BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:

DARRELL PAULEY

COMPLAINT NO. CIC 2014-006

CONCILIATION AGREEMENT

The West Virginia Ethics Commission and Thomas D. Pauley ("Respondent") freely and voluntarily enter into the following Conciliation Agreement pursuant to West Virginia Code § 6B-2-4(s) to resolve all potential charges arising from allegations in the above-referenced Complaint.

FINDINGS OF FACT

1. Respondent Thomas D. Pauley served, at all pertinent times herein, as an employee of the Union Public Service District ("PSD").

2. The PSD entered into a construction contract with Breckenridge Construction Company of Buckhannon, West Virginia, in July 2009, for the upgrade and revitalization of the PSD's 40th Street Wastewater Treatment Plant ("40th Street Plant").

3. The construction at the 40th Street Plant was completed in or about July 2011.

4. As part of the upgrade project, certain equipment being replaced with new equipment as part of the construction project was moved to the PSD's Rocky Fork Plant during the construction at the 40th Street Plant.

5. This equipment included a generator and a Flygt submersible pump.

6. The generator and the Flygt submersible pump, along with other equipment, were stored at the Rocky Fork Plant for approximately one year after the completion of the construction at the 40th Street Plant.

7. The generator and the pump were listed for sale on eBay on the account of William Ashley.

8. Respondent contends that the generator and submersible pump, and other equipment listed for sale on eBay were owned by the contractor, Breckenridge Construction, and that he was given permission to sell it by his supervisor.

9. The Ethics Commission's investigation revealed that Breckenridge Construction denied that it owned the equipment at any time and Respondent avers that the ownership of the equipment is in dispute.

10. The generator was sold for $9,000.00 through the eBay listing.

11. The proceeds of the sale were distributed among certain employees rather than placed into the PSD's general fund.

12. Respondent Pauley personally received $900.00 from the sale of the generator.

13. The Flygt submersible pump was sold for $5,500.00 through the eBay listing.

14. Respondent received no monies from the sale of the Flygt submersible pump. The Commissioners for the Union PSD learned of the sale of the generator and the Flygt submersible pump on March 21, 2013.

15. Respondent paid $900.00 to the PSD which he received from the sale of the generator.

16. The Complaint was referred to the Commission's Probable Cause Review Board, which ordered the issuance of a Notice of Investigation (NOI). The Executive Director issued the NOI on May 8, 2014.

17. Respondent has fully cooperated with the Ethics Commission staff throughout the investigation and conciliation process.

18. The Respondent denies all allegations in the complaint not specifically admitted herein.

RELEVANT LEGAL PROVISION

W.Va. Code § 6B-2-5(b) provides:

> (1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in *de minimis* private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

CONCILIATION OF VIOLATION

I, Thomas D. Pauley, deny that I intentionally violated the West Virginia Governmental Ethics Act; however, I acknowledge that knowing what I know now about the Ethics Act, I violated the Ethics Act. I acknowledge that even if given permission from a supervisor, the Ethics Act prohibits a public employee from selling equipment from a public job location and receiving proceeds therefrom.

In Order to resolve this matter, I enter into this Agreement. For this Conciliation Agreement to be finalized, the Commission must approve the Agreement and must further determine which sanctions to impose. In consideration for the settlement of this matter, I agree to the Commission's imposition of the following sanctions:

1. Fine of $150.00; and
2. Training regarding the West Virginia Ethics Act by viewing the training provided on the Ethics Commission's website, *www.ethics.wv.gov*, or otherwise provided by the Ethics Commission, within 90 days of the entry of the Order of the Ethics Commission adopting this Agreement. I shall notify the Commission in writing upon my completion of this training.

I understand and agree that if the Ethics Commission fails to approve this Conciliation Agreement, then this Conciliation Agreement is null and void and the complaint will be referred back to the Probable Cause Review Board, where the Complaint will continue to be processed in accordance with the West Virginia Code and the Ethics Commission's Legislative Rules.

If the Ethics Commission approves this Agreement, it will enter an Order in which it approves the Agreement and sets forth the sanctions listed above.

Both parties understand that, pursuant to W.Va. Code § 6B-2-4(s), the Conciliation Agreement and Commission Order must be made available to the public.

Date: 5/7/15

Robert J. Wolfe, Chairperson
W.Va. Ethics Commission

Date: 5-5-2015

Darrell E. Pauley, Respondent

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

In Re:
DARRELL E. PAULEY **CIC No: 2014-006**

COMMISSION'S ORDER

After considering the foregoing FINDINGS OF FACT, RELEVANT LEGAL PROVISION and CONCILIATION OF VIOLATION, the West Virginia Ethics Commission finds that the Conciliation Agreement is in the best interest of the State and the Respondent as required by W.Va. Code § 6B-2-4(s). In accordance with W.Va. Code § 6B-2-4(r), the Commission imposes the following sanctions:

1. Training regarding the West Virginia Ethics Act either in person or by viewing the training provided on the Ethics Commission's website, www.ethics.wv.gov, within 90 days of the entry of the Order of the Ethics commission adopting this Agreement. Respondent shall notify the Commission, in writing, upon completion of this training, and

2. A fine in the amount of $150.00, to be paid by June 15, 2015.

5/7/15
Date

Robert J. Wolfe
Robert J. Wolfe, Chairperson
WV Ethics Commission