

**Application for Annexation for minor boundary adjustment**

**Minden Area**

**2484 acres**

**Submitted to the Fayette County Commission  
By the City of Oak Hill**

**(1) The number of businesses located in and the persons residing in the additional territory;**

*(a) There are currently five businesses located in the territory.*

*(b) The population of the additional territory is approximately 500. The population provided by the United States Census 2010 is 250 for Minden. The additional territory includes a larger area than defined by the U.S. Census as Minden by including lands adjacent to Minden such as Rocklick and Concho. Census Tract 202.01 reports a population of 1,356 but includes areas beyond the additional territory such as Gatewood Road and Pea Ridge.*

*See Attachment 1 (Minden census information, census tract 202.01 and population for tract 202.01)*

**(2) An accurate map showing the metes and bounds of the additional territory;**

*See Attachment 2 (exhibits describing the additional territory)*

**(3) A statement setting forth the municipality's plan for providing the additional territory with all applicable public services such as police and fire protection, solid waste collection, public water and sewer services and street maintenance services, including to what extent the public services are or will be provided by a private solid waste collection service or a public service district;**

*(a) Police protection will be provided by the Oak Hill Police Department, the Fayette County Sheriff's Department and the West Virginia State Police.*

*(b) Fire protection will be provided by the Oak Hill Volunteer Fire Department with mutual aid provided by the Fayetteville and Mount Hope Fire Departments, as required.*

*(c) Public water is currently provided by West Virginia American Water Company and there will be no change in water service.*

*(d) Sanitary sewer service is currently provided by Arbuckle PSD but is planned to be provided by the City of Oak Hill Sanitary Board in the future.*

*(e) Street maintenance services are provided by the West Virginia Department of Highways.*

*(f) Solid waste collection is provided by private firms.*

**(4) A statement of the impact of the annexation on any private solid waste collection service or public service district currently doing business in the territory proposed for annexation in the event the municipality should choose not to utilize the current service providers;**

*(a) The private solid waste collection services currently operating in the additional territory will continue to operate at the will of their individual customers. Municipalities within Fayette County do not offer waste collection services.*

*(b) Arbuckle PSD currently provides sanitary sewer service for the residents and businesses of the additional territory. The City of Oak Hill Sanitary Board plans to operate and maintain the District's system and ultimately acquire the system as specified in a letter of intent agreed upon by the Arbuckle PSD, City of Oak Hill Sanitary Board and the City of Oak Hill City Council.*

*See attachment 3 (Signed letter of Intent, O&M agreement and acquisition agreement)*

**(5) A statement of the impact of the annexation on fire protection and fire insurance rates in the territory proposed for annexation;**

*There will be no immediate impact on fire protection or fire insurance rates because the City of Oak Hill already provides fire protection. The City of Oak Hill does collaborate with West Virginia American Water Company to increase the number of hydrants within the municipal boundary. Over time and within budgetary restraints, the additional territory is more likely to have improved fire service with an increase in the number of fire hydrants. Fire service is provided by the City of Oak Hill to the additional territory by means of a fire levy that is voted on by the public every five years. In the event the fire levy does not pass, the additional territory could potentially have far superior fire service if successfully annexed.*

**(6) A statement of how the proposed annexation will affect the municipality's finances and services; and**

*The City of Oak Hill would receive business and occupation taxes, ad valorem taxes, storm water fees and utility taxes. Many variables exist in placing a value upon the revenue and the cost of services. These variables include property tax values, number of homestead exemptions, amount of utility bills, gross revenue of businesses, and trending growth in population and business. This annexation will be an investment by the City of Oak Hill for the future economic development of Minden. Investing in the future is not a new concept for the City as evidenced by ordinances that provide for a five year phase - in of B&O tax for newly annexed businesses and a five year waiver of B&O tax for non competing businesses.*

*There are multitudes of services provided by the City of Oak Hill that will be affected. Many services are not mandated and will be provided within budgetary constraints whether within the additional territory or within the current municipal boundary. Some service items commonly provided by the City include streets, police, fire, recreation, dilapidated structures and administration of many matters such as zoning enforcement. Future programs would also apply to the additional territory such as the MS4 program that mitigates pollution from entering streams, i.e. sediment, discarded medication, petroleum products, etc.*

*Providing adequate sanitary sewer service to the additional territory is the paramount service that necessitates this annexation. This service provided by the City of Oak Hill Sanitary Board would provide a more sanitary living condition for residents, provide for possible economic growth and greatly reduce fecal matter from entering a national river.*



*The Police Chief of the City of Oak Hill has stated to Council that his recommendation is for two additional officers for the additional territory. The basis for this estimation is the travel time to the area versus a ratio of officers to population.*

*Street maintenance will not be the obligation of the City, however, the City endeavors to provide this service in situations where the West Virginia State DOH and the City agree it is in the best interest of the citizens. Examples of this are the City sweeping streets, mowing and assisting the State with drainage issues on certain State maintained roads within the corporate limits.*

*The City of Oak Hill has an active recreation program with two City Parks, the White Oak Rail Trail and the Lively Family Amphitheater. The City has actively expanded its recreation program and will include the Minden area for possible future opportunities.*

*The City of Oak Hill takes a proactive and reactive approach to dilapidated structures through a vacant structure registration program and by enforcing an unsafe structure ordinance. The City has a history of requiring unsafe structures demolished and accomplishing this task when property owners do not comply. A common sense, gradual phase in of enforcement by the City of Oak Hill should reduce the proliferation of unsafe / dilapidated structures that currently exist in the additional territory.*

**(7) A statement that the proposed annexation meets the requirements of this section.**

*The proposed annexation does meet the requirements of WV C 8-6-5 in that the territory proposed to be annexed is contiguous to the corporate limits of the City of Oak Hill. The City of Oak Hill desires to increase its corporate limits, improve the conditions of a national river, and provide infrastructure and services that promote economic growth and a cleaner environment for the residents.*

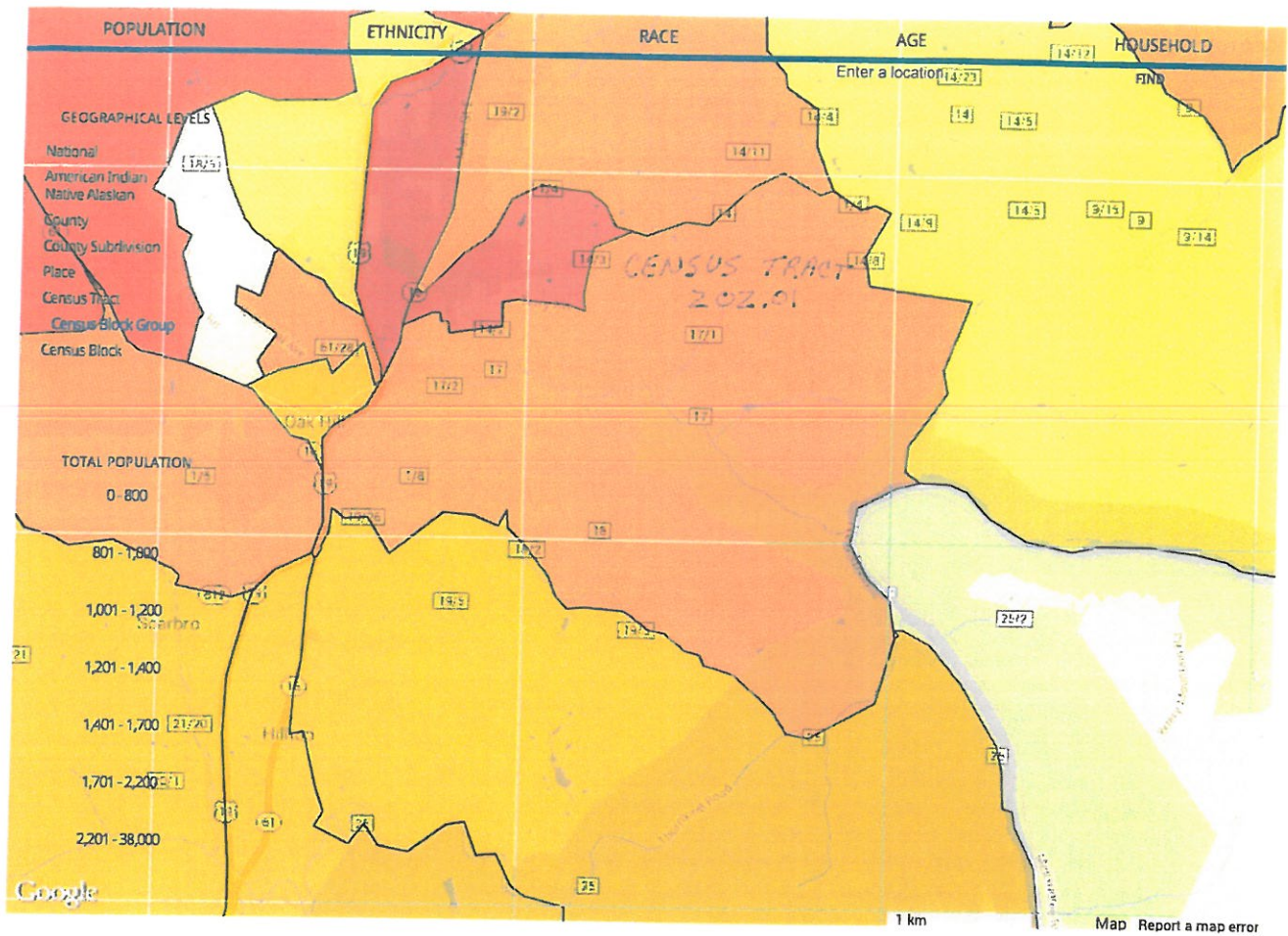


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# **ATTACHMENT 1**

**Minden Census Information**









## What does your community look like with others across America?

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**2010 Census National Population: 308,745,538**

