%	25% 75%	-2% 48%
Short Term Investment - (90 days of expenses)		\$ 378,116.71	\$ (518,281.48)



**FINANCE DEPARTMENT**

# The City of Morgantown

389 SPRUCE STREET

MORGANTOWN, WEST VIRGINIA 26505

PHONE: (304) 284-7407 FAX: (304) 284-7418

[jgoff@morgantownwv.gov](mailto:jgoff@morgantownwv.gov)

[www.morgantownwv.gov](http://www.morgantownwv.gov)

Municipal Pensions Oversight Board  
301 Eagle Mountain Road, Suite 251  
Charleston, West Virginia 25311

Under penalty for false swearing (West Virginia Code §61-5-3), I hereby certify the foregoing information in this annual report of the Morgantown Policemen's Pension and Protection Fund for fiscal year ended June 30, 2015 to be true and accurate in all respects. I further certify (per §8-22-19(d)(1) and §8-22-19(d)(1)(B)) the Board of Trustees of the pension and relief fund has made a report to the governing body of the municipality and to the oversight board on the condition of its fund with respect to the fiscal year. This Annual Report has been presented to the City of Morgantown city council on September 20, 2016.

Date: September 9, 2016

Name: James M. Goff

Signed:

Title: Municipal Treasure and Custodian of the Policemen's Pension and Relief Fund

Municipality: City of Morgantown

**Annual Report of Policemen's and Firemen's Pension and Relief Funds  
to the Municipal Pensions Oversight Board  
as required by WV Code §8-22-19(d)(1)(B) and §8-22-22a(a)**

Pension Fund	Morgantown Policemen's Pension & Relief Fund
Treasurer	James Goff, Finance Director
Municipality	City of Morgantown, West Virginia
Fiscal Year (July 1 - June 30)	July 1, 2015 - June 30, 2016
Actuarial Funding Method	<input type="checkbox"/> Standard Funding Method <input type="checkbox"/> Optional Funding Method <input checked="" type="checkbox"/> Alternative Funding Method (107%) <input type="checkbox"/> % Necessary to Maintain Plan Solvency for 15 Years <input type="checkbox"/> Conservation Funding Method

PART I		Item	Amount
<b>Beginning Fair Value of Pension Plan</b>		<b>July 1</b>	<b>\$ 14,434,406.86</b>
<b>I. Revenue During Fiscal Year</b>			
1. Employee Contributions for employees hired prior to Jan. 1, 2010	Percent of Gross Salary	9.50%	
Total amounts contributed by employees or withheld from their salaries			\$ 278,573.78
2. Employee Contributions for employees hired on or after Jan. 1, 2010	Percent of Gross Salary	9.50%	
Total amounts contributed by employees or withheld from their salaries			\$ 81,959.25
3. Employee Contributions for Plans utilizing the Conservation Funding Method	Percent of Gross Salary	1.50%	
Total amounts contributed by employees or withheld from their salaries			
4. Government Contributions			
a. From Parent Local Government			
Required employer contributions from your municipality			\$ 771,231.74
b. Additional employer contributions from your municipality			\$ 77,124.26
c. From State Government		Municipal Pensions Oversight Board (premium surcharges on fire and casualty insurance)	\$ 597,542.38
5. Earnings on Investments			
a. Net Appreciation/(Depreciation) of Fair Value of Investments			\$ (648,291.31)
b. Short Term & Fixed Income Interest			\$ 106,964.68
c. Dividends			\$ 211,856.33
d. Net Realized Gain (Loss) on Sale or Exchange of Assets			\$ 125,473.23
e. Other			\$ -
f. Less Investment Expense			\$ (109,460.04)
Net Investment Income			\$ (313,457.11)
6. All Other Revenues			
Please Specify		Funds received from a stock settlement	\$ 267.12
<b>Total Revenues</b>			<b>\$ 1,493,241.42</b>
The sum of items 1.1. through 1.6.			

PART II		Item	Amount
<b>Expenditures During Fiscal Year</b>			
Does not include Investment Expenses, see 1.5.7 on first page			
1. Benefits Paid			
Retirement, disability, survivor and any other benefits			\$ 2,084,457.48
2. Withdrawals			
Amount paid to employees or former employees or their survivors, representing return of contributions made by employees during the period of their employment			\$ 14,429.48

**Annual Report of Policemen's and Firemen's Pension and Relief Funds  
to the Municipal Pensions Oversight Board  
as required by WV Code §8-22-19(d)(1)(B) and §8-22-22a(a)**

<b>3. Other Payments</b>			
Administrative expenses and other costs or payments not representing benefit payments or withdrawals			
a. Administration	Municipal administration fees		\$ 1,500.00
b. Other	Example: Pension Secretary expenses; Rent, etc		\$ 493.60
<b>Total Expenditures</b>			\$ 2,100,880.56
The sum of Items II.1. through II.3.b.			
<b>Net Income/(Loss)</b>			\$ (607,639.14)
<b>Ending Fair Value of the Pension Plan</b>			\$ 13,826,767.72
June 30			
<b>III Asset Allocation at End of Fiscal Year</b>			
<b>1. Cash and Cash Equivalents - Short Term</b>		Percent of Total Assets	<b>6.59%</b>
Financial Institution or Money Manager	Type of Account	Fair Value	
a.	Checking	\$	507,531.25
b.	Treasury Bills	\$	-
c.	Savings or Money Market Account	\$	403,586.96
d.	Short Term Investment Funds	\$	-
e.	Re-Purchase Agreements	\$	-
f.	Commercial Paper	\$	-
g.	CDs and Bankers' Acceptances	\$	-
			Fair Value
<b>Total Cash and Cash Equivalents</b>		The sum of items 1.a. through 1.g.	\$ 911,118.21
<b>2. Fixed Income - Long Term</b>		Percent of Total Assets	<b>19.53%</b>
Financial Institution or Money Manager	Type of Account	Fair Value	
a.	US Govt Agencies & Instruments	\$	1,240,190.64
b.	Foreign Govt, Subdivisions, Agencies or Enterprise	\$	-
c.	International agencies or supranational entities	\$	-
d.	Mortgage-related or others asset back securities	\$	-
e.	Corporate Debt Securities	\$	1,459,580.23
f.	Corporate Inflation-index bonds	\$	-
g.	Bank CD's, fixed time deposits, Bankers Acceptance	\$	-
h.	State & Local Govt Debt Securities	\$	-
i.	Mutual Funds (Bonds)	\$	-
j.	International Mutual Funds - Bonds	\$	-
k.	Exchange Traded Funds (ETF) - Bonds	\$	-
l.	International Exchange Traded Funds (ETF) - Bonds	\$	-
			Fair Value
<b>Total Fixed Income (at fair value)</b>		The sum of items 2.a. through 2.l.	\$ 2,699,770.87
<b>3. Equity Investments</b>		Percent of Total Assets	<b>58.72%</b>
Financial Institution or Money Manager	Type of Account	Fair Value	
a.	Individual Stocks Held	\$	1,517,109.64
b.	Mutual Fund Shares (Equities)	\$	-
c.	Exchange Traded Funds (ETF)	\$	3,760,760.03
d.	International Stocks Held	\$	2,841,301.76
e.	International Mutual Funds - Equities	\$	-
f.	International Exchange Traded Funds (ETF)	\$	-
			Fair Value
<b>Total Equity Investments (at fair value)</b>		The sum of items 3.a. through 3.f.	\$ 8,119,171.43

**Annual Report of Policemen's and Firemen's Pension and Relief Funds  
to the Municipal Pensions Oversight Board  
as required by WV Code §8-22-19(d)(1)(B) and §8-22-22a(a)**

4. Alternative Investments		Percent of Total Assets	15.16%
Financial Institution or Money Manager		Type of Account	Fair Value
a.		Real Estate Investment Trust	\$ -
b.		Private Equity Fund	\$ -
c.		Hedge Funds	\$ -
d.		Other Alternative Investments	\$ 2,096,707.21
Total Alternative Investments (at fair value) <small>The sum of items 4 a. through 4 d.</small>			\$ 2,096,707.21
<b>Total Assets</b> <small>Sum of III.1. through III.4.</small>			\$ 13,826,767.72

III.5 Total return on investments for the period of July 1 thru June 30	<small>(Obtain from financial institution or money manager)</small>	-2.08%
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**PART II**

**Membership and Beneficiaries**

\* Please report the figures requested below, for the fiscal year reported on page 1. To figure the Average Monthly Number of Persons, add figures for each month and divide by 12. Please round to two decimal places. An employee must have been paid for 100 hours in any month to be included in that month.

\*\* Please report the total number of disability applications received during the fiscal year, the status of each application at the end of the fiscal year, the total applications granted and denied, and the percentage of disability benefit recipients to the total number of active members of the fund. This requirement satisfies §8-22-23a(a) of the WV Code if the report is submitted to the Municipal Pensions Oversight Board prior to August 1st of each year.

Item	Avg. Monthly #
<b>I. Members of your Pension Fund</b> <small>Exclude Beneficiaries</small>	
1. Active Members <small>Current number of employees contributing to the pension fund</small>	63.75
2. Inactive Members <small>Non-active vested members and employees on extended leave without pay</small>	1.00
<b>II. Beneficiaries Receiving Periodic Benefit Payments During Fiscal Year</b>	
1. Retirees	64.58
2. Disability Retirees <small>Includes the new applications approved during reporting period</small>	7.00
a. Number of Disability Applications received during the fiscal year	0.00
b. Status of each Disability Application at end of fiscal year - please attach separate sheet with details	
(1.) Disability Applications Approved during Fiscal Year	0.00
(2.) Disability Applications Denied during Fiscal Year	0.00
3. Percentage of Disability Benefit Recipients to the Total of Active Members in the fund	10.98%
4. Survivors (of Deceased Members) Drawing Benefits	10.00

**PART III**

**Legal Thresholds for Investments**

	(1)	(2)	(3)
	%	Maximum % and \$	(Over) Under
Equity Investments	59%	75%	16%
International Securities	21%	30%	9%
Alternative Investments	15%	25%	10%
Cash/Cash Equivalents and Fixed Income (Low 25%; High 75%)	26%	25% 75%	-1% 49%
Short Term Investment - (90 days of expenses)		\$ 525,220.14	\$(385,898.07)

**COMMITTEE OF THE WHOLE MEETING August 30, 2016:**

The Committee of the Whole meeting of the Common Council of the City of Morgantown was held in the Council Chambers of City Hall on Tuesday August 30, 2016 at 7:06 p.m.

**PRESENT:** Interim City Manager Glen Kelly, City Attorney Ryan Simonton, Mayor Marti Shamberger, and Council Members, Ron Bane, Deputy Mayor Bill Kawecki, Wes Nugent, Jenny Selin, Jay Redmond and Nancy Ganz.

Deputy Mayor Kawecki called the meeting to order.

**PRESENTATIONS:**

**1. Airport Update**

Glen Kelly, Interim City Manager, announced that Southern will begin on October 1, 2016. Mark Cestari, Vice President, stated via presentation by face-time providing service that reliability will not only come from that the aircraft being based in Morgantown, but that the pilots will also live in Morgantown. He noted that fares will be \$29-\$39 to Pittsburgh and \$49 to Washington Dulles and all flights are non-stop. He announced that there will be a Kick-off of the new airlines at the Jet Center on September 21<sup>st</sup>, 2016 at p.m. Council asked questions to Mr. Cestari and Interim City Manager Glen Kelly.

Interim City Manager Glen Kelly announced that the new Public Works Director is Kenny Holloway and that the new Communications Managers starting September 19, 2016 will be Krista Baker from Channel 12.

**2. Downtown Loitering**

Chief Ed Preston, presented a power point on aggressive panhandling, WV Code restrictions and how the City can regulate public disorder. Council asked questions to Chief Ed Preston. **Exhibit A**

**3. Presentation on time for Trick or Treat**

Chief Ed Preston, noted his suggestions for Trick or Treat would be on October 31 from 5:30 to 8:00 pm.

Interim City Manager Glen Kelly announced that Tim Ball, MUB Director, is going to speak during the public portion on the DEP Bond and did not have time to get issue on agenda. Interim City Manager Glen Kelly noted for transparency purposes wanted Council to be aware he was going to speak during the public portion.

**PUBLIC PORTION:**

Deputy Mayor Kawecki asked if there was anyone to speak during the Public Portion.

Tim Ball, MUB Director, updated Council on the Wastewater Treatment Plant Bond that the DEP is going to give the City 10 million more dollars, which simplifies the bond issue. He asked Council to approve the new Bond Ordinance for 30 million on their Regular Agenda September 6<sup>th</sup>, 2016. Deputy

Mayor Kawecki asked City Attorney Simonton if we could approve item that was not on the agenda? City Attorney Simonton responded in saying that the City Manager commonly places items on the agenda and it does not require action by Council. City Council asked questions.

Jason Turak, 26 Madora Drive, requested that Council re-consider his zoning request on Jerome Street. He noted that since the First Reading of the ordinance which failed 3-3; I have support from the neighbors and estimates from Morgantown Utility Board.

George Lilly, 143 Poplar Drive, member of the Coordinating Coalition on Homelessness stated that along with Community leaders there will be a meeting on September 28<sup>th</sup> at Wesley United Methodist Church. At the meeting we will discuss a collaborative effort to coordinate the work of the service agencies, with government entities, business, faith communities, university departments, and private citizens in order to focus our community's efforts in ways that will be most effective and most efficient on dealing with the homelessness issues in the downtown.

Laura Jones, Director Mylan Puskar Health Right, updated Council that the Friendship Room behind the Garlow House will be moving to 304 Wiley Street to a space that will be more functional for staff and members.

Travis Henline, Main Street Director asked Council for their approval of new lighting downtown and commented that businesses downtown are concerned about the loitering and wish something could be done.

James Giuliani, 256 Prairie Avenue, stated that he was upset that his BZA hearing was canceled again. He noted that this is the only community that uses the zoning term "mixed-use" dwelling in the country. He requested of Council to bring his zoning request back up on the agenda, to be fair.

Dave Biafora, Metro Properties, noted that Mr. Giuliani was not treated right and the public is tired of the problems. He suggested that the Interim City Manager have a Workshop with a Professional Company to address the Zoning Codes.

There being no more presenters, Deputy Mayor Kawecki closed the public portion.

### **ITEMS FOR DISCUSSION:**

#### **1. Downtown Loitering**

Deputy Mayor Kawecki asked if there needed further discussion on Downtown Loitering? Council had no more discussion at this time.

#### **2. Trick or Treat**

Deputy Mayor Kawecki asked if Council needed further discussion on Trick or Treat? After Discussion Council decided on the time for Trick or Treat for City of Morgantown will be from 5:30 pm to 7:30 pm on October 31, 2016. Council referred item to the Regular Agenda.

**3. Botanic Garden Lease**

Deputy Mayor Kawecki requested that Interim City Manager to explain: Interim City Manager Glen Kelly explained the lease process. Council suspended the rules for Bill Johnson, Director, Botanic Gardens to speak on the lease and update Council on projects. Council referred Ordinance to the Regular Agenda by consensus.

**4. Zoning Ordinance amending permitted land uses**

Deputy Mayor Kawecki requested that Interim City Manager, Glen Kelly explain: Glen Kelly Interim City Manager explained. Council suspended rules to have Planner Chris Fletcher explain Zoning Ordinance. Council referred Ordinance to the Regular Agenda by consensus.

Council adjourned the Committee of the Whole meeting at 9:20 p.m.

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

\_\_\_\_\_  
Mayor

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

# Aggressive Panhandling

- Loitering – Protected Activity under First Amendment (Freedom of Assembly)
- Begging/Panhandling - Protected Activity under First Amendment (Freedom of Speech)
- Restriction – (Aggressive Solicitation)
  - A. Intentionally or recklessly making any physical contact with or touching another person in the course of the solicitation without the person's consent,  
or
  - B. Following the person being solicited, if that conduct is:
    1. Intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or
    2. Intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation, or

# Aggressive Panhandling (Cont)

- C. Continuing to solicit within five feet of the person being solicited after the person has made a negative response, if continuing the solicitation is:
  - 1. Intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or
  - 2. Intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation, or
- D. Intentionally or recklessly blocking the safe or free passage of the person being solicited or requiring the person to take evasive action to avoid physical contact with the person making the solicitation; or
- E. Intentionally or recklessly using obscene or abusive language or gestures:
  - 1. Intended to or likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or
  - 2. Words intended to or reasonably likely to intimidate the person into responding affirmatively to the solicitation, or
- F. Approaching the person being solicited in a manner that is:
  - 1. Intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or
  - 2. Intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.

# Aggressive Panhandling (Cont)

- (c) Prohibited Acts. It shall be unlawful for any person to solicit money or other things of value, or to solicit the sale of goods or services:
- (1) In an aggressive manner in a public area;
  - (2) Within fifteen feet of any entrance or exit of any bank or within fifteen feet of any automated teller machine abutting a public right-of-way during the hours of operation of such bank or automated teller machine.
  - (3) On private property if the owner, tenant, or lawful occupant has asked the person not to solicit on the property, or has posted a sign clearly indicating that solicitations are not welcome on the property.

# WV CODE RESTRICTIONS

- Public Intoxication – Protected Activity when the offender is an alcoholic under Eighth Amendment (Cruel and Unusual Punishment) (WV Supreme Court)

296 S.E.2d 873 (1982)

STATE ex rel. Mark Anthony HARPER

v.

Jack ZEGERER, Judge, etc., et al., City of South Charleston

- “We agree that alcoholism is a disease. We also believe that criminally punishing alcoholics for being publicly intoxicated violates the prohibition against **cruel** and **unusual punishment**. W.Va. Const. art. III, § 5.<sup>[3]</sup>”
- WV Code 60-6-9(f) – “who is an alcoholic shall be found not guilty by reason of addiction” and will apply to:
    - Public Intoxication
    - Public Consumption
    - Illegal Possession of alcoholic beverages

# Research

Panhandlers need to go where the money is. In other words, they need to panhandle in communities and specific locations where the opportunities to collect money are best—where there are a lot of pedestrians or motorists, especially those who are most likely to have money and to give it.

- on or near college campuses (because students tend to be more sympathetic toward panhandlers);
- near places that provide panhandlers with shade and shelter from bad weather (such as doorways, alcoves and alleys in commercial districts);
- in front of convenience stores, restaurants and grocery stores (because panhandlers' claims to be buying food or necessities for them or their children seem more plausible, and because shoppers and diners often feel especially fortunate and generous);



# Research Continued

Panhandling is more common in communities that provide a high level of social services to the needy, because the same citizens who support social services are also likely to give money directly to panhandlers; panhandlers are drawn to communities where both free social services and generous passersby are plentiful.

- Most panhandlers are not interested in regular employment, particularly not minimum-wage labor, which many believe would scarcely be more profitable than panhandling.
- Some panhandlers' refusal to look for regular employment is better explained by their unwillingness or inability to commit to regular work hours, often because of substance abuse problems. Some panhandlers buy food with the money they receive, because they dislike the food served in shelters and soup kitchens.

# ISSUES

- ▶ As people with mental illnesses are increasingly released into the community, often without adequate follow-up care, panhandling also increases. Where there are inadequate detoxification and substance-abuse treatment facilities, panhandling is high.
- ▶ As courts strike down Panhandling laws that authorize police to regulate public disorder panhandling flourishes.

# ISSUES Continued

- No current Public Intoxication Shelter
- Police are required by State Code to take the following actions for Arrestees not alcoholic – but found intoxicated:
  - Transported to the intoxicated persons residence
  - Release the Arrestee to a sober person that accepts responsibility for the intoxicated person
  - Transport the Intoxicated person to the Emergency Room or arrange for Transportation
    - NOTE – When no longer in medical distress are discharged.
  - Transport the Arrestee to a Judicial Official
    - NOTE – REGIONAL JAIL CAN AND DOES REFUSE CUSTODY OF INTOXICATED INDIVIDUALS UNTIL MEDICALLY CLEARED
- A person who has been found guilty of public intoxication 3 times within 6 months is sufficient evidence of alcoholism
- Involuntary Commitment requires that an individual be an imminent danger to themselves or others. Involuntary Commitment is a separate Civil Process and when the Intoxicated Individual is not a danger they are released.

# Arrest Clarifications

- ▶ Officer can arrest for any offense committed in the officers presence.
- ▶ Officer may only arrest for a limited number of violations not committed in the officers presence (Domestic Battery, Shoplifting).
- ▶ Officers generally may not arrest for a misdemeanor, not committed in the presence of the officer, without a warrant.
  - ▶ Warrant must be obtained from a judicial official based upon a sworn complaint
  - ▶ Warrant must establish the crime
  - ▶ If the officer did not observe the crime the victim or witness will be necessary to establish the probable cause for the complaint
  - ▶ Victim or Witness will be necessary to prosecute the crime

**SPECIAL MEETING September 6, 2016:**

The Special Meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Tuesday, September 6, 2016 at 6:03 p.m.

**PRESENT:** City Clerk Linda Tucker, Mayor Marti Shamberger, Deputy Mayor Bill Kawecki and Council Members, Ron Bane, Jenny Selin, Jay Redmond, Nancy Ganz. Wes Nugent Absent.

The meeting was called to order by the Mayor.

**INTERVIEWS FOR VARIOUS BOARDS AND COMMISSIONS:**

Questions were posed to the following candidates from Council:

- Barry Wendell – Library
- Patrick Hathaway – Library
- George Lies – Sister Cities
- Helene Friedberg – Sister Cities

**EXECUTIVE SESSION:** Pursuant to WV State Code Section 6-9A-4(b) (2) (A) motion by Ganz, second by Selin to go into executive session in order to discuss personnel matters in considering appointments to Boards and Commissions. Present: Council. Time: 6:50 p.m.

**ADJOURNMENT:**

There being no further business, Council adjourned the Special Meeting at 7:09 p.m.

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

\_\_\_\_\_  
Mayor

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

**REGULAR MEETING September 6, 2016:** The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers of City Hall on Tuesday, September 6, 2016 at 7:00 p.m.

**PRESENT:** Interim City Manager & Airport Director Glen Kelly, City Attorney Ryan Simonton, City Clerk Linda Tucker, Mayor Shamberger, Council Members: Ron Bane, Deputy Mayor Bill Kawecki, Wes Nugent, Jenny Selin, Jay Redmond, and Nancy Ganz.

The meeting was called to order by Mayor Shamberger.

**APPROVAL OF MINUTES:** August 16, 2016 Special Meeting Minutes, August 30, 2016 Special Meeting Minutes, and August 16, 2016 Regular Meeting Minutes were approved by acclamation.

**CORRESPONDENCE:** Mayor Shamberger presented a proclamation to Joan Gibson, Rebecca Davis, Susan Arnold and DAR members to encourage citizens to celebrate September 17-23 as Constitution Week. Councilor Selin noted a letter to be part of the record from Dr. Paula Fitzgerald objecting to the new yellow curb lines that have been painted in the Suncrest neighborhood. **Exhibit A.**

**PUBLIC HEARING – AN ORDINANCE AMENDING SECTIONS 1329.02, 1349.08, AND 1365.04 OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS THEY RELATE TO BICYCLE STORAGE REQUIREMENTS.**

Mayor Shamberger declared the Public Hearing open.

