



Office of the City Clerk

The City of Morgantown

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**AGENDA
MORGANTOWN CITY COUNCIL
REGULAR MEETING
February 5, 2013
7:00 p.m.**

1. **CALL TO ORDER**
2. **ROLL CALL BY CITY CLERK**
3. **PLEDGE TO THE FLAG**
4. **APPROVAL OF MINUTES:** Regular Meeting – January 15, 2013
Special Meeting – January 29, 2013
5. **CORRESPONDENCE:**
 - A. HOME RULE PRESENTATION
6. **UNFINISHED BUSINESS:**
 - A. BOARDS AND COMMISSIONS
7. **SPECIAL COMMITTEE REPORTS**
8. **NEW BUSINESS:**
 - A. Consideration of APPROVAL of FIRST READING of AN ORDINANCE AMENDING ARTICLE 367 “PARKING DISTRICTS” OF THE CITY OF MORGANTOWN TRAFFIC CODE AS IT PERTAINS TO THE PROMULGATION OF RULES RELATING TO THE ESTABLISHMENT OF PETITION, FEASIBILITY STUDY, AND ADMINISTRATIVE RECOMMENDATION PROCESSES; PARKING PERMIT TYPES; AND, PARKING PERMIT FEES.

- B. Consideration of APPROVAL of FIRST READING of AN ORDINANCE PROVIDING FOR THE ELIMINATION OF THE “ISOD, INTERSTATE SIGN OVERLAY DISTRICT” FROM THE OFFICIAL ZONING MAP OF THE CITY OF MORGANTOWN SO THAT THE BOUNDARIES OF SAME MAY BE DEFINED AND DESIGNATED BY DESCRIPTION IN ARTICLE 1359 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.**
- C. Consideration of APPROVAL of FIRST READING of AN ORDINANCE AMENDING ARTICLE 1329.02 “DEFINITIONS” OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS IT PERTAINS TO “BILLBOARD SIGN” AND “POLE SIGN”.**
- D. Consideration of APPROVAL of FIRST READING of AN ORDINANCE AMENDING ARTICLE 1359 “ISOD, INTERSTATE SIGN OVERLAY DISTRICT” OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE.**
- E. Consideration of APPROVAL of FIRST READING of AN ORDINANCE AMENDING TABLE 1369.06.01 “PERMITTED SIGNS” OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS IT PERTAINS TO BILLBOARD SIGNS.**
- F. Consideration of APPROVAL of FIRST READING of AN ORDINANCE AMENDING TABLE 1369.09.01 “FREESTANDING SIGN HEIGHT LIMITS” OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS IT PERTAINS TO BILLBOARD SIGNS.**
- G. Consideration of APPROVAL of FIRST READING of AN ORDINANCE AMENDING ARTICLE 1369.10 “PROHIBITED SIGNS AND DEVICES” OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS IT PERTAINS TO BILLBOARD SIGNS.**
- H. Consideration of APPROVAL of FIRST READING of AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 1512.05 OF ITS FIRE PREVENTION CODE, AS THE SAME APPLIES TO MALICIOUS BURNING.**

- I. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 121.04 OF ITS ADMINISTRATIVE CODE, AS THE SAME APPLIES TO THE ORDER OF PROCEDURE FOR COUNCIL MEETINGS; MORE PARTICULARLY, THE LOCATION OF THE “PUBLIC PORTION” UPON THE CITY COUNCIL MEETING AGENDA.**
- J. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 163.03 OF ITS ADMINISTRATIVE CODE AS THE SAME APPLIES TO MEMBERSHIP OF THE URBAN LANDSCAPE COMMISSION.**
- K. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 172.02 OF ITS ADMINISTRATIVE CODE AS THE SAME PERTAINS TO QUALIFICATIONS FOR MEMBERSHIP ON THE MORGANTOWN SISTER CITIES COMMISSION.**
- L. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE AUTHORIZING A LEASE AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN, LESSOR, AND BJK AVIATION, LLC. LESSEE, IN WHICH OFFICE SPACE, SPECIFICALLY SUITES 235 AND 241, ARE BEING LEASED AT THE MORGANTOWN MUNICIPAL AIRPORT FOR THE PURPOSE OF OPERATING A FLIGHT TRAINING CONCESSION.**
- M. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE AUTHORIZING A LEASE AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN, LESSOR, AND AC EXPRESS, INC., LESSEE, IN WHICH OFFICE SPACE, SPECIFICALLY SUITE 229, IS BEING LEASED AT THE MORGANTOWN MUNICIPAL AIRPORT FOR THE PURPOSE OF OPERATING A CHARTER FLIGHT CONCESSION.**
- N. Consideration of **APPROVAL** of **A RESOLUTION AUTHORIZING THE EXECUTION OF A GOVERNOR’S COMMUNITY PARTICIPATION GRANT, FUNDS FOR USE BY MOUNTAINFEST, LLC., FOR THE MOUNTAINFEST MOTORCYCLE RALLY.**
- O. Consideration of **APPROVAL** of **A RESOLUTION AUTHORIZING THE EXECUTION OF A GOVERNOR’S COMMUNITY PARTICIPATION GRANT, FUNDS FOR USE FOR THE MORGANTOWN MARKETPLACE PROJECT.**

- P. Consideration of **APPROVAL of A RESOLUTION AUTHORIZING THE EXECUTION OF A GOVERNOR'S COMMUNITY PARTICIPATION GRANT, FUNDS FOR USE FOR THE COLONEL ZACKQUILL MORGAN STATUE PROJECT.**
- Q. Consideration of **APPROVAL of A RESOLUTION AUTHORIZING THE EXECUTION OF A GOVERNOR'S COMMUNITY PARTICIPATION GRANT, FUNDS FOR USE FOR THE MEMBERS OF DIVERSITY ORGANIZATION.**
9. **PUBLIC PORTION WHICH SHALL BE SUBJECT TO RULES ESTABLISHED BY COUNCIL AND ADOPTED BY RESOLUTION**
10. **CITY MANAGER'S REPORT:**
- NEW BUSINESS:**
1. Bid Result Report for Public Works 4x4 Rubber Tire Backhoe
 2. Capital Escrow Capital Lease Purchase of Fire Department Vehicles
11. **REPORT FROM CITY CLERK**
12. **REPORT FROM CITY ATTORNEY**
13. **REPORT FROM COUNCIL MEMBERS**
14. **EXECUTIVE SESSION: PURSUANT TO SECTION 6-9A-4(B)(9) OF THE WEST VIRGINIA STATE CODE TO CONSIDER MATTERS INVOLVING OR AFFECTING THE PURCHASE, SALE OR LEASE OF PROPERTY, ADVANCE CONSTRUCTION PLANNING, THE INVESTMENT OF PUBLIC FUNDS OR OTHER MATTERS INVOLVING COMMERCIAL COMPETITION, WHICH IF MADE PUBLIC, MIGHT ADVERSELY AFFECT THE FINANCIAL OR OTHER INTEREST OF THE CITY.**
15. **ADJOURNMENT**

If you need an accommodation contact us at 284-7439

REGULAR MEETING, JANUARY 15, 2013: The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers of City Hall on Wednesday, January 2, 2013 at 7:00 P.M.