### Population

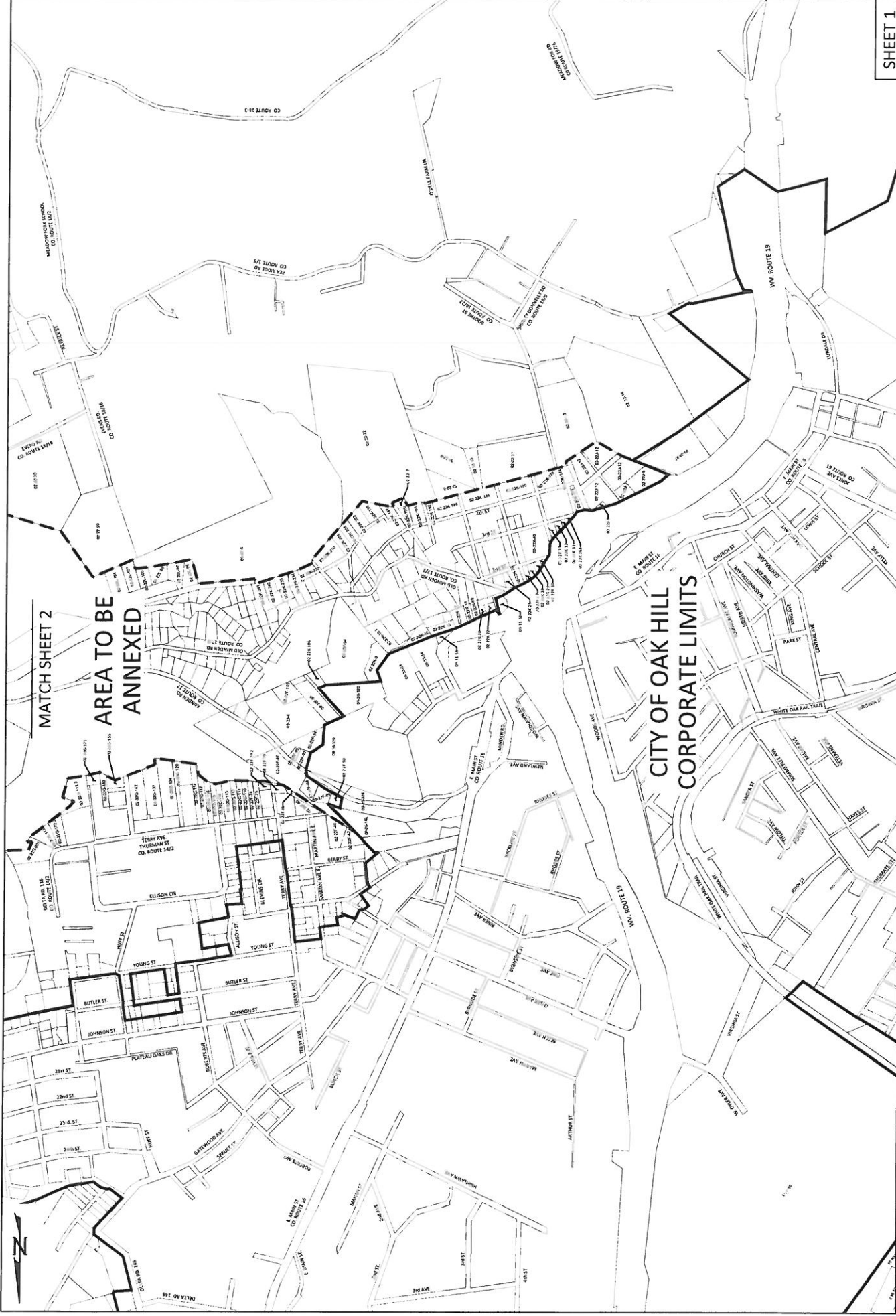
	WV - Fayette County - Census Tract 202.01 - Block Group 3
Total Population	1,356

Print

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# **ATTACHMENT 2**

**(Exhibits Describing Additional Territory)**



MATCH SHEET 2

AREA TO BE ANNEXED

CITY OF OAK HILL CORPORATE LIMITS

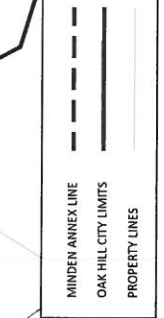
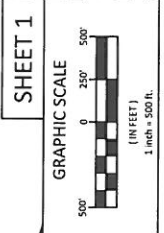


EXHIBIT SHOWING 2484 ACRES PROPOSED FOR ANNEXATION  
BY THE CITY OF OAK HILL

FAYETTE COUNTY

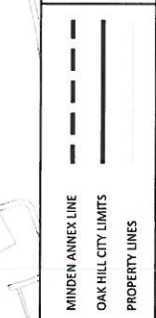
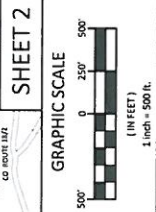
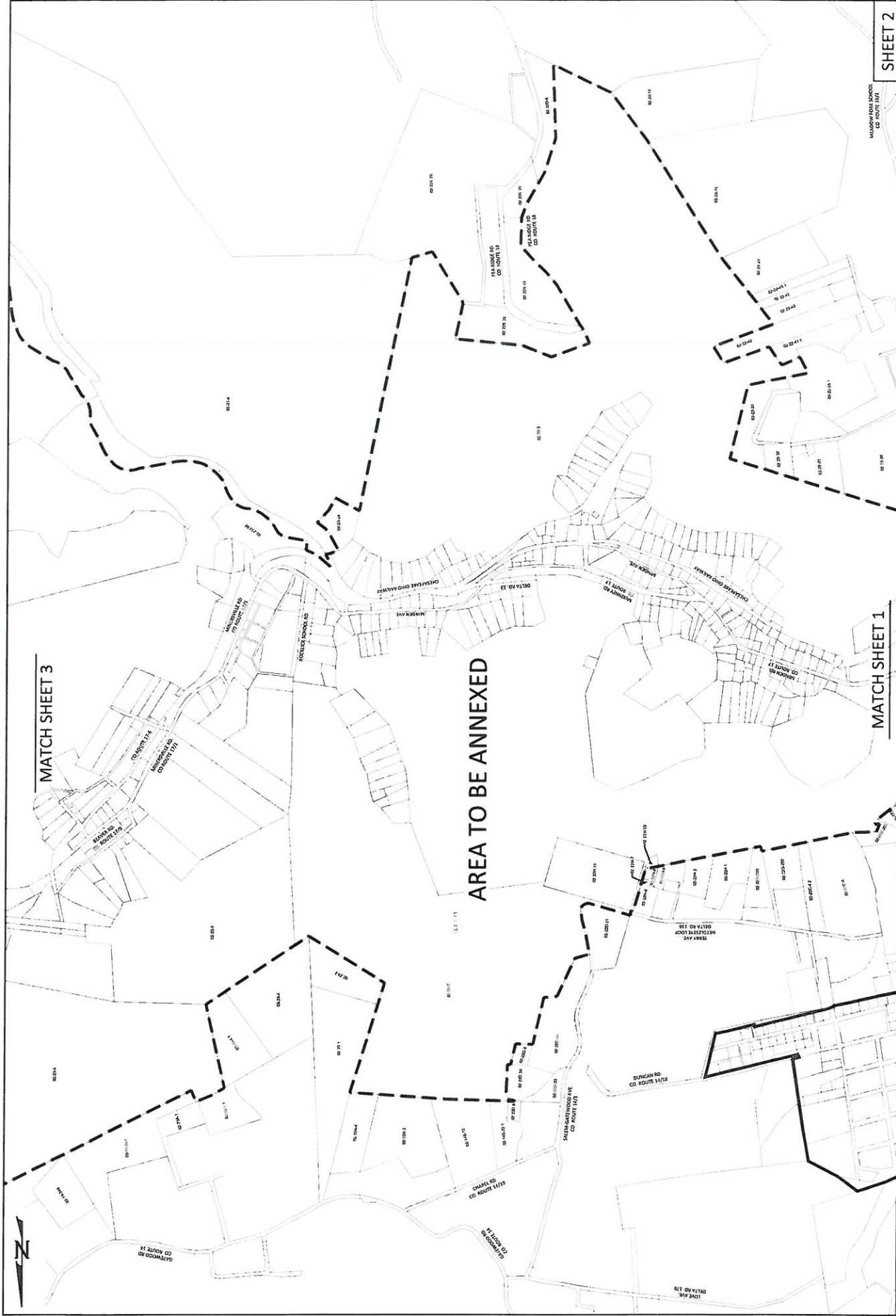
11/26/2014