Frank Gmeindl, 941 Wilsons Avenue, member of the Bicycle Board, noted his support of amending the zoning code as it relates to storage requirements. He stated that passing the Bicycle Storage zoning test amendment will move the City one step closer to making bicycling irresistible in Morgantown. **Exhibit B.**

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

**PUBLIC HEARING- AN ORDINANCE AMENDING ARTICLES 1383, 1389, AND 1391 OF THE CITY'S PLANNING AND ZONING CODE GOVERNING ADMINISTRATIVE APPEALS AND THE ESTABLISHMENT, POWERS AND DUTIES, AND JUDICIAL REVIEW OF THE BOARD OF ZONING APPEALS.**

Mayor Shamberger declared the Public Hearing open.

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

**PUBLIC HEARING- AN ORDINANCE AMENDING ARTICLE 1329.02, TABLE 1331.05.01, ARTICLE 1365.04, AND ARTICLE 1365.07 OF THE CITY'S PLANNING AND ZONING CODE AS THEY RELATE TO PARKING LOT AND PARKING STRUCTURE USES.**

Mayor Shamberger declared the Public Hearing open.

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

**PUBLIC HEARING- AN ORDINANCE AUTHORIZING A PARKING SPACE LEASE WITH MOTOWN TAXI AT THE MORGANTOWN MUNICIPAL AIRPORT.**

Mayor Shamberger declared the Public Hearing open.

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

**PUBLIC HEARING- AN ORDINANCE AUTHORIZING THE CITY TO SUBMIT AN AMENDMENT TO ITS WRITTEN PLAN TO THE HOME RULE BOARD.**

Mayor Shamberger declared the Public Hearing open.

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

**UNFINISHED BUSINESS:**

**AN ORDINANCE AMENDING SECTIONS 1329.02, 1349.08, AND 1365.04 OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS THEY RELATE TO BICYCLE STORAGE REQUIREMENTS:** The below entitled Ordinance was presented for the second reading.

AN ORDINANCE AMENDING SECTIONS 1329.02, 1349.08, AND 1365.04 OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS THEY RELATE TO BICYCLE STORAGE REQUIREMENTS.

Motion by Ganz, second by Selin, to adopt the above entitled Ordinance. After discussion, Council suspended the rules to have Chris Fletcher, City Planner to explain and answer questions. Motion by Kawecki, second by Nugent to table ordinance so that Planner Fletcher can get more clarification for Council. Motion by Bane to take ordinance off the table, second by Kawecki. Council suspended the rules to have Planner explain Bicycle Storage Comparison Table (**Exhibit C**) and answer questions. After discussion, motion carried 7-0.

**AN ORDINANCE AMENDING ARTICLES 1383, 1389, AND 1391 OF THE CITY'S PLANNING AND ZONING CODE GOVERNING ADMINISTRATIVE APPEALS AND THE ESTABLISHMENT, POWERS AND DUTIES, AND JUDICIAL REVIEW OF THE BOARD OF ZONING APPEALS:** The below entitled Ordinance was presented for the second reading.

AN ORDINANCE AMENDING ARTICLES 1383, 1389, AND 1391 OF THE CITY'S PLANNING AND ZONING CODE GOVERNING ADMINISTRATIVE APPEALS AND THE ESTABLISHMENT, POWERS AND DUTIES, AND JUDICIAL REVIEW OF THE BOARD OF ZONING APPEALS.

Motion by Selin, second by Ganz, to approve the adopt the above entitled Ordinance. Motion carried 7-0.

**AN ORDINANCE AMENDING ARTICLE 1329.02, TABLE 1331.05.01, ARTICLE 1365.04,**

**AND ARTICLE 1365.07 OF THE CITY'S PLANNING AND ZONING CODE AS THEY RELATE TO PARKING LOT AND PARKING STRUCTURE USES:** The below entitled Ordinance was presented for the second reading.

AN ORDINANCE AMENDING ARTICLE 1329.02, TABLE 1331.05.01, ARTICLE 1365.04, AND ARTICLE 1365.07 OF THE CITY'S PLANNING AND ZONING CODE AS THEY RELATE TO PARKING LOT AND PARKING STRUCTURE USES.

Motion by Bane, second by Ganz, to adopt the above entitled Ordinance. Motion carried 7-0.

**AN ORDINANCE AUTHORIZING A PARKING SPACE LEASE WITH MOTOWN TAXI AT THE MORGANTOWN MUNICIPAL AIRPORT:** The below entitled Ordinance was presented for the second reading.

AN ORDINANCE AUTHORIZING A PARKING SPACE LEASE WITH MOTOWN TAXI AT THE MORGANTOWN MUNICIPAL AIRPORT.

Motion by Ganz, second by Bane, to adopt the above entitled Ordinance. Interim City Manager Glen Kelly explained. After discussion, motion carried 7-0.

**AN ORDINANCE AUTHORIZING THE CITY TO SUBMIT AN AMENDMENT TO ITS WRITTEN PLAN TO THE HOME RULE BOARD:** The below entitled Ordinance was presented for the second reading.

AN ORDINANCE AUTHORIZING THE CITY TO SUBMIT AN AMENDMENT TO ITS WRITTEN PLAN TO THE HOME RULE BOARD.

Motion by Ganz, second by Redmond, to adopt the above entitled Ordinance. Interim City Manager Glen Kelly explained. After discussion, City Attorney Ryan Simonton explained timeline of Ordinance. Motion carried 7-0.

**BOARDS AND COMMISSIONS:** By acclamation Council appointed Barry Wendell, Sue Carpenter to the Library Board and reappointed George Lies and Helene Friedberg to Sister Cities Commission.

**PUBLIC PORTION:**

Mayor Shamberger declared the Public Portion open.

Bill Johnson, 673 Clearview Avenue, President WV Botanic Garden, supports the Ordinance under New Business this evening executing an 82-acre parcel known as Tibbs Run. He noted that the Botanic Garden is a refreshing asset to this community.

There being no more appearances Mayor Shamberger declared the Public Portion closed.

**SPECIAL COMMITTEE REPORTS:** No reports.

**NEW BUSINESS:**

**AN ORDINANCE AUTHORIZING EXECUTION WITH THE WEST VIRGINIA BOTANICAL GARDEN, INC. FOR AN 82-ACRE PARCEL KNOWN AS THE TIBBS RUN PROPERTY:** The below entitled Ordinance was presented for the first reading.

AN ORDINANCE AUTHORIZING EXECUTION WITH THE WEST VIRGINIA BOTANICAL GARDEN, INC. FOR AN 82-ACRE PARCEL KNOWN AS THE TIBBS RUN PROPERTY.

Interim City Manager Glen Kelly explained. Motion by Ganz, second by Selin to approve the above entitled ordinance to second reading. Motion carried 7-0.

**AN ORDINANCE AMENDING TABLE 1331.05.01 "PERMITTED LAND USES: OF THE CITY'S PLANNING AND ZONING CODE AS IT RELATES TO CHURCHES, PLACES OF WORSHIP:** The below entitled Ordinance was presented for the first reading.

AN ORDINANCE AMENDING TABLE 1331.05.01 "PERMITTED LAND USES: OF THE CITY'S PLANNING AND ZONING CODE AS IT RELATES TO CHURCHES, PLACES OF WORSHIP.

Councilor Selin stated that she is a member of this church and will abstain from voting on this Ordinance. Interim City Manager Glen Kelly explained, motion by Kawecki, second by Ganz, to approve the above entitled Ordinance to second reading. Council suspended the rules to have Planner Chris Fletcher explain ordinance and answer questions. After discussion, motion carried 6-0. Councilor Selin abstained.

**AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION AND IMPROVEMENTS TO THE SANITARY SEWER PORTION OF THE CITY OF MORGANTOWN AND FINANCING COST THEREOF THROUGH THE ISSUANCE OF NOT MORE THAN 30,000,000 IN AGGREGATE AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS SERIES 2016C.:** The below entitled Ordinance was presented for the first reading.

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION AND IMPROVEMENTS TO THE SANITARY SEWER PORTION OF THE CITY OF MORGANTOWN AND FINANCING COST THEREOF THROUGH THE ISSUANCE OF NOT MORE THAN 30,000,000 IN AGGREGATE AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS SERIES 2016C.

Interim City Manager Glen Kelly explained, motion by Ganz, second by Kawecki, to approve the above entitled Ordinance to second reading. Council suspended the rules to have Tim Ball, MOB General Manager explain Bond Ordinance and answer questions. After discussion, motion carried 7-0.

**CITY MANAGER'S REPORT:**

**New Business:**

1. Festival Permit Requested for West Virginia Public Theatre(WVPT)

Attached is a request for a festival permit from the West Virginia Public Theatre to host a fund raising event called “WVPT Oktoberfest”, a German-themed event, to be held at the WV National Guard Readiness Center on October 8, 2016 from 10:00 am – 6:00 pm. The City anticipates no problems with this event and Interim City Manager recommends that City Council authorize a festival permit to be sent to the ABCA for October 8, 2016 to endorse the event.

Motion by Kawecki, second by Bane to authorize a festival permit to host a fund raiser called “WVPT Oktoberfest” at the Readiness Center on October 8, 2016. Motion carried 7-0.

2. Salt Bid – Bid Call 2017

Salt bids were opened on August 18, 2016. Attached is the Memorandum from the Public Works Department. Interim City Manager Glen Kelly recommends Council to approve the awarding of this contract as listed to Cargill Salt.

After discussion, motion by Kawecki second by Bane to approve the contract for salt to Cargill Salt. Motion carried 7-0.

3. WVDOH Announces Upcoming Highway Project

The WVDOH has announced proposed plans for a new roundabout project at the intersection of University Avenue, Collins Ferry Road and Baldwin Street in the City of Morgantown. Interim City Manager Glen Kelly request council’s guidance on a response is as a body should be done during this public comment period. The public response period ends on September 19, 2016.

After discussion motion by Selin, second by Nugent to support Figure 5. (**Exhibit D**) Motion carried 7-0. Councilor Ganz motioned to amend to add an ingress/egress from the current WVU parking. Second by Selin. Motion carried 7-0 Council directed Interim Glen Kelly to send a letter to D.O.H with Figure 2. (**Exhibit E**) & Figure 5. (**Exhibit D**) combined and have the engineers come up with the best scenario.

**Information:**

1. Mainstreet Downtown Lighting

Interim City Manager Glen Kelly informed Council that Main Street Downtown Lighting would need the blessing of the D.O.H. before anything can be done. He noted that the poles in downtown are owned by Mon Power, and any changes would need to be coordinated through the utility. He explained to Council that there is \$40,000 in funding for this project in the City’s capital escrow account.

2. Suncrest Painting of Yellow Lines

Interim City Manager Glen Kelly commented that this project has been in the works for years. He noted his embarrassment that that the city staff failed to communicate its plan effectively to the residents in Suncrest. He informed a letter ((**Exhibit F**) was sent to over 400 Suncrest resident from City Engineer Damien Davis. Interim City Manager Glen Kelly reported that the project will be suspended to allow residents with questions to call the City.

After discussion and suggestions from Council, Mayor Shamberger asked if there were any further comments. No further comments, City Manager moved on to the next item.

3. Trick or Treat

Interim City Manager Glen Kelly announced Trick or Treat will be held on Monday October 31<sup>st</sup> from 5:30pm until 7:30pm. Motion by Kawecki, second by Ganz to approve having Trick or Treat on October 31<sup>st</sup>. Motion carried 7-0.

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

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

**REPORT FROM COUNCIL MEMBERS:**

Councilor Bane: No report.

Deputy Mayor Kawecki: No report.

Councilor Nugent: No report.

Councilor Selin: No report.

Councilor Redmond: Councilor Redmond noted that he receives Channel 15 audio complaints. He has some friends that are Uber drivers and they were asking where they should park in the downtown? He suggested to the Interim City Manager Glen Kelly to come up with some regulations for the Uber drivers. He felt compelled to address the vagrancy and panhandling taking place in our downtown and read a letter he wrote as part of the record. **(Exhibit G)**

Councilor Ganz: Councilor Ganz noted the panhandlers are asking the students to give to them and students are very generous. She noted that by funding addiction and mental health programs and help with decreasing these issues. She requested Business downtown at night begin contributing and helping with the solutions. She complimented WVU & President Gee for entertaining Legislatures in his booth and enjoyed the gold rush and stated how proud she is of the Olympians and athletes.

Mayor Shamberger: Mayor Shamberger thanked everyone who attended "Meet Your Neighbor Event" sponsored by the Coordinating Council on Homelessness. She noted that the Friendship Room has opened on Willey Street and they have all kinds of activities available. She announced she attended the movie premiere of "Girls on the Run", at Mon General which shows young girls and how they can attain confidence. She stated that you can also see this movie on You Tube. She reminded everyone of the Brad Paisley concert on 9-7 to be aware of the traffic that evening. She wanted everyone to mark their calendars for

the Morgantown Marathon which will start be from 9-16 to 9-18 and will bring lots of racers to the area and traffic. She requested Council to started thinking of their Legislative items for 2017 and to come up with 2 to 3 items. She announced that the CC for Social Justice on 9-11-16 is having an event "How to make Our Community a More Livable Place" at the Unitarian-Universalist Fellowship, 429 Warwick. She announced the Botanic Garden Fall Mushroom Walk 9-11-16; Adult Coloring Day 9-12-16; Wine & Jazz Festival 9-18-16; Botanic Garden 9-17; Botanic Garden 9-18 and International Street Festival 9-24-16.

**EXECUTIVE SESSION:** Pursuant to WV State Code Section 6-9A-4(b)(2)(A) motion by Bane, second Ganz to go into executive session in order to discuss personnel matters in recruitment for a new City Manager. Present: Council. Time: 9:35 pm

**REGULAR SESSION:** Motion by Deputy Mayor Kaweck, second by Ron Bane to authorize the Mayor To contact the search firm who Council has approved for the City Manager's position. Motion carried unanimously.

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

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

\_\_\_\_\_  
Mayor

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

Dr. M. Paula Fitzgerald  
 361 Kenmore Street  
 Morgantown, WV 26505  
 (304) 282 -0337  
 mpaulafitzgerald@gmail.com

August 30, 2016

Dear Mr. Kelly, Mr. Davis and Members of the Morgantown City Council:

I object strongly to the new yellow curb lines that have been painted in the Old Suncrest neighborhood. Because of this change, I have lost about three parking spaces and now have no parking on the front or the side of my home. I object to this change a variety of reasons.

- 1) I spoke with Mr. Davis, the City Engineer, and asked him to identify the problem the City is trying to solve by greatly reducing the amount of street parking in our neighborhood. He cited issues concerning WVU football and basketball parking, as well as attendance at the WVU Creative Arts Center events. I live at the corner of Fairlawns Ave. and Kenmore St. I do not believe I have ever had a person choose to park in front of my home for a WVU football game nor a CAC event. On occasion, when WVU is playing well and facing a strong opponent, I may have a car in front of my house for basketball. I estimate that this happens perhaps four (4) times a year.
- 2) The people most affected by this change were given no notice. Mr. Davis stated that he spoke to the Suncrest Neighborhood Association about a year ago and noted that changes would be coming. He also announced the specific changes, again at the neighborhood association meeting, on Thursday, August 25. When I asked about how many people were in attendance, he agreed with my estimate of 20ish. Thus, only 20 people who probably regularly attend a neighborhood meeting were told what was going on. They had less than 5 days to respond. Mr. Davis suggested that, if I wanted notice of these things happening, I should attend these meetings. I believe that that is an unrealistic expectation.
- 3) There are at least two unintended consequences to the City's actions. First, property values in our neighborhood will decrease because of a lack of adequate parking for visiting family and friends, as well as service workers who maintain and repair homes. Each of the residents paid a premium for the convenience of on-street parking. Those without garages or sizable driveways are at a particular disadvantage.

Second, it is very likely that neighbors will now be competing for parking spaces—reducing the overall “neighborliness” of our community. As illustrated in the attached, property owners have informal systems of rights to available curbside parking. Those of us losing parking will now be using “other neighbor’s curbs.” This will likely result in anger, angst and disagreement within our neighborhood.

I request that the following to occur:

- 1) I would like to know how eliminating parking spots along Kenmore St., Rotary St. and Mulberry St. from Fairlawns Ave. to University Avenue addresses the concerns about parking from WVU football, basketball and CAC events. Patrons of these events simply do not park here. If you

believe otherwise, I would like to see the data. Specifically, I would like to see the cost/benefit rationale and calculations completed, as well as the data that supports the presumption that WVU events create a regular hazard at this end of the neighborhood.

- 2) I would like all parking on the University Ave. side of Fairlawns St. restored. This action has significantly inconvenienced the people living in the neighborhood—where will my friends park for gatherings? Where will repair and maintenance workers (plumbers, cleaners, carpenters, etc.) park when working on my home? Many of my neighbors and I are now inconvenienced on a daily basis by a solution to a problem that occurs on an infrequent basis. We need a solution.
- 3) In the future, each homeowner affected by a City decision that impacts the citizen's life and property value should be individually notified, via a door knocker or letter, and given adequate time to provide to the changes. Five days' notice to 20 people is simply not adequate
- 4) I would like an inspection of the quality of the lines painted on Monday, Sept. 29. They are sloppy, at best, and again reduce the aesthetics and monetary value of our home.

In sum, people respond very negatively when something they had (such as adequate parking) is taken away. This change in my neighborhood has been made without notice to, or input from, those affected, has left me with no street parking, is likely to inconvenience me on a regular basis, and fails to solve any problems while reducing property values.

I look forward to hearing from you and to resolving these concerns.

Sincerely,

M. Paula Fitzgerald, PhD

Attachment

<http://grist.org/cities/who-parked-in-my-spot-neighbors-cars-and-your-curb-space/>

September 6, 2016

Public comment to Morgantown City Council on Bicycle Storage zoning text amendment

My name is Frank Gmeindl. I live at 491 Wilson Avenue.

I am a Morgantown bicyclist, a member of the Morgantown Municipal Bicycle Board, former chairman of the Bicycle Board, former member of the Metropolitan Planning Organization Citizen Advisory Committee and former member of the Morgantown Traffic Commission. I am also a certified bicycling instructor.

I am here today to provide some context that will hopefully encourage you to vote yes on the Bicycle Storage zoning text amendment.

Nationwide, making communities bicycle friendly has been demonstrated to improve the communities' safety, health, property values, business climate and social climate.

For the past 4 years, Morgantown has been the only West Virginia community recognized by the National League of American Bicyclists as a Bicycle Friendly Community.

Over the past 4 years, Morgantown has made progress implementing the Greater Morgantown Bicycling Plan that City Council unanimously adopted in 2012.

Clearly, more people of all ages and appearances are riding bicycles in Morgantown today.

Last month, the Bicycle Board submitted a Bicycle Friendly Community award renewal application. We are moderately confident that we will at least keep our bronze status.

Last week, I attended the new I-79 exit 123 ribbon cutting ceremony. Eldon Callen; University Town Center developers; Governor Tomblin; Oliver Luck and WVDOH Commissioner Paul Maddox all stated that the success of that \$22M project was the result of continuous leadership and communication, coordination and collaboration among all key stakeholders.

From the beginning of that project, the Bicycle Board was represented on the MPO CAC and accommodating bicyclists was in the project plan practically from the beginning. Now, there are Shared Lane Markings, Share the Road signs and a Bike Lane over there.

The same kind of leadership and communication, coordination and collaboration that realized that new bicycle friendly interchange will be required in any development and any transportation project in Morgantown. The leader and the key stakeholders must be able to see their project with a cyclist's eye view.

- Is there a safe and convenient place to store my bike?
- Is there a quick, easy and safe route to my destination on which I won't get harassed?
- Is there a safe and convenient place that I can park my bike when I get there?
- Is there a place that I clean up before my meeting or my class or shopping?

If a cyclist doesn't have positive answers to questions such as these, he or she will probably not ride the bike but rather choose a means of transportation that provides positive answers.

Today, in Morgantown, it looks like the single occupancy motor vehicle provides the best solution.

However, we are gradually making strides towards making bicycling more attractive.

- We have short-term bicycle parking throughout the WVU campus and on High Street and Walnut Street.
- All our busses have bike racks. All the PRT stations have bike racks.
- We have a grant for applying Shared Lane Markings and Bicycles May Use Full Lane signs throughout the City and for providing sheltered bicycle parking at bus shelters.
- Bicycle storage is required for developments of significant impact in the downtown business area.

Passing the Bicycle Storage zoning text amendment will move us one step closer to making bicycling irresistible in Morgantown.