PRESENT: City Manager Terrence Moore, Deputy City Manager Jeff Mikorski, City Attorney Steve Fanok, City Clerk Linda Little, Mayor Jim Manilla and Council Members: Ron Bane, Wes Nugent, Jenny Selin, Marti Shamberger, Bill Byrne, and Linda Herbst.

APPROVAL OF MINUTES: The minutes of the Regular Meeting of January 2, 2013 were approved as printed.

CORRESPONDENCE: Mayor Manilla presented a proclamation to Coach Tom Yester of MHS in honor of his 600th win as head basketball coach.

UNFINISHED BUSINESS:

BOARDS AND COMMISSIONS: After discussion, by consensus of Council, consideration of the removal of the Chamber of Commerce seat on the Urban Landscape Commission shall take place at the Committee of the Whole meeting on January 29, 2013.

SPECIAL COMMITTEE REPORTS: None.

PUBLIC PORTION:

Don Price, 251 Wagner Road, addressed Council on the issues of Charter change and read an extensive statement regarding his view of the matter. Mr. Price presented his statement to the City Clerk for inclusion in the record. That statement shall be hereto attached.

Randy Jones, WVU SGA Liaison, updated Council on the upcoming priorities for the Student Government Association.

Mayor Manilla announced Ross Lavelle from Boy Scout Troop 65 who is in attendance to earn a merit badge for civic engagement.

There being no other appearances, Mayor Manilla declared the public portion closed.

CITY MANAGERS REPORT:

NEW BUSINESS:

1. Authorization of Fire Equipment Purchase Recommendations

Motion by Byrne, second by Nugent to approve the purchase recommendations. Motion carried 7-0.

2. Capital Escrow Budget Adjustment for Fire Equipment

Motion by Bane, second by Shamberger to approve the budget adjustment. Motion carried 7-0.

REPORT FROM CITY CLERK: Ms. Little reported to Council that she has appointed Mr. Vaughn Kiger and Mr. Jacques Williams to reprise their roles as Ballot Commissioners for the upcoming Municipal Election. She also announced that absentee voting applications are available to the public at this time.

REPORT FROM CITY ATTORNEY: No Report.

REPORT FROM COUNCIL MEMBERS: (Roll Reversal)

Councilor Herbst: Councilor Herbst reminded the public of the upcoming Empty Bowls charity event.

Councilor Byrne: Councilor Byrne thanked MUB and the Public Works Dept. staff for their prompt response to a citizen in Norwood. He announced that over 11 tons of recyclable material was gathered with the first collection of the new recycling totes. He noted a greeting card received from the Office of Municipal Affairs in our friendship city, Xuzhou, China as well as a dinner with the WVU Chinese Student Association. He relayed an invitation from the Chinese students to Council to attend their Chinese New Year event at WVU.

Councilor Shamberger: Councilor Shamberger thanked Christie Yost for resolving issues with the recycling bins, and thanked those involved with the Urban Deer Hunt. She reminded everyone that the BOPARC Ice Rink is now open. She requested that the City Manager look into improving a pedestrian crossing near Arnold Hall and reported graffiti on stop signs at the intersections of Charles and James and Richwood Avenue, as well as Spruce and Prospect.

Councilor Selin: Councilor Selin commented that citizens need to know what items are fit for inclusion in the recycling totes. She noted to SGA representative Randy Jones that part of this education can be given to student residents as part of their orientation about Morgantown. She reported that she has fielded complaints about the audio quality of the Council meeting broadcasts and asked the City to look into improving the audio systems in Chambers. Mr. Mikorski understands the issues and reported that he is working with an electrical engineer to assess and fix the problems with the microphones and audio equipment. She also discussed parking arrangements during basketball season.

Councilor Nugent: Councilor Nugent announced the postponement of the Wiles Hill-Highland Park Neighborhood association meeting. He passed along a property maintenance question to the City Manager's Office and then reported some out of order downtown street lamps.

Councilor Bane: No Report.

Mayor Manilla: Mayor Manilla noted some key budget concerns regarding reduced revenue and other areas of concern for the coming fiscal year. He

discussed an upcoming meeting for Tom Arnold and the Landlord's association regarding the placement of the recycling totes. Discussion began and Councilor Shamberger noted that the enforcement of trash can placement and maintenance is a wide reaching problem in the City. Councilor Byrne suggested that rental unit's trash be handled as commercial properties. Discussion about this and the budget issues as mentioned above.

ADJOURNMENT: There being no further items of business or discussion, the meeting adjourned by unanimous consent at 7:50 p.m.

City Clerk

Mayor

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

2/25/13

To: The Council of the City of Morgantown
From: Donald E. Price, Chairman, Coordinating Committee for Charter Revision (CCCR), 9/75 – 4/77; Chairman, Morgantown Charter Board, 2/76 – 4/83
Ref: Charter Revision; Elections
Date: 1/15/13

For more than two years Council has been concerned about voter turnout in our City elections. Overly concerned, I think. So concerned that charter revision is now being seriously discussed.

I am here to say that voter turnout is none of Council's business. Council's business is to govern for their two-year term by the terms of the Charter. Council's job is to abide by the Charter. The Charter is not a two-year thing. It is a long-term thing; it has permanence. The Charter dictates the terms by which you govern. It is not a suggestion to you. It is a commandment. Your job is to abide by it as it is, not as you wish it to be.

You, Council, have illustrated the difference between the permanence of the Charter and the temporary nature of Council's two-year term. The Charter has served our city well for thirty-five years, virtually unchanged. That's permanence.