WEST VIRGINIA

**THRASHER**  
155 BLUE ANGEL LANE, BEAVER, WV 25813

SHEET 1





**WEST VIRGINIA**

**EXHIBIT SHOWING 2484 ACRES PROPOSED FOR ANNEXATION  
BY THE CITY OF OAK HILL**

**11/26/2014**

**FAYETTE COUNTY**

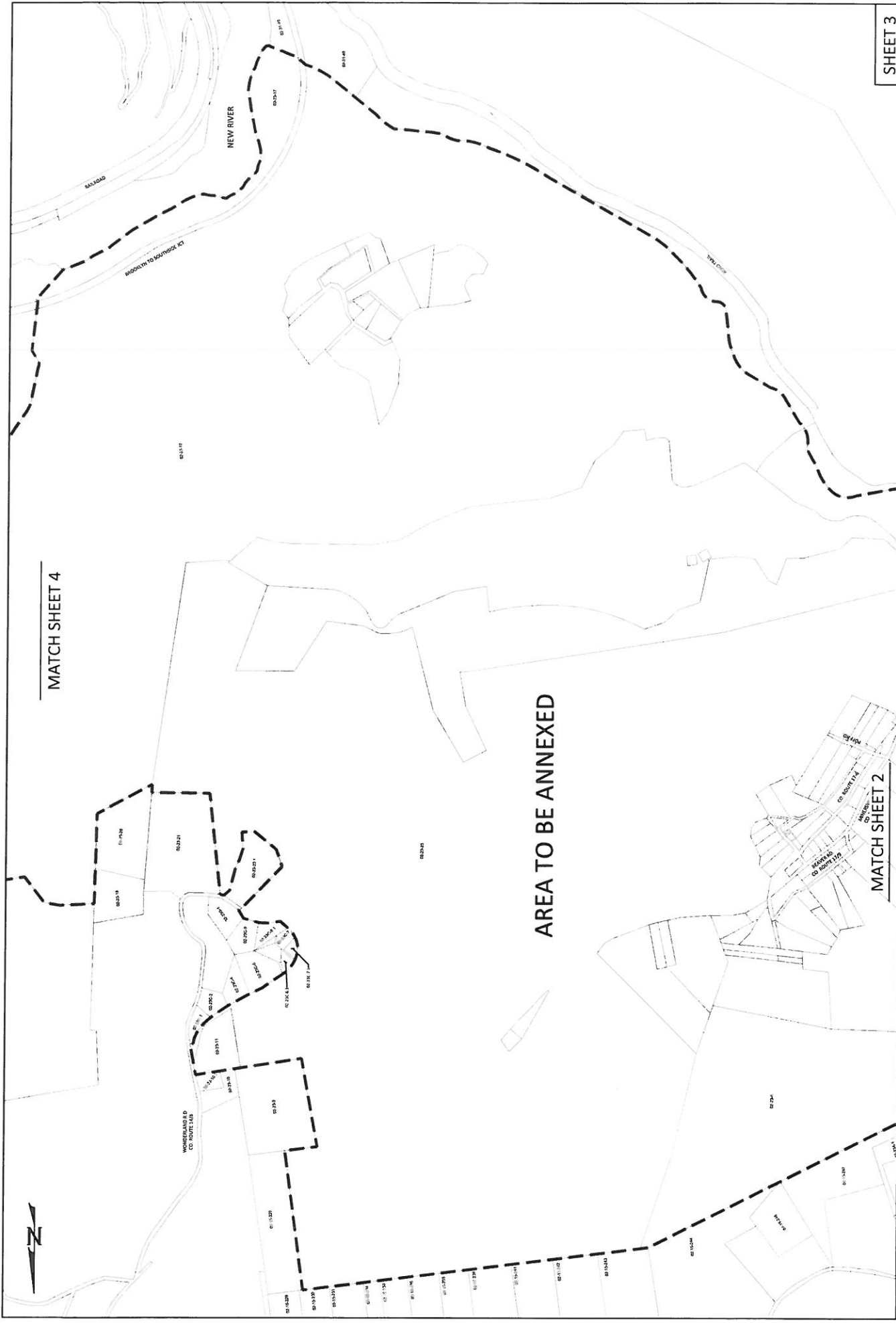
**THRASHER**  
155 BLUE ANGEL LANE, BEAVER, WV 25813

MATCH SHEET 3

AREA TO BE ANNEXED

MATCH SHEET 1

SHEET 2



**SHEET 3**

GRAPHIC SCALE  
 500' 0 250' 500'  
 (IN FEET)  
 1 inch = 500 ft.

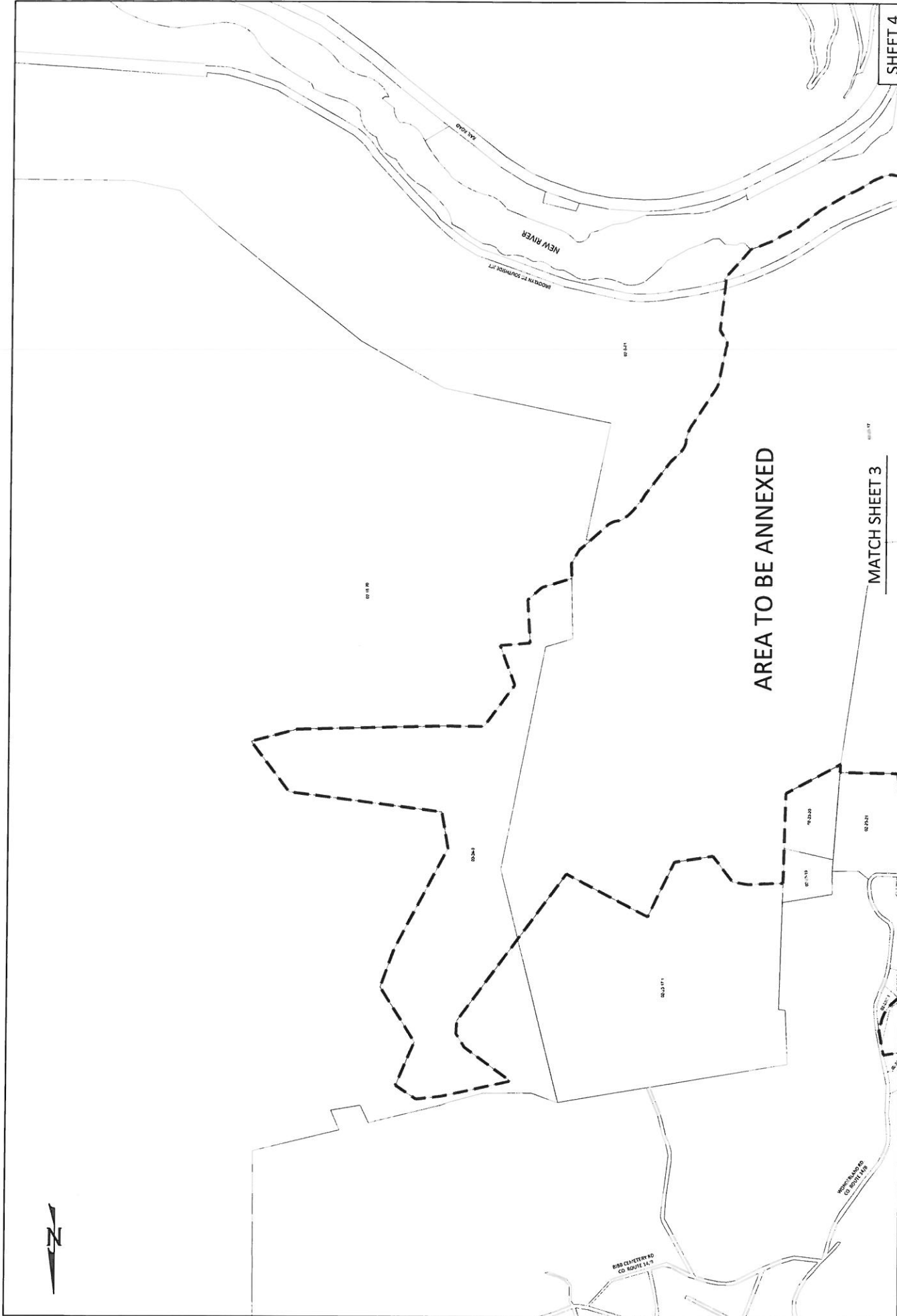
--- MINDEN ANNEX LINE  
 --- OAK HILL CITY LIMITS  
 --- PROPERTY LINES

**EXHIBIT SHOWING 2484 ACRES PROPOSED FOR ANNEXATION  
 BY THE CITY OF OAK HILL**

FAYETTE COUNTY      WEST VIRGINIA

11/26/2014

**THRASHER**  
 155 BLUE ANGEL LANE, BEAVER, WV 25813



**SHEET 4**

GRAPHIC SCALE

1000' 500' 250' 0' 250' 500'

(IN FEET)

1 inch = 500 ft.

--- MINDEN ANNEX LINE

— OAK HILL CITY LIMITS

— PROPERTY LINES

WEST VIRGINIA

AREA TO BE ANNEXED

MATCH SHEET 3

EXHIBIT SHOWING 2484 ACRES PROPOSED FOR ANNEXATION  
BY THE CITY OF OAK HILL

11/26/2014

FAYETTE COUNTY

**THRASHER**  
155 BLUE ANGEL LANE, BEAVER, WV 25813



# **ATTACHMENT 3**

**(Signed Letter of Intent)  
(O&M Agreement)  
(Acquisition Agreement)**

## LETTER OF INTENT

This LETTER OF INTENT is made as of September 24, 2014 by and between the Sanitary Board of the City of Oak Hill (the "Board"), the City of Oak Hill (the "City") and the Arbuckle Public Service District (the "District"),(together, the "Parties");

### RECITALS

A. The District is a public service district, created pursuant to W.Va. Code ("Code") §16-13A-1 et. seq., established in Fayette County, West Virginia, which owns and operates a wastewater collection and treatment system (the "District System").

B. The Board is a sanitary board, created pursuant to Code §16-13-1 et. seq., which owns and operates a wastewater collection and treatment system (the "Board System").

C. The City is a West Virginia municipal corporation, created pursuant to Code §8-1-1 et. seq.,.

D. The District has submitted an application to the West Virginia Infrastructure and Jobs Development Council (the "IJDC")for funding for a project to stabilize the District's wastewater treatment plant ("District Plant") from deterioration and subsidence ("Emergency Project").

E. Following the execution by all parties of this Letter of Intent, the District will submit an application to the IJDC for funding for a project to reduce inflow and infiltration ("I&I Project") on the District's existing collectionsystem.

F. The Board intends to submit an application to the IJDC for funding for a project ("Expanded Project") to enable the Board to decommission the District Plant, expand and upgrade the Board's wastewater treatment plant ("Board Plant"), expand and upgrade the Board's wastewater transmission system ("Board Mains"), including a new pump station and force main so that the Board can transmit wastewater generated in the District's service area to the Board's Plant for treatment, and make other improvements needed for the proficient operation of the Board's System.

G. The Board and the District have engaged in discussions concerning the operation and maintenance of the District System by the Board, the advancement of projects, and the acquisition by the Board of the sewer utilities assets and liabilities of the District as defined herein, (collectively, the "Transactions"); and

H. The Parties desire to set forth their mutual understanding regarding the terms and conditions of the Transactions.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the premises and of the respective covenants and conditions contained herein, the Parties desire to enter into this Letter of Intent to

establish clear guidelines for the negotiation and consummation of the Transactions, subject to the following terms and conditions. Therefore, the Parties hereby agree as follows:

**Article 1. Definitive Agreements.** Subject to the terms and conditions set forth in this Letter of Intent, each Party agrees to negotiate in good faith toward execution of definitive agreements setting forth the terms and structure of, and pursuant to which the Parties shall effectuate the Transactions (the "Definitive Agreements"). The Parties shall commence such negotiation promptly upon the execution of this Letter of Intent with a view to execution of the Definitive Agreements as soon as possible, and shall continue such negotiation diligently until the execution of the Definitive Agreements or until the termination of this Letter of Intent.

**1.2. PSC Review.** The Board shall submit this Letter of Intent to the Public Service Commission of West Virginia ("PSC") for its review and approval. The Parties shall negotiate, prepare and approve the Definitive Agreements while the PSC is reviewing this Letter of Intent. One or more Definitive Agreements may be filed with the PSC before the PSC has issued a final order on this Letter of Intent.

**1.3. Non-Assumption of Liability.** In entering into this Letter of Intent, none of the Parties nor any Party's respective insurer assumes liability for any acts or omissions performed by any other Party during a past, present, or subsequent period when another Party owned, operated or controlled its wastewater collection and treatment system.