Frank Gmeindl

Exhibit C

City	LT Residential Storage	ST Residential Storage	LT Retail Storage	ST Retail Storage	LT Office Storage	ST Office Storage	LT Restaurant Storage	ST Restaurant Storage
Morgantown, WV	1 bicycle storage space per unit  Requires all new developments in the B-4 District, or developments of 12 units or more or more; or requires developments of 1 acre or greater in the B-4 District, or 2 acres of more in other areas.	1 bicycle storage space per 20 automobile parking spaces.  Requires developments of 22 units or more in the B-4 District or 12 units or more in other areas; or requires developments of 1 acre or greater in the B-4 District, or 2 acres of more in other areas.	1 bicycle storage space per 20 automobile parking spaces.  Requires developments over 10,000 square feet in the B-4 District or 15,000 square feet in other areas; or requires developments of 1 acre or greater in the B-4 District, or 2 acres of more in other areas.	1 bicycle storage space per 20 automobile parking spaces.  Requires developments over 10,000 square feet in the B-4 District or 15,000 square feet in other areas; or requires developments of 1 acre or greater in the B-4 District, or 2 acres of more in other areas.	1 bicycle storage space per 20 automobile parking spaces.  Requires developments over 10,000 square feet in the B-4 District or 15,000 square feet in other areas; or requires developments of 1 acre or greater in the B-4 District, or 2 acres of more in other areas.	1 bicycle storage space per 20 automobile parking spaces.  Requires developments over 10,000 square feet in the B-4 District or 15,000 square feet in other areas; or requires developments of 1 acre or greater in the B-4 District, or 2 acres of more in other areas.	1 bicycle storage space per 20 automobile parking spaces.  Requires developments over 10,000 square feet in the B-4 District or 15,000 square feet in other areas; or requires developments of 1 acre or greater in the B-4 District, or 2 acres of more in other areas.	1 bicycle storage space per 20 automobile parking spaces.  Requires developments over 10,000 square feet in the B-4 District or 15,000 square feet in other areas; or requires developments of 1 acre or greater in the B-4 District, or 2 acres of more in other areas.
Cambridge, MA	1 bicycle storage space per unit for multi-family units, an additional .05 bicycle storage spaces per unit for 20+ unit projects after the 20 <sup>th</sup> unit; in some cases 1 bicycle storage space per 2 units; and no spaces required for No bicycle storage spaces required for s for Single-Family Residential units. Transient housing, is .02 spaces per room.	.1 bicycle storage spaces per unit on lot for multi-family housing, .05 bicycle storage spaces per unit for elderly housing, .05 bicycle storage spaces per unit for group housing and transient housing, and no bicycle storage spaces required for s for Single-Family Residential units.	.1 bicycle storage space per 1,000 square feet.	.6 bicycle storage spaces per 1,000 square feet.	.3 bicycle storage spaces per 1,000 square foot for general offices, .22 bicycle storage spaces per 1,000 square feet for research facilities, and .2 bicycle storage spaces per 1,000 square feet for medical offices	None required.	.2 bicycle storage spaces per 1,000 square feet.	1 bicycle storage space per 1,000 square feet.
Portland, OR	1.5 bicycle storage spaces per unit for multi-family units in the Central City area, 1.1 bicycle storage spaces per unit for multi-family units in other areas. For group housing, 2 bicycle storage spaces minimum or 1 bicycle storage space per 20 residents over 59 residents, and 1 bicycle storage space per residents in Dormitory's. No spaces required for Single-Family Residential.	2, or 1 bicycle storage space per 20 units. No bicycle storage spaces required for s for Single-Family Residential units.	2, or 1 bicycle storage space per 12,000 sq. ft. of net building area	2, or 1 bicycle storage space per 5,000 sq. ft. of net building area	2, or 1 bicycle storage space per 10,000 sq. ft. of net building area	2, or 1 bicycle storage space per 40,000 sq. ft. of net building area	2, or 1 bicycle storage space per 12,000 sq. ft. of net building area	2, or 1 bicycle storage space per 5,000 sq. ft. of net building area

City	LT Residential Storage	ST Residential Storage	LT Retail Storage	ST Retail Storage	LT Office Storage	ST Office Storage	LT Restaurant Storage	ST Restaurant Storage
Boulder, CO	1.5 bicycle storage spaces per dwelling unit without a garage, .75 bicycle storage spaces per ever 3 cooperative dwelling and dormitory bed, and .75 bicycle storage spaces per ever 5 other group quarter beds.	.5 bicycle storage spaces per dwelling unit without a garage, .25 bicycle storage spaces per ever 3 cooperative dwelling and dormitory bed, and .25 bicycle storage spaces per ever 5 other group quarter beds.	.25 bicycle storage spaces per 750 square feet of floor area, with a minimum of 4 bicycle storage spaces (long-term or short-term).	.75 bicycle storage spaces per 750 square feet of floor area, with a minimum of 4 bicycle storage spaces (long-term or short-term).	.75 bicycle storage spaces per 1,500 square feet of floor area, with a minimum of 4 bicycle storage spaces (long-term or short-term).	.25 bicycle storage spaces per 1,500 square feet of floor area, with a minimum of 4 bicycle storage spaces (long-term or short-term).	.25 bicycle storage spaces per 750 square feet of floor area, with a minimum of 4 bicycle storage spaces (long-term or short-term).	.75 bicycle storage spaces per 750 square feet of floor area, with a minimum of 4 bicycle storage spaces (long-term or short-term).
Pittsburgh, PA	.6 bicycle storage spaces per 3 units for 12 or more unit developments	.4 bicycle storage spaces per 3 units for 12 or more unit developments	None required	0-4 required automobile parking spaces require 0 bicycle storage spaces; 4-20 required automobile parking spaces require 1 bicycle storage spaces; 21-40 required automobile parking spaces require 2 bicycle storage spaces; over 40 require 1 bicycle storage space per every 10 automobile parking spaces or fraction thereof. (reduction in the number of automobile parking spaces shall be reduced by no more than one (1) space for each Bicycle storage Space, but by no more than thirty (30) percent of the total required spaces.)	None required	0-5 employees require 0 bicycle storage spaces; 6-20 employees require 1 bicycle storage spaces; 21-80 employees require 2 bicycle storage spaces; over 80 employees require 1 bicycle storage space per every 20 employees or fraction thereof.	None required	0-4 required automobile parking spaces require 0 bicycle storage spaces; 4-20 required automobile parking spaces require 1 bicycle storage spaces; 21-40 required automobile parking spaces require 2 bicycle storage spaces; over 40 require 1 bicycle storage space per every 10 automobile parking spaces or fraction thereof. (reduction in the number of automobile parking spaces shall be reduced by no more than one (1) space for each Bicycle storage Space, but by no more than thirty (30) percent of the total required spaces.)
Burlington, VT	1 bicycle storage space per 4 multi-family dwelling unit, or dormitory resident. 1 bicycle storage spaces per 10 elderly housing dwelling unit	1 bicycle storage space per 10 multi-family dwelling unit, elderly housing unit, or dormitory resident.	1 bicycle storage space per 20,000 square feet of building area.	1 bicycle storage space per 5,000 square feet of building area.	1 bicycle storage space per 5,000 square feet of building area.	1 bicycle storage space per 8,000 square feet of building area for medical offices, and 1 bicycle storage space per 10,000 square feet of building area for all other offices.	1 bicycle storage space per 10 employees.	6 bicycle storage spaces per 100 automobile storage spaces (per ordinance reading).

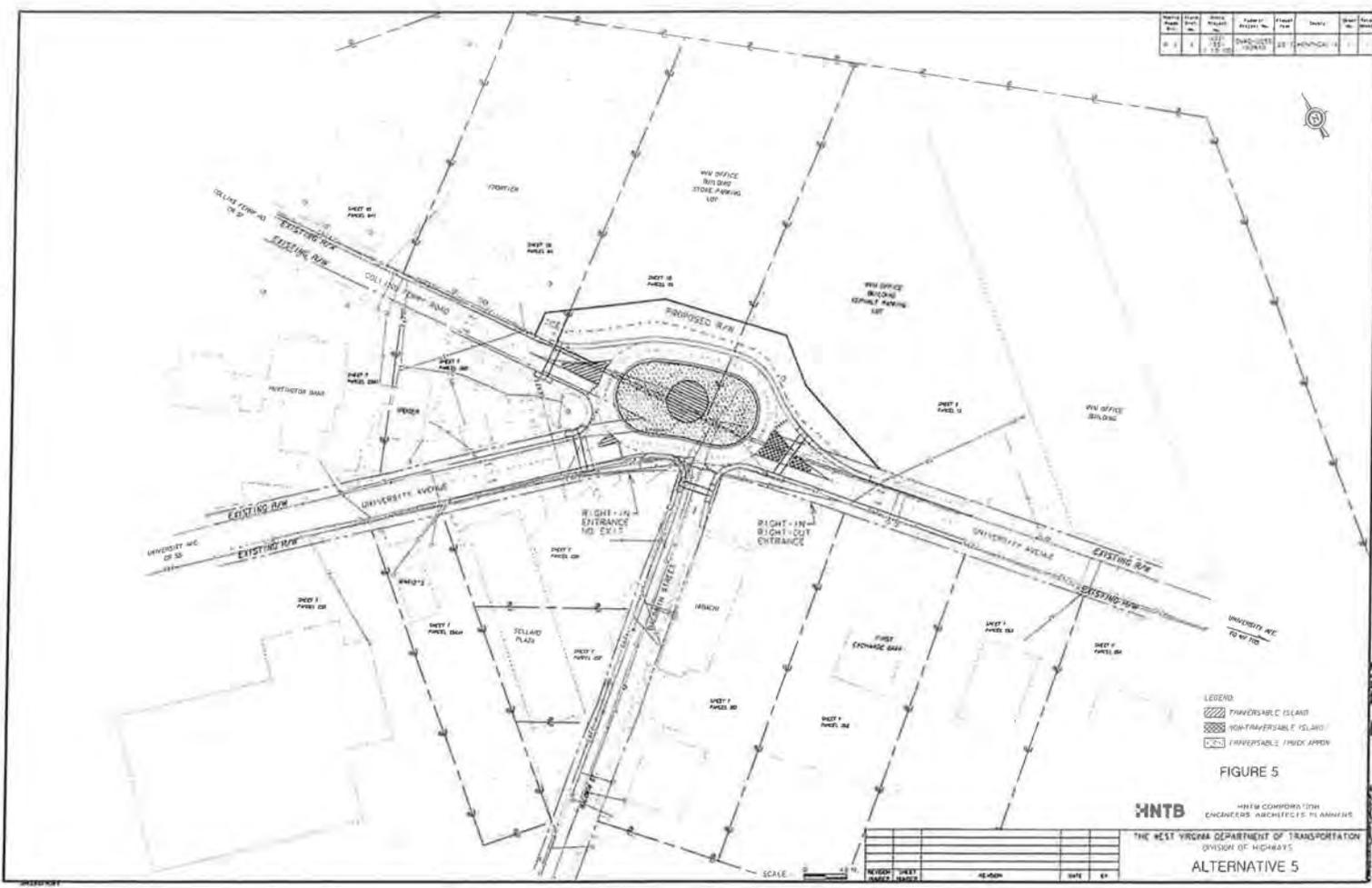
Cambridge, MA Off Street Parking and Loading Ordinance: [http://www.cambridgema.gov/cdd/projects/planning/~/link.aspx?\\_id=9959E81D3EEB48849085C549182A5044&\\_z=z](http://www.cambridgema.gov/cdd/projects/planning/~/link.aspx?_id=9959E81D3EEB48849085C549182A5044&_z=z)

Portland, OR Parking and Loading Ordinance: <https://www.portlandoregon.gov/bps/article/53320>

Boulder, CO Development Standards: [https://www2.municode.com/library/co/boulder/codes/municipal\\_code?nodeId=TIT9LAUSCO\\_CH9DEST\\_9-9-6PAST](https://www2.municode.com/library/co/boulder/codes/municipal_code?nodeId=TIT9LAUSCO_CH9DEST_9-9-6PAST)

Pittsburgh, PA Bicycle storage: [https://www.municode.com/library/pa/pittsburgh/codes/code\\_of\\_ordinances?nodeId=PIZOOCO\\_TITNINEZOCO\\_ARTWIDEST\\_CH914PALOAC\\_914.05BIPA](https://www.municode.com/library/pa/pittsburgh/codes/code_of_ordinances?nodeId=PIZOOCO_TITNINEZOCO_ARTWIDEST_CH914PALOAC_914.05BIPA)

Burlington, VT Parking Ordinance: <https://www.burlingtonvt.gov/sites/default/files/u119/20160331%20ART08-Parking.pdf>



Sheet No.	Scale	Project No.	Sheet Title	Author	Date
1	AS SHOWN	100-000000	UNIVERSITY AVENUE	...	...

LEGEND  
 [Symbol] TRAVERSABLE ISLAND  
 [Symbol] NON-TRAVERSABLE ISLAND  
 [Symbol] TRAVERSABLE TRUCK APPROACH

FIGURE 5

**HNTB** HNTB CORPORATION  
 ENGINEERS ARCHITECTS PLANNERS  
 THE WEST VIRGINIA DEPARTMENT OF TRANSPORTATION  
 DIVISION OF HIGHWAYS  
 ALTERNATIVE 5

NO.	REVISION	DATE



Exhibit F



*The City of Morgantown*  
Public Works Department  
389 Spruce Street  
Morgantown, West Virginia 26505  
J. Damien Davis, P.E., CFM  
Director of Public Works and Engineering  
PH: (304) 284-7412 FAX: (304) 284-7409  
E-MAIL: [ddavis@morgantownwv.gov](mailto:ddavis@morgantownwv.gov)  
[bmorgan@morgantownwv.gov](mailto:bmorgan@morgantownwv.gov)

Dear Suncrest Resident,

As you may be aware the City's Public Works Department has begun painting the curbs yellow in your neighborhood. This will limit parking to one side of most streets. In some cases streets designated "Primary Emergency Response Routes" by the City's Fire Department will have parking removed from both sides.

Limited access has been an ongoing issue for many years and as a result of repeated request from the residents of the neighborhood, the City's Police and Fire Departments, and EMS Services the City has taken action.

Many of the streets in this area are too narrow to accommodate parking on both sides. This has presented problems for Police, Fire and EMS responding to emergencies and also for the residents accessing their property during many of the events that take place in the area.

We understand that this is a major change. We have placed finishing the painting on hold until Monday, September 12<sup>th</sup> so that we can hear your questions, comments and/or concerns. We will review all the comments received and make adjustments where appropriate. If you have comments please call 304-284-7412 or 304-284-7405 or you can email them to [bmorgan@morgantownwv.gov](mailto:bmorgan@morgantownwv.gov) or [callen@morgantownwv.gov](mailto:callen@morgantownwv.gov)

Sincerely,

Damien Davis  
City Engineer

Tonight I feel compelled to address an issue that has been under discussion by this body. That issue is the vagrancy and panhandling that is taking place in our downtown. Of course the question is what can we do about it. At our meeting last Tuesday, the police chief presented a view of this issue that was centered on the rights of the vagrants and panhandlers. This was followed up by a story in the newspaper on Saturday that reiterated this view point.

Tonight I would like to present my viewpoint and that view is centered on the rights of the citizens. These rights include the ability to go and move about downtown without stress, without fear, and without intimidation. The chief stated that the individuals causing problems downtown have the right to assemble and have the right to free speech, and that the issue of panhandling and vagrancy is not a police enforcement issue, but instead an issue related to the modern ills of our society. I respectfully disagree. First it's important to make a clear distinction between our homeless population and vagrants. Homelessness is a condition borne of circumstance and misfortune. The homeless we should help are the ones looking to overcome their situation and become productive members of society again. They truly deserve our help. Most of the homeless among us are not vagrants. They seek and accept the many services available to them on the path to recovery. Vagrancy, on the other hand, is a condition of selection and choice. Most of the vagrants among us are not homeless. However, they seek to pray upon the sympathetic, while picking and choosing which services they find convenient to them. The most ridiculous thing I have heard during these discussions was the statement that many of the vagrants don't like the free food they are offered by the grace of our community, and would rather beg for money to buy pizza. Yes, some of these individuals suffer the ills of modern society such as drug addiction and mental instability. And help is there for them if they choose to accept it. But who among us doesn't personally know someone suffering in the same way? And are they ungratefully praying upon the rest of us?

The activity we are witnessing downtown is not going on in front of the Mountainlair because the university wouldn't tolerate it. It's not going on at Suncrest Town Center, or University Town Center, or the malls, or any other shopping district, because it wouldn't be tolerated there either. But it's going on in downtown Morgantown, and it's going on because we tolerate it. Yes, part of the problem is we're dealing with public property, and yes, part of the problem is the location of many social service agencies near or in the downtown area. However, neither of these should be an excuse. These are people making a conscious choice to behave badly and we must stop tolerating it. To essentially state that we are powerless is an untenable position for our city to take, and an unfortunate position for our chief law enforcement officer to adopt.

If our current loitering or panhandling laws cannot be used to solve this problem then we must look to redefine our laws in a way that gives us the legal authority to act, along with working towards establishing other mechanisms available to business and property owners that will

give them greater control of their sidewalks, as we have already done with our outside dining permit process.

One thing I can agree with the chief about is the need for a detention center for the temporary confinement of the chronic violators in their own best interest and the public's best interest. I hope that the community can help us to accomplish this much needed facility.

For now, the police chief has told us that people must be willing to file complaints and appear in court. So beginning tomorrow I will be spending as much time downtown as possible searching for and indeed welcoming violations for which I can file a complaint. I encourage everyone who wants an end to this problem to join me in a day-to-day effort to combat this cancer that has invaded our historic shopping and entertainment district. As well, I call upon good citizens who are willing, and able, to gather regularly and peaceably on the steps of the First Baptist Church on High Street. Good citizens have as much a right to be there as the individuals who gather there now.

These efforts may sound like grandstanding to some, but I can speak from experience. As a downtown business owner for more than 20 years I lived the problem first hand. I believe the present and future of our downtown is at stake. We're facing increasing competition in our business sector with much more to come. The time for action is now.

We don't need another study, or a task force, or a committee. We need the will to put an end to individuals willfully flaunting the bounds of modern decency to further their own ends. We need the will and we need it now.

## Boards & Commissions Available Positions

<u>Board/Commission</u>	<u>Vacancy/Term</u>	<u>Name of Applicants</u>	<u>Res./Non Res.</u>	<u>Ward</u>	<u>Code Sec.</u>	<u>Other</u>
Parking Authority	1	Blo to come Tom Arnold	Resident		155	Special Meeting
Sister Cities	1	<b>2 Apps. Attached</b>	Resident		172.02	Special Meeting
Traffic Commission	2	<b>Advertising</b>	Resident	6,Vac	151	Special Meeting
Ward & Boundary	1	<b>Stever Carpenter</b>	Resident	4th	Ch.7.05	Selin Appoint
<b>Urban Landscape is re-vamping board rules, Marchetta Maupin will notify Clerk.</b>						

Sister Cities Applicant Elizabeth Finklea is out of the country and will contact me for an interview when she returns.

*\*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.*

9/13/2016

Council to interview all

## Linda Little

---

**From:** DO-NOT-REPLY@govtsystems.com  
**Sent:** Monday, April 19, 2010 11:56 AM  
**To:** Linda Little  
**Subject:** Request Partner Email

Linda Little,

The Request ID 24986 was just assigned to you.  
The details of the request are presented below.

\*\*\*\*\*  
Request Form Name: Volunteer for City Boards and Commissions Request Form Description:  
Use this form to apply for a seat on a City Boards, Commissions, and Authorities. Not all  
Boards and Commissions have vacancies at this time. The City Clerk will contact you when  
a vacancy arises. Your application will remain active for six months.  
\*\*\*\*\*

First Name: Elizabeth ✓  
Last Name: Finklea  
Email: liz.finklea@mail.wvu.edu  
Telephone: 304-291-1755  
Address1: 100 Maple Avenue  
Address2:  
City: Morgantown  
State: WV  
Zip Code: 26501  
Language Preference:  
Preferred Method of Response: E-Mail  
Request Entry Method: Anon Online

Are you a Morgantown resident?:  
Yes

In which City Ward do you live?:  
Second

Who is your employer?:  
WVU

If Yes, how many years have you lived in the City of Morgantown?:  
almost 24 years

What type of business are you employed in?:  
education (support services)

What is your job description?:  
Community outreach coordinator/Web Administrator for the Office of International Students  
and Scholars, Events Coordinator/Web Administrator for the Center for Women's Studies

Do you have any professional certifications or licenses?:  
No

Do you have any pertinent special interests?:  
As an immigrant (from the UK - my husband is an American) I am interested in helping  
international visitors to Morgantown navigate American culture, understand the differences  
and realize the similarities between us. I have been working with Women Across Cultures  
and Girl Scouts for many years to this end.

On which commission(s) are you interested in serving?:

Request Details

# Request #31515 : Volunteer for Boards and Commissions

<p>Are you a Morgantown resident?</p> <p>Are you a Morgantown resident? Yes</p> <p>If Yes, how many years have you lived in the City of Morgantown?</p> <p>If Yes, how many years have you lived in the City of Morgantown? 1</p> <p>In which City Ward do you reside?</p> <p>Who is your current employer (If retired, answer "retired")? West Virginia University</p> <p>In which City Ward do you reside? First</p> <p>Who is your current employer (If retired, answer "retired")?</p> <p>On which Board, Commission, or Authority are you interested in being a volunteer? <i>A+ Large Vacancy</i> Library Board; Traffic Commission</p> <p>What type of business are you, or were you, employed in?</p> <p>What type of business are you, or were you, employed in? Information Technology</p> <p>Do you have professional certifications or licenses?</p> <p>Do you have professional certifications or licenses?</p> <p>Do you have any pertinent special interests?</p> <p>Do you have any pertinent special interests?</p>	<p>Status Completed</p> <p>Priority Normal</p> <p>Received 6/21/2016 at 11:19 AM</p> <p>Source of Request Anon Online by Anonymous</p> <p>Assigned To: Heather Carl</p> <p>Associated To: Anonymous</p> <p>Est. Completion 6/26/2016</p> <p>Actual Completion 6/24/2016</p> <p><input type="button" value="Reactivate"/> <input type="button" value="Print"/></p>
	<p><b>Citizen Information</b></p> <p>Patrick Hathaway 359 Sanford Street Morgantown, WV 26501 3042821072 Patrick.Hathaway1@gmail.com</p> <p><b>Preferred Response Method:</b> E-Mail</p>
	<p><b>Communication</b></p> <p>Select Communication Template</p> <p>Standard <input type="button" value="v"/></p> <p><input type="button" value="Print Letter"/></p> <p><a href="#">View Email Text</a></p>
<p><b>Staff Activities</b></p> <p>Add New <span style="float: right;">Sort</span></p> <p>The status of the request was changed from Active to Completed, by Heather Carl on 6/24/2016 at 8:05 AM</p>	

## Application to Serve on City Boards and Commissions

THE CITY OF MORGANTOWN HAS NUMEROUS COMMITTEES, BOARDS, AND COMMISSIONS COMPRISED OF CITIZENS WHO GIVE OF THEIR TIME IN VERY IMPORTANT CAPACITIES. STATE LAWS PRESCRIBE THAT SOME OF THOSE BODIES RETAIN MEMBERS WHO HAVE CERTAIN EXPERIENCE, EDUCATION OR PROFESSIONAL CERTIFICATIONS. WE ASK THAT YOU PROVIDE THE FOLLOWING BASIC INFORMATION SO WE MAY EVALUATE PROSPECTIVE APPOINTEES' QUALIFICATIONS IN AN EXPEDIENT MANNER. A RESUME OR OTHER PERTINENT INFORMATION MAY BE SUBMITTED ALONG WITH THIS FORM.