The two-year term of Council elected in 2009, because of its fixation on voter turnout, enacted "vote by mail." The very next Council, elected in 2011, reversed the Council of 2009. One might detect an element of temporariness or even whimsy. That is not permanence.

Elections are none of Council's business except to see to it that they are carried out by the terms of the Charter, not by your whims, but as commanded by the Charter: the Charter as it is, not as you might wish it to be. It is not Council's business to tamper with the rules by which you are elected. Some might see that as a conflict of interest.

Charter revision is none of Council's business. Council's job is to *ABIDE* by it, *NOT* to change it. Council has no business in discussing the appointment of a committee to review the Charter. Who would do the choosing of the committee? Why Council, of course. Who would you choose to serve? Answer: only those who would do your bidding; only those of like mind as you. It won't work. It would be seen as the sham and the fraud it would be.

Some of you on Council seem to deem yourselves a Charter Board. You're not! If you want to be, then do it right. Do it like **WE** did in 1975-76. But first you will have to resign your position on Council. Why resign, you may ask? Well, because *unlike you*, **WE** were not sworn to support the then Charter. As a matter of fact **WE** wanted to trample it wholesale. We wanted to drive a stake through its heart. We wanted to kill the beast; *and we did!* Who is the **WE** I speak of? I don't have the time now to tell you but only to identify **US** as the Coordinating Committee for Charter Revision, the CCCR, the *ad hoc* citizen's committee that was the precursor to the Charter Board and coexisted with it. Not many alive today would remember it. I do, because I was chairman both of the CCCR and the Charter Board.

Let's get back to the crux of what's bothering Council; voter turnout which is absolutely none of your business, except to the extent you try to get more of the turnout to vote for you over your opponent.

Some of you think it gospel wisdom that high voter turnout through combining city elections with state and national elections is a good thing. I'm here to assert that it is not, but rather it is ill-advised. I intend to support my assertion with authority. Impeccable, confident, and credible authority having the qualities referred to by our City attorney, Steve Fanok, in his comments to you January 2,

2013. Those qualities were professional experience, confidence, ability, and understanding of the issues involved in drafting a Charter.

I will site authority very specifically, not generally, not by arguments made by me. My authority will contain specific names, dates, organizations, credentials. My authority will contain giants from industry, academia, and government. My citations will come at the conclusion of my presentation.

But, back to the subject of combining elections. I offer a *premise* upon which I think we can agree. It is that in order to succeed a government must be supported by an informed and concerned electorate. Can we agree on that premise?

However, there is a problem. The average turnout in the city's regular elections since 1979 has been about 18%. Thus 82% of our electorate, on average, is unconcerned and uninformed. Therefore, we have low turnout. Low turnout is not peculiar to Morgantown's uncombined city elections. It is the unhappy phenomena existing across the nation about uncombined municipal elections.

Some on Council, maybe all, are unhappy with only that 18%. So where will the charter revisionists find the voters to increase turnout? Obviously they must come from the 82% who are not concerned or informed about purely city affairs: those who have to have a better reason to go to the polls than a mere city election to elect a mere seven councilmen. So some of you want to give them a better reason, which will offer them a myriad of county, state, and national offices to vote for on a yard-long ballot: a combined election lacking focus on local issues.

But, at what cost? Two things come to mind: purity and focus. Focus in the voters' mind on what is Morgantown's affairs, undistracted by campaigns about county, state, and national affairs.

You, Council, may bemoan the fact, but fact it is, that most of the electorate don't give a pinch of salt about city affairs or governance. You know it to be fact, otherwise you'd not be fixated on turnout.

Under the rules of our Charter with uncombined city elections, only those pure of heart, dedicated to purely city affairs, the informed, only they participate in our City elections: the 18%.

So I come down to a challenge, and this challenge contains the underlying rationale or essence of why increased turnout through combining elections is not desirable. I challenge you to make the case that ***diluting the vote of the concerned and informed, with those who are not, will improve our city government.***

I will restate my earlier assertion that it is desirable to separate municipal from state and national elections; that this separation is important.

I have promised you impeccable and competent authority for this assertion when I conclude, but that can wait for my next communication.

SPECIAL MEETING JANUARY 29, 2013:

The special meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Tuesday, January 29th, 2013 at 6:30 p.m.

PRESENT: Mayor Jim Manilla, Council Members Ron Bane, Wes Nugent, Jenny Selin, Bill Byrne, Marti Shamberger, Linda Herbst.

The meeting was called to order by Mayor Manilla.

EXECUTIVE SESSION:

Motion by Nugent, second by Shamberger, to go into executive session pursuant to Section 6-9A-4(b)-2(A) of the West Virginia Code in order to discuss personnel matters with the following persons present; Mayor Manilla, Council Members. Session commenced at 6:35 pm; session adjourned at 6:40 pm.

Immediately following the adjournment of the Executive Session, Mayor Manilla announced that Deputy City Manager Jeff Mikorski is hereby appointed as Interim City Manager of the City of Morgantown, effective February 2, 2013 for a period of 6 months.

ADJOURNMENT:

There being no further business, Council adjourned the special meeting at 6:52 pm.

City Clerk

Mayor

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



OFFICE OF THE CITY MANAGER
Jeff Mikorski, Deputy City Manager

The City of Morgantown

389 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505
(304) 284-7405 FAX (304) 284-7430

Friday, February 01, 2013

City Manager's Report for City Council February 5, 2013

Action Items:

1. As a part of the Capital Lease Program established in December or 2012, the Public Works Department requires the placement of a 4X4 Rubber Tire Backhoe. As referenced in the attached memo from Director Terry Hough, the equipment will cost \$79,959.00. I request \$80,449.00 be transferred from the Capital Escrow Capital Lease Contingency line to the Public Works Equipment line in order to purchase the equipment.
2. The same Capital Lease funds are needed for the Fire Department to replacement four support vehicles for the Fire Marshall's office and the Fire Chief. The current vehicles continually need to be repaired and maintained, and are becoming unreliable vehicles for the Fire Department's emergency needs. Vehicles will be purchased from the state bid contract for a total of \$114,015.00 plus installation costs for Fire Department specific equipment and signage. I request that \$124,000.00 be transferred from the Capital Escrow Capital Lease Contingency line to the Fire Department Vehicle line for these purchases.