**Article 2. Projects.**

**2.1. District Projects.** The District shall diligently pursue funding for the I&I Project and the Emergency Project, including, but not limited to, the retention of an engineering firm, an accounting firm, and a law firm at the District's expense as needed to advance the funding applications and projects through to closing on funding. In the event the IJDC does not provide funding for the I&I Project and/or the Emergency Project, the District shall pursue funding from federal and private sources. The District shall seek to have the terms of funding for the I&I Project readily assumable by the Board.

**2.2. Emergency Project.** Upon a finding by a funding agency that the Emergency Project is technically feasible and the identification of funding sources, the District shall, within ten (10) days of receipt of such determination, file an application to the PSC for approval of such funding and a determination that the Emergency Project does not require a certificate of convenience and necessity. Upon the PSC's issuance of a final order regarding the funding for the Emergency Project, the District shall diligently pursue implementation of the Emergency Project through to the completion of construction with engineers and contractors selected by the District.

**2.3 I&I Project.** If the I&I Project is deemed technically feasible and a funding source acceptable to the Board is identified, Triad Engineering, the District's engineering firm, shall prepare the final design of the I&I Project and perform services related thereto, subject to the terms of the engineering services agreement between the District and Triad Engineering. The District shall execute an agreement assigning its rights and obligations under the District's engineering agreement with Triad Engineering for the I&I Project to the Board for



\$1.00, upon request of the Board. Triad Engineering shall perform inspection during construction subject to standards approved by the Board.

**2.4 Expanded Project.** The Board shall pursue funding for the Expanded Project. Upon a finding that the Expanded Project is technically feasible and the identification of funding sources acceptable to the Board, the Board shall take action to advance the final design of the Expanded Project.

**2.5 PSC Application.** Upon the satisfaction of the conditions identified in Sections 2.2, 2.3 and 2.4, and the receipt of binding commitment letters for project funding, the Board shall file and prosecute application(s) to the PSC for the acquisition of the assets of the District, and the issuance of certificates of convenience and necessity for the I&I Project and the Expanded Project. The Board may file such applications as separate applications or as a consolidated application in the Board's discretion. In the event the PSC attaches conditions in its orders granting a certificate which are unacceptable to the Board or the City, the Board and the City reserve the right to terminate this Letter of Intent and any related agreements executed or adopted pursuant to this Letter of Intent. Due to numerous uncertainties regarding the capital cost and funding terms for the I&I Project and the Expanded Project, post-project rates cannot be estimated at this time. The post-project rate to District customers will be the same as the City's rates except that a per customer surcharge will apply to District customers for a ten year period from the date of substantial completion of the I&I Project to enable the City to pay debt service on the I&I Project during that period.

**2.6 Rate Ordinance.** Within ten (10) days of the Board filing an application for a certificate of convenience and necessity to the PSC, the City shall consider a sewer rate increase ordinance containing the rates determined necessary by the Board to support the ownership and operation of the Board System following acquisition of the District System and following completion of construction of the I&I Project and Expanded Project, including, but not limited to, debt service, reserve and coverage requirements related to the funding for the Emergency Project, I&I Project and Expanded Project.

**2.7 Annexation.** The City shall file an application for minor boundary adjustment with the Fayette County Commission for the annexation of the Minden area of Fayette County into the City no later than December 31, 2014. If the annexation of the Minden Area into the City is not approved by March 31, 2015, the Board may terminate this Letter of Intent and any related agreements executed or adopted pursuant to this Letter of Intent.

**2.8 County Grant Reimbursement.** In its application for funding for the Expanded Project, the Board shall use its best efforts to obtain funding to reimburse the Fayette County Commission, without interest, for any grant contribution which the Fayette County Commission may make to the Emergency Project.

**2.9 Advisory Committee.** Following full execution of this Letter of Intent, the District may appoint two persons of its choosing and the Board may appoint one member to a three member Advisory Committee. The Advisory Committee shall meet at regularly scheduled meetings before the meetings of the Board. The Advisory Committee may make non-binding recommendations to the Board regarding implementation of the O&M

Agreement, advancement of the projects, and the acquisition. The Advisory Committee shall terminate one year after the Board closes on the acquisition of the District's assets and liabilities.

**Article 3. Operation and Maintenance Agreement.**

**3.1 Essential Terms.** Within twenty (20) days of the date of full execution of this Letter of Intent, the Board shall present to the District an operations and maintenance agreement ("O&M Agreement") for the comprehensive operation of the District System. By executing this Letter of Intent, the Parties represent that each Party agrees to the inclusion in the O&M Agreement of the following terms:

(a) **PSC Application.** The Board shall file the O&M Agreement with the PSC for approval only after all of the Projects have been deemed technically feasible and funding sources and projected post-project rates acceptable to the Board have been identified for each and every one of the Projects. If any of the Projects are not deemed technically feasible or the identified funding sources for any of the Projects are not acceptable to the Board, then the Board shall be under no obligation to assume any operation or maintenance responsibility for the District System. In the event the PSC attaches conditions in its orders or the application for approval of the O&M Agreement which are unacceptable to the Board or the City, the Board and the City reserve the right to terminate this Letter of Intent and any related agreements executed or adopted pursuant to this Letter of Intent.

(b) **Start Date.** The Board shall commence its responsibilities under the O&M Agreement thirty (30) days after the PSC's final order approving the O&M Agreement, provided the PSC's order is acceptable to the Board and the City.

(c) **Transition.** The District and its employees shall cooperate and assist the Board in assuming its responsibilities under the O&M Agreement, including, but not limited to, transferring complete and current customer account information to Board employees, in hard copy and electronic formats, and performing a complete tour of the District System with Board employee and contractors.

(d) **Office Functions.** The Board shall assume responsibility for billing District customers, collecting payment (including, but not limited to, terminating water service for non-payment of sewer service) and other office functions, including the preparation of materials for meetings of the board of directors of the District. The Board shall deposit all revenue received from District customers into the District's bank account on the same days as the Board deposits revenues from Board customers.

(e) **Field Duties.** The Board shall assume responsibility for all field maintenance activities on the District System, including, but not limited to, paying for electricity, water, gas, and insurance charges.

(f) **Liability.** The Board and its insurers and the City and its insurers shall have no liability for any act or omission involving the District System prior to the date of the Board's commencement of O&M services. In performing O&M

services, the Board and its insurers shall only be liable for acts of gross negligence. The Board and its insurers shall have no liability for damages or injuries arising primarily from deficiencies in or malfunctions of the District System.

(g) **Employment.** As the Board does not guarantee employment for any period to its own employees, the Board shall not be obligated to hire any District employees, however, District employees are encouraged to apply for employment with the Board.

(h) **District Financial Responsibilities.** Unless and until otherwise agreed to in writing by the Board, the District shall remain exclusively responsible for the payment of its bond obligations, legal, accounting, engineering, District board member, and PSC fees.

(i) **District board Responsibilities.** The board of directors of the District shall meet at least monthly and review, approve (as appropriate), and pay all payments due under the terms of its bonds in full and on time, all accounts payable in full and on time, including but not limited to the O&M fee due to the Board. In the event the District is unable to pay any vendor (including but not limited to the Board) or meet any bond obligation, within thirty (30) days of the due date of any such payment or transfer, or fail to meet any of its bond covenants, or the Board's six-month financial report shows that the O&M fee should be increased, the District shall, within thirty (30) days of such an occurrence, file a petition to the PSC for a rate increase. The Board may also petition the PSC for an increase to the District's rates.

(j) **O&M Fee.** The initial monthly O&M fee that the District shall pay to the Board is \$29,000.00 monthly, based upon the financial analysis, attached hereto as **Attachment 1**. The Board shall track its costs in providing O&M services to the District and issue a financial report every six months regarding the cost of providing O&M services. After one year of operation under the O&M Agreement, the Board shall modify the O&M fee to 105% of the previous year's O&M costs.

(k) **Capital Repairs.** Unless otherwise agreed by the Board in writing, the District shall be responsible for the cost of any capital expenditures, including, but not limited to, repair and replacement of equipment and facilities that are capitalized under generally accepted accounting practices ("GAAP").

#### **Article 4. Acquisition.**

4.1 **Essential Terms.** Within twenty (20) days of the date of full execution of this Letter of Intent, the Board shall present to the District an asset purchase agreement ("Purchase Agreement") for the acquisition by the Board of thesewer utility assets and liabilities of the District. By execution this Letter of Intent, the Parties represent that each party agrees to the inclusion in the Purchase Agreement of the following terms:

a. **The Sewer System Conveyance.** The Board agrees to accept and the District agrees to convey for \$1.00 the sewer utility assets of the District and the liabilities of the District lists ("Acquisition Items"), subject to the terms of this



Letter of Intent. Within ten days of the date of execution of this Letter, the District shall present to the Board a list of the Acquisition Items.

b. **PSC Application.** The Board shall file the Purchase Agreement with the PSC for approval in conjunction with the filing of one or more applications for a certificate of convenience and necessity for the I&I Project and the Expanded Project. Binding commitment letters for funding for the I&I Project and the Expanded Project on terms acceptable to the Board shall be received before the Board is obligated to file any application to the PSC or move forward with the acquisition of the Acquisition Items. In the event the PSC attaches conditions in its orders approving the acquisition which are unacceptable to the City or the Board, the City and the Board reserve the right to terminate this Letter of Intent and any related agreements executed or adopted pursuant to this Letter of Intent. The post-acquisition rate to District customers will be the same as the City's rates except that a per 1000 gallon surcharge will apply to District customers for a ten year period from the date of closing to enable the City to pay for the title opinion required to close on the acquisition, increased expenses attributable to the District's prior delinquencies in payment to the USDA RUS, any outstanding accounts payable of the District at the time of closing, the repayment of the Fayette County Commission grant for the Emergency Project, any deficiency in payment by the District to the City for O&M services, and any fines and the cost of any remedial actions required related to the District System. The amount of the per 1000 gallons surcharge may change over the ten year period .

c. **Additional debt.** Following the execution of this Letter of Intent, the District shall not incur any additional indebtedness without first obtaining the consent of the Board.

d. **DEP Communications.** Following the execution of this Letter of Intent, the District shall provide the Board with a copy of all correspondence between the District and the West Virginia Department of Environmental Protection ("DEP"), including but not limited to Discharge Monitoring Reports ("DMRs"), Notice of Violation ("NOVs"), draft consent order, consent orders, and any other orders.

e. **Interim Operations.** The District shall operate the District System in the ordinary course until the O&M Agreement becomes effective.

f. **Title Opinion.** The Board shall cause to be prepared a title opinion by a licensed West Virginia Attorney identifying any and all deficiencies in title and encumbrances of any kind pertaining to all real property required for the lawful ownership and operation of the District System. The District shall, at its expense, cure any deficiencies in title identified by the Board.

g. **Closing.** The Definitive Agreement shall provide that the consummation of the sewer systems conveyance (the "Closing") shall occur as promptly as possible after satisfaction or waiver of all conditions precedent, and that the Parties shall use their commercially reasonable best efforts to cause the Closing to occur within sixty (60) days of PSC approval, provided the PSC's order is acceptable to the City and the Board.