MR/MS: Erica Hetzel WORK/CELL PHONE: 304-293-4633

ADDRESS: 1257 Jersey Avenue HOME PHONE: 757-645-7976

Morgantown, WV ZIP: 26505

EMAILADDRESS: erica.hetzel@mail.wvu.edu

CITY RESIDENT? YES  NO  YEARS OF CITY RESIDENCY >1 <sup>(June 1, 2015)</sup> WARD 6

WHO IS YOUR EMPLOYER? (If Retired, Answer "Retired"): West Virginia University Research Corporation

WHAT TYPE OF BUSINESS ARE (were) YOU EMPLOYED IN? Legal/Education

JOB TITLE or JOB DESCRIPTION: Office Manager, Land Use & Sustainable Development Law Clinic

PROFESSIONAL CERTIFICATIONS/LICENSES: Bachelor of Science, Environmental Policy & Planning (Virginia Tech, 2013)

SPECIAL INTERESTS: Environment, sustainability, zoning, planning

PLEASE CHECK THE COMMISSIONS YOU ARE INTERESTED IN SERVING:

- |   |  |
|---|--|
| <input type="checkbox"/> BOCA BOARD OF APPEALS                  | <input type="checkbox"/> MUSEUM COMMISSION                             |
| <input type="checkbox"/> BOARD OF PARKS AND RECREATION          | <input type="checkbox"/> PARKING AUTHORITY                             |
| <input type="checkbox"/> BOARD OF ZONING APPEALS                | <input type="checkbox"/> PERSONNEL BOARD                               |
| <input type="checkbox"/> BUILDING COMMISSION                    | <input type="checkbox"/> PLANNING COMMISSION                           |
| <input type="checkbox"/> FIRE CIVIL SERVICE                     | <input type="checkbox"/> POLICE CIVIL SERVICE                          |
| <input type="checkbox"/> HISTORIC LANDMARKS                     | <input type="checkbox"/> SISTER CITIES COMMISSION                      |
| <input type="checkbox"/> HUMAN RIGHTS                           | <input checked="" type="checkbox"/> TRAFFIC COMMISSION <i>6/17 ufd</i> |
| <input type="checkbox"/> LIBRARY BOARD                          | <input type="checkbox"/> TRANSIT AUTHORITY                             |
| <input type="checkbox"/> MET BOARD                              | <input type="checkbox"/> TREE BOARD                                    |
| <input type="checkbox"/> MORGANTOWN HOUSING ADVISORY COMMISSION | <input type="checkbox"/> URBAN LANDSCAPE COMMISSION                    |
| <input type="checkbox"/> MORGANTOWN UTILITY BOARD               | <input type="checkbox"/> WARD & BOUNDARY                               |

WOODBURN REDEVELOPMENT COMMISSION

SUBMIT TO: CITY CLERK, 389 SPRUCE STREET, RM.10, MORGANTOWN, WV, 26505.  
APPLICATIONS WILL REMAIN ON FILE IN THE CITY CLERK'S OFFICE FOR 6 MONTHS

UPDATED: 7/15  
Page 10 of 15  
Page 56 of 159

## ERICA LEE HETZEL

1257 JERSEY AVENUE • MORGANTOWN, WEST VIRGINIA 26505 • (757) 645-7976 • EHETZEL@VT.EDU

### EDUCATION

---

Virginia Polytechnic Institute & State University, Blacksburg, Virginia May 2013  
Bachelor of Science, Environmental Policy & Planning Cumulative G.P.A.: 3.38  
Minor, Agricultural & Applied Economics In-Major G.P.A.: 3.57

### PROFESSIONAL EXPERIENCE

---

West Virginia University College of Law • Morgantown, WV • June 2015 – present • *Office Manager*

- Provide managerial and administrative support to Land Use and Sustainable Development Law Clinic attorneys & planners; supervise student clinicians; conflict checks for intake of new clients & projects
- Compile & maintain database of local governmental comprehensive plans and zoning ordinances in WV
- Contribute to and review & revise final attorney work products such as certified title opinions for real property, West Virginia Legal Education to Address Abandoned Properties “WV LEAP” Toolkit
- Manage travel itineraries, authorization, and reimbursement for staff and student clinicians
- Organize and plan events and conferences, including client meetings, regional land use planning workshops and the statewide annual Mountain State Land Use Academy
- Develop & update clinic office manual and semester syllabus; maintain clinic website and blog

Roylance, Abrams, Berdo & Goodman, LLP • Washington, D.C. • May 2014 – May 2015 • *Paralegal*

- Assisted senior partner & of counsel in patent and trademark prosecution in the U.S. Patent and Trademark Office; protection of intellectual property rights in U.S. district courts & Federal Circuit Court of Appeals
- Drafted and revised client correspondence, patent infringement and validity opinions, patent specifications, amendments, briefs on appeal, reply briefs, trademark renewal applications, and miscellaneous documents
- Developed and maintained individual client and comprehensive dockets of required deadlines for filing responses, appeals, declarations, statements of use, and other necessary actions
- Facilitated filing of U.S. and International Patent Cooperation Treaty patent applications

Finkelstein Thompson LLP • Washington, D.C. • May 2013 – March 2014 • *Paralegal*

- Provided legal assistance to staff attorneys in all aspects of litigation from inception through conclusion
- Performed legal research & factual investigations on antitrust, securities, commodities, class action, intellectual property, whistleblower, consumer protection, bankruptcy, and landlord/tenant law issues
- Drafted pleadings, memoranda of law, and motions in federal, Virginia, Maryland, and District of Columbia courts and the Fourth and District of Columbia Circuit Courts of Appeals
- Created tables of contents and authorities, applications for admission *pro hac vice*, requests for admission, production of documents, and interrogatories, and other supporting litigation materials
- Maintained firm website, Facebook, Twitter, and LinkedIn accounts

Crag Law Center • Portland, OR • May – August 2012 • *Summer Legal Intern*

- Assisted staff attorneys in preparing for trials and hearings for cases involving public interest, environmental, energy, land use, planning & zoning, conservation, and natural resource law
- Created and revised grant proposals, quarterly newsletter, and 501(c)(3) non-profit articles of dissolution
- Drafted and edited pleadings, motions, memoranda, and other supporting litigation documents in federal, Washington, and Oregon courts and the Ninth Circuit Court of Appeals
- Helped plan and organize film screening of Tapped, a documentary, and annual summer fundraising party

VT Office of University Development • Blacksburg, VA • September 2009 – January 2013 • *Office Assistant*

- Provided assistance and performed specialized projects for the Office of Gift Planning’s professional staff
- Created and organized prospect & major donor portfolios for each staff member and the Office as an entity
- Analyzed prospects by generating reports to establish priorities & ensure ongoing expansion of donor base
- Performed general administrative duties such as mailers, drafting correspondence, shredding, copying, etc.

## **PROFESSIONAL CERTIFICATIONS**

---

Notary Public, State of West Virginia

Commission Expires April 18, 2021

- Verify signatures, administer oaths & affirmations, and certify true and accurate copies of documents

## **RELEVANT COURSES**

---

- Law of Critical Environmental Areas
- Administrative Law & Policy
- Legal Foundations of Planning

## **HONORS & AWARDS**

---

- The Honor Society of Phi Kappa Phi
- Dean's List: F'11, S'12, F'12, S'13
- UAP Growth & Development Award

## **INDEPENDENT RESEARCH & CONFERENCE PRESENTATIONS**

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*Ain't No Mountain High Enough? Direct & Indirect Regulation of Mountaintop Removal Coal Mining*

- Virginia Commonwealth University 6<sup>th</sup> Annual Student Research Conference, April 2012, Richmond, VA
- Virginia Tech 10<sup>th</sup> Annual Undergraduate Research Conference, April 2012, Blacksburg, VA
- American Agricultural Law Association 33<sup>rd</sup> Annual Symposium, October 2012, Nashville, TN

Stephen G. Carpenter  
456 Rotary Street  
Morgantown, WV 26505

September 1, 2016

The Honorable Marti Shamberger, Mayor  
The City of Morgantown  
389 Spruce Street  
Morgantown, WV 26505

Dear Mayor Shamberger,

Please accept this as official notice of my resignation from the Morgantown Wards and Boundary Commission effective immediately. I have retired and spend significant time out-of-state particularly during the fall and winter months.

I am grateful for having had the opportunity to serve on the commission since 1994, and I offer my best wishes as you work to make Morgantown a better place in which to live.

Sincerely,

  
Stephen G. Carpenter

cc: Linda L. Tucker, CMC, Morgantown  
Dr. Alan Donaldson, President, Wards and Boundaries Commission

ARTICLE 159  
Library Board

159.01	Established; appointment and term of members; vacancies.	159.05	Donations of cash, property or real estate.
159.02	Compensation.	159.06	Library to be free service.
159.03	Duties.	159.07	Withdrawal of State or federal funds.
159.04	Annual report to be made.		

CROSS REFERENCES

State law provisions - see W. Va. Code Art. 10-1

159.01 ESTABLISHED; APPOINTMENT AND TERM OF MEMBERS; VACANCIES.

There is hereby established a Board of five directors who shall be chosen from the residents of the City, with reference to their fitness for such office, and who shall be appointed by the Mayor with approval of Council. The directors shall hold office for five years from the 1st day of July following their appointment, and until their successors are appointed and qualified; provided, that upon their first appointment under this article, a proportionate number shall be appointed for one year, for two years, for three years, for four years and for five years. Vacancies in the Board shall be immediately reported to the Board of the governing authority and filled by appointment in like manner, and, if an unexpired term for the remainder of the term only. A director may be removed by just cause in the manner provided by the by-laws of the Library Board. Council may remove any director for just cause. (1967 Code Sec. 2-129.)

159.02 COMPENSATION.

No compensation shall be paid or allowed any director.  
(1967 Code Sec. 2-130.)

159.03 DUTIES.

The Board of Directors of the library shall:

- (a) Immediately after their appointment, meet and organize by electing one member as president, one member as treasurer and one member as secretary and such other officers as may be necessary. All officers shall hold office for one year and shall be eligible for re-election. The treasurer before entering upon his duties shall give bond to the governing authority in an amount fixed by Council and shall, if requested, give bond to the Library Board in an amount fixed by such Board, which bonds shall be conditioned for the faithful discharge of his official fiscal duties. The cost of such bonds shall be paid from the Library Fund.
- (b) Adopt such by-laws, rules and regulations as are necessary for its guidance and for the administration, supervision and protection of the library and all property belonging thereto as may not be inconsistent with the provisions of the laws of the State.

- (c) Supervise the expenditures of all money credited to the Library Fund. All money appropriated or collected for public library purposes shall be deposited in the treasury of the library directors fund as the library's Board of Directors shall direct, and shall be paid out on the certified requisition of the Library Board, in the manner provided for in the by-laws of the Board.
- (d) Employ a head librarian, and upon his or her recommendation employ such other assistants as may be necessary for the efficient operation of the library. (1967 Code Sec. 2-131.)

#### 159.04 ANNUAL REPORT TO BE MADE.

The Board of Directors shall make an annual report at the end of each fiscal year to the City Manager stating the condition of the library property, the various sums of money received from the Library Fund and all other sources, and how such money was expended, the number of books and periodicals on hand, the number added during the year, the number withdrawn from circulation, the number of books lent, the number of registered users of such library, with such other statistics, information and suggestions as may be deemed of general interest. A copy of this report shall be sent to the State Library Commission. (1967 Code Sec. 2-132.)

#### 159.05 DONATIONS OF CASH, PROPERTY OR REAL ESTATE.

The Board of Library Directors shall be a corporation; and as such it may contract and be contracted with, sue and be sued, plead and be impleaded and shall have and use a common seal.

The title in the future to all bequests or donations of cash or other personal property or real estate for the benefit of such library shall be vested in the Board of Library Directors to be held in trust and controlled by such Board according to the terms and for the purposes set forth in the deed, gift, devise or bequest; provided, however, that the person making the bequest or donation of cash or of her personal property or real estate for the benefit of such library shall have the right and privilege to vest the title thereto in a trustee, or trustees, of his own selection, and to provide for the selection of successor trustees and to designate the manner in which such fund or property shall be invested and used.

Should the Library Board be dissolved, all assets of such Board shall revert to and become the property of the City. (1967 Code Sec. 2-133.)

#### 159.06 LIBRARY TO BE FREE SERVICE.

The library shall be free for the use of all persons living within the City, subject to reasonable rules and regulations adopted by the Library Board. The Board may extend the privilege and use of the library to nonresidents upon such terms and conditions as it may prescribe. The Board may exclude from the use of the library under its charge any person who willfully or persistently violates any rule or regulations prescribed for the use of the library or its facilities. (1967 Code Sec. 2-134.)

#### 159.07 WITHDRAWAL OF STATE OR FEDERAL FUNDS.

In the event State or federal funds are withdrawn from the Municipal Library, such Library will revert to the method of operation prior to adoption of this article. (1967 Code Sec. 2-135.)

ARTICLE 155  
Parking Authority

155.01	Created.	155.085	Parking enforcement officers.
155.02	Jurisdiction.	155.09	Powers relative to parking facilities.
155.03	Composition and membership; vacancies.	155.10	Members not to be interested in contracts.
155.04	Oath of office.	155.11	Certain State law adopted.
155.05	Members' bonds. (Repealed)	155.12	Construction of article.
155.06	Organization and officers.		
155.07	Powers and duties.		
155.08	Appointment of special police officers.		

CROSS REFERENCES

Municipal public works; bonds - see W. Va. Code Art. 8-16

Authority to lease off-street parking facilities - see

W. Va. Code 8-12-12

Off-street parking - see TRAF. Art. 365

**155.01 CREATED.**

There is hereby established the Morgantown Parking Authority.  
(1967 Code Sec. 2-108.)

**155.02 JURISDICTION.**

The construction, acquisition, improvement, extension, equipment, custody, operation and maintenance of all automobile parking facilities, except as otherwise provided by this article, including parking lots, parking buildings, ramps, curb line parking and other parking facilities deemed necessary or incidental to the regulation and control and parking of automobiles is hereby vested in the City Parking Authority, hereinafter referred to in this article as the "Parking Authority".  
(1967 Code Sec. 2-109.)

**155.03 COMPOSITION AND MEMBERSHIP; VACANCIES.**

The Parking Authority shall consist of five persons, each of whom shall be a resident of the City. Two members of such authority shall also be members of the governing body of the City, one of which is to be appointed by the Mayor, and one of which is to be elected by Council. The term of these two members shall be coextensive with the term of office to which he has been elected or appointed. The remaining members of the Commission shall be appointed by Council for a term of three years, such terms to begin on the first day of July of any year; provided, however, that the three members of the Parking Authority heretofore appointed and in office when this article becomes effective shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and qualified. In the event of a vacancy in the membership of the Parking Authority a successor shall be appointed by Council for the unexpired term only. Members other than those appointed from the governing body shall serve until their successors have been appointed and qualified.

Any member of the Parking Authority not also a member of the governing body of the City shall be eligible for reappointment upon expiration of his term, and any member who is also a member of the governing body shall be eligible for reappointment; provided, that he is continuing as a member of the governing body. Members of the Parking Authority shall receive no compensation or salary for their services but shall be reimbursed out of the funds of such Authority for any expenses incurred in their duties as such. Any member of the Parking Authority shall be removed for just cause by Council upon written charges and by the vote of a majority thereof after a public hearing thereon.  
(1967 Code Sec. 2-110.)

**155.04 OATH OF OFFICE.**

Each member of the Parking Authority before entering upon the duties of his office shall make before someone authorized by law to administer oaths, and file with the City Clerk, an oath or affirmation to support the Constitution of the United States and of the State, and to perform faithfully, honestly and impartially the duties of his authority to the best of his skill and judgment.  
(1967 Code Sec. 2-111.)

**155.05 MEMBERS' BONDS. (REPEALED)**

EDITOR'S NOTE: Former Section 155.05 was repealed by Ordinance 14-17.

#### 155.06 ORGANIZATION AND OFFICERS.

As soon after the first day of July of each year as possible the Parking Authority shall hold an annual meeting at which time a chairman and a secretary shall be elected from the membership of such Authority. The chairman shall preside at all meetings of the Parking Authority, shall have the power to call a meeting of such Authority at any time and shall perform such other functions as may be provided for in the rules and regulations and by-laws of the Parking Authority. The secretary shall keep a record of the proceedings of the Parking Authority which shall be considered a public municipal record and shall be available for inspection of any person at all reasonable times. The Finance Director shall be treasurer of the Parking Authority. The treasurer shall be the custodian of the funds of the Parking Authority and shall receive and disburse the same as directed by such Authority. (1967 Code Sec. 2-113.)

#### 155.07 POWERS AND DUTIES.

The Parking Authority shall have the power and authority within the City to construct, acquire, improve, extend, equip, operate and maintain automobile parking facilities, including parking lots, parking buildings and parking ramps deemed necessary or incidental to provide off-street parking facilities for vehicles within the City, and all such works shall be under the custody, control and supervision of such authority.

Such authority shall have the power to collect revenues therefrom for the services rendered thereby, which revenues shall be delivered to the Finance Director and maintained by him in a separate fund designated as the "Parking Facilities Revenue Fund". The revenues from the operation of off-street parking facilities, after allowance for the cost of maintenance and operation, shall be available for the payment of the interest on and principal of the bonds proposed to be issued, which payments shall be made by the Finance Director, with the approval of Council, and no other expenditures from such Fund shall be made without the approval of Council; except, that the Finance Director may honor requisitions from the Parking Authority for reasonable and necessary expenditures not to exceed the sum of five hundred dollars (\$500.00) in any fiscal year.

The Parking Authority shall have power to take all steps and proceedings, and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties; provided, that any contract involving the expenditure of a sum in excess of five hundred dollars (\$500.00) in any fiscal year, and any contract relating to the financing or the acquisition, construction, extension or equipment of any such works, or the issuance of any bonds, or any trust indenture shall be first approved by Council. Rates or charges for the use of, and for the services rendered by the municipal public automobile parking facilities shall be established by Council.

The Parking Authority shall have the power to employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys and such other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, and all such employees shall perform such work and labor as the Parking Authority may direct. All such compensation and expenses incurred in carrying out the provisions of this article shall be paid out of the funds provided under this article and under the provisions of West Virginia Code Article 8-16, and such Authority shall not exercise or carry out any authority or power herein given it so as to bind such Authority or the City beyond the extent to which moneys shall have been, or may be provided for its use by Council, or moneys provided under the authority of West Virginia Code Article 8-16.

No contract or agreement exceeding the sum of one thousand dollars (\$1,000) shall be made without advertising for bids, which bids shall be publicly opened and award made to the lowest responsible bidder, with power in the Parking Authority to reject any and all bids. After the construction, installation, completion or the acquisition of any such public works, the Parking Authority shall operate, manage and control the same, and may order and complete any extensions, betterments and improvements of and to the works that such Authority may deem expedient, if funds therefor are available, or made available as provided in such sections of the Code of West Virginia, and such Authority shall have the right to establish rules and regulations for the use and operation of such works and to do all things necessary or expedient for the successful operation thereof.

The Parking Authority shall also have the power to adopt rules, regulations and by-laws for the conduct of its business and affairs.

The Parking Authority shall make monthly reports to Council. Such reports shall show the financial condition of the various facilities operated by the Parking Authority including receipts and expenditures. The Parking Authority shall provide such other reports and information as Council may from time to time require or request. Any such reports may also in the discretion of the Parking Authority or at the request of Council include such recommendations concerning the activities of the Parking Authority as may be determined proper. (1967 Code Sec. 2-114.)

#### 155.08 APPOINTMENT OF SPECIAL POLICE OFFICERS.

The Parking Authority shall have authority to appoint special police officers, whose sole duties shall be to patrol, and to enforce Municipal ordinances upon or within, designated parking lots and parking buildings under the control of and operated by the Parking Authority. In the performance of such duties, such special police officers shall be vested with power to make arrests, issue summons, sign complaints and request the issuance of capiases. Such special police officers shall be in uniform, shall display a badge or other sign of authority and shall serve at the will and pleasure of the appointing authority. The cost of providing such special parking lot or parking building police officers shall be paid from revenues derived from off-street parking lots or parking buildings. (1967 Code Sec. 2-114.1.)

#### 155.085 PARKING ENFORCEMENT OFFICERS.

The Parking Authority shall have authority to enforce municipal parking ordinances within the City.

The Parking Authority shall appoint parking enforcement officers who will patrol and enforce Municipal parking ordinances upon the streets of the City of Morgantown and, in the performance of such duties shall be vested with power to issue summons and citations and sign complaints.

Parking enforcement officers shall be in uniform and display a badge or other sign of authority.

The salaries of such parking enforcement officers shall be paid by the Parking Authority and the Parking Authority shall retain all income derived from the curblin parking meters.

Parking enforcement officers shall acquire no civil service rights under the civil service rules of the State, shall acquire no rights under the policemen's pension and relief fund provisions of the West Virginia Code, nor shall the limited power delegated to them herein be construed as power or authority of a peace officer.

(Ord. 10-18. Passed 5-18-10.)

#### 155.09 POWERS RELATIVE TO PARKING FACILITIES.

The Parking Authority with reference to automobile parking facilities within the City shall have all of the powers and authorities provided for in West Virginia Code Article 8-16.

(Ord. 10-7-86.)

#### 155.10 MEMBERS NOT TO BE INTERESTED IN CONTRACTS.

No member of the Parking Authority shall become or be directly or indirectly interested in any contract or in the profits to be derived therefrom with the Parking Authority.

(1967 Code Sec. 2-116.)

#### 155.11 CERTAIN STATE LAW ADOPTED.

In the establishing of the Parking Authority, Council does hereby expressly adopt the provisions of West Virginia Code Article 8-16 as provided under the provisions and in accordance with the requirements of West Virginia Code 8-1-6.

(1967 Code Sec. 2-117.)

#### 155.12 CONSTRUCTION OF ARTICLE.

Inasmuch as this article is necessary for the public health, safety and welfare of the residents of the City, it shall be liberally construed to effectuate the purposes thereof.

(1967 Code Sec. 2-118.)

ARTICLE 172  
Morgantown Sister Cities Commission

172.01	Established.	172.06	Compensation and reimbursement for expenses.
172.02	Members.	172.07	Appropriation of funds.
172.03	Officers.	172.08	Purpose, powers, and duties.
172.04	Meetings.		
172.05	Voting.		

**172.01 ESTABLISHED.**

There is hereby formed, created and established a municipal Sister Cities Commission, known as the Morgantown Sister Cities Commission (the "Commission").  
(Ord. 10-10. Passed 3-2-10.)

**172.02 MEMBERS.**

The Commission shall consist of nine members who shall be appointed by City Council. The terms of the individual Commission members first appointed shall be as follows:

- Three members - 3 years
- Three members - 2 years
- Three members - 1 year

All vacancies shall be filled for the unexpired term only. All other appointments shall be for a term consistent with that set for the member position in question, to commence on the date following the scheduled expiration date of the previous term. At all times one of the nine members of the Commission shall be a member of City Council. Two of the members may be ex-officio, non-voting members selected from the Greater Morgantown Area as defined by the jurisdictional boundaries of the Morgantown, Monongalia Metropolitan Planning Organization. At all times, seven members of the Commission shall be residents of the City.  
(Ord. 13-03. Passed 2-19-13.)

**172.03 OFFICERS.**

The Commission shall select from its own membership a chairperson, vice-chairperson, and secretary. (Ord. 10-10. Passed 3-2-10.)

**172.04 MEETINGS.**

The Commission shall meet on a monthly basis. Special meetings may be held as deemed necessary by the Chairperson. Such meetings shall be subject to the requirements of the West Virginia Open Governmental Proceedings Act. A quorum of members must be present before a meeting of the Commission can be held at which any official action of the Commission is to take place.

(Ord. 10-10. Passed 3-2-10.)

**172.05 VOTING.**

Every member of the Commission present, when a question is put, shall vote unless he/she is interested therein other than as a resident of the City. To be successful, an issue shall require five affirmative votes.

(Ord. 10-10. Passed 3-2-10.)

**172.06 COMPENSATION AND REIMBURSEMENT FOR EXPENSES.**

The members of the Commission shall receive no compensation for their services, but shall be entitled to reimbursement for reasonable and necessary expenses actually incurred in the performance of their duties as a Commission member, if said Commission member has received approval from the City's Finance Director to make such expenditure prior to incurring said expense.

(Ord. 10-10. Passed 3-2-10.)

**172.07 APPROPRIATION OF FUNDS.**

City Council may appropriate any funds that it deems necessary to carry out any of the proposals set forth by the Commission, so long as said proposal meets the purpose and intent of this article. (Ord. 10-10. Passed 3-2-10.)

**172.08 PURPOSE, POWERS, AND DUTIES.**

It shall be the duty of the Commission to advise and recommend to the City Manager and/or City Council means of creating or advancing inter-cultural, educational, social and economic exchanges between the City and the State of West Virginia with other cities with which the City of Morgantown has established not only sister cities formal relationships guided by the organization known as Sister Cities International, but also, informal friendship cities relationships formed under the guidance of the Commission.

(Ord. 11-18. Passed 5-17-11.)

ARTICLE 151  
Traffic Commission

- |                                    |   |
|------------------------------------|---|
| 151.01 Established.                | 151.03 Officers and rules of procedure. |
| 151.02 Composition and membership. | 151.04 Duties.                          |

CROSS REFERENCES

Authority to establish - see CHTR. Sec. 4.02

**151.01 ESTABLISHED.**

There is hereby established and created a Traffic Commission for the City, the official name of which shall be "The Morgantown Traffic Commission".  
(Ord. 15-09. Passed 2-17-15.)

**151.02 COMPOSITION AND MEMBERSHIP.**

(a) The Traffic Commission shall be composed of: a member of Council; one resident from each of the City wards; one resident at-large to represent bicycling; one resident at-large to represent walking; and one Planning Commission member. All ward, at-large and Planning Commission members shall be appointed by Council. Ex-officio Commission members of the Traffic Commission shall include the Police Chief, or his/her designee; the City Engineer, or his/her designee; the WVU Parking Director/Planner or his/her designee; the Director of the Morgantown Board of Park and Recreation Commissioners (BOPARC) or his/her designee; the Director of the Mountain Line Transit Authority or his/her designee; and the Director of the Morgantown Monongalia Metropolitan Planning Organization (MMMPO) or his/her designee.