Jeff Mikorski,
Interim City Manager

Memo

City of Morgantown

Department of Public Works and Engineering

To: Jeff Mikorski, Deputy City Manager

From: Terry Hough, Director of Public Works and Engineering



Subject: Bid Call 2013-02 – 4x4 Rubber Tire Backhoe

Date: January 15, 2013

Bids were opened on October 29, 2012 at 2:00 pm for a 4x4 Rubber Tire Backhoe.

The results are as follows:

4x4 Rubber Tire Backhoe:

State Equipment, Inc.

Case 580SN

\$78,959.00

Given the above, upon securing the appropriate funding from the recently obtained Capital Lease, it is recommended that State Equipment be awarded the bid for the 4x4 Rubber Tire Backhoe at \$78,959.00. Delivery for the backhoe will be anywhere from 10 – 90 days from the vendor's receipt of Notice of Award.

If you have any questions or need any additional information, please do not hesitate to contact me.

City of Morgantown

Finance Department

389 Spruce Street

Morgantown, WV 26505

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

jsabatelli@cityofmorgantown.org

MEMO

DATE: February 1, 2013

TO: Jeff Mikorski
Interim City Manager

FROM: JR Sabatelli, CPA
Finance Director 

RE: Capital Escrow Capital Lease Budget Revision-Fire Vehicles

The items below are the proposed budget adjustments for the Capital Escrow Fund for the fiscal year ending June 30, 2013. The first adjustment is to purchase 4 vehicles for the Fire Department. The purchase will be made through the state bid contracts and therefore did not require the City to go through a bid process. The second item is to purchase a back hoe and is pending Council's approval of the bid. An additional \$1,490 was added to cover any ancillary costs that may arise from this purchase. These purchases will be made with funds approved for and provided through the City's new Capital Lease, of which funds were allocated to the Contingency line until authorizations to purchase are approved.

Budget Line	Current Budget	Proposed Revised Budget	Net Change
Revenues:			
**NONE	\$ -	\$ -	\$ -
			\$ -
Expenses:			
Fire Department Vehicles	\$ -	\$ 124,000	\$ 124,000
Public Works Equipment (Backhoe)	\$ 109,000	\$ 189,449	\$ 80,449
Contingency	\$ 590,817	\$ 386,368	\$ (204,449)
			\$ -
Net Revision			\$ -

BOARDS AND COMMISSIONS - TERMS EXPIRED AND CURRENT VACANCIES

HISTORIC LANDMARKS COMMISSION:

Sharon Tinnell, Chair has informed me that Ralph Schmitt's position on this commission needs filled. Attached is a bio for Seret Cole who is interested in serving in this position. Council can vote on this at the next Regular Meeting. Appointed by Council at least 2 members inter. In historic preservation-1 Council Rep.

WARD AND BOUNDARY COMMISSION:

Attached find a letter from Marca Paporozzi resigning as the 6th ward representative. She also is recommending Guy Panrell serve in her place. Attached is a bio. from Guy Panrell for Council's approval. Appointed by Council w/in 30 days of term commencement. One member per ward.

***POLICE & FIRE CIVIL SERVICE COMMISSIONS:** NEW PRESIDENTS APPOINTED IN JANUARY.

****Information for Boards and Commissions vacancies are placed in the Dominion Post, are advertised on the City's Government Station Channel 15, and are posted at the Library and also information is on the City's Web Page.***

****Council decided on 3-21-06 by unanimous consent that if there is only one candidate for Boards & Commissions, 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.***

1/17/13

I am moving to Arizona, so
I will have to resign from wards
& Boundries. I have always enjoyed
doing anything for the City, & I'll
miss everyone.

Patricia Papmoggi

I would like for Guy Panzuel
to be appointed to this in my place

Request Details



Request #27102 : Volunteer for City Boards and Commissions

<p>What is your work telephone number?</p> <p>Are you a Morgantown resident? Yes</p> <p>If Yes, how many years have you lived in the City of Morgantown? 20 years</p> <p>In which City Ward do you live? Not Sure 2</p> <p>Who is your employer? (If retired, answer "retired") United Biosource Corp.</p> <p>What type of business are, or were, you employed in? Medical</p> <p>What is your job description?</p> <p>Do you have any professional certifications or licenses? Associates Degree as a Medical Assistant</p> <p>Do you have any pertinent special interests? Youth Education, particularly in the area of Arts and Music Education, The preservation of our city and various historic and nonhistoric landmarks,</p> <p>On which commission(s) are you interested in serving? Board of Park and Recreation Commissioners; Historic Landmarks Commission; Museum Commission; Urban Landscape Commission</p>	<p>Status Completed</p> <p>Priority Normal</p> <p>Received 10/26/2012 at 9:49 AM</p> <p>Source of Request Anon Online by Anonymous</p> <p>Assigned To: Bethany Sypolt</p> <p>Associated To: Anonymous</p> <p>Est. Completion 11/5/2012</p> <p>Actual Completion 11/5/2012</p> <p>Reactivate Print</p>
<p>Staff Activities</p> <p>Add New Sort</p> <p>A letter was created from the template Request Letter Document. by Bethany Sypolt on 11/5/2012 at 8:23 AM</p> <p>The status of the request was changed from Active to Completed. by Bethany Sypolt on 11/5/2012 at 8:42 AM</p>	<p>Citizen Information</p> <p>Seret Cole 960 Grand Street Morgantown, WV 26501 304-282-2662 scole0608@gmail.com</p> <p>Preferred Response Method: US Mail</p>
<p>Public Activities</p> <p>Add New Sort</p>	<p>Communication</p> <p>Select Communication Template Standard - Comment - Address <input type="button" value="v"/></p> <p>Print Letter</p> <p>View Email Text</p>

Request was successfully submitted.

by EXEC EXEC on 10/26/2012 at 9:49 AM

Thank you for your interest in serving the City of Morgantown, we will contact you if there are openings on the boards or commission you have specified interest in.

by Bethany Sypolt on 11/5/2012 at 8:21 AM

Attachments

Add New

AN ORDINANCE AMENDING ARTICLE 367 "PARKING DISTRICTS" OF THE CITY OF MORGANTOWN TRAFFIC CODE AS IT PERTAINS TO THE PROMULGATION OF RULES RELATING TO THE ESTABLISHMENT OF PETITION, FEASIBILITY STUDY, AND ADMINISTRATIVE RECOMMENDATION PROCESSES; PARKING PERMIT TYPES; AND, PARKING PERMIT FEES.