**Article 5. Conditions Precedent.** The Definitive Agreements shall provide that the obligations of the Parties to consummate the Transactions are contingent upon:

**5.1. Governing Body Approval.** Acceptance and approval of the Transactions and the Definitive Agreements and all related agreements by all necessary parties, including, without limitation, each Party's governing board;

**5.2. Regulatory Approval.** Approval of the Transactions by, and the giving of all required notices to, all federal, state, and local governmental or regulatory entities or authorities having jurisdiction;

**5.3. Assignment and Assumption of District debt.** Approval of the District's bondholders to the assignment by the District and the assumption by the Board of the rights and obligations arising under the District's bonds.

**5.4. Acceptable Funding.** Identification by funding agencies of funding on terms acceptable to the Board and the City for the I&I Project and Expanded Project.

**Article 6. General Terms.**

**6.1. Pursuit of Approvals.** Each Party shall take all action necessary to promptly initiate and apply for, and to diligently pursue receipt of, each of the approvals, assignments, assumptions, exemptions or waivers required to be obtained by such Party.

**6.2. Due Diligence Review.** During the term of this Letter of Intent, each of the Parties shall cooperate fully with the other Party with respect to, and permit the authorized separate legal, financial and engineering representatives of such other Parties to conduct, a due diligence investigation for the purposes of considering, investigating, negotiating and/or consummating the Transactions. In the Definitive Agreements, each Party shall be required to make certain representations as to the accuracy and completeness of information shared with the other party as of the date of the Closing.

**6.3. Good Faith Negotiations.** The Parties shall work together in good faith to develop a timeline with a task list for completing negotiations and executing the Definitive Agreements.

**6.4. Expenses.** Unless otherwise provided herein, each Party shall bear its own expenses associated with the activities contemplated by this Letter of Intent.

**6.5. No Third-Party Beneficiaries.** This Letter of Intent is intended solely for the benefit of the Parties hereto and not for the benefit of any other person or entity.

**6.6. Entire Agreement.** This Letter of Intent may be amended only by a written instrument executed by the Parties. This Letter of Intent may not be assigned by any Party without the prior written consent of the other Party. This Letter of Intent shall be binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.



6.7. **Notices.** Any and all notices given under this Letter of Intent shall be given by, and be deemed given when, (i) delivered by personal delivery; (ii) deposited in U.S. mail, postage prepaid return receipt requested; or (iii) sent by email with confirmation of receipt, addressed as follows:

If to the District:

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If to the City:

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If to the Board:

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6.8. **Counterparts; Electronic Signature.** This Letter of Intent may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument and become effective when one or more counterparts shall have been executed by each of the Parties, but all such counterparts together shall constitute but one agreement. Signatures of the Parties to this Letter of Intent on a counterpart or any number of counterparts transmitted by facsimile or other electronic means shall be deemed original signatures for all purposes.

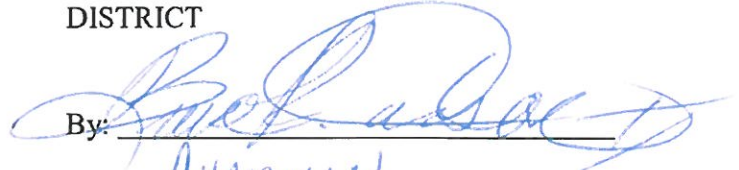
6.9. **Governing Law.** This Letter of Intent shall be governed by and construed in accordance with the internal substantive laws of the State of West Virginia.

6.10. **Severability.** If any of the terms or provisions of this Letter of Intent or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Letter of Intent and the application of such terms or provisions to other persons or circumstances shall not be affected thereby, but rather shall be enforceable to the greatest extent permitted by law.


6.11. **No Conflict.** Each Party represents and warrants that its entry into discussions regarding the Transactions and the entry into this Letter of Intent does not constitute a default under or result in a breach of any agreement to which it is a Party.

IN WITNESS WHEREOF, the Parties have executed this Letter of Intent effective the day and year first set forth above.


ARBUCKLE PUBLIC SERVICE  
DISTRICT

By:   
Its: CHAIRMAN

OAK HILL SANITARY BOARD

WILLIAM C. HANNABASS  
By:   
Its: CHAIRMAN

CITY OF OAK HILL

Fred W. Dickinson  
By:   
Its: MAYOR

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**Attachment 1**

**of**

**Letter of Intent**

**ARBUCKLE PUBLIC SERVICE DISTRICT**

*Contract Operations Analysis*

*Based on Fiscal Year Ended June 30, 2013  
and other historic and Current Planning Information*

*Griffith & Associates, pllc*

**Michael D. Griffith, CPA**

*on Behalf of the City of Oak Hill Sanitary Board*

*950 Little Coal River Road  
Alum Creek, West Virginia 25003  
email: mgriffith@gcorpwv.com  
Phone: (304) 756-3600; Facsimile: (304) 756-2911*

September 22, 2014

**Operation and Maintenance Expense Estimates**

Collection System

Labor and Transportation	40,000	<i>See Labor and Transportation Detail</i>
Supplies, etc.	8,000	<i>Estimated based on historic and Oak Hill experience</i>
Maintenance	8,000	<i>Estimated based on historic and Oak Hill experience</i>
<b>Collection System Expected Expenses</b>	<b>56,000</b>	

Pumping System

Labor and Transportation	32,000	<i>See Labor and Transportation Detail</i>
Supplies, etc.	8,000	<i>Estimated based on historic and Oak Hill experience</i>
Maintenance	60,000	<i>Estimated based on historic and Oak Hill experience</i>
Power	15,000	<i>Arbuckle actual plus expected rate increase</i>
Other/Misc.	2,000	<i>Estimate</i>
<b>Pumping System Expected Expenses</b>	<b>117,000</b>	

Treatment System

Labor and Transportation	25,000	<i>See Labor and Transportation Detail</i>
Supplies, etc.	12,000	<i>Estimated based on historic and Oak Hill experience</i>
Maintenance	5,000	<i>Estimated based on historic and Oak Hill experience</i>
Power	30,000	<i>Arbuckle actual plus expected rate increase</i>
Other/Misc. (Oak Hill)	45,000	<i>Arbuckle actual plus expected flow increase</i>
<b>Treatment System Expected Expenses</b>	<b>117,000</b>	

Billing/Collecting

Labor and Transportation	14,000	<i>See Labor and Transportation Detail</i>
Supplies, etc.	20,000	<i>Estimated based on historic and Oak Hill experience</i>
Maintenance	8,000	<i>Estimated based on historic and Oak Hill experience</i>
<b>Billing &amp; Collecting Expected Expenses</b>	<b>42,000</b>	

Oak Hill Administration

Labor and Transportation	14,000	<i>See Labor and Transportation Detail</i>
Supplies, etc.	1,000	<i>Estimate</i>
Other/Misc.	1,000	<i>Estimate</i>
<b>Oak Hill Administration Expected Expenses</b>	<b>16,000</b>	

PSD Administrative Costs

Board Fees, Etc.	6,000	<i>Estimate</i>
Insurance	8,000	<i>Historic plus projected increase</i>
PSC/DEP/Other Fees	5,000	<i>Historic</i>
General Legal	3,000	<i>Estimate</i>
General Accounting	3,000	<i>Estimate</i>
Audit	3,000	<i>Estimate</i>
<b>PSD Administrative Expected Expenses</b>	<b>28,000</b>	

Total O & M Projected

**376,000.00**

348,000 29,000 *monthly to Oak Hill*



**Labor and Transportation**

**Collection System**

Transportation	7,000	<i>Estimates based on anticipated travel times, etc.</i>
Labor	25,000	<i>Estimates on rough time estimates, see calculations</i>
Taxes, benefits, related	8,000	
<i>Collection System Labor and Transportation Expected</i>	<b>40,000</b>	

**Pumping System**

Transportation	6,000	<i>Estimates based on anticipated travel times, etc.</i>
Labor	20,000	<i>Estimates on rough time estimates, see calculations</i>
Taxes, benefits, related	6,000	
<i>Pumping System Labor and Transportation Expected</i>	<b>32,000</b>	

**Treatment System**

Transportation	5,000	<i>Estimates based on anticipated travel times, etc.</i>
Labor	15,000	<i>Estimates on rough time estimates, see calculations</i>
Taxes, benefits, related	5,000	
<i>Treatment System Labor and Transportation Expected</i>	<b>25,000</b>	

**Billing/Collecting**

Transportation	1,000	<i>Estimates based on anticipated travel times, etc.</i>
Labor	10,000	<i>Estimates on rough time estimates, see calculations</i>
Taxes, benefits, related	3,000	
<i>Billing / Collecting Labor and Transportation Expected</i>	<b>14,000</b>	

**Oak Hill Administration**

Transportation	1,000	<i>Estimates based on anticipated travel times, etc.</i>
Labor	10,000	<i>Estimates on rough time estimates, see calculations</i>
Taxes, benefits, related	3,000	
<i>Oak Hill Administration Labor and Transportation Expected</i>	<b>14,000</b>	

Total Labor & Transportation Projected **125,000.00**

Calculations - Labor, Benefits, Taxes, Hours

Oak Hill

FICA	7.65%			
PERS	14.50%			
Workers Comp	10.00%			
Unemployment	1.75%			
	<u>33.90%</u>			
Health		371.50	4,458.00	2.143
Dental		23.00	276.00	0.133
Vison		7.50	90.00	0.043
Per Hour				<u>2.319</u>

Average Hourly Pay per Unit		Taxes, etc.		plus Insurance	
Collection	13.61	33.90%	18.224	2.319	20.54
Pumping	12.60	33.90%	16.871	2.319	19.19
Treatment	18.77	33.90%	25.133	2.319	27.45
Billing/Admin	11.52	33.90%	15.425	2.319	17.74