(b) The ex-officio members shall serve without any specific term and shall serve by virtue of their office, enjoying all rights of membership except a vote. Each Council and Planning Commission members shall serve until his or her current respective term on Council or Planning Commission expires.

(c) The members appointed by ward residency, and the at-large members shall each serve for a term of three years. (Ord. 15-09. Passed 2-17-15.)

**151.03 OFFICERS AND RULES OF PROCEDURE.**

(a) The City Engineer shall call the first meeting of the Traffic Commission. The Commission shall meet at least once a month, and shall select from its own membership a chairperson.

(b) The Commission shall adopt its own rules of procedure and shall keep minutes of regular and special meetings.  
(Ord. 15-09. Passed 2-17-15.)

## 151.04 DUTIES.

The duties of the Traffic Commission shall be to receive citizen input pertaining to traffic issues and to act as an advisory to City Council on matters relating to:

- (a) The movement and regulation of motor vehicles, bicycles and pedestrians within the City.
- (b) The coordination of traffic activities.
- (c) Educational activities in traffic matters.
- (d) The ways, means and methods of improving traffic conditions within the City; and
- (e) The administration and enforcement of traffic regulation. The Commission shall receive such reports and information as deemed necessary by City Administration. The Commission may request the assistance and advice of any other department or official of the City. The City Engineer shall provide primary services for agendas, minutes, studies and implementation of tasks resulting from Commission actions.  
(Ord. 15-09. Passed 2-17-15.)

**SECTION 7.05. WARDS, ADJUSTMENT OF WARD BOUNDARIES.**

(a) Number of Wards. The territory included in the City shall be, and is hereby divided into seven wards and the number of wards shall not be increased or decreased.

(b) Ward Boundary Commission. The Council shall appoint seven qualified voters, one from each of the seven wards of the City as they exist at the time of such appointment, who shall comprise a Ward Boundary Commission. The voters chosen shall not be employed by the City in any other capacity. The appointment shall be made not later than 30 days after the commencement of each Council's term of office.

(c) Report. The Commission shall file with the City Clerk a report containing a recommended plan and a map for adjustment of ward boundaries to comply with the specifications set forth in subsection (d), which report shall be made between November 15 and November 30 of each even-numbered year.

(d) Specifications. Except as otherwise provided in Section 10.05, the ward boundaries shall be adjusted from time to time in accordance with the following specifications:

- (1) Each ward shall be formed of contiguous territory, and its boundary lines shall follow the precinct lines and the center lines of streets wherever practicable.
- (2) Each ward shall contain as nearly as practicable the same number of qualified voters, determined from the registration for the last statewide general election. This specification shall not be construed to require the adjustment of precinct boundaries or to require the sacrifice of compactness of wards for the sake of achieving equality of numbers of registered voters among the seven wards of the City. The report shall include a map and description of the boundaries of each of the wards.

(e) Action on Report. Within 15 days after the date of the filing of the report mentioned in subsection (c), the Council shall approve or disapprove the same. If the report is disapproved, the Council shall state the reasons therefor on the minutes of the Council meetings. If the report is approved, the Council shall within 15 days after such approval, introduce a proposed ordinance providing for the ward boundaries in accordance with the specifications contained in the report. The procedure for the enactment of the ordinance shall be the same as for any ordinances provided for under Section 2.13 with the additional requirements of Section 2.13(b)(3).

(f) Enactment of Ordinances. If (1) the report of the Commission is disapproved, or (2) if the Commission fails to file the report as and when required by subsection (e), the Council shall, within 15 days after such disapproval or of such failure to file the report, nevertheless introduce an ordinance adjusting the ward boundaries consistent with specifications of subsection (d) unless the Council shall, within 15 days after the filing of the report, or of the failure to file the report, make a finding of fact, entered upon the minutes of the Council meetings, that no ward boundary adjustments are necessary. The procedure for the enactment of such ordinance shall be the same as for any ordinances provided for under Section 2.13 with the additional requirements of Section 2.13(b)(3).

(g) Effect of Enactment. The new ward boundaries as of the date of the enactment of an ordinance providing therefor shall supersede previous ward boundaries for all the purposes of the next regular City election including nominations. The new ward boundaries shall supersede previous ward boundaries for all other purposes as of the date of which all Councilmembers elected at that regular City election take office.

(h) Terms of Members of the Commission. The terms of office of the members of the Commission shall expire at the same time as the expiration of the terms of the Council which appointed them. A new Commission shall thereafter be appointed as provided by subsection (b).

**AN ORDINANCE AUTHORIZING EXECUTION OF A LEASE AGREEMENT WITH THE WEST VIRGINIA BOTANICAL GARDEN, INC. FOR AN 82-ACRE PARCEL KNOWN AS THE TIBBS RUN PROPERTY**

The City of Morgantown hereby ordains that the City Manager is authorized to execute, on behalf of the City of Morgantown, the Lease Agreement attached to, and made a part of, this ordinance.

This Ordinance shall be effective from the date of its adoption.

First Reading:

Adopted:

\_\_\_\_\_  
Mayor

Filed:

Recorded:

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

## LEASE AGREEMENT

This Lease Agreement (the "Agreement") is executed by and between The City of Morgantown, a municipal corporation and political subdivision of the State of West Virginia, ("LESSOR") and West Virginia Botanic Garden, Inc., a West Virginia nonprofit corporation ("LESSEE") as of the \_\_\_\_ day of \_\_\_\_\_, 2016.

1. **Premises and Term:** LESSOR does hereby lease to LESSEE, and LESSEE does hereby lease from LESSOR, a parcel of real property consisting of 82 acres, more or less, and known as the Tibbs Run property, more particularly described on the attached "Exhibit 1," which is incorporated herein by reference (the "Premises"), subject to all existing easements, encumbrances, and other matters of record or discernible by visible inspection. The Premises are leased to Tenant for a term commencing **October 1, 2016**, and extending until midnight on the day preceding the **FIFTIETH** anniversary of such date; provided that, on and after the **TENTH** anniversary of the effective date, upon appropriate legal action by the governing body of LESSOR and written acceptance by the authorized representative of LESSEE, this lease may be renewed for an additional term of fifty years. The foregoing renewal provision shall be in addition to, and not derogation of, any other powers and authorities of the parties.
2. **Consideration:** As consideration for the use of the Premises, LESSEE agrees to pay LESSOR one dollar (\$1.00) per year beginning with the execution of this Lease Agreement and continuing on the fifteenth day of each successive year that the lease is in effect.
3. **Operations:** LESSEE agrees to do the following:
  - a. Provide to and maintain with LESSOR its current Articles of Incorporation, the names and addresses of its Directors and Officers, annual financial statements, and minutes of all proceedings of its Members, Board of Directors and Committees having any of the authority of the Board of Directors. These documents may be supplied to LESSOR via electronic means.
  - b. Allow LESSOR and/or its designated representative access for inspection purposes to all books and records maintained by LESSEE.
  - c. LESSEE shall not diminish the value of the Premises in any fashion, including, but not limited to, the harvest or felling of any trees or the harvest of other natural resources located thereon, without the express and written permission of LESSOR, except that dead and other hazardous trees may be removed by LESSEE at any time, and those trees which must be removed to accommodate any improvements expressly approved in writing by LESSOR may be removed by LESSEE at any time. Any value of such trees removed in accordance with these allowed exceptions may be enjoyed by LESSEE.
  - d. LESSEE shall endeavor to apply for all necessary permits and approvals in a timely manner.

- e. LESSEE shall be financially responsible for all costs associated with the LESSEE'S development and operation of the leased area undertaken during the term of this Agreement.
- f. LESSEE shall be responsible for paying any real or personal property taxes which may be assessed and due against the leased Premises during LESSEE'S possession of same under this Agreement.
- g. LESSEE shall be responsible for general upkeep and maintenance of the Premises to the satisfaction of LESSOR.

4. Annual Report: Within sixty (60) days after the end of each fiscal year of LESSEE, LESSEE shall submit to LESSOR a detailed written report describing the past year's operations and activities. The report may be supplied by electronic means.

5. Construction and Improvement Activities:

- a. Prior to beginning any project involving grading, earth removal, stream or pond modification, construction of a building, or any alteration to the Premises involving a permanent improvement or fixture, LESSEE will present detailed plans for the same to the LESSOR for review and comment. Work on any such project will not commence until such time as the LESSOR approves said plans. All construction shall conform to all applicable statutes, building codes, and laws, including the Americans with Disabilities Act. Upon completion of any such construction, LESSEE shall provide evidence to satisfaction of LESSOR, by written statement, and any other means or devices deemed necessary by LESSOR, that no liens exist on any of the construction and improvements made and that all contractors and subcontractors have been paid all amounts due and owing to them.
- b. Planting of trees, shrubs, and other minor horticultural activities by LESSEE will not require permission from LESSOR.
- c. It is agreed and understood that construction upon and any improvements to the Premises shall become the property of the LESSOR upon termination of this Agreement, free and clear of any liens or encumbrances whatsoever; provided, however, that any equipment, signs and other personal property of LESSEE not permanently affixed to the leased Premises shall remain the property of LESSEE and shall so remain unless the LESSEE shall fail, following the termination of this Agreement and following thirty (30) days' written notice, to remove such personal property, in which event, at the option of LESSOR, title to same shall vest in LESSOR, at no cost to LESSOR.

6. Utilities: LESSEE shall be responsible for obtaining and paying for all utility services to the Premises.

7. Maintenance: LESSEE shall be responsible, at its sole expense, for the reasonable maintenance of the Premises and for the repair or replacement of any improvements to the Premises.

8. Right to Enter: LESSOR and its duly authorized representatives or agents shall have the right to enter and inspect the Premises at any time to determine whether LESSEE is in compliance with the terms of the Agreement and to perform any necessary inspections or operations. LESSEE will provide LESSOR with the means to access any obstructions to entry or movement on the Premises, including keys to all locked gates, doors, or other structures. LESSOR shall not provide copies of any such means of access to any agency or individual not having official business on the property.

9. Insurance: LESSEE shall procure and maintain during the term of this Lease Agreement, at its sole expense, insurance coverage in the following amounts, with the LESSOR named as an additional insured. A Certificate of Insurance or a copy of the insurance policies involved shall be furnished to LESSOR.

- a. Comprehensive Public Liability and Property, including, but not limited to, personal injury, protecting LESSOR against any and all liability arising out of LESSEE'S conduct incident to the use of the Premises or resulting from any accident occurring on or about the leased realty, caused by or arising out of any act or omission of LESSEE, in the minimum amount of two million dollars (\$2,000,000.00)
- b. Building Fire and Extended Coverage Insurance on the Premises and on all construction and improvements erected by LESSEE in the amount of one hundred percent (100%) of the full insurable value as from time to time determined by a competent appraiser. Said insurance coverage will provide that any such loss shall be payable jointly to LESSOR and LESSEE, and LESSEE shall have the right, if done within thirty (30) days of receipt thereof, to use the proceeds of any such loss to repair or replace the damaged or destroyed structure; otherwise, the entire proceeds of such policy shall be the property of LESSOR. Should LESSEE wish to exercise the right to repair or replace said damage or destroyed structure, it will notify LESSOR of such intent immediately upon receipt of such loss proceeds, obtain approval from LESSOR regarding LESSEE'S plans regarding such work, and jointly work with LESSOR in arrangement of and payment for repair or replacement activities.
- c. Excess liability insurance coverage, with a limit of liability no less than two million dollars (\$2,000,000.00), each occurrence of bodily injury and/or property damage combined and two million dollars (\$2,000,000.00) aggregate (where applicable) in excess of the limits of primary coverage described above.

10. Indemnification: LESSEE shall protect, defend, indemnify and hold LESSOR and its officers, agents, representatives and employees completely harmless from and against any claims, demands, actions, suits, or judgments relating to the Premises, including any claim, demand, action, suit, or judgment arising by reason of the injury or death of any person or damage to or loss of any property, and including all reasonable costs for investigation and defense thereof (including, but not limited to, attorney fees, court costs and expert fees), and of any nature whatsoever arising out of or incidental to this Agreement, LESSEE'S use or occupancy of the Premises, or the acts or omissions of invitees, regardless of where the injury, death, loss or damage may occur, unless such injury, death, loss or damage is caused by the sole negligence of LESSOR. LESSOR shall give LESSEE reasonable notice of any such claims or actions. The provision of this Article shall survive the expiration or earlier termination of this Lease Agreement.

11. Assignment and Subletting: LESSEE shall not assign, transfer or sublease this Agreement, by process or operation of law or in any other manner whatsoever, without the prior, written consent of LESSOR, which said consent may be withheld in the sole direction of the LESSOR. In the event LESSOR consents to any assignment, transfer, subleasing or subletting on the part of LESSEE of any rights or privileges granted in this Agreement, LESSEE shall continue to be primarily liable for the faithful performance of all terms, covenants and conditions on the part of LESSEE herein contained.

12. Nondiscrimination: Notwithstanding any other or inconsistent provisions of this Agreement, during the term of this Agreement, LESSEE, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration for this Agreement, does hereby agree that:

- a. No person on the grounds of race, color, religion, sex, handicap or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination in the use of the leased Premises.
- b. In the construction of and any improvement on, over or under the leased Premises, and the furnishing of services therein or thereon, no person on the grounds of race, color, religion, sex, handicap or national origin shall be excluded from participation in or denied the benefits of, such activities or otherwise be subject to discrimination.

13. Default and Termination: This Lease Agreement shall be subject to termination by LESSOR should anyone or more of the following conditions of default occur:

- a. If LESSEE shall neglect or fail to perform or observe any of the terms, provisions, conditions or covenants herein contained and on LESSEE'S part to be performed and observed and if LESSEE fails to commence corrective actions or measures within 30 days after receipt of written notice from LESSOR, to LESSEE.
- b. If LESSEE shall abandon all or any substantial part of the leased Premises or shall discontinue any or all of its operations.

- c. LESSEE files a voluntary or involuntary petition in bankruptcy, including a reorganization plan, makes a general or other assignment for the benefit of creditors, is adjudicated as bankrupt or if a receiver is appointed for the property or affairs of LESSEE and such receivership is not vacated within thirty (30) days after appointment of such receiver.
- d. The occurrence of any act which operates to deprive the LESSEE permanently of the rights, powers and privileges necessary for the proper conduct and operation of its business granted herein.
- e. If the estate hereby created shall be taken by execution or by other process of law.
- f. If LESSEE shall substantially fail to abide by all applicable laws, ordinances, rules and regulations of the United States of America or the State of West Virginia, and the LESSOR fails to commence corrective actions or measures within 30 days after receipt of written notice from LESSOR to LESSEE.

In the event any condition of default shall occur, LESSOR then, or at any time thereafter, during which such breach is continuing, shall have the right, at its election, to terminate this Agreement by giving at least thirty (30) days written notice to LESSEE at which time LESSEE will then quit and surrender the leased Premises to LESSOR.

The failure of LESSOR to insist, in any one or more instance, upon the strict performance by the LESSEE of any of the provisions, terms, covenants, reservations, conditions or stipulations contained in this Agreement shall not be considered a waiver or relinquishment thereof for the future, and no waiver of the conditions or stipulation hereof shall be deemed to have been made in any instance unless made expressly in writing.

Upon the expiration or other termination of this Lease Agreement, LESSEE'S rights to use the leased Premises, facilities, services and privileges provided herein shall cease, and LESSEE shall forthwith upon such expiration or termination surrender the same.

14. General Provisions: If any term, clause or provision of this Agreement shall be adjudged by any court or government agency to be invalid or contrary to any applicable law or regulation or prevent financial or other assistance to the LESSOR by any federal or state government agency, such invalidation or determination shall not affect the validity and enforceability of the remaining portions of Agreement; and, to this end, the terms, clauses and provisions of this Agreement are hereby agreed to be severable.

The parties acknowledge and agree that this document contains the entire agreement between the parties and that they have not relied upon any statements, representations, agreements or warranties, except such as are expressed herein, and that no amendment or modification of this lease shall be valid or binding unless expressed in writing and executed by the parties hereto in the same manner as the execution of this Agreement.

This agreement shall be deemed to have been made in and construed in accordance with the laws of the State of West Virginia.

Any notice or other communication to the LESSOR or the LESSEE shall be deemed validly given, served or delivered upon deposit in the United States Mail, certified and with proper postage and certification fee prepaid, addressed as follows:

To LESSEE: West Virginia Botanic Garden, Inc.  
714 Venture Drive PMB #121  
Morgantown, WV 26508

To LESSOR: City of Morgantown  
City Manager's Office  
389 Spruce Street  
Morgantown, WV 26505

or to such other address as the addressee may designate by written notice to the other party, delivered in accordance with the provisions of this paragraph. Any communication which is sent via electronic means, as specifically permitted by this Agreement, shall be sent to the following addresses:

To LESSOR: [callen@morgantownwv.gov](mailto:callen@morgantownwv.gov)

To LESSEE: [info@wvbg.org](mailto:info@wvbg.org)

or such other address as designated by the parties.

This Agreement may be executed in duplicate copies, each of which shall be considered an original document.

15. Superseding Agreement: LESSOR and LESSEE agree that this Agreement terminates, replaces, and supersedes that certain "LEASE AGREEMENT" dated the 18<sup>th</sup> day of April, 2012, providing for the lease of the Premises described herein, and any amendments thereto, and that the provisions of this Agreement shall govern and control the obligations of the parties, provided that any continuing obligation of LESSEE under that prior "LEASE AGREEMENT" shall remain in effect. LESSOR and LESSEE shall execute any documents, and enter into any arrangements, necessary to give effect to the provisions of this paragraph.

[Signature page follows]

Executed this \_\_\_\_ day of \_\_\_\_\_, 2016 by the parties as follows:

City of Morgantown,  
LESSOR

West Virginia Botanical Garden, Inc.,  
LESSEE

By

By

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
President

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Executive Director

MEMORANDUM

TO: City Council  
Glen Kelly, City Manager

FROM: Timothy L. Ball, General Manager, MUB

DATE: August 31, 2016

SUBJECT: **WWTP Funding and Related New Bond Ordinance**

As discussed with you at last night's Committee of the Whole, we have received some good news related to the funding for our Wastewater Treatment Plant (WWTP) project. DEP has just committed (on Monday 8/29) to increasing their loan for the WWTP project, from \$5.5 million to \$15.5 million. Terms will be 1% 30 years, with \$0.5 million to be forgiven.

The additional \$10 million now provided by DEP will replace the two \$10 million loans that DEP had previously and informally indicated their intention (but NOT made a binding commitment) to provide in 2018 and 2019.

DEP has very recently raised the rates that would have been charged on the potential 2018 and 2019 loans. Those rates would be 2% 30 years (double the interest that we originally expected).

An exhibit is attached to show the various funding scenarios that have been used to support the project.

We believe that the certainty of the new DEP proposal is far superior to the uncertainty of the original plan. The relative costs will be close enough to not be a factor. But " a bird in the hand...."

Because the original plan was for only a \$5 million DEP loan, the original bond ordinance approved a max of only \$10 million. We never expect to get more than 2x the planned amount.

In order to take advantage of the new DEP offer, we will need to revise the recently approved bond ordinance. We respectfully request to run the ordinance in the following Council meetings: Sep 6, Sep 20, Oct 4.

This schedule for the Ordinance is necessary so that this new development does not delay the project. The Bond issue is currently scheduled to be executed (closed) on/about November 30.

MUB appreciates the City Council's support of these critical projects. We look forward to beginning their construction later this year, and we are working diligently and urgently toward that goal.

If you have any questions, please feel free to contact me.

## MUB – WWTP Funding Scenarios

### Scenario #1 (original worst case)

\$64.5 million at market rates

\$20.0 million extraordinary call (but not ever called early)

\$5.0 million DEP 0.75% + 0.25%, 30 yrs

\$0.5 million DEP forgiven

### Scenario #2 (original plan)

\$64.5 million at market rates

\$20.0 million extraordinary call (half called in 2018 and half in 2019)

\$5.0 million DEP 0.75% + 0.25%, 30 yrs

\$0.5 million DEP forgiven

\$10 million DEP 0.75% + 0.25%, 30 yrs issued 2018

\$10 million DEP 0.75% + 0.25%, 30 yrs issued 2019

### Scenario #3 (original plan - revised new DEP rates)

\$64.5 million at market rates

\$20.0 million extraordinary call (half called in 2018 and half in 2019)

\$5.0 million DEP 0.75% + 0.25%, 30 yrs

\$0.5 million DEP forgiven

\$10 million DEP 1.5% + 0.50%, 30 yrs issued 2018

\$10 million DEP 1.5% + 0.50%, 30 yrs issued 2019

### Scenario #4 (the current plan)

\$74.5 million at market rates

\$15.0 million DEP 0.75% + 0.25%, 30 yrs

\$0.5 million DEP forgiven

**BOND ORDINANCE**  
**THE CITY OF MORGANTOWN**

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE SANITARY SEWER PORTION OF THE EXISTING COMBINED UTILITY SYSTEM OF THE CITY OF MORGANTOWN AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$30,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2016 C (WEST VIRGINIA SRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A BOND PURCHASE AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, The City of Morgantown (the "Issuer" or the "City") presently owns and operates, through The City of Morgantown Utility Board (the "Board"), a public combined waterworks, sanitary sewerage and stormwater system (collectively, the "System") and has heretofore financed the acquisition and construction of the System and certain additions, betterments and improvements thereto through the issuance of several series of bonds or refunding bonds, of which there are presently outstanding the Prior Bonds, as hereinafter defined.

WHEREAS, all of the Prior Bonds were issued pursuant to ordinances of the Issuer previously enacted (such ordinances, as so amended and supplemented, collectively herein called the "Prior Ordinances");

WHEREAS, under the provisions of Chapter 8, Article 20 of the West Virginia Code of 1931, as amended (the "Act"), the Issuer is authorized and empowered to

acquire, construct and operate extensions, additions, betterments and improvements for the System;

WHEREAS, the Issuer has determined, and does hereby affirm, that the acquisition and construction of certain extensions, additions, betterments and improvements to the sanitary sewerage collection and treatment portion of the System, is necessary, appropriate, useful and desirable for the health, safety, and welfare of the inhabitants of the Issuer and surrounding areas;

WHEREAS, the Issuer has determined that the aforementioned acquisition and construction of extensions, additions, betterments and improvements to the sanitary sewerage collection and treatment portion of the System, including but not limited to Star City treatment plant upgrades, collection system improvements, pumping stations and all necessary appurtenances (further defined herein as the "Sewer Treatment Plant Project" or "the Project") should be financed, as provided under the Act, in whole or in part, from the proceeds of multiple series of combined utility system revenue bonds to be issued by the Issuer, to pay all or any portion of the costs thereof;

WHEREAS, the Issuer has determined to initially finance the costs of the Sewer Treatment Plan Project through the simultaneous issuance of three series of combined utility system revenue bonds designated, and in the not to exceed amounts, as follows:

(1) The City of Morgantown, Combined Utility System Revenue Bonds, Series 2016 A (Tax Exempt), in the aggregate principal amount of not more than \$100,000,000 (the "Series 2016 A Bonds");

(2) The City of Morgantown, Combined Utility System Revenue Bonds, Series 2016 B (Tax Exempt – Extraordinary Optional Call), in the aggregate principal amount of not more than \$30,000,000 (the "Series 2016 B Bonds"); and

(3) The City of Morgantown, Combined Utility System Revenue Bonds, Series 2016 C (SRF Program), in one or more series, in the aggregate principal amount of not more than \$30,000,000 (collectively, the "Series 2016 C Bonds," and collectively with the Series 2016 A Bonds and the Series 2016 B Bonds, the "Sewer Treatment Plant Project Bonds").