The Morgantown City Council hereby ordains that Article 367 "Parking Districts" of the City of Morgantown Traffic Code is amended as follows (deleted matter struck through; new matter underlined):

ARTICLE 367
Parking Districts

367.01 ESTABLISHED

There are hereby established designated parking districts within the City. Within such districts, qualified person may obtain permits to park their vehicles on the streets within the district for periods longer than permitted for those vehicles without such permits.

367.02 PURPOSES OF ARTICLE.

The purposes of this article are as follows:

- a) To reduce hazardous traffic conditions resulting from the use of streets within areas zoned for residential uses for the parking of vehicles by persons not residing within the area.
- b) To protect those districts from polluted air, excessive noise, and trash and refuse caused by the entry of such vehicles.
- c) To protect residents of those districts from unreasonable burdens in gaining access to their residences.
- d) To preserve the character of those districts as residential districts.
- e) To promote efficiency in the maintenance of those streets in a clean and safe condition.
- f) To preserve the value of the property in those districts.
- g) To promote the peace, good order, comfort, convenience, and welfare of the inhabitants of the City.

367.03 SELECTION OF DISTRICTS.

Council shall, from time to time as it deems necessary, identify, by specific and separate ordinances, areas of the City as designated parking districts. During its deliberations, Council shall consider, in addition to the achievement of the purposes defined above, the following criteria:

- a) The degree to which traffic congestion and demand for on-street parking is generated by drivers of vehicles who do not reside in the proposed district.
- b) The existence of structures or facilities in the immediate vicinity of the proposed designated parking district, the use of which generates significant increased traffic congestion and demand for on-street parking spaces within the proposed district.
- c) The existence of an on-street parking space shortage defined as utilization of in excess of seventy-five percent (75%) of the on-street parking spaces on a continuing basis.

367.04 PERMITS; RULES; FEES.

The City Manager, or his/her designee, which may include the Morgantown Parking Authority, is hereby authorized to issue parking permits to qualified residents of designated parking districts within the City. ~~The City Manager, or his/her designee, which may include the Morgantown Parking Authority, may also, on a case by case basis, issue parking permits to regular visitors of a designated parking district, who are not visiting residents of the district; provided that Council must approve each such issuance.~~

The City Manager shall promulgate rules governing the use of designated parking districts, including, but not limited to, rules governing the determination of eligibility of residents for receipt of ~~one or more~~ parking permits.

The rules shall make provisions for parking district petition processes, feasibility study procedures, and administrative recommendations.

The rules shall make provision for regular permits, as well as for the issuance of temporary permits for the guests and visitors of residents of the district and also for temporary permits to delivery or other business vehicles serving the residents of the district.

The rules shall make provisions for the distribution of parking permits per household, which may differ from one parking district to another; further provided that no more than two regular resident permits and one regular visitor permit, with the exception of one-day (24 hour) visitor permits, shall be issued to any one household within the district.

Prior to implementing any such rules, the City Manager shall reduce them to writing and present them to City Council for consideration and approval by Resolution.

The intent of the permit process is to provide on-street parking for residents, their guests and visitors to their household. Permits are not to be given by residents to individuals so that those individuals may park in the district when not specifically there for the sole purpose of visiting with the residence in question. Visitor permits of any type, with the exception of one-day (24 hour) visitor permits, may not be used for more than five (5) consecutive days for the same vehicle.

The City Clerk shall maintain a book that contains all ordinances, resolutions, and adopted rules and regulations pertaining to the designation and enforcement of parking districts within the City. Said book shall also contain any amendments to the foregoing documents. The City Clerk shall title this book "Parking Districts and Applicable Ordinances, Resolutions, and Rules."

The following shall be the costs for the issuance of permits issued under this article. The fees for permits issued under this article shall be established by ordinance setting the fee schedule for each designated parking district; provided, parking permit fees shall not be less than:

Regular permits, one resident and one visitor;	_____ \$5.00/yr.
Additional Temporary visitor, guest or business vehicle permits;	_____ no charge
<u>First Resident Permit.....</u>	<u>\$5.00 per year</u>
<u>Each additional Resident Permit.....</u>	<u>\$10.00 per year</u>
<u>Visitor Permits (all types except One-day Visitor Permit)</u>	<u>\$5.00 per year</u>
<u>One-day Visitor Permit</u>	
<u>(1 to a maximum of 8 permits per occurrence).....</u>	<u>\$5.00 per occurrence</u>

Permits issued under this article are valid only in the designated parking district for which the permit is issued.

367.05 APPLICABILITY OF OTHER PARKING RESTRICTIONS.

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

367.99 PENALTY.

Any vehicle violating the provisions of this article shall be subject to the penalties provided under Section 303.99 of the City's Traffic Code. Any occupant of a residence within a parking district who violates Section 367.04 by giving a parking permit, which has been issued to the residence, to another individual so that he or she may park their vehicle within the parking district when not there for the specific purpose of visiting the residence in question, shall be guilty of a misdemeanor and shall be fined \$50.00. Each such incident shall be deemed a separate offense of this article.

This ordinance shall be effective upon date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk

AN ORDINANCE PROVIDING FOR THE ELIMINATION OF THE "ISOD, INTERSTATE SIGN OVERLAY DISTRICT" FROM THE OFFICIAL ZONING MAP OF THE CITY OF MORGANTOWN SO THAT THE BOUNDARIES OF SAME MAY BE DEFINED AND DESIGNATED BY DESCRIPTION IN ARTICLE 1359 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.

THE CITY OF MORGANTOWN HEREBY ORDAINS:

1. That the "ISOD, Interstate Sign Overlay District" shall be eliminated from the Official Zoning Map of the City of Morgantown in the manner 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;
2. That the boundaries of the "ISOD, Interstate Sign Overlay District" shall be defined and designated by description in Article 1359 of the Planning and Zoning Code Zoning Code of the City of Morgantown; and,
3. That the Official Zoning Map of the City of Morgantown be accordingly changed to show said zoning map amendment.

This Ordinance shall be effective from the date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk

AN ORDINANCE AMENDING ARTICLE 1329.02 "DEFINITIONS" OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS IT PERTAINS TO "BILLBOARD SIGN" AND "POLE SIGN".