Estimates of hourly labor with non listed costs such as training, etc and rounded:

Collection	20.54	say:	22.00
Pumping	19.19		21.00
Treatment	27.45		30.00
Billing/Admin	17.74		19.00

	<u>Monthly</u>	<u>Annual</u>	<u>Hrly Rate</u>	<u>Annual Estimate</u>
Collection Hours Estimated	150	1,800	22.00	39,600
Pumping Hours Estimated	125	1,500	21.00	31,500
Treatment Hours Estimated	75	900	30.00	27,000
Billing/Admin Hours Estimated	120	1,440	19.00	27,360

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**Sewer System Operation & Maintenance  
Agreement**

SEWER SYSTEM OPERATION AND MAINTENANCE  
AGREEMENT

This Operations and Maintenance Agreement ("O&M Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by and among the **Sanitary Board of the City of Oak Hill**(the "Board"), the **City of Oak Hill**(the "City"), a political subdivision of the State of West Virginia, and the **Arbuckle Public Service District** (the "District"), a public sewerutility within the State of West Virginia, (collectively, the "Parties"):

**WITNESSETH:**

**WHEREAS**, the District owns and operates a public sewersystem in accordance with the laws of the State of West Virginia, and is engaged in providing sewerservice in Fayette County, West Virginia, pursuant to authority granted by the Public Service Commission of West Virginia ("PSC"); and

**WHEREAS**, the Board is authorized to transact business in accordance with the laws of the State of West Virginia and is engaged in providing water and sewer service to various communities located within Fayette County in West Virginia, pursuant to authority granted the Board by the PSC; and

**WHEREAS**, the District and the Board are each engaged in or are preparing for various construction and improvement projects, including (1) stabilization of the District's wastewater treatment plant, (2) reduction of inflow and infiltration on the District's existing collection system, (3) decommissioning of the District's wastewater treatment plant, (4) expanding and upgrading the Board's wastewater transmission system and installation of a new pump station, and (5) other improvements to allow the Board to proficiently operate the Board's System (collectively, the "Projects"); and

**WHEREAS**, the Board intends to purchase from the District, and the District intends to sell to the Board all the assets of the District's System; and

**WHEREAS**, the Parties have determined that it is in the best interests of the public that the Board become the entity responsible for all operations and maintenance ("O&M") activities for the District's sewer system (the "District's System"); and the Board has agreed to provide O&M services for the District; and

**WHEREAS**, the Board and the District have determined it is in their best interests to enter into this O&M agreement;

**NOW THEREFORE**, in consideration of the recitals, the Parties do hereby agree as follows:

## A. FIELD OPERATIONS AND MAINTENANCE

1. Lawful Operations.The Board shall operate and maintain the District's System in accordance with all applicable state laws and regulations, to the extent possible with the current condition of the District's System.
2. Scope of Activities.The Board shall be responsible for all O&M activities related to the District's System, including, the following tasks:

All daily system operations, maintenance and repairs; new sewer service installations; billing and collection functions; responding to trouble calls; all system testing; line extensions; preparation of extension estimates; maintaining and updating system drawings; payment of electricity, water, gas, and insurance bills; system operation activities required by state and federal regulatory agencies; and any other activity necessary of a non-capital nature for the proper O&M of the District's System.

3. Additional Necessary Activities.The Board shall perform any other activity not specifically named above and not reserved as a responsibility of the District if it is deemed necessary for the proper operation and maintenance of the District's System in meeting regulatory reporting responsibilities, insuring public safety, or preventing violation of regulatory requirements.

## B. BILLING, RATES, REVENUES, AND COSTS

1. Rates.The Board and the District agree that all customers of the District shall be charged for sewer usage at the District's tariff rates, as amended from time to time, until closing occurs on the transfer of the District's sewer assets to the Board.
2. Billing and Related Activities.Within five days of the PSC's approval of this Agreement, the District will provide the Board with a complete and current list of the District's customers, in both hard copy and electronic formats. The Board shall assume responsibility for billing District customers, collecting payment (including, but not limited to, all acts related to terminating water service for non-payment of sewer service) and other office functions, including the preparation of materials for meetings of the board of directors of the District. The Board shall deposit all revenue received from District customers into the District's bank account on the same days as the Board deposits revenues from Board customers.
3. Business Management. The Board shall assume responsibility for administration of the general ledger and bank accounts of the District. The Board will review invoices from vendors, present invoices to the District for payment, prepare checks for execution by the District's chairman and secretary, and mail checks. The Board may request clarification from



vendors regarding invoices received. The Board shall make appropriate accounting entries in the general ledger of the District to reflect the financial activity of the District.

#### **C. TRANSITION AND POST-TRANSITION LIABILITY**

1. Transition Cooperation. The District and its employees shall cooperate and assist the Board in assuming its responsibilities under this O&M Agreement, including, but not limited to, transferring complete and current customer account information to Board employees, in hard copy and electronic formats, and performing a complete tour of the District's System with Board employees and contractors.
2. Employment. The Board shall not be obligated to hire or provide employment for any District employee.
3. Limitations on Liability. The Board and its insurers and the City and its insurers shall have no liability for any act or omission involving the District's System prior to the date of the Board's commencement of O&M services under this Agreement. In performing O&M services, the Board and its insurers and the City and its insurers shall only be liable for acts of gross negligence. The Board and its insurers and the City and its insurers shall have no liability for damages or injuries arising primarily from deficiencies in or malfunctions of the District's System.

#### **D. ONGOING RESPONSIBILITIES OF THE DISTRICT**

1. Scope of Ongoing Obligations. Unless and until otherwise agreed to in writing by the Board, the District shall remain exclusively responsible for the payment of the District's bond obligations, legal, accounting, engineering, District board member, and PSC fees.
2. Periodic Board Action. The board of directors of the District shall meet at least monthly and review, approve (as appropriate), and pay all payments due under the terms of its bonds in full and on time, all accounts payable in full and on time, including but limited to the O&M fee due to the Board. In the event the District is unable to pay any vendor (including, but not limited to, the Board) or meet any bond obligation, within thirty (30) days of the due date of any such payment or transfer, or fail to meet any of its bond covenants, or the Board's six-month financial report shows that the operation and maintenance fee should be increased, the District shall, within thirty (30) days of such an occurrence, file a petition with the PSC for a rate increase. The Board may also petition the PSC for an increase in the District's rates.
3. Operation and Maintenance Fee. The initial monthly operation and maintenance fee that the District shall pay to the Board is twenty-nine

thousand dollars (\$29,000.00). The Board shall track its costs in providing operation and maintenance services to the District and issue a financial report every six months regarding the cost of providing O&M services. After one year of operation under this O&M Agreement, the Board shall modify the O&M fee to one hundred five percent (105%) of the previous year's O&M costs. In the event the Board collects fee in excess of its costs of providing O&M services, the Board shall apply such excess fees to the District's outstanding indebtedness.

4. Capital Expenditures. Unless otherwise agreed by the Board in writing, the District shall be responsible for the cost of any capital expenditures, including, but not limited to, repair and replacement of equipment and facilities that are capitalized under generally accepted accounting practices ("GAAP").

#### **E. NOTIFICATIONS**

Any and all notifications required to be sent to the District, the Board, or the City under the terms of this agreement are to be mailed by certified mail with return receipt requested to the following addresses:

If to the District:

Arbuckle Park Public Service District  
Post Office Box 369  
Minden, West Virginia 25879

If to the Board:

Sanitary Board of the City of Oak Hill  
Post Office Box 1245  
Oak Hill, West Virginia 25901

If to the City:

City of Oak Hill  
Post Office Box 1245  
Oak Hill, West Virginia 25901

#### **F. OTHER**

1. Indemnification. The parties agree to indemnify and hold harmless each other for their respective activities pursuant to this O&M Agreement.
2. Regulatory Approval. The Board and the District will seek to obtain the consent to this agreement by the District's bondholders. This O&M Agreement shall be effective upon the PSC's consent after approval and execution by the District, the Board, and the City. The Board shall commence its responsibilities under this O&M Agreement thirty (30) days after the PSC's final order approving this O&M

Agreement, provided the PSC's final order is acceptable to the Board and the City. If the PSC's final order is unacceptable to the Board or the City, the Board or the City may terminate this O&M Agreement.

3. Duration. This O&M Agreement shall continue in effect for a period of time necessary to obtain approval or denial from the PSC for the Board to obtain ownership of the District's System.
4. Conditional Approval or Rejection. If the request for transfer of ownership of the District's System is denied by the PSC, or if the PSC attaches terms to the transfer of the District's System which are unacceptable to the City or the Board, this O&M Agreement will become null and void 60 days following the final order of the Commission. Thereafter, the Board will not provide the District with any operation, maintenance or management services.
6. Binding Agreement. This O&M Agreement shall be binding on the Parties, and their respective members, officers, employees, agents, successors, and assigns.
7. Assignability. This O&M Agreement shall not be assigned by any party without the prior written approval of the other parties.
8. Entire Agreement. This O&M Agreement is the entire O&M Agreement between the Parties and the Parties to this O&M Agreement have been represented by counsel with regard to this O&M Agreement, and all provisions of this O&M Agreement have been fully negotiated. This O&M Agreement constitutes the sole, final, and entire O&M Agreement and understanding among the Parties, and they shall not be bound by any terms, conditions, statements, or representations, oral or written, not contained in this O&M Agreement. This O&M Agreement may not be changed orally, but only by an agreement, in writing, executed by all Parties. This O&M Agreement shall be governed by and interpreted in accordance with the laws of the State of West Virginia and if any provisions of this O&M Agreement shall for any reason be held invalid or unenforceable by any Court, governmental agency, or arbitrator of competent jurisdiction, such invalidity or unenforceability shall not affect any other provision, and this O&M Agreement shall be construed as if such invalid or unenforceable provision had never been contained therein.
9. District's Representations and Warranties. The District represents and warrants to the Board that the execution, delivery and performance of this O&M Agreement by the District has been duly authorized by vote of the District's board of directors and this O&M Agreement constitutes a valid and binding obligation of the District enforceable in accordance with its terms,



and the execution and performance of this O&M Agreement by the District will not violate any provision of the law or violate any instruments in relating to the operation and maintenance of the District's System.

10. Board's Representations and Warranties. The Board represents and warrants to District that the execution, delivery and performance of the O&M Agreement by the Board has been duly authorized by the Board, and this O&M Agreement constitutes a valid and binding obligation of the Board enforceable in accordance with its terms, and the execution and performance of this O&M Agreement by the Board will not violate any provisions of the law or violate any provisions of any instruments or contracts relating to the Board's operations.
  