WHEREAS, the Issuer has determined to enact this Ordinance and issue the Series 2016 C Bonds to have such security and such other terms and provisions as are hereinafter provided, all in the manner set forth herein;

WHEREAS, the Issuer has also determined that the design, acquisition and construction of certain extensions, betterments and improvements to the potable water raw water supply and storage, treatment, treated water storage and distribution system (the "Potable Water System"), specifically including, but not limited to, the design, acquisition and construction of a new water reservoir, transmission lines, distribution lines, storage,

booster stations and the installation of emergency generators to serve facilities of the Potable Water System, and all necessary appurtenances (collectively, the "Water Reservoir Project"), is necessary, appropriate, useful and desirable for the health, safety, and welfare of the inhabitants of the Issuer and surrounding areas;

WHEREAS, the Issuer has determined to finance all or a portion of the costs of the Water Reservoir Project through the issuance of its The City of Morgantown, Combined Utility System Revenue Bonds, Series 2016 D (Tax Exempt), in the aggregate principal amount of not more than \$40,000,000 (the "Series 2016 D Bonds"), to be issued either simultaneously with, or after, the issuance of the Sewer Treatment Project Bonds, pursuant to an ordinance of the Issuer (the "Series 2016 D Ordinance") to be enacted simultaneously with the enactment of the ordinances authorizing the issuance of the Sewer Treatment Plant Bonds; and

WHEREAS, the Series 2016 A Bonds, the Series 2016 B Bonds, the Series 2016 C Bonds and the Series 2016 D Bonds (collectively, the "Series 2016 Bonds") will be issued on a parity with one another, and the Prior Bonds, with respect to their lien on and security interest in the Gross Revenues of the System, and the Series 2016 C Bonds shall contain such other terms and provisions as are hereinafter provided, all in the manner set forth herein.

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 and Chapter 22C, Article 2 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. The Issuer presently owns and operates the System through the Morgantown Utility Board (the "Board"). It is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer, and for the improvement of the water environment of the City and specifically of the project area, that there be acquired and constructed certain extensions, additions, betterments and improvements to the sanitary sewer portion of the existing public combined waterworks, sewerage, and stormwater system of the Issuer, specifically including, the Sewer Treatment Plant Project as herein defined (the existing public combined potable waterworks, sanitary sewer, and stormwater system of the Issuer, the

Sewer Treatment Plant Project and any further extensions, additions, betterments and improvements thereto are herein called the "System"), in accordance with the plans and specifications prepared by the Consulting Engineers as herein defined.

B. The Issuer intends to permanently finance a portion of such the costs of acquisition and construction of the Sewer Treatment Plant Project through the issuance of its combined utility revenue bonds to the West Virginia Water Development Authority (the "Authority"), which administers the West Virginia Clean Water State Revolving Fund Program (the "SRF Program"), all pursuant to the Act.

C. It is deemed necessary for the Issuer to issue its Series 2016 C Bonds as herein defined, in one or more series, in the aggregate principal amount of not more than \$30,000,000, to permanently finance a portion of the costs of acquisition and construction of the Sewer Treatment Plant Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor and eligible under the SRF Program; interest, if any, upon the Series 2016 C Bonds for a period not exceeding 6 months after completion of construction of the Sewer Treatment Plant Project; amounts which may be deposited in the Series 2016 C Bonds Reserve Account (as hereinafter defined) or amounts which may be used to purchase a surety bond to fund the Series 2016 C Bonds Reserve Account; 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, fees and expenses of the Authority, including the SRF Administrative Fee (as hereinafter defined); discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2016 C Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the acquisition or construction of the Sewer Treatment Plant 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 or the Board for any amounts expended by them for allowable costs prior to the issuance of the Series 2016 C 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 Sewer Treatment Plant Project is not less than 35 years.

E. It is in the best interests of the Issuer that its Series 2016 C Bonds be sold to the Authority pursuant to the terms and provisions of a Bond Purchase Agreement by and among the Issuer, the Authority and the West Virginia Department of Environmental Protection (the "DEP"), in form satisfactory to the respective parties (the "Bond Purchase Agreement"), approved hereby if not previously approved by resolution of the Issuer.

F. There are outstanding obligations of the Issuer which will rank on a parity with the Series 2016 C Bonds as to liens, pledge, source of and security for payment, being the Issuer's:

1. 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");
2. 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");
3. 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");
4. 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");
5. 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");
6. 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");
7. 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");
8. 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");
9. 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");

10. 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");
11. 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");
12. 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");
13. 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");
14. Combined Utility System Revenue Bonds, Series 2014 B dated July 23, 2014, issued in the original aggregate principal amount of \$505,421 (the "Series 2014 B Bonds");
15. Combined Utility System Revenue Bonds, Series 2015 A (West Virginia Water Development Authority), dated March 31, 2015, issued in the original aggregate principal amount of \$137,568 (the "Series 2015 A Bonds");
16. Combined Utility System Revenue Bonds, Series 2015 B (West Virginia Water Development Authority), dated March 31, 2015, issued in the original aggregate principal amount of \$4,586 (the "Series 2015 B Bonds");
17. Combined Utility System Revenue Bonds, Series 2015 C (West Virginia SRF Program), dated March 31, 2015, issued in the original aggregate principal amount of \$8,111,813 (the "Series 2015 C Bonds");
18. Combined Utility System Revenue Bonds, Series 2015 D (West Virginia SRF Program), dated March 31, 2015, issued in the original aggregate principal amount of \$1,688,394 (the "Series 2015 D Bonds"); and
19. Combined Utility System Revenue Bonds, Series 2015 E (West Virginia SRF Program), dated June 11, 2015, issued in the

original aggregate principal amount of \$662,300 (the "Series 2015 E Bonds"), (collectively, the "Prior Bonds").

Simultaneously with the issuance of the Series 2016 C Bonds, the Issuer intends to finance the remaining costs of the Sewer Treatment Plant Project through the issuance of the following bonds:

20. Combined Utility System Revenue Bonds, Series 2016 A (Tax Exempt), to be issued simultaneously herewith, issued in the original aggregate principal amount not to exceed \$100,000,000 (the "Series 2016 A Bonds"); and

21. Combined Utility System Revenue Bonds, Series 2016 B (Tax Exempt – Extraordinary Redemption Call), to be issued simultaneously herewith, issued in the original aggregate principal amount not to exceed \$30,000,000 (the "Series 2016 B Bonds").

G. Prior to the issuance of the Series 2016 Bonds, the Issuer will (i) a 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 2000 A Bonds, Series 2000 B 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 2013 A Bonds, Series 2015 A Bonds, Series 2015 B Bonds, Series 2015 C Bonds, Series 2015 D Bonds and Series 2015 E Bonds to the issuance of the Series 2016 C Bonds on a parity with the Series 2000 A Bonds, Series 2000 B 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 2013 A Bonds, Series 2015 A Bonds, Series 2015 B Bonds, Series 2015 C Bonds, Series 2015 D Bonds, and Series 2015 E Bonds. The Series 2010 A Bonds, Series 2010 F Bonds, Series 2012 C Bonds and Series 2014 B 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.

H. The estimated revenues to be derived in each year after completion of the Wastewater Treatment Plant Project and the Water Reservoir Project from the operation of the System will be sufficient to pay all costs of operation and maintenance of the System and the principal of and interest, if any, on the Series 2016 Bonds and the Prior Bonds and to make payments into all funds and accounts and other payments provided for herein.

I. The Issuer has complied with all requirements of West Virginia law and the Bond Purchase Agreement relating to authorization of the acquisition, construction and operation of the Sewer Treatment Plant Project and the System and issuance of the Series 2016 C Bonds, or will have so complied prior to issuance of any thereof, including,

among other things, the approval of the Project and the financing thereof by the West Virginia Infrastructure and Jobs Development Council.

J. The Sewer Treatment Plant Project has been reviewed and determined to be technically and financially feasible by the West Virginia Infrastructure and Jobs Development Council as required under Chapter 31, Article 15A of the West Virginia Code of 1931, as amended.

K. Prior to construction the Issuer will enact a Project Ordinance in compliance with Chapter 24, Article 2, Paragraph 11 of the West Virginia Code of 1931, as amended.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2016 C Bonds by 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 Bondholders of any and all of such Series 2016 C Bonds, all of which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds 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, collectively, Chapter 8, Article 20 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

“Authority” means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2016 C Bonds, or any other agency, board or department of the State that succeeds to the functions of the Authority, acting in its administrative capacity and upon authorization from the DEP under the Act.

“Authorized Officer” means the Mayor or the City Manager of the Issuer, and, in the instance of the Board, the Chairman, the General Manager or the Assistant General Manager, or any other officer of the Issuer or Board specifically designated by resolution of the Governing Body or the Board, as appropriate.

“Board” means the Morgantown Utility Board of the Issuer.

“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 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.

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

“Bond Purchase Agreement” means the Bond Purchase Agreement heretofore entered, or to be entered, into by and among the Issuer, the Authority and the DEP, providing for the purchase of the Series 2016 C Bonds from the Issuer by the Authority, the form of which shall be approved, and the execution and delivery by the Issuer authorized and directed or ratified, by the Supplemental Resolution.

“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 2016 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.

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

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

“Closing Date” means the date upon which there is an exchange of the Series 2016 C Bonds for all or a portion of the proceeds of the Series 2016 C Bonds from the Authority and the DEP.

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

“Completion Date” means the completion date of the Project, as defined in the SRF Regulations.

“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. “Consulting Engineer” shall also

include a licensed professional engineer employed by the Board, who is responsible for design and/or supervision of improvements, additions or modifications to the System.

“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.

“DEP” means the West Virginia Department of Environmental Protection, or any other agency, board or department of the state that succeeds to the function of the DEP.

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

“Depreciation Fund” means the Depreciation Fund created by the Prior Ordinances and continued hereby.

“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.

“Grants” means any grants committed to the Project.

“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” include any gains from the sale or other disposition of capital assets, but does not include any increase in the value of capital assets (including Qualified Investments, as hereinafter defined) or any Tap Fees (as hereinafter defined).

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

“Independent Certified Public Accountant” 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.

“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 2016 C Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Reserve Accounts.

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

“Operating Expenses” shall mean 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 Authority, fiscal agents, the Depository Bank, the Registrar and Paying Agent (all as hereinafter defined), other than those capitalized as part of the Costs, the SRF Administrative Fee, 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.

“Operation and Maintenance Fund” means the Operation and Maintenance Fund established by the Prior Ordinances and continued hereby.

“Outstanding” when used with reference to Bonds or Prior Bonds and as of any particular date, describes all Bonds or Prior Bonds theretofore and thereupon being authenticated and delivered, except (i) any Bond or Prior Bond cancelled by the Bond Registrar or Registrar for Prior Bonds, at or prior to said date; (ii) any Bond or Prior Bonds, for the payment of which moneys, 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; and for purposes of consents or other action by a specified percentage of Bondholders, or holders of Prior Bonds, any Bonds or Prior 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 designated as such for the Series 2016 C Bonds in the Supplemental Resolution.

“Prior Bonds” means, collectively, the Series 2000 A Bonds, Series 2000 B 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 C Bonds, Series 2013 A Bonds, Series 2014 B Bonds, Series 2015 A Bonds, Series 2015 B Bonds, Series 2015 C Bonds, Series 2015 D Bonds and Series 2015 E Bonds..

“Prior Ordinances” means, collectively, the ordinances authorizing the Prior Bonds.

“Project” or “Sewer Treatment Plant Project” means the Project as described in Section 1.02A hereof.

“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, 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 exempt from federal income taxation, 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.

“Reserve Accounts” means, collectively, the respective Reserve Accounts established for the Series 2016 Bonds and the Prior Bonds.

“Reserve Requirement” means, collectively, the respective amounts required to be on deposit in any Reserve Account for the Prior Bonds and the Series 2016 C Bonds.

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

“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 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 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 B Bonds" means the Issuer's Combined Utility System Revenue Bonds, Series 2014 B dated July 23, 2014, issued in the original aggregate principal amount of \$505,421.

"Series 2015 A Bonds" means the Issuer's Combined Utility System Revenue Bonds, Series 2015 A (West Virginia Water Development Authority), dated March 31, 2015, issued in the original aggregate principal amount of \$137,568.

"Series 2015 B Bonds" means the Issuer's Combined Utility System Revenue Bonds, Series 2015 B (West Virginia Water Development Authority), dated March 31, 2015, issued in the original aggregate principal amount of \$4,586.

"Series 2015 C Bonds" means the Issuer's Combined Utility System Revenue Bonds, Series 2015 C (West Virginia SRF Program), dated March 31, 2015, issued in the original aggregate principal amount of \$8,111,813.

"Series 2015 D Bonds" means Issuer's Combined Utility System Revenue Bonds, Series 2015 D (West Virginia SRF Program), dated March 31, 2015, issued in the original aggregate principal amount of \$1,688,394.

"Series 2015 E Bonds" means Issuer's Combined Utility System Revenue Bonds, Series 2015 E (West Virginia SRF Program), dated June 11, 2015, issued in the original aggregate principal amount of \$662,300.

"Series 2016 Bonds" means collectively, the Series 2016 A Bonds, Series 2016 B Bonds, Series 2016 C Bonds and, if issued, the Series 2016 D Bonds.

"Series 2016 A Bonds" means Issuer's Combined Utility System Revenue Bonds, Series 2016 A (Tax Exempt), to be issued simultaneously herewith, in the original aggregate principal amount not to exceed \$100,000,000.

"Series 2016 B Bonds" means Issuer's Combined Utility System Revenue Bonds, Series 2016 B (Tax Exempt – Extraordinary Redemption Call), to be issued

simultaneously herewith, in the original aggregate principal amount not to exceed \$30,000,000.

“Series 2016 C Bonds” means the Combined Utility System Revenue Bonds, Series 2016 C (West Virginia SRF Program), of the Issuer, issued in one or more series, authorized by this Bond Legislation.

“Series 2016 C Bonds Construction Trust Fund” means the Series 2016 C Bonds Construction Trust Fund established by Section 5.01 hereof.

“Series 2016 C Bonds Reserve Account” means the Series 2016 C Bonds Reserve Account established by Section 5.02 hereof.

“Series 2016 C Bonds Reserve Requirement” means, as of any date of calculation, the maximum amount of principal and interest, if any, which will become due on the Series 2016 C Bonds in the then current or any succeeding year.

“Series 2016 C Bonds Sinking Fund” means the Series 2016 C Bonds Sinking Fund established by Section 5.02 hereof.

“Series 2016 D Bonds” means Issuer’s Combined Utility System Revenue Bonds, Series 2016 D (Tax Exempt), to be issued simultaneously herewith, or after the issuance of the Series 2016 C Bonds, in the original aggregate principal amount not to exceed \$40,000,000, for purpose of financing the Water Reservoir Project.

“Sewer Treatment Plant Project Bonds” means collectively, the Series 2016 A Bonds, Series 2016 B Bonds and Series 2016 C Bonds.

“Sinking Funds” means, collectively, the respective Sinking Funds established for the Series 2016 Bonds and the Prior Bonds.

“SRF Administrative Fee” means any administrative fee required to be paid pursuant to the Bond Purchase Agreement.

“SRF Program” means the State's Clean Water State Revolving Fund Program, under which the Authority purchases the water pollution control revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of a capitalization grant award from the United States Environmental Protection Agency and funds of the State.

“SRF Regulations” means the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations.

“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 2016 C Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2016 C Bonds, and not so included may be included in another Supplemental Resolution.

“Surplus Revenues” means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Series 2016 Bonds, the Prior Bonds or any other obligations of the Issuer, including, without limitation, the Depreciation Fund, the Sinking Funds and the Reserve Accounts.

“System” means, collectively, the complete existing public combined waterworks, sewerage, and stormwater system of the Issuer, as presently existing in its entirety or any integral part thereof, and shall include the Sewer Treatment Plant Project and the Water Reservoir Project and any 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 SEWER TREATMENT PLANT PROJECT**

Section 2.01. Authorization of Acquisition and Construction of the Sewer Treatment Plant Project. There is hereby authorized and ordered the acquisition and construction of the Project, at an estimated cost of not to exceed \$140,000,000, 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 2016 C 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, compatible with the financing plan submitted to the DEP and the Authority.

The cost of the Sewer Treatment Plant Project is estimated not to exceed \$140,000,000, of which not to exceed \$30,000,000 will be obtained from proceeds of the Series 2016 C Bonds, not to exceed \$100,000,000 will be obtained from the proceeds of the Series 2016 A Bonds and not to exceed \$30,000,000 will be obtained from the proceeds of the Series 2016 B Bonds.

### ARTICLE III

#### **AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF BOND PURCHASE AGREEMENT**

Section 3.01. Authorization of Bonds. For the purposes of capitalizing interest on the Series 2016 C Bonds, if any, funding a reserve account or purchasing a surety bond to fund a reserve account for the Series 2016 C Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance of the Series 2016 C Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be issued the negotiable Series 2016 C Bonds of the Issuer. The Series 2016 C Bonds shall be issued in one or more series designated as "Combined Utility System Revenue Bonds, Series 2016 C (West Virginia SRF Program)," in the principal amount of not more than \$30,000,000, for a term not to exceed forty (40) years, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2016 C Bonds remaining after purchasing a surety bond to fund the Series 2016 C Bonds Reserve Account or cash funding the Series 2016 C Bonds Reserve Account (if funded from Bond proceeds) and capitalization of interest, if any, shall be deposited in or credited to the Series 2016 C 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 2016 C Bonds shall be issued in such principal amount; shall bear interest at such rate or rates, not exceeding the then legal maximum, payable quarterly on such dates; shall mature on such dates (not to exceed forty (40) years), and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the Bond Purchase Agreement. The Series 2016 C 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, if any, on the Series 2016 C 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 Authority is the Registered Owner thereof.

As provided by the Supplemental Resolution, the Series 2016 C Bonds shall initially be issued in one or more series, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the respective Series 2016 C Bonds. The Series 2016 C 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 Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Series 2016 C Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. Such Series 2016 C Bonds shall be dated and shall bear interest, if any, as set forth in a Supplemental Resolution.

Section 3.03. Execution of Bonds. The Series 2016 C 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 2016 C Bonds shall cease to be such officer of the Issuer before the Series 2016 C 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 2016 C 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 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 2016 C Bonds 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 2016 C Bonds 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 2016 C 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 2016 C 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 2016 C Bonds remain outstanding, the Issuer, through the Bond Registrar or its agent, shall keep and maintain books for the registration and transfer of such Bonds.

The registered Series 2016 C 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 2016 C Bonds or transferring the registered Series 2016 C Bonds are exercised, all Series 2016 C Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 2016 C Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Bond Registrar. For every such exchange or transfer of Series 2016 C 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 2016 C Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 2016 C Bonds or, in the case of any proposed redemption of Series 2016 C 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. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2016 C Bonds 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 Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond 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 Bonds so surrendered shall be canceled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 2016 C Bonds shall not, in any event, be or constitute an 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 System as herein provided. No Holder or Holders of the Series 2016 C Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2016 C Bonds or the interest, if any, thereon.

Section 3.08. Bonds Secured by Pledge of Gross Revenues; Lien Position with respect to Prior Bonds. The payment of debt service of the Series 2016 Bonds shall be secured 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. Such Gross

Revenues in an amount sufficient to pay the principal of and interest, if any, on the Series 2016 Bonds and the Prior Bonds and to make all other payments provided for in the Bond Legislation are hereby irrevocably pledged to such payments as they become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 2016 C Bonds to the Registrar, and the Registrar shall authenticate, register and deliver the Series 2016 C Bonds to the original purchasers upon receipt of the documents set forth below:

- A. If other than the Authority, a list of the names in which the Series 2016 C 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 2016 C Bonds to the original purchasers;
- C. An executed and certified copy of the Bond Legislation;
- D. An executed copy of the Bond Purchase Agreement; and
- E. The unqualified approving opinion of bond counsel on the Series 2016 C Bonds.

Section 3.10. Form of Bonds. The text of the Series 2016 C 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 2016 C BOND)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF MORGANTOWN  
COMBINED UTILITY SYSTEM REVENUE BOND, SERIES 2016 C  
(WEST VIRGINIA SRF PROGRAM)

No. CR-1

§

KNOW ALL MEN BY THESE PRESENTS: That on this the \_\_\_\_\_ day of \_\_\_\_\_, 2016, 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 special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of \_\_\_\_\_ DOLLARS 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, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_ 1, 20\_\_\_, to and including \_\_\_ 1, 20\_\_\_, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. The SRF Administrative Fee of \_\_\_\_\_ % (as defined in the hereinafter described Bond Legislation) shall be payable quarterly on March 1, June 1, September 1, and December 1 of each year, commencing \_\_\_ 1, 20\_\_\_, as set forth on EXHIBIT B attached hereto.

This bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, 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 (the "Paying Agent").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority on behalf of the West Virginia Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Bond Purchase (the "Bond Purchase Agreement") by and among the Issuer, the Authority, and the DEP, dated \_\_\_\_\_, 20\_\_\_.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the sanitary

sewer portion of the existing combined waterworks, sewerage and stormwater system (the "Sewer Treatment Plant Project"); [(ii) fund the Series 2016 C Bonds Reserve Account]; and (iii) to pay certain costs of issuance of the Bonds of this Series (the "Series 2016 C Bonds") and related costs. The Sewer Treatment Plant Project, and any further extensions, additions, betterments or improvements to the existing combined waterworks, sewerage and stormwater system 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 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on \_\_\_\_\_, 20\_\_\_\_ and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 20\_\_\_\_ (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 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");
2. 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");
3. 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");
4. 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");
5. 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");

6. 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");
7. 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");
8. 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");
9. 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");
10. 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");
11. 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");
12. 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");
13. 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");
14. COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2014 B DATED JULY 23, 2014, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$505,421 (THE "SERIES 2014 B BONDS");
15. COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2015 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), DATED MARCH 31, 2015,

ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$137,568 (THE "SERIES 2015 A BONDS");

16. COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2015 B (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), DATED MARCH 31, 2015, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$4,586 (THE "SERIES 2015 D BONDS");
17. COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2015 C (WEST VIRGINIA SRF PROGRAM), DATED MARCH 31, 2015, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$8,111,813 (THE "SERIES 2015 C BONDS");
18. COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2015 D (WEST VIRGINIA SRF PROGRAM), DATED MARCH 31, 2015, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$1,688,394 (THE "SERIES 2015 D BONDS"); AND
19. COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2015 E (WEST VIRGINIA SRF PROGRAM), DATED JUNE 11, 2015, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$662,300 (THE "SERIES 2015 E BONDS"), (AND COLLECTIVELY WITH THE BONDS LISTED ABOVE, THE "PRIOR BONDS");
20. COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2016 A (TAX EXEMPT), DATED \_\_\_\_\_, 2016, ISSUED SIMULTANEOUSLY HEREWITH, IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$ \_\_\_\_\_ (THE "SERIES 2016 A BONDS");
21. COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2016 B (TAX EXEMPT – EXTRAORDINARY REDEMPTION CALL), DATED \_\_\_\_\_, 2016, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$ \_\_\_\_\_ (THE "SERIES 2016 B BONDS"); AND
22. [COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2016 D (TAX EXEMPT), DATED \_\_\_\_\_, 2016 ISSUED SIMULTANEOUSLY HEREWITH, IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$ \_\_\_\_\_ (THE "SERIES 2016 D 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, the Series 2016 A Bonds, the Series 2016 B Bonds, [the Series 2016 D Bonds] and from monies in the Reserve Account created under the Bond Legislation for the Series 2016 C Bonds (the "Series 2016 C Bonds Reserve Account"), and unexpended proceeds of the Series 2016 C Bonds. Such Gross Revenues shall be sufficient to pay the principal of

and interest, if any, 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 an 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, except from said special fund provided from the Gross Revenues, the monies in the Series 2016 C Bonds Reserve Account and unexpended proceeds of the Series 2016 C 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 Series 2016 C Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with or junior or subordinate to the Series 2016 C Bonds including the Prior Bonds, the Series 2016 A Bonds, the Series 2016 B Bonds, and [Series 2016 D Bonds]; provided however, that, so long as there exists in the Series 2016 C Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on the Series 2016 C 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 junior and subordinate to the Series 2016 C Bonds, including the Prior Bonds, the Series 2016 A Bonds, the Series 2016 B Bonds, [and the Series 2016 D 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 Series 2016 C Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the Registered Owners of the Series 2016 C 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 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.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in 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 of and interest, if any, 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]

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

ATTEST:

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

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2016 C 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: \_\_\_\_\_, 2016.