The Morgantown City Council hereby ordains that Article 1329.02 "Definitions" of the City of Morgantown Planning and Zoning Code is amended as follows (deleted matter struck through; new matter underlined):

SIGN, BILLBOARD – An off-premise sign, usually of the pole or pylon sign type, for which a static message or copy on the sign can be changed manually (e.g. paint, paper, vinyl, etc.), mechanically (e.g. tri-action, etc.), or electronically (e.g. digital displays using LED or similar technology controlled via electronic communication through a secure network). Such signs are prohibited within the City, except as provided in Article 1359 "ISOD, Interstate Sign Overlay District" and Article 1369 "Signs".

SIGN, POLE – A sign that is mounted on a freestanding pole(s) or other support so that the bottom edge of the sign face is six feet or more above the grade. Such signs are prohibited within the City, ~~except within 500 feet of a Federal Interstate Highway~~ as provided in Article 1359 "ISOD, Interstate Sign Overlay District" and Article 1369 "Signs". Also called a PYLON SIGN.

This ordinance shall be effective upon date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk

AN ORDINANCE AMENDING ARTICLE 1359 "ISOD, INTERSTATE SIGN OVERLAY DISTRICT" OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE.

The Morgantown City Council hereby ordains that Article 1359 "ISOD, Interstate Sign Overlay District" of the City of Morgantown Planning and Zoning Code be amended by replacing same in its entirety as follows (deleted matter struck through; new matter underlined):

ARTICLE 1359
ISOD, Interstate Sign Overlay District

~~1359.01 PURPOSE.~~

~~The purpose of the Interstate Sign Overlay District is to provide owners of property within 500 feet of a Federal Interstate Highway right of way the ability to erect pole or pylon signs, whether on or off premise in nature, for the convenience of the motoring public. This district may not be applied over any residentially zoned property.~~

~~1359.02 REGULATIONS.~~

- ~~(A) A conditional use permit shall be required for any pole or pylon sign, whether of the on-premise or off-premise variety.~~
- ~~(B) No more than one pole or pylon sign of any type may be located on a parcel.~~
- ~~(C) Off-premise pole or pylon signs shall not be located within 100 feet, measured radially, of any other off-premise pole or pylon sign. No such spacing limit shall apply to on-premise pole or pylon signs.~~
- ~~(D) Maximum sign height shall be determined by the Board of Zoning Appeals, after considering evidence supplied by the applicant that clearly demonstrates, to the satisfaction of the Board, that the requested height is necessary. The Board shall take into account the horizontal distance the sign will be from the travel lanes of the Interstate, the difference in elevation between the property grade and the highway grade, and the advice of the City Engineer and/or Planning Director. The Board may approve the height requested by the applicant, or any other height that it deems is warranted given the facts of the case.~~
- ~~(E) The maximum size of any pole or pylon sign, whether on or off-premise in nature, shall not exceed 250 square feet, or whatever smaller size the Board of Zoning Appeals approves, considering the same criteria as for height. This shall be in addition to any other signs permitted by these regulations. The regulations~~

~~regarding computation of sign area for double-sided signs shall apply.~~

- ~~(F) As part of the conditional use application procedure for pole or pylon signs, the applicant shall provide a certified land survey prepared by an engineer or surveyor licensed to practice in West Virginia that shows the following:
 - ~~(1) Parcel boundaries.~~
 - ~~(2) Distance between the right of way of the Interstate Highway in question and the subject parcel. If the parcel is entirely contained within the 500-foot boundary, the survey shall so indicate. If only a portion of the parcel falls within the 500-foot zone, the survey must indicate which portions of the property fall within it, and which are outside of the boundary.~~
 - ~~(3) The location of any existing or proposed buildings, structures, or other pole or pylon signs on the subject property.~~~~
- ~~(G) Utilizing the survey, the applicant shall then indicate:
 - ~~(1) The exact location of the proposed sign; and~~
 - ~~(2) The proposed height, square footage, and construction details of the proposed sign. Signs shall be designed by a licensed engineer and shall conform to the regulations of the West Virginia State Building Code.~~~~
- ~~(H) No permit for such signs shall be issued unless all existing non-conforming signs, of any type, on the subject property are first removed or brought into compliance with this ordinance.~~

1359.01 PURPOSE.

The purpose of the Interstate Sign Overlay District is to provide an area within 500 feet of a Federal Interstate Highway right-of-way within which on-premise pole or pylon signs or billboard signs may be erected for the convenience of the motoring public. This overlay district may not be applied over any residentially zoned property.

1359.02 GENERAL REGULATIONS.

- (A) Conditional use approval by the Board of Zoning Appeals shall be required for on-premise pole or pylon signs and billboard signs.
- (B) No more than one pole or pylon sign or billboard sign may be located on a parcel.
- (C) Spacing.
 - (1) Billboard signs shall not be located within 1,000 feet of any other billboard sign. This distance requirement shall include in its calculation any billboards located outside the corporate boundaries of the City.
 - (2) Billboard signs shall not be located within 200 feet of a residential zoning

district. If illuminated by internal, external or digital/electronic means, said signs shall not be located within 300 feet of a residential zoning district.

- (3) No such spacing limit shall apply for on-premise pole or pylon signs.
- (D) Height. Maximum sign height for on-premise pole or pylon signs or billboard signs shall be determined by the Board of Zoning Appeals, after considering evidence supplied by the applicant that clearly demonstrates, to the satisfaction of the Board, that the requested height is necessary. The Board shall take into account the horizontal distance the sign will be from the travel lanes of the roadway, the difference in elevation between the property grade and the roadway grade, and the advice of the City Engineer and/or Planning Director. The Board may approve the height requested by the applicant, or any other height that it deems is warranted given the facts of the case.
- (E) Area. The maximum area for on-premise pole or pylon signs shall not exceed 250 square feet; for billboard signs 450 square feet; or, whatever smaller area the Board of Zoning Appeals approves, considering the same criteria as for height. This shall be in addition to any other signs permitted by these regulations. For the purposes of this section, the surface display area of a pole or pylon sign or a billboard sign shall be measured to include the entire area within a regular geometric form or combinations thereof comprising all of the display area of the sign, including all of the elements of the matter displayed. Frames and structural members, excluding necessary supports or uprights, shall be included in computation of the surface display area. In the case of a sphere, spheroid, or similar shaped sign (e.g. a ball), the total surface display area shall be divided by two for determine the maximum surface display area permitted. The regulations regarding computation of sign area for double-sided and V-type signs in Article 1369 shall apply.
- (F) Setback. No on-premise pole or pylon sign or billboard sign may be located within 15 feet of any parcel boundary line of the property on which the subject sign is located.
- (G) Distance requirements provided in this section shall be measured radially from the leading edge of the sign face.
- (H) No on-premise pole or pylon sign or billboard sign may be located on top of, cantilevered over or otherwise suspended above any building or structure.
- (I) An on-premise pole or pylon sign or billboard sign having more than one surface display area which are tandem (side-by-side) or stacked (one above the other) are considered two billboards and are prohibited.
- (J) Illumination. On-premise pole or pylon signs may only be internally illuminated. Billboard signs may be illuminated provided such illumination is consistent with

the requirements for a digital billboard as set forth herein, or is concentrated on the surface of said sign and is located so as to avoid glare or reflection onto any portion of an adjacent street or highway, the path of oncoming vehicles or any adjacent premises.