11. Not Effective Before Approval. This O&M Agreement will not be effective until such time as West Virginia Public Service Commission approval has been obtained.
  
12. Conditions Precedent to Filing. The Board shall file this O&M Agreement with the PSC for approval only after all the Projects have been deemed technically feasible and funding sources and projected post-project rates acceptable to the Board have been identified for each and every one of the Projects. If any of the Projects are not deemed technically feasible or the identified funding sources for any of the Projects are not acceptable to the Board, then the Board shall be under no obligation to assume any operation or maintenance responsibilities for the District's System. In the event the PSC attaches conditions in its orders or the application for approval of this O&M Agreement which are unacceptable to the Board or the City, the Board and the City reserve the right to terminate this O&M Agreement and any related agreements.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement by their appropriate officers as of the day and year first above written.

**Sanitary Board of the City of Oak Hill**

By \_\_\_\_\_

ATTEST: \_\_\_\_\_

Its: President

Secretary

**City of Oak Hill**



By \_\_\_\_\_

Its: Mayor

ATTEST: \_\_\_\_\_

Secretary

**Arbuckle Public Service District**

By \_\_\_\_\_

Its: Chairman

ATTEST: \_\_\_\_\_

Secretary

Oct. 20 Bowles Rice Draft

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## **Asset Purchase and Sale Agreement**

**ASSET PURCHASE AND SALE AGREEMENT**

Asset Purchase and Sale (“Purchase Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between the **ARBUCKLE PUBLIC SERVICE DISTRICT**, a public sewer utility operating in Fayette County, West Virginia, (the “District”), the **SANITARY BOARD OF THE CITY OF OAK HILL** (the “Board”), and the **CITY OF OAK HILL**, a political subdivision of the State of West Virginia (the “City”).

**WITNESSETH:**

**WHEREAS**, the District owns and operates a public wastewater collection and treatment system (the “Sewer System”) in accordance with the laws of the State of West Virginia, currently providing service to approximately \_ customers in Fayette County, West Virginia, pursuant to authority granted by the Public Service Commission of West Virginia (“PSC” or the “Commission”); and

**WHEREAS**, the Board is authorized to transact business in accordance with the laws of the State of West Virginia and is engaged in providing water and sewer service to various communities located within Fayette County in West Virginia, pursuant to authority granted the Board by the PSC; and

**WHEREAS**, the District and the Board are each engaged in or are preparing for various construction and improvement projects, including (1) stabilization of the District’s wastewater treatment plant, (2) reduction of inflow and infiltration on the District’s existing collection system, (3) decommissioning of the District’s wastewater treatment plant, (4) expanding and upgrading the Board’s wastewater transmission system and installation of a new pump station, and (5) other improvements to allow the Board to proficiently operate the Board’s System (collectively, the “Projects”); and

**WHEREAS**, the Board is willing and desires to acquire the assets of the District in order to continue serving the current customers of the District's Sewer System, as well as provide for future growth and expansion in Fayette County; and

**WHEREAS**, the District is willing and desires to sell the assets of the District to the Board;

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants as contained herein, the parties agree as follows:

Section 1. CONSIDERATION

Purchase Price. The Board hereby agrees to purchase from the District and the District hereby agrees to sell to the Board, for a total purchase price of one dollar (\$1.00) (the "Purchase Price") and upon the terms and conditions hereinafter set forth, the assets constituting the Sewer System, including all lands, easements, rights-of-way, permits, rights, and other tangible and intangible assets owned or held by the District and used or useful in providing sewer services to the customers of District, except as specifically exempted and reserved as provided herein. The property and facilities to be conveyed by the District to the Board (the "Acquisition Items") are more specifically described in Exhibits attached to and incorporated herein by reference:

- Exhibit A      Tangible and Intangible Personal Property Associated with Sewer System
- Exhibit B      Real Property Interests and Improvements thereon, Including Leaseholds, Rights-of-Way, Easements and Other Interests in Real Property Associated with Sewer System
- Exhibit C      Liabilities of the District to be Assumed by the Board
- Exhibit D      Permits
- Exhibit E      Agreements made by the District to be Assumed by the Board



Section 2. OPERATION OF SEWER SYSTEM PRIOR TO EXECUTION OF AN OPERATION AND MAINTENANCE AGREEMENT. Until an operation and maintenance agreement among the Board, the City, and the District is signed and approved by the PSC day-to-day operation of the Sewer System shall continue to be the responsibility of the District.

Section 3. FINAL METER READING AND BILLING. ~~At the Closing, the District will provide the Board with a complete and current list of the District's Sewer System customers, in both hard copy and electronic formats.~~ The final meter reading by the District and billing to the customers before Closing will occur on or about its regular time, after which time the Board will assume all responsibility for meter reading, billing, and collecting. The Board shall retain the District's customer records which it received and has used pursuant to the Operations and Maintenance Agreement. The District will be entitled to retain the balance in its sewer revenue account and all revenue for service rendered on or before the day of final meter reading. The Board will be entitled to all revenue for service rendered after final meter reading. The Board will retain as an offset against any liabilities owed to the Board by the District any late payments it receives from customers for service periods prior to the final meter read. If there are no such liabilities the Board shall remit such payments to the District.

Section 4. ASSUMPTION AND NONASSUMPTION OF LIABILITIES. The District and the Board expressly agree that the Board is assuming only those liabilities, obligations and debts of the District listed in Exhibits C & E. The Board will be responsible for (i) the obligation to make refunds under routine extension agreements between the District and customers for as long as, and to the same extent as, the District would have been obligated if the District had continued to own the Sewer System, (ii) refunding any security deposits collected by the District from customers of the Sewer System, and (iii) assuming the rights, duties and obligations of the District for the agreements disclosed on Exhibit E hereto. With

regard to the electric service accounts associated with the Sewer System, the District shall arrange to have the electric meters read as close to Closing as possible. The District shall be responsible for the cost of electric service incurred as of the date of the final electric meter readings while the Board shall be responsible for the cost of electric service incurred after the final electric meter readings. The Board is not assuming any liabilities or debts owed to vendors, consultants, attorneys, engineers, accountants, suppliers, governmental entities, repairmen and contractors except as shown on Exhibit C.

Section 5. REQUIRED APPROVAL.

The District shall act upon this Purchase Agreement at a duly noticed meeting in compliance with *W.Va. Code § 16-13A-18a*. The Board will seek the Fayette County Commission's approval of this Purchase Agreement, as required by *W.Va. Code § 16-13A-18a*. Following the obtaining of such approvals, in conjunction with the filing of an application to the Commission for a certificate of convenience and necessity, the Board shall file an application to the PSC for consent and approval of the Purchase Agreement. [The Board and the District will seek to obtain the consent to this agreement by the District's bondholders.](#)

Section 6. COOPERATION OF PARTIES. The District and the Board agree to cooperate fully with one another and with third parties to ensure that all required filings are made, notices given when needed, consents granted or obtained and in taking all such actions as may be necessary to timely seek and obtain all approvals or waivers required to consummate the acquisition.

Section 7. CLOSING.

(a) Title Defects. The Board shall cause to be prepared a title opinion prepared by a West Virginia licensed attorney identifying any and all deficiencies in title and encumbrances of any kind pertaining to all real property required for the lawful ownership and operation of the

Sewer System. The District shall, at its expense, cure any deficiencies in title identified by the Board. If the District is unable to cure any defects of title, then the Board shall do so with the District's cooperation and assistance subject to the cost of such actions to cure title being included in a surcharge imposed upon the customer of the District after closing.

(b) Timing.Closing of the transaction contemplated by this Agreement shall take place at a mutually agreeable time and place after the issuance by the PSC of a final, non-appealable order approving the acquisition on the terms and conditions set forth herein and acceptable to the Board and the City. ("Closing"). The Closing shall occur as promptly as possible after satisfaction or waiver of all conditions precedent, and the Parties shall use their commercially reasonable best efforts to cause the Closing to occur within sixty (60) days of approval by the Commission, provided the Commission final order approving the transaction is acceptable to the Board and the City.

Section 8. DELIVERIES AT CLOSING.At Closing, the District shall convey to the Board the Sewer System described in the exhibits attached hereto, by executing and delivering to the Board deeds, assignments, and/or bills of sale, as appropriate, for all of the real and personal property and rights associated with the Sewer System, including, but not limited to, all property and rights identified and described in the exhibits attached to this Agreement. The Board shall prepare the conveyance documents and its expense.

Section 9. REPRESENTATIONS, WARRANTIES AND COVENANTS BY THE DISTRICT. The District represents and warrants to and covenants with the Board that as of the date of execution of this Purchase Agreement (unless otherwise stated below) and as of the Closing:

(i) Right to Convey.Subject to obtaining the approvals of the Fayette County Commission and the PSC, theDistrict has the lawful right, power and authority and



capacity to sell the assets to be conveyed pursuant to this Purchase Agreement in accordance with the terms, provisions and conditions of this Purchase Agreement;

(ii) Clear Title.The District is the owner of good and marketable fee simple title to the assets to be conveyed pursuant to this Purchase Agreement, and such assets will be conveyed free and clear of all liens, encumbrances or claims other than as provided herein;

(iii) Assets Free of Encumbrances.On the date of Closing there will be no claims, actions, judgments, bankruptcies, liens, executions, suits, decrees, proceedings or orders presently pending or threatened against, by or affecting the District relating to the assets to be conveyed pursuant to this Agreement, nor is there any litigation nor any other proceedings (including condemnation or similar proceedings) before any court or government or administrative department, commission, bureau, board or agency, domestic or foreign, which threaten or affect the assets to be conveyed pursuant to this Purchase Agreement or which may, in any one case or in the aggregate, result in any material decrease in the value of, or constitute a lien or claim against, the Sewer System;

(iv) Duly Authorized Agreement.This Purchase Agreement has been duly authorized, executed and delivered by the District and is a valid and legal obligation of the District;

(v) Financial Information.The books and records of the District relating to the Sewer System (the "Financial Information") are correct and complete in all material respects, present fairly the results of operations included in such Financial Information and do not omit any information necessary to make such Financial Information misleading;

(vi) Violations of Law.Except as can be found in the publicly available records of the West Virginia Department of Environmental Protection ("DEP"), to the best of the