UNITED BANK, INC.,  
as Registrar

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

EXHIBIT A

RECORD OF ADVANCES

AMOUNT	DATE	AMOUNT	DATE
(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 \_\_\_\_\_

EXHIBIT B

DEBT SERVICE SCHEDULE

(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:

\_\_\_\_\_

Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Bond Purchase Agreement. The Series 2016 C Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Bond Purchase Agreement. If not so authorized by previous ordinance or resolution, the Mayor are specifically authorized and directed to execute the Bond Purchase Agreement in the form approved by Supplemental Resolution, and the City Clerk is directed to affix the seal of the Issuer, attest the same and deliver the Bond Purchase Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed.

Section 3.12. Filing of Amended Schedule. Upon completion of the acquisition and construction of the Project, the Board will file with the Authority and the DEP, a schedule setting forth the actual costs of the Project and sources of funds therefor.

#### **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 or 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 2016 C Bonds Construction Trust Fund.

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

separate and apart from all other funds or accounts of the Commission or the Issuer and from each other:

- (1) Series 2000 A Bonds Sinking Fund (established by Prior Ordinances);
- (2) Series 2000 A Bonds Reserve Account (established by Prior Ordinances);
- (3) Series 2000 B Bonds Sinking Fund (established by Prior Ordinances);
- (4) Series 2000 B Bonds Reserve Account (established by Prior Ordinances);
- (5) Series 2006 A Bonds Sinking Fund (established by Prior Ordinances);
- (6) Series 2006 A Bonds Reserve Account (established by Prior Ordinances);
- (7) Series 2007 A Bonds Sinking Fund (established by Prior Ordinances);
- (8) Series 2007 A Bonds Reserve Account (established by Prior Ordinances);
- (9) Series 2010 A Bonds Sinking Fund (established by Prior Ordinances);
- (10) Series 2010 A Bonds Reserve Account (established by Prior Ordinances);
- (11) Series 2010 C Bonds Sinking Fund (established by Prior Ordinances);
- (12) Series 2010 C Bonds Reserve Account (established by Prior Ordinances);
- (13) Series 2010 D Bonds Sinking Fund (established by Prior Ordinances);
- (14) Series 2010 D Bonds Reserve Account (established by Prior Ordinances);
- (15) Series 2010 E Bonds Sinking Fund (established by Prior Ordinances);
- (16) Series 2010 E Bonds Reserve Account (established by Prior Ordinances);
- (17) Series 2010 F Bonds Sinking Fund (established by Prior Ordinances);

- (18) Series 2010 F Bonds Reserve Account (established by Prior Ordinances);
- (19) Series 2012 A Bonds Sinking Fund (established by Prior Ordinances);
- (20) Series 2012 A Bonds Reserve Account (established by Prior Ordinances);
- (21) Series 2012 C Bonds Sinking Fund (established by Prior Ordinances);
- (22) Series 2012 C Bonds Reserve Account (established by Prior Ordinances);
- (23) Series 2013 A Bonds Sinking Fund (established by Prior Ordinances);
- (24) Series 2013 A Bonds Reserve Account (established by Prior Ordinances);
- (25) Series 2014 B Bonds Sinking Fund (established by Prior Ordinances);
- (26) Series 2014 B Bonds Reserve Account (established by Prior Ordinances);
- (27) Series 2015 A Bonds Sinking Fund (established by Prior Ordinances);
- (28) Series 2015 A Bonds Reserve Account (established by Prior Ordinances);
- (29) Series 2015 B Bonds Sinking Fund (established by Prior Ordinances);
- (30) Series 2015 B Bonds Reserve Account (established by Prior Ordinances);
- (31) Series 2015 C Bonds Sinking Fund (established by Prior Ordinances);
- (32) Series 2015 C Bonds Reserve Account (established by Prior Ordinances);
- (33) Series 2015 D Bonds Sinking Fund (established by Prior Ordinances);
- (34) Series 2015 D Bonds Reserve Account (established by Prior Ordinances);
- (35) Series 2015 E Bonds Sinking Fund (established by Prior Ordinances);

- (36) Series 2015 E Bonds Reserve Account (established by Prior Ordinances);
- (37) Series 2016 A Bonds Sinking Fund (established by Prior Ordinances);
- (38) Series 2016 A Bonds Reserve Account (established by Prior Ordinances);
- (39) Series 2016 B Bonds Sinking Fund (established by Prior Ordinances);
- (40) Series 2016 B Bonds Reserve Account (established by Prior Ordinances);
- (41) Series 2016 C Bonds Sinking Fund and
- (42) Series 2016 C Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited upon receipt by the Issuer 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 the Prior Ordinances and this Bond Legislation. All moneys 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 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, Series 2012 C Bonds and Series 2014 B Bonds.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) the amounts required by the Prior Ordinances to pay the principal of the Prior Bonds; and (ii) to the Commission commencing 4 months prior to the first date of payment of principal of the Series 2016 C Bonds, for deposit in the Series 2016 C Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2016 C Bonds on the next ensuing quarterly principal

payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2016 C Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the respective Reserve Accounts for the Prior Bonds, the amounts required by the Prior Ordinances; (ii) commencing 4 months prior to the first date of payment of principal of the Series 2016 C Bonds, if not fully funded upon issuance of the Series 2016 C Bonds or otherwise provided for pursuant to a surety bond, for deposit in the Series 2016 C Bonds Reserve Account, an amount equal to 1/120th of the Series 2016 C Bonds Reserve Requirement; provided, that no further payments shall be made into the Series 2016 C 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 2016 C 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, from the moneys remaining in the Revenue Fund, on the first day of each month transfer to the Depreciation 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 Depreciation 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 Depreciation Fund for replacements, emergency repairs, improvements or extensions to the System; provided, that any deficiencies in the Reserve Accounts (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 moneys from the Depreciation Fund.

Moneys in the Series 2016 C Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the Series 2016 C Bonds, as the same shall become due. Moneys in the Series 2016 C Bonds Reserve Account shall be used only for the purpose of paying principal of and interest, if any, on the Series 2016 C Bonds, as the same shall come due, when other moneys in the Series 2016 C Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the Series 2016 C Bonds Sinking Fund and the Series 2016 C 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 2016 C 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 2016 C Bonds, and then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 2016 C Bonds Reserve Account which results in a reduction in the balance therein to below the Series 2016 C Bonds Reserve Requirement shall be subsequently restored from the first Gross Revenues available after all required payments have been made in full in the order set forth above.

As and when additional Bonds ranking on a parity with the Series 2016 C Bonds are issued, provision shall be made for additional payments into the respective sinking fund sufficient to pay the interest, if any, 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 thereof.

The Issuer shall not be required to make any further payments into the Series 2016 C Bonds Sinking Fund or the Series 2016 C Bonds Reserve Account, when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2016 C Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

Interest, principal or reserve payments, whether made for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Prior Bonds and the Series 2016 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 2016 C Bonds Sinking Fund and Series 2016 C Bonds Reserve Account created hereunder, and all amounts required for said accounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. 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.

Moneys in the Series 2016 C Bonds Sinking Fund and the Series 2016 C Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2016 C Bonds Sinking Fund and the Series 2016 C Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2016 C Bonds under the conditions and restrictions set forth herein.

B. The Issuer shall on the first day of each month (if such day is not a business day, then the next succeeding business day), deposit with the Commission the required interest, if any, principal and reserve payments with respect to the Series 2016 C 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. 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 SRF Administrative Fee as set forth in the Schedule Y attached to the Bond Purchase Agreement.

C. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinabove 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 the Act, such excess shall be considered as 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. In the case of payments to the Commission under this paragraph, the Issuer shall, make the necessary arrangements whereby such required payments shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required.

E. The moneys in excess of the maximum amounts insured by FDIC in any of the 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 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 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.

I. All Tap Fees, as received, shall be deposited in the Revenue Fund and may be used for any lawful purpose of the System.

Section 5.04. Reserve Account Letter of Credit or Surety Bond. With the advance written consent of the Authority, the Issuer may, in lieu of funding the Series 2016 C Bonds Reserve Account with cash or Qualified Investments, satisfy the Series 2016 C Bonds Reserve Requirement by obtaining a reserve account letter of credit, a surety bond, or other credit facility satisfactory to the Authority in an amount equal to the Series 2016 C Bonds Reserve Requirement. The Issuer hereby authorizes the purchase of a reserve account letter of credit, a surety bond, or other credit facility satisfactory to the Authority, all as set forth in a Supplemental Resolution, and the execution and delivery of any applicable reimbursement agreement or note in such forms as shall be described in a Supplemental Resolution.

## ARTICLE VI

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

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the moneys received from the sale of the Series 2016 C Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2016 C Bonds, there shall first be deposited with the Commission in the Series 2016 C Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest.

B. Next, from the proceeds of the Series 2016 C Bonds, the Issuer may purchase a surety bond to fund the Series 2016 C Bonds Reserve Account as set forth in the Supplemental Resolution, or there shall be deposited with the Commission in the Series 2016 C Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Series 2016 C Bonds Reserve Account.

C. As the Issuer receives advances of the remaining moneys derived from the sale of the Series 2016 C Bonds, such moneys shall be deposited with the Depository Bank in the Series 2016 C Bonds Construction Trust Fund and applied solely to payment of

the costs of the Project in the manner set forth in Section 6.02 hereof and until so expended, are hereby pledged as additional security for the Series 2016 C Bonds.

D. After completion of construction of the Project, as certified by the Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 2016 C Bonds shall be expended as approved by the DEP.

Section 6.02. Disbursements From the Series 2016 C Bond Construction Trust Fund. On or before the closing date, the Board shall have delivered to the Authority and the DEP a report listing the specific purposes for which the proceeds of the Series 2016 C Bonds will be expended and the disbursement procedures of such proceeds, including an estimated monthly draw schedule. Payments for Costs of the Project shall be made monthly.

The Issuer hereby appoints and designates the Board, and the Authorized Officers thereof, as its agent (i) for the review and approval of all invoices for the Project to be paid from the proceeds of the Series 2016 C Bonds; (ii) to take any and all actions necessary to apply for and obtain a commitment from the DEP, specifically including, but not limited to, any administrative loan documents required by DEP; and (iii) to act on and execute documents on behalf of the Issuer for any and all federal and state actions as they relate to the planning, design and/or construction of the Project.

Except as provided in Section 6.01 hereof, disbursements from the Series 2016 C Bonds Construction Trust Fund shall be made only after submission to, and approval from, the Authority and the DEP of a completed and signed "Payment Requisition Form," a form of which is attached to the Bond Purchase Agreement, in compliance with the construction schedule.

Pending such application, moneys in the Series 2016 C 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 2016 C 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 2016 C 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 2016 C Bonds or the interest, if any, thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2016 C Bonds shall not be nor constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of the Series 2016 C Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2016 C Bonds or the interest, if any, thereon.

Section 7.03. Bonds Secured by Pledge of Gross Revenues; Lien Position with respect to Prior Bonds. The payment of debt service of the Series 2016 Bonds shall be secured 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. Such Gross Revenues in an amount sufficient to pay the principal of and interest, if any, on the Series 2016 Bonds and the Prior Bonds and to make all other payments provided for in the Bond Legislation are hereby irrevocably pledged to such payments as they become due.

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.

So long as the Series 2016 C 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 Purchase Agreement. In the event the schedule of rates, fees and charges initially established for the System in connection with the Series 2016 C Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation and the Bond Purchase Agreement, 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, fees and charges and take all

such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and the Bond Purchase Agreement.

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. Additionally, so long as the Series 2016 C Bonds are outstanding and except as otherwise required by law or with the written consent of the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding, in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 2016 C Bonds, immediately be remitted to the Commission for deposit in the Series 2016 C Bonds Sinking Fund, and, with the written permission of the Authority, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and interest, if any, on the Series 2016 C Bonds. Any balance remaining after the payment of the Series 2016 C Bonds and interest, if any, thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Board shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of \$1,000,000, the Board shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Revenue Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$1,000,000 but not in excess of \$5,000,000, the Board shall first, determine, that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding. The proceeds of any such sale shall be deposited in the Depreciation Fund. The payment of such proceeds into the Depreciation Fund shall not reduce the amount required to be paid into such account by other provisions of this Bond Legislation.

No sale, lease or other disposition of the properties of the System shall be made by the Board if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$5,000,000 and insufficient to pay all Bonds then Outstanding, without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of the Bonds then Outstanding. The Issuer shall prepare the

form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

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 other 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 2016 Bonds and the Prior Bonds. All obligations issued by the Issuer after the issuance of the Series 2016 C 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 2016 C 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 2016 C Bonds, and the interest, if any, thereon, upon any of the income and revenues of the System pledged for payment of the Series 2016 C Bonds and the interest, if any, thereon in this Bond Legislation, or upon the System or any part thereof.

The Issuer shall give the Authority prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the Project, or any other obligations related to the Project or the System.

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. In addition, no Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2016 C Bonds pursuant to this Bond Legislation, without the prior written consent of the Authority and without complying with the conditions and requirements herein provided (unless less restrictive than the provisions of the Prior Ordinances).

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2016 C Bonds.

No such Parity Bonds shall be issued except for the purpose of financing the costs of design, acquisition or construction of extensions, additions, improvements or betterments to the System or refunding any outstanding Bonds, or both such purposes.

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 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 expected 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 improvements to be financed by such Parity Bonds and any increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the issuance of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, 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, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to 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 theretofore or subsequently issued from time to time within the limitations of and in compliance with this section. All Bonds, 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 the Gross Revenues, without preference of any Bond over any other. 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 2016 C Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from 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 2016 C 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 and the Prior Ordinances, shall have been made in full as required to the date of delivery of the Parity Bonds, and the Issuer then be in full compliance with all the covenants, agreements and terms of this Bond Legislation and the Prior Ordinances.

Section 7.08. Books; Records and Audit. The Board 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 Board shall permit the Authority and the DEP, or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Board shall submit to the Authority and the DEP such documents and information as they may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

The Board shall permit the Authority and the DEP, or their agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times following completion of construction of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time following commencement of construction.

The Board 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. Separate control accounting records shall be maintained by the Board. 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 Board. The Board 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 Board shall be reported to such agent of the Issuer as the Board shall direct.

The Board shall file with the Authority and the DEP, or any other original purchaser of the Series 2016 C Bonds, and shall mail in each year to any Holder or Holders of the Series 2016 C Bonds, requesting the same, an annual report containing the following:

(A.) A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.

(B.) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation and the status of all said funds and accounts.

(C.) The amount of any Bonds, notes or other obligations payable from the revenues of the System outstanding.

The Board shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountant (and to the extent legally required, in compliance with the applicable OMB Circular, or any successor thereof, and the Single Audit Act, or any successor thereof), and shall mail upon request, and make available generally, the report of the Independent Certified Public Accountant, or a summary thereof, to any Holder or Holders of the Series 2016 C Bonds and shall submit said report to the Authority and the DEP, or any other original purchaser of the Series 2016 C Bonds. Such audit report submitted to the Authority and the DEP shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if there are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

Subject to the terms, conditions and provisions of the Bond Purchase Agreement and the 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.

The Issuer shall provide the DEP with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as set forth in Exhibit E of the Bond Purchase Agreement or as promulgated from time to time.

The Board shall permit the Authority and the DEP, or their agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times. Prior to, during and after completion of construction and commencement of operation of the Project, the Board shall also provide the Authority and the DEP, or

their agents and representatives, with access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and the DEP with respect to the System pursuant to the Act.

Section 7.09. Rates. Prior to the issuance of the Series 2016 C Bonds, equitable rates or charges for the use of and service rendered by the System shall be 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 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 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 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 2016 C Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2016 C Bonds, including the Series 2016 A Bonds, Series 2016 B Bonds, [Series 2016 D Bonds] and the Prior Bonds; provided, that in the event that amounts equal to or in excess of the reserve requirements are on deposit in the Series 2016 C Bonds Reserve Account, and any reserve accounts for obligations on a parity with the Series 2016 C Bonds are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2016 C Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2016 C Bonds, including the Series 2016 A Bonds, Series 2016 B Bonds, [Series 2016 D Bonds] and the Prior Bonds. In any event, the Issuer shall not reduce the rates or charges for services set forth in the rate ordinances described in Section 7.04.

Section 7.10. Operating Budget and Monthly Financial Report. The Board 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 and shall submit a copy of such budget to the Authority and the DEP within 30 days of adoption thereof.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for 2 years following the completion of the Project, the Board shall each month complete a "Monthly Financial Report," a form of which is attached to the Bond Purchase Agreement, and forward a copy of such report to the Authority and the DEP by the 20th day of each month.

Section 7.11. Engineering Services and Operating Personnel. The Board shall obtain a certificate of the Consulting Engineers in the form attached to the Bond Purchase Agreement, stating, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the DEP 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 Board shall provide and maintain competent and adequate engineering services satisfactory to the Authority and the DEP 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, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority and the DEP and the Issuer at the completion of construction that construction of the Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

The Issuer shall require the Consulting Engineers to submit Record Drawings, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Issuer shall notify the DEP in writing of such receipt. The Issuer shall submit a "Performance Certificate," a form of which is attached to the Bond Purchase Agreement as Exhibit A, to the DEP within 60 days of the end of the first year after the Project is completed.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to the DEP when the Project is 90% completed. The Issuer shall at all times provide operation and maintenance of the System in compliance with all state and federal standards.

The Issuer shall employ qualified operating personnel properly certified by the State before the Project is 50% complete and shall retain such a certified operator to operate the System during the entire term of the Bond Purchase Agreement. The Issuer shall notify the DEP in writing of the certified operator employed at the 50% completion stage.

The Issuer shall serve the additional customers at the location(s) as set forth in Certificate of Engineer. The Issuer shall not reduce the amount of additional customers served by the project without the prior written approval of the Board of the Water Development Authority. Following completion of the Project the Issuer shall certify to the Authority the number of customers added to the System.

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 Board 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 20 days after the same shall become due and payable, 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 stormwater portion of the System and any services and facilities of the waterworks portion of the System, to all users of the services of the stormwater system delinquent in payment of charges for the services of the stormwater system and will not restore such services of either the waterworks system or the stormwater system until all delinquent charges for the services of the stormwater 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. If the waterworks facilities are not owned by the Issuer, the Issuer shall use diligent efforts to enter into a termination agreement with the provider of such water services, subject to any required approval of such agreements by the Public Service Commission of West Virginia.

Section 7.14. No Free Services. The Board 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 the Board, or any department, agency, instrumentality, officer or employee of either 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, the Board 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 Board hereby covenants and agrees that so long as the Series 2016 C Bonds remain Outstanding, the Board 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 Board 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 Depreciation Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Depreciation Fund. The Board 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 Board, the Authority, the prime contractor and all subcontractors as their respective interests may appear, in accordance with the Bond Purchase Agreement, 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 Authority, the Issuer, the Board, 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 Board 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 and the Board 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 OR COMPLETION BONDS, such bonds to be in the amounts of not less than 100% of the amount of any construction contract and to be required of each contractor dealing directly with the Board 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 any additions, extensions or improvements for the System in compliance with West Virginia Code, Section 38-2-39.

(4) FIDELITY BONDS will be provided as to every officer and employee of the Board or the Issuer 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.

(5) FLOOD INSURANCE, if the System facilities are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.

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

B. The Board 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 Board shall verify such bonds prior to commencement of construction.

The Board 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; provided, that the amounts and terms of such coverage are satisfactory to the Authority and the DEP. The Board shall verify such insurance prior to commencement of construction. In the event the Bond Purchase Agreement so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the Board, the prime contractor and all subcontractors, as their interests may appear.

Section 7.16. Mandatory Use. The mandatory use of the stormwater facilities 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. Accordingly, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, every owner, tenant or occupant of any real property located near the stormwater portion of the System, and where stormwater from real property affects or drains into the stormwater portion of the System, shall be deemed to be a user served by the stormwater portion of the System and it is declared that the mandatory use of the stormwater portion of the System by such real property owner is necessary and essential for the health and welfare of the inhabitants and residents of the Issuer and the State. To the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, every such owner, tenant or occupant shall, after a 30-day notice of the availability of the stormwater portion of the System, pay the rates and charges established therefor.

Section 7.17. Completion of Project; Permits and Orders. The Board 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 Board has obtained all permits required by state and federal laws for the acquisition and construction of the Project, all orders and approvals from the DEP necessary for the acquisition and construction of the Project and the operation of the System and all approvals for issuance of the Series 2016 C Bonds required by state law, with all requisite appeal periods having expired without successful appeal and the Issuer shall supple an opinion of counsel to such effect.

Section 7.18. Compliance with Bond Purchase Agreement and Law. The Issuer and the Board shall perform, satisfy and comply with all the terms and conditions of the Bond Purchase Agreement and the Act. Notwithstanding anything herein to the contrary, the Issuer and the Board shall provide the DEP with copies of all documents submitted to the Authority.

The Issuer and the Board shall also comply with all applicable laws, rules and regulations issued by the Authority and the DEP or other 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 shall perform an annual maintenance audit which maintenance audit shall be submitted to the Authority and the Public Service Commission of West Virginia in the manner prescribed by and the guidelines established by the Authority and the Public Service Commission of West Virginia.

Section 7.19. RESERVED.

Section 7.20. Securities Laws Compliance. The Issuer shall provide the Authority, 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) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

Section 7.21. Contracts; Change Orders; Public Releases. A. The Issuer shall, simultaneously with the delivery of the Series 2016 C Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

B. The Issuer shall submit all proposed change orders to the DEP for written approval. The Issuer shall obtain the written approval of the DEP before expending any proceeds of the Series 2016 C Bonds held in “contingency” as set forth in the schedule attached to the Certificate of the Consulting Engineer. The Issuer shall also obtain the written approval of the DEP before expending any proceeds of the Series 2016 C Bonds made available due to bid or construction or project underruns.

C. The Issuer shall list the funding as being provided by the Authority and the DEP in any press release, publication, program bulletin, sign or other public

communication that references the Project, including but not limited to any program document distributed in conjunction with any ground breaking or dedication of the Project.

Section 7.22. Statutory Mortgage Lien. For the further protection of the Holders of the Series 2016 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 2016 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**

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, the Depository Bank, or such other bank or national banking association, as the case may be, 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 or such other bank or national banking association, as the case may be, 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 as 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 2016 C Bonds are Outstanding and as long thereafter as necessary to assure the exclusion of

interest, if any, on the Series 2016 C Bonds from gross income for federal income tax purposes.