(K) Appearance.

(1) Except for time and temperature signs or digital billboards as otherwise regulated herein, all on-premise pole or pylon signs and billboard signs must be static or stationary and may not contain any visible moving parts, alternating or moving messages or have the appearance of having moving parts or messages. Provided, each message or copy displayed on a mechanically changed billboard sign (e.g., tri-action, etc.) shall remain fixed for at least ten (10) seconds; must accomplish the change between messages within an interval of two (2) seconds or less; and must contain a default design that will freeze the sign in one position if a malfunction occurs.

(2) Under no circumstances may any type of on-premise pole or pylon sign or billboard sign contain a message or display that appears to flash, undulate, pulse, move, scroll, or portray explosions, fireworks, flashes of light, or blinking lights or otherwise appears to move toward or away from the view, expand or contract, bounce, rotate, spine twist or make other comparable movements.

(3) The frames, borders, and all structural members of a billboard sign shall be black, with no illumination and no writing or symbols other than the identification (name and/or logo) of the sign owner/operator.

(L) Permitting. Every on-premise pole or pylon sign and billboard sign requires a City building permit before installation or modification. Permits shall be reviewed and issued consistent with the terms of this section as well as all other applicable ordinances of the City as amended from time to time. Every applicant for an on-premise pole or pylon sign or billboard sign shall file with the building permit application a certificate of insurance naming the City as coinsured and certifying that the applicant and City are insured against bodily injury and for property damage arising out of the erection, maintenance, repair, and replacement of the sign. Each applicant, if the permit is granted, shall be required to maintain said insurance and keep a certificate of insurance currently effective on file with the City so long as the sign is in existence. The certificate shall provide that the City shall receive ten (10) days written notice in case of cancelation of the policy. Any on-premise pole or pylon sign or billboard sign in violation of the insurance requirements of this section shall be removed immediately and the cost of such removal shall be charged against the owner/operator of the sign.

- (M) Other Applicable Requirements and Laws. An on-premise pole or pylon sign or billboard sign must otherwise comply with all other relevant regulations and ordinances of the City and comply with all applicable provisions of federal and state law.

1359.03 DIGITAL OFF-PREMISE AND BILLBOARD SIGN REGULATIONS

The City recognizes that billboards are, by their nature, different in scope and purpose from other types of signage in the City. Billboards are significantly larger in size than other types of signage allowed in the City and their principal purpose is to dramatically attract the attention of the travelling public. The potential impact of a billboard on adjacent areas is significantly greater than other types of signage. Advancements in technology and efficiencies enable signs to change static message or copy electronically (e.g. utilizing an LED or digital type of sign). These newer technologies exacerbate the potential impact of a billboard in terms of adversely dominating the environment in which they operate due to light spillover and light pollution, unless regulated in a reasonable fashion. The intent of this section is to establish standards and regulations for billboards, including addressing those utilizing these newer technologies, in order to minimize the secondary effects that can accompany the unregulated display of these types of signs; preserve the character and repose of adjacent areas, with a principal focus on residential neighborhoods; protect property values in all areas of the City; and, reduce traffic and similar hazards caused by undue distractions.

- (A) Locations. In addition to the spacing and setback standards provided in this section, digital or electronic billboard signs are prohibited on the same site as a National Register designated historic structure or within a National Register designated historic district. Digital or electronic billboard signs are prohibited within 500 feet of a National Register designated historic structure, except where a federal interstate highway separates the digital or electronic billboard sign from the National Register designated historic structure.

(B) Display.

- (1) The display or message on a digital billboard sign may change no more frequently than once every ten (10) seconds. Any change in message or copy shall be completed instantaneously.
- (2) The display, message, or copy must otherwise comply with subsection 1359.02(K) and the digital billboard sign must have a light sensing device to adjust brightness as ambient light conditions change in order to insure that the message meets the following brightness standard.

Maximum brightness levels for digital billboards shall not exceed 0.2 (two tenths) foot-candles over ambient light levels measured within 150 feet of the sign. Certification must be provided to the City demonstrating that the sign has been preset to automatically adjust the brightness to these levels

or lower. Certified re-inspection and recalibration shall be annually required by the City, in its reasonable discretion, at the sign owner/operator's expense to ensure that the specified brightness levels are maintained at all times.

(3) Brightness of digital billboards shall be measured as follows:

(a) At least 30 minutes following sunset, a foot-candle meter shall be used to obtain an ambient light reading for the location. This is done while the sign is off or displaying black copy. The reading shall be made with the meter aimed directly at the sign area at the pre-set location.

(b) The sign shall then be turned on to full white copy to take another reading with the meter at the same location.

(c) If the difference between the readings is 0.2 (two tenths) foot-candles or less, the brightness is properly adjusted.

(4) Consecutive messages on a single digital or electronic sign face (digital slots) are prohibited when the second message answers a textual question posed on the prior slot, continues or completes a sentence started on the prior slot, or continues or completes a story line started on the prior slot. Nothing in the subsection shall prohibit consecutive messages by the same advertiser or consecutive messages for the same product or service; provided, that the second of such advertisements does not answer a textual questions posed on the prior advertisement slot, continue or complete a sentence started on the prior advertisement slot, or continue or complete a story line started on the prior advertisement slot. For example, consecutive advertisements by a single grocery store advertising the same or multiple products are permitted provided that such advertisements do not answer textual questions from one slot to the next slot, continue or complete a sentence from one slot to the next slot, or continue or complete a story line from one slot to the next slot.

(5) The sign shall have a default mechanism or setting that will cause the sign to turn off or show a "full black" image if a visible malfunction or failure occurs.