District's knowledge, the Sewer System is not constructed, and is not occupied, used or operated in violation of, or is otherwise in violation of, and the District has received no notice of any violations or potential violation of, any zoning, building, health, environmental, or other laws, codes, ordinances, regulations, orders or requirements of any city, county, state, federal or other governmental authority having jurisdiction thereof, or any private restrictive covenants affecting the Sewer System, and all certificates, licenses, permits, authorizations, consents and approvals required by any such governmental authority for the continued use, occupancy and operation of the Sewer System have been obtained, are paid for and are free of restrictions;

(vii) Operation in the Normal Course of Business Only. From the date of this Purchase Agreement until Closing, the District will not sell, convey, lease or in any other way dispose of any of the assets to be conveyed pursuant to this Purchase Agreement, except in the ordinary course of business;

(viii) Condition of Assets. Except for any assets of the District specifically excluded from conveyance to the Board hereunder, all improvements, machinery, equipment, tools, furniture and other fixed tangible assets of the Sewer System are in good operating condition and repair, reasonable wear and tear excepted, and are necessary to the continued operation of the Sewer System by the Board substantially in the manner as it was conducted prior to the date of this Purchase Agreement and the date of the Closing;

(ix) No Breach of Representations or Warranties. The District will not cause or permit any action to be taken which will cause any of the foregoing representations, warranties and covenants to be untrue or unperformed on the date of the Closing;

(x) Deliveries at Closing. The District will deliver at Closing all documents and instruments required by this Purchase Agreement and perform all acts necessary or appropriate for the consummation of the Acquisition; and

(xi) Post-Closing Employment.The District acknowledges and agrees that, the Board, in entering into this Purchase Agreement, is not obligated to use, employ or hire any of the District's officers, agents or employees and that, the Board does not accept any responsibility for any contractual or legal obligations that the District might have to any officers, agents or employees.

Section 10. REPRESENTATIONS, WARRANTIES AND COVENANTS BY THE BOARD. The Board represents and warrants to and covenants with the District that as of the date of the execution of this Purchase Agreement and as of Closing:

(i) Valid Existence.The Board is a public utility operating under the authority of the City, a public corporation and political subdivision of the State of West Virginia;

(ii) Right to Purchase.The Board has the lawful right, power and authority and capacity to purchase the assets to be conveyed pursuant to this Purchase Agreement in accordance with the terms, provisions and conditions of this Purchase Agreement;

(iii) No Breach of Representations or Warranties.The Board will not cause or permit any action to be taken which will cause any of the foregoing representations, warranties and covenants to be untrue or unperformed on the date of the Closing;

(iv) Duly Authorized Agreement.This Purchase Agreement has been duly authorized, executed and delivered.

Section 11. PUBLIC SERVICE COMMISSION FILING AND APPROVAL.

The Board shall file this Purchase Agreement with the Commission for approval in conjunction with the filing of one or more applications for a certificate of convenience and necessity for one or more of the Projects. Binding commitment letters for funding for the Projects on terms acceptable to the Board shall be received before the Board is obligated to file any application to the Commission or move forward with the acquisition of the Acquisition

Items. In the event the Commission attaches conditions to its orders approving the acquisition which are unacceptable to the City or the Board, the City and the Board reserve the right to terminate this Agreement and any related agreements. The post-acquisition rate to District customers will be the same as the City's rate except that two surcharges shall also apply. A per-thousand gallon surcharge will apply to District Customers for a ten-year period from the date of Closing to enable the City to pay for the title opinion required to close on the acquisition and clear any deficiencies of title if the District is unable to do so, increased expenses attributable to the District's prior delinquencies in payments to the USDA RUS, any outstanding accounts payable to the District at the time of the closing, repayment of amounts due to the Fayette County Commission for grants associated with the Projects, any deficiency in payment by the District to the City for operation and maintenance services, and any fines and the cost of any remedial actions required related to the District System. The amount of the per-thousand gallon surcharge may change over the ten-year period. The Board may also impose a per customer surcharge to the former customers of the District for a 10 year period from the date of closing on project financing to recover the debt service costs of the District's inflow and infiltration project, [and the incremental increase to the Board's debt service from the Expanded Project as compared to the Board's 2013 project which was the subject of PSC Case No. 13-1487-S-CN.](#)

Section 12. ACCESS TO BOOKS, RECORDS, FACILITIES AND ASSETS.

Between the date hereof and Closing, the Board shall have the right to examine, and to obtain copies of, all books and records of the District relating to the Sewer System operations and the assets being conveyed under this Purchase Agreement and to inspect and inventory the assets being conveyed under this Purchase Agreement, including any physical plants and all materials, supplies, spare parts, and the like, of the District used in the operations of the Sewer System at such reasonably convenient times as the Board may require. In the event the transactions



contemplated by this Purchase Agreement are not consummated, all of such copies and inventories shall be promptly returned to the District.

Section 13. NOTICES. Any notice to be given hereunder shall be given by, and deemed given when, delivered by personal delivery, deposited in U.S. mail, postage prepaid and return receipt requested, addressed as follows (or at such other address as the Board, the City, or the District may in writing direct):

Sanitary Board of the City of Oak Hill  
Post Office Box 1245  
Oak Hill, West Virginia 25901

City of Oak Hill  
Post Office Box 1245  
Oak Hill, West Virginia 25901

Arbuckle Public Service District  
Post Office Box 369  
Minden, West Virginia 25879

Section 14. AMENDMENTS. No amendments to this Purchase Agreement shall be effective until reduced to writing and executed by all of the parties hereto.

Section 15. FORCE MAJEURE. If the performance by either party of any of the covenants or agreements contained herein is delayed or prevented for reasons beyond the control of that party, such as an act of God, act of war, strike, lockout, restraint of labor from whatever cause, either partial or general, riot or civil commotion, order of court or administrative tribunal having jurisdiction over either party hereto, then and in any of those events, that party shall be excused from such performance to the extent that it is necessarily prevented, hindered or delayed thereby, during the continuance of any such happening or event and the time for such performance shall be extended commensurate with such delays, provided, however, that the party claiming an excuse from performance under this section shall notify the other party in



writing of the occurrence of any such event of force majeure within a reasonable time after it becomes known.

Section 16. EXECUTION IN COUNTERPARTS. This Purchase Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute but the same document.

Section 17. CONDITIONS PRECEDENT TO EFFECTIVENESS OF AGREEMENT.

The obligations of the Parties to consummate the transaction are contingent upon:

(i) Governing Body Approval. Acceptance and approval of the transaction, this Purchase Agreement, and all related agreements by all necessary parties, including, without limitation, each Party's governing board.

(ii) Regulatory Approval. Approval of the transaction by, and the giving of all required notices to, all federal, state, and local governmental regulatory entities or authorities having jurisdiction.

(iii) Assignment and Assumption of District Debt. Approval of the District's bondholders to the assignment by the District and the assumption by the Board of the rights and obligations arising under the District's bonds.

(iv) Acceptable Funding. Identification by funding agencies of funding on terms acceptable to the Board and the City for the Projects.

Section 18. TERMINATION. The Board and the District each reserve the right to terminate unilaterally this Purchase Agreement should either, in its sole judgment, determine that consummation of the acquisition is unlikely. The Board and the District agree that a decision by either party to exercise its unilateral right to terminate this Purchase Agreement will not result in the exercising party being liable to the non-exercising party for any alleged damage, loss or injury that may result from termination of this Purchase Agreement.

Section 19. INDEMNIFICATION. The Board and the District each agree to indemnify and hold harmless the other from and against, and will pay and reimburse the other for, any and all losses incurred or suffered by the Board or the District directly or indirectly arising out of, relating to, or resulting from any material inaccuracy in or breach of any representation or warranty contained in this Purchase Agreement or any material nonperformance or other breach of any covenant or agreement contained in this Purchase Agreement.

Section 20. GOVERNING LAW. The parties hereto understand and agree that this Purchase Agreement shall be governed by and construed in accordance with laws of the State of West Virginia.

IN WITNESS WHEREOF, the Board has caused this Purchase Agreement to be executed by its duly authorized Chairman, the District has caused this Purchase Agreement to be executed by the duly authorized chairman of its board of directors, and the City has caused this Purchase Agreement to be executed by its duly authorized Mayor, all as of the day and year first above written.

**SANITARY BOARD OF THE CITY OF OAK HILL**

\_\_\_\_\_  
By: William C. Hannabass  
Its: Chairman

**CITY OF OAK HILL**

\_\_\_\_\_  
By: Fred W. Dickinson  
Its: Mayor

**ARBUCKLE PUBLIC SERVICE DISTRICT**

\_\_\_\_\_  
By: Bruce Carson  
Its: Chairman

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_; to-wit:

The foregoing instrument was acknowledge before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Bruce Carson, Chairman of the Arbuckle Public Service District, on behalf of said entity

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

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

[SEAL]

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_; to-wit:

The foregoing instrument was acknowledge before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by William C. Hannabass, Chairman of the Sanitary Board of the City of Oak Hill, onbehalf of said entity.

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

\_\_\_\_\_

Notary Public

[SEAL]

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_; to-wit:

The foregoing instrument was acknowledge before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Fred W. Dickinson, Mayor of the City of Oak Hill, on behalf of said entity.

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

\_\_\_\_\_

Notary Public

[SEAL]

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## Exhibit A

### Tangible and Intangible Personal Property

- 4 Office Computers
- 2 Printers
- 1 Fax/Printer
- Miscellaneous office furniture
  
- Drying Bed with Canopy
  
- 2005 GMC Sierra Truck
- 1999 Aquatech Flusher
- 1990 Case Backhoe
- Troy Built Riding Lawn Mower
  
- Sewer Deposit Account - Balance at date of closing
- Sewer Renewal and Replacement Account - Balance at date of closing
- Sewer Debt Service Reserve Account - Balance at date of closing

## Exhibit B

Real Property Interests and Improvements thereon related to the following:

- Office Structure with basement garage
- Office storage building
- 5 Lift Stations
- Utility Garage
- Storage building for chlorine
- Collection plant and sewers
- system pumping plant
- treatment and disposal plant

## Exhibit C

### Liabilities to be assumed

- RUS Loan No. 9202 Balance as of date of closing
- RUS Loan No. 9203 balance as of date of closing
  
- Doss Electric Balance as of date of closing

## Exhibit D

### Permits

- NPDES Permit # \_\_\_\_\_



## Exhibit E

Agreements to be assumed