Section 8.02. Covenants as to Use of Proceeds. The Issuer covenants (i) to comply with the Code and all Regulations from time to time in effect and applicable to the Series 2016 C Bonds as may be necessary in order to maintain the status of the Series 2016 C Bonds as governmental bonds; (ii) that it shall not take, or permit or suffer to be taken, any action with respect to the Issuer's use of the proceeds of the Series 2016 C Bonds which would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Code, issued by the Authority or the DEP, as the case may be, from which the proceeds of the Series 2016 C Bonds are derived, to lose their status as tax-exempt bonds; and to take such action, or refrain from taking such action, as shall be deemed necessary by the Issuer, or requested by the Authority or the DEP, to ensure compliance with the covenants and agreements set forth in this Section, regardless of whether such actions may be contrary to any of the provisions of this Ordinance.

The Issuer shall annually furnish to the Authority, information with respect to the Issuer's use of the proceeds of the Series 2016 C Bonds and any additional information requested by the Authority.

## **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 2016 C Bonds:

- (1) If default occurs in the due and punctual payment of the principal of or interest, if any, on any Series 2016 C 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 2016 C Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2016 C 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 Commission, the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Holder of a Bond; or
- (3) If the Issuer or Board 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; or

(5) If default occurs with respect to the Series 2016 A Bonds, Series 2016 B Bonds or Series 2016 D Bonds or the respective ordinances authorizing the Series 2016 A Bonds, Series 2016 B Bonds and Series 2016 D Bonds.

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, however, that all rights and remedies of the Holders of the Series 2016 Bonds shall be on a parity with those of the Holders of 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 do.

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 2016 C Bonds, the principal of and interest, if any, due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Gross Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2016 C 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 2016 C Bonds from gross income for federal income tax purposes.

## **ARTICLE XI**

### **MISCELLANEOUS**

Section 11.01. Amendment or Modification of Bond Legislation. Prior to the issuance of the Series 2016 C Bonds, this Ordinance may be amended or supplemented

in any way by the Supplemental Resolution. Following issuance of the Series 2016 C 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 2016 C Bonds shall be made without the consent in writing of the Registered Owners of the Series 2016 C 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 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 Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Series 2016 C 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 excludability of interest on the Series 2016 C 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 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 2016 C 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; 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 Manager, the City Clerk and members of the Governing Body and the Board 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 PLLC, Morgantown, West Virginia, as bond counsel to the Issuer and the Board in connection with the issuance by the Issuer of the Series 2016 C 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 newspaper published and 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 2016 C 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 public hearing and final reading hereof.

Passed on First Reading: September 6, 2016

Passed on Second Reading: September 20, 2016

Passed on Final Reading  
Following Public Hearing: October 4, 2016

THE CITY OF MORGANTOWN

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

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of THE CITY OF MORGANTOWN on the \_\_\_\_\_ day of November, 2016.

[SEAL]

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

**THE CITY OF MORGANTOWN  
COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2016 C  
(WEST VIRGINIA SRF PROGRAM)**

**BOND ORDINANCE**

**ARTICLE I  
STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS**

- Section 1.01. Authority for this Ordinance.
- Section 1.02. Findings.
- Section 1.03. Bond Legislation Constitutes Contract.
- Section 1.04. Definitions.

**ARTICLE II  
AUTHORIZATION OF ACQUISITION AND CONSTRUCTION  
OF THE PROJECT**

- Section 2.01. Authorization of Acquisition and Construction of the Project.

**ARTICLE III  
AUTHORIZATION, TERMS, EXECUTION, REGISTRATION  
AND SALE OF BONDS; AUTHORIZATION AND EXECUTION  
OF BOND PURCHASE AGREEMENT**

- Section 3.01. Authorization of Bonds.
- Section 3.02. Terms of Bonds.
- Section 3.03. Execution of Bonds.
- Section 3.04. Authentication and Registration.
- Section 3.05. Negotiability, Transfer and Registration
- Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost.
- Section 3.07. Bonds not to be Indebtedness of the Issuer.
- Section 3.08. Bonds Secured by Pledge of Gross Revenues; Lien Position with respect to Prior Bonds.
- Section 3.09. Delivery of Bonds.
- Section 3.10. Form of Bonds.
- Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Bond Purchase Agreement.
- Section 3.12. Filing of Amended Schedule.

**ARTICLE IV  
[RESERVED]**

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

- Section 5.01. Establishment of Funds and Accounts with Depository Bank.
- Section 5.02. Establishment of Funds and Accounts with Commission.
- Section 5.03. System Revenues; Flow of Funds.
- Section 5.04. Reserve Account Letter of Credit or Surety Bond.

**ARTICLE VI  
BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS**

- Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds
- Section 6.02. Disbursements From the Series 2016 C Bond Construction Trust Fund.

**ARTICLE VII  
ADDITIONAL COVENANTS OF THE ISSUER**

- Section 7.01. General Covenants of the Issuer.
- Section 7.02. Bonds not to be Indebtedness of the Issuer.
- Section 7.03. Bonds Secured by Pledge of Gross Revenues; Lien Position with respect to Prior Bonds.
- Section 7.04. Rates and Charges.
- Section 7.05. Sale of the System.
- Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances.
- Section 7.07. Parity Bonds.
- Section 7.08. Books; Records and Audit.
- Section 7.09. Rates.
- Section 7.10. Operating Budget and Monthly Financial Report.
- Section 7.11. Engineering Services and Operating Personnel.
- Section 7.12. No Competing Franchise.
- Section 7.13. Enforcement of Collections.
- Section 7.14. No Free Services.
- Section 7.15. Insurance and Construction Bonds.
- Section 7.16. Mandatory Use.
- Section 7.17. Completion of Project; Permits and Orders.
- Section 7.18. Compliance with Bond Purchase Agreement and Law.
- Section 7.19. RESERVED.
- Section 7.20. Securities Laws Compliance.
- Section 7.21. Contracts; Change Orders; Public Releases.
- Section 7.22. Statutory Mortgage Lien.

**ARTICLE VIII  
INVESTMENT OF FUNDS**

- Section 8.01. Investments.
- Section 8.02. Covenants as to Use of Proceeds

**ARTICLE IX  
DEFAULT AND REMEDIES**

- Section 9.01. Events of Default.
- Section 9.02. Remedies
- Section 9.03. Appointment of Receiver.

**ARTICLE X  
PAYMENT OF BONDS**

- Section 10.01. Payment of Bonds.

**ARTICLE XI  
MISCELLANEOUS**

- Section 11.01. Amendment or Modification of Bond Legislation.
- Section 11.02. Bond Legislation Constitutes Contract.
- Section 11.03. Severability of Invalid Provisions.
- Section 11.04. Headings, Etc.
- Section 11.05. Conflicting Provisions Repealed; Prior Ordinances.
- Section 11.06. Covenant of Due Procedure, Etc.
- Section 11.07. Appointment.
- Section 11.08. Statutory Notice and Public Hearing.
- Section 11.09. Effective Date.

SIGNATURES  
CERTIFICATION

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF TWO (2) PARCELS OF REAL ESTATE IN THE SIXTH WARD OF THE CITY OF MORGANTOWN FROM R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT TO R-1A, SINGLE-FAMILY RESIDENTIAL DISTRICT BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH HEREIN.

Property included in this consideration is identified in the Monongalia County Assessor's records as Parcels 25.1 and 26 of County Tax Map 22; Morgantown Corporation District.

THE CITY OF MORGANTOWN HEREBY ORDAINS:

1. That the zoning designation for Parcels 25.1 and 26 of County Tax Map 22 of the Monongalia County tax assessment as described herein and illustrated on the exhibit hereto attached and declared to be a part of this Ordinance to be read herewith as if the same was fully set forth herein are reclassified from R-1, Single-Family Residential District to R-1A, Single-Family Residential District.
2. That the Official Zoning Map be accordingly changed to show said zoning classification.

This Ordinance shall be effective from the date of adoption.

FIRST READING:

\_\_\_\_\_

Mayor

ADOPTED:

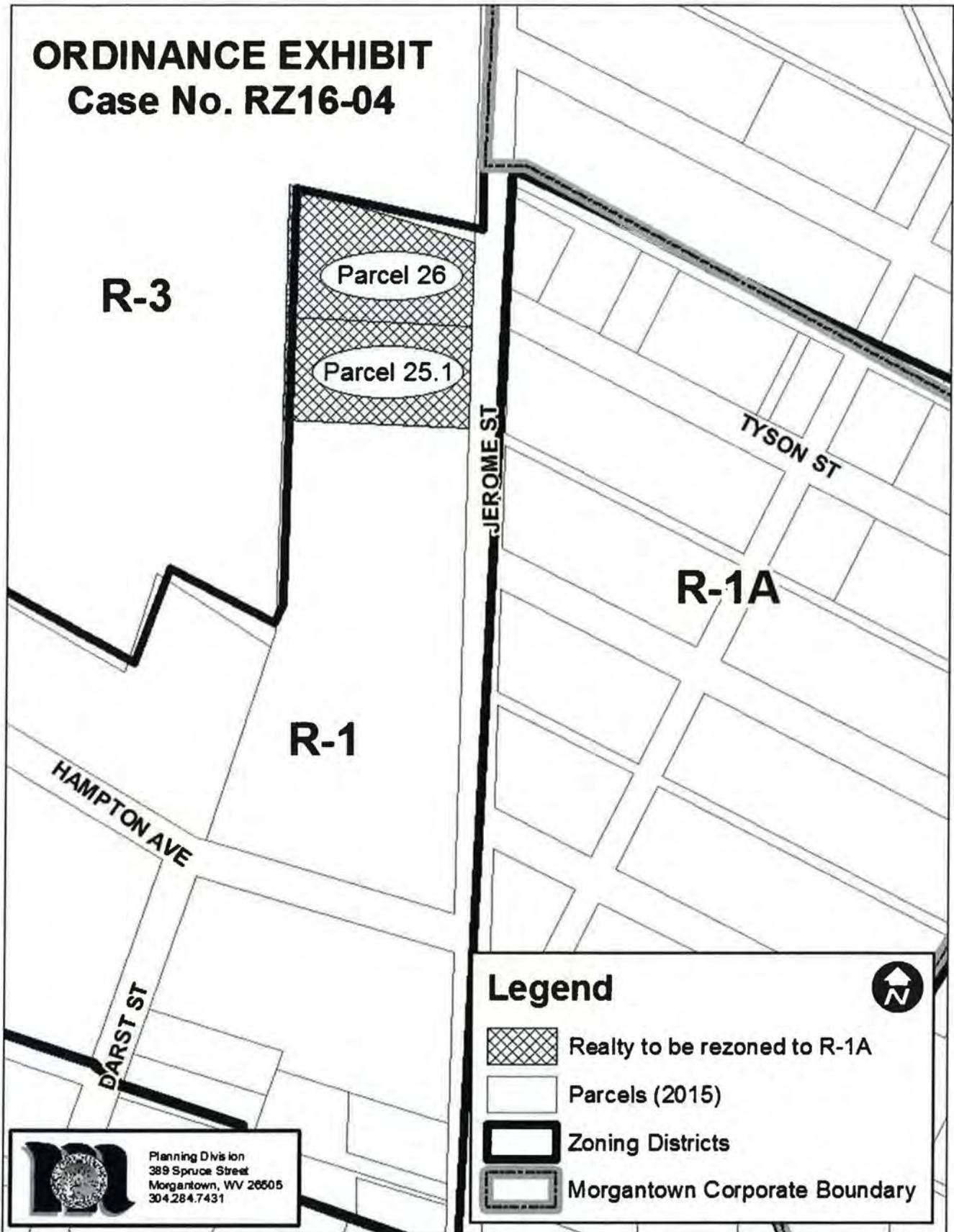
FILED:

RECORDED:

\_\_\_\_\_

City Clerk

# ORDINANCE EXHIBIT Case No. RZ16-04



R-3

Parcel 26

Parcel 25.1

JEROME ST

TYSON ST

R-1A

R-1

HAMPTON AVE

BARST ST

## Legend



Realty to be rezoned to R-1A



Parcels (2015)



Zoning Districts



Morgantown Corporate Boundary



Planning Division  
389 Spruce Street  
Morgantown, WV 26605  
304.284.7431

**AN ORDINANCE AMENDING THE FY 2016-2017 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND.**

The City of Morgantown hereby ordains:

That the FY 2016-2017 Annual Budget of the General Fund of the City of Morgantown is amended as shown in the Request for Revision to Approved Budget (Revision 02) attached hereto and made a part of this ordinance.

First Reading:

Adopted:

\_\_\_\_\_  
Mayor

Filed:

Recorded:

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

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

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

CONTROL NUMBER  
 FY: **2016-2017**  
 Fund: **General**  
 Rev. No. **2**  
 Pg. of No. **1 of 1**

City of Morgantown  
 GOVERNMENT ENTITY  
 389 Spruce Street  
 STREET OR PO BOX  
 Morgantown CITY 26505 ZIP CODE

Person To Contact Regarding Request:  
 Name: **James Goff**  
 Phone: **304-284-7407**  
 Fax: **304-284-7430**

Municipality  
 Government Type

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

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
	#N/A				

NET INCREASE/(DECREASE) Revenues (ALL PAGES)

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

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

(WV CODE 7-1-9)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
699	Contingencies*	3,234,416		25,000	3,209,416
422	Personnel Office	119,972	25,000		144,972
415	City Clerk				
417	City Attorney				
420	Engineering				
422	Personnel Office				
439	Data Processing				
700	Police Department				
706	Fire Department				
750	Streets and Highways				
901	Visitors Bureau				

NET INCREASE/(DECREASE) Expenditures

APPROVED BY THE STATE AUDITOR  
 BY: \_\_\_\_\_ Date \_\_\_\_\_  
 Deputy State Auditor, Local Government Services Division

*James Goff*  
 AUTHORIZED SIGNATURE  
 OF ENTITY

9/13/16  
 APPROVAL  
 DATE

**AN ORDINANCE AMENDING SECTIONS 521.07 AND 521.09 TO PERMIT ALCOHOL SALES FOR ON-PREMISES CONSUMPTION BEGINNING AT TEN O'CLOCK IN THE MORNING ON SUNDAYS**

The City of Morgantown hereby ordains that City Code sections 521.07 and 521.09 are amended as follows (new matter underlined, deleted matter ~~stricken~~):

**521.07 ACTS PROHIBITED BY NONINTOXICATING BEER LICENSEE.**

(a) No licensee under West Virginia Code Article 11-16, his, her, its or their servants, agents or employees shall sell, give or dispense, and no individual shall drink or consume, in or on any licensed premises or in any rooms directly connected therewith, nonintoxicating beer or cooler on weekdays between the hours of 2:00 a.m. and 7:00 a.m., or between the hours of 2:00 a.m. and 1:00 p.m. on any Sunday, except in private clubs licensed under the provisions of West Virginia Code Article 60-7, where the hours shall conform with the hours of sale of alcoholic liquors; provided that any holder of a valid Class A license issued by the West Virginia Alcohol Beverage Control Administration, or any successor entity, may sell, give or dispense the beverages regulated by this Section only for consumption on the licensed premises beginning at 10:00 a.m. on Sunday.

**521.09 ACTS PROHIBITED BY PRIVATE CLUB LICENSEE.**

(a) No person licensed under West Virginia Code Article 60-7, or his agent, employee or member thereof, on such licensee's premises shall:

(1) Sell or offer for sale any alcoholic liquors other than from the original package or container;

(2) Authorize or permit any disturbance of the peace; obscene, lewd, immoral or improper entertainment, conduct or practice; gambling or any slot machine, multiple coin console machine, multiple coin console slot machine or device in the nature of a slot machine;

(3) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors for or to, or permit the consumption of nonintoxicating beer, wine or alcoholic liquors on the licensee's premises, by any person less than twenty-one years of age;

(4) Sell, give away, or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors, for or to any person known to be deemed legally incompetent, or for or to any person who is physically incapacitated due to consumption of nonintoxicating beer, wine or alcoholic liquor or the use of drugs;

(5) Sell, give or dispense nonintoxicating beer, wine or alcoholic liquors in or on any licensed premises or in any rooms directly connected therewith, between the hours

of 3:00 a.m. and 1:00 p.m. on Sunday; provided that any holder of a valid Class A license issued by the West Virginia Alcohol Beverage Control Administration, or any successor entity, may sell, give or dispense nonintoxicating beer, wine or alcoholic liquors only for consumption on the licensed premises beginning at 10:00 a.m. on Sunday.

This Ordinance shall be effective upon the date of adoption.

FIRST READING:

\_\_\_\_\_  
MAYOR

ADOPTED:

FILED:

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

RECORDED:

**A RESOLUTION AUTHORIZING AN AGREEMENT WITH THE MONONGALIA  
COUNTY COMMISSION FOR EMPLOYMENT OF AN ANIMAL CONTROL  
OFFICER**

It is hereby resolved by the City of Morgantown that the City Manager is authorized to execute the attached agreement, which is incorporated herein by reference, to employ an Animal Control Officer as set forth in City Code section 505.13.

\_\_\_\_\_  
**Mayor**

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

# MONONGALIA COUNTY COMMISSION

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

Eldon A. Callen, Commissioner  
Tom Bloom, Commissioner  
Edward A. Hawkins, Commissioner

Telephone: 304 291-7257



September 1, 2016

Col. Glen Kelly  
Morgantown Interim City Manager  
389 Spruce Street  
Morgantown, WV 26505

Dear Col. Kelly:

Enclosed please find an Intergovernmental Agreement between the County Commission and the City of Morgantown for Dog Warden services within the corporate limits of Morgantown.

Please obtain approval of Council, sign the agreement and return one to the Commission for our records. The agreement will become effective as of September 1, 2016.

The new amount of \$36,819.11 is based on 247 calls responded to during fiscal year 2015-2016, plus a 3% across the board increase.

Should you have any questions, please do not hesitate contacting me.

Thank you.

For the Commission,

A handwritten signature in blue ink that reads "Rennetta McClure". The signature is written in a cursive style.

Rennetta McClure  
County Administrator  
Monongalia County Commission

Enclosures

# MONONGALIA COUNTY COMMISSION

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

Eldon A. Callen, Commissioner  
Tom Bloom, Commissioner  
Edward A. Hawkins, Commissioner



Telephone: 304 291-7257

## INTERGOVERNMENTAL AGREEMENT

This Agreement made and entered into this **31<sup>st</sup>** day of **August, 2016**, by and between the City of Morgantown, hereinafter referred to as "CITY", and the Monongalia County Commission, hereinafter referred to as "COMMISSION", witnesseth:

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

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

Now, therefore, the parties hereto agree as follows:

- 1) The COMMISSION agrees to assume the responsibility for employing and supervising qualified individual(s) who will enforce the ordinances of the CITY.
- 2) The COMMISSION shall continue providing such Dog Warden services to the CITY effective with the date of this Agreement.
- 3) That the individual(s) employed by the COMMISSION to perform the services contemplated herein shall not be employees of the CITY.
- 4) That the individual(s) employed by the COMMISSION to perform the services contemplated herein shall be available seven days each week to respond to animal ordinance service needs of the CITY.

- 5) That the COMMISSION employee(s) shall respond to calls for assistance regarding domesticated animals within the CITY in which a resident may be threatened by said domesticated animal.
- 6) That the COMMISSION'S employee(s) will respond to calls regarding small dead animals within the public right of ways within the CITY and on private property within the CITY and will dispose of any such carcass. The COMMISSION will pay for any costs that may be associated with the disposal of any such carcass.
- 7) That the COMMISSION will provide a phone number to the CITY, at the time this Agreement is executed, which the CITY may call to request specific Dog Warden assistance pursuant to this Agreement.
- 8) The COMMISSION shall provide the City Manager with periodic reports, as requested by the City Manager, summarizing Dog Warden incidents within the municipality and responsive action taken by the COMMISSION'S employee(s).
- 9) The COMMISSION'S employee(s) will issue citations for violations of the CITY'S animal ordinances and will be available to testify in the Morgantown Municipal Court regarding the same.
- 10) That the COMMISSION shall be responsible for the actions of its employee(s) while they are performing services within the municipality pursuant to this Agreement.
- 11) That the term of this Agreement shall be for twelve consecutive months beginning with the first day of September and ending September 30 of the following year. This agreement shall be in effect until September 30, 2017.
- 12) As consideration for the Dog Warden services provided by the COMMISSION, CITY agrees to pay the COMMISSION \$36,819.11 for the 12 month term of this agreement in installment payments of \$3,068.26 for each of the 12 months, payable by the 15<sup>th</sup> day of each month that the Agreement is in effect. If this Agreement is terminated by either party hereto, per paragraph 13 below, the balance of the above \$36,819.11 due the Commission will be reduced by \$3,068.26 for each and every month which would have remained on the term of the agreement had it not been terminated by the party doing so. (This paragraph includes a 3% cost of living increase).
- 13) Either party hereto has the right to terminate this Agreement at any time by providing 30 days prior written notice of the same to the other party.

- 14) At the conclusion of the twelve month term this Agreement will automatically be renewed for an additional twelve month period with a standard increase of 3% per year.
- 15) This document shall constitute the entire Agreement between the parties and any amendment or additions hereto shall be by written agreement of both parties, which shall be subject to approval by the governing bodies by both parties.

Signed by the MONONGALIA COUNTY COMMISSION:

*Eldon A. Lallen* 8/31/16  
(Signature) (Date)  
President  
(Title)

Signed by the CITY OF MORGANTOWN:

\_\_\_\_\_  
(Signature) (Date)  
  
\_\_\_\_\_  
(Title)

# ***City of Morgantown***

## ***Finance Department***

*389 Spruce Street*

*Morgantown, WV 26505*

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

*jgoff@morgantownwv.gov*

# **MEMO**

**DATE:** 9/8/2016

**TO:** Glen Kelly  
Interim City Manager

**FROM:** James Goff  
Finance Director

**RE:** Authorized Signers

---

Please find attached a resolution authorizing certain individuals of the City of Morgantown to transact business with the City's banking institutions. I am requesting this resolution be forwarded to City Council for approval at the next regular City Council meeting. This resolution is required by banking institutions to add Amy Cobasky, Eric Winaught, and yourself as authorized signers and to remove Jeff Mikorski, Karen Everly and Lori Livengood as authorized signers. All checks and other withdrawal methods require two authorized signatures or approvals before payment may be made.

I am also requesting authorization to allow Denise Stefanizzi authority to transfer funds internally within our operating bank. Electronic transfers within the bank also require two approvals before the transfer may be made.

Please let me know if you have any questions.

**RESOLUTION**

**WHEREAS, the City of Morgantown utilizes various banking facilities as depositories for City funds;**

**WHEREAS, City Council is of the opinion that a record should be made of the specific individuals authorized as agents of the City.**

**BE IT HEREBY RESOLVED that the following are authorized agents of the City of Morgantown for the transacting of funds in the designated banking and financial institutions:**

- 1. Glen Kelly, Interim City Manager**
- 2. James Goff, Finance Director**
- 3. Amy Cobasky, Budget and Accounting Manager**
- 4. Eric Winaught, Accountant**

**BE IT FURTHER RESOLVED that the following is an authorized agent of the City of Morgantown for the electronic transfers of funds within the City's operating banking and financial institution:**

- 1. Denise Stefanizzi, B&O Construction Revenue Clerk**

**This Resolution shall be effective from this \_\_\_\_\_ day of \_\_\_\_\_, 2016.**

\_\_\_\_\_  
**MAYOR**

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