(6) The sign shall not be configured to resemble a warning or danger signal. The sign shall not resemble or simulate any lights or official signage used to control traffic.

(C) The Board of Zoning Appeals, in reviewing the conditional use application, may require, as a reasonable condition, that an approved digital billboard sign be turned off or display a "full black" image during nighttime hours to preserve the

character and repose of adjacent residential areas.

- (D) The owner/operator of the digital billboard sign shall maintain a secure electronic communication network that controls the display and display changes.
- (E) Prior to the issuance of a permit for construction of a digital billboard sign, the owner/operator of the sign shall enter into an agreement with the City providing for public service announcements on a regular basis without charge. Such announcements shall be provided as specified in the agreement and shall include messages of significant public interest related to safety and traffic matters (e.g. AMBER Alerts, Cop Killer Alerts, severe weather, disaster, evacuation bulletins/notices, etc.).

1359.04 CONDITIONAL USE APPLICATION

- (A) As part of the conditional use application for on-premise pole or pylon signs and billboard signs, the applicant shall provide a certified land survey prepared by an engineer or surveyor licensed to practice in West Virginia that shows the following:
 - (1) The parcel boundaries for the property on which the proposed sign is to be located.
 - (2) The right-of-way boundary of the Federal Interstate Highway used to establish the applicable ISOD Overlay District.
 - (3) The exact location of the proposed sign.
 - (4) The distances between the subject Federal Interstate Highway right-of-way, the property on which the proposed sign is to be located, and the exact location of the proposed sign. If the parcel is entirely contained within the 500-foot ISOD Overlay District boundary, the survey shall so indicate. If only a portion of the parcel falls within the 500-foot ISOD Overlay District boundary, the survey must indicate which portions of the property fall within it, and which are outside of the boundary.
 - (5) The location of any existing or proposed buildings, structures, and other on-premise pole or pylon and billboard signs on the subject property.
 - (6) Floodplain boundaries, as may be required by the City Engineer.
- (B) In addition to the survey, the applicant must submit the following:
 - (1) A scaled photo simulation of the proposed on-premise pole or pylon sign or billboard sign from no less than two (2) points of view, the locations of which must be agreed to by the Planning Director.
 - (2) The proposed height, square footage, and construction details of the proposed sign. Signs shall be designed by a licensed engineer and shall

conform to the regulations of the West Virginia State Building Code and design standards provided herein.

(3) If the proposed sign is a billboard sign, a map must be submitting illustrating the following:

(a) Any and all billboard signs within 1,500 feet, measured radially, of the proposed billboard sign location along with the distances between same.

(b) The distance of the proposed billboard sign, measured radially, to the closest residential zoning district.

This ordinance shall be effective upon date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk

AN ORDINANCE AMENDING TABLE 1369.06.01 "PERMITTED SIGNS" OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS IT PERTAINS TO BILLBOARD SIGNS.

The Morgantown City Council hereby ordains that Table 1369.06.01 "Permitted Signs" of the City of Morgantown Planning and Zoning Code be amended as follows (new matter underlined):

Table 1369.06.01: Permitted Signs

SIGN TYPE	R-1, R-1A, R-2, R-3	B-1, B-2, B-5, PUD	I-1	B-4	OI, PRO	ISOD	Required Permits
Ground							
Directory	√	√	√	√	√	--	BP, FP, SP
Directional	√	√	√	√	√	--	BP, FP, SP
Menu Board	--	√	--	√	--	--	BP, FP, SP
Monument	√	√	√	√	√	--	BP, FP, SP
Post and Panel	--	√	√	√	√	--	BP, FP, SP
Pole or Pylon Sign	--	--	--	--	--	√	BP, FP, SP
<u>Billboard Sign</u>	<u>--</u>	<u>--</u>	<u>--</u>	<u>--</u>	<u>--</u>	<u>√</u>	<u>BP, FP, SP</u>
Sandwich Board	√	√	--	√	√	--	BP, FP, SP
Building							
Construction	√	√	√	√	√	--	SP, FP
Directory	√	√	√	√	√	--	BP, FP, SP
Electronic, scrolling message	--	√	√	--	--	--	BP, FP, SP
Marquee	--	√	--	√	--	--	BP, SP
Suspended	--	√	--	√	√	--	BP, SP
Temporary	√	√	√	√	√	--	FP, SP
Wall	√	√	√	√	√	--	BP, SP

Table 1369.06.01: Permitted Signs (cont.)

Other							
Off Premise Sign	–	–	–	–	–	√	BP, FP, SP
Public Event Banner	√	√	√	√	√	–	BP, SP*

BP – building permit; required for signs costing more than \$250 which includes labor and materials

FP - floodplain permit

SP - sign permit

* The manner of attachment may determine whether or not a BP is required.

This ordinance shall be effective upon date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk

AN ORDINANCE AMENDING TABLE 1369.09.01 "FREESTANDING SIGN HEIGHT LIMITS" OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS IT PERTAINS TO BILLBOARD SIGNS.

The Morgantown City Council hereby ordains that Table 1369.09.01 "Freestanding Sign Height Limits" of the City of Morgantown Planning and Zoning Code be amended as follows (new matter underlined>:

Table 1369.09.01: Freestanding Sign Height Limits (inches)

Sign Type	Residential Districts	Commercial Districts	Industrial Districts	OI & PRO District	ISOD District
Construction	48	48	48	48	
Directory, Logo/Name	48	48	48	48	
Directory, Detailed	60	60	60	60	
Menu Board	--	60	--	--	
Political	48	48	48	48	
Principal Ground	48	48	48	48	
<u>Pole/Pylon, Billboard</u>					*
Monument	72	72	72	72	

* To be determined by the Board of Zoning Appeals

This ordinance shall be effective upon date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk

AN ORDINANCE AMENDING ARTICLE 1369.10 "PROHIBITED SIGNS AND DEVICES" OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS IT PERTAINS TO BILLBOARD SIGNS.

The Morgantown City Council hereby ordains that Article 1369.10 "Prohibited Signs and Devices" of the City of Morgantown Planning and Zoning Code be amended as follows (new matter underlined):

1369.10 PROHIBITED SIGNS AND DEVICES.

All signs not expressly permitted under this Ordinance or exempt from regulation hereunder in accordance with the previous section are prohibited. Such signs include, but are not limited to:

- (A) Any sign that copies or imitates an official sign or purports to have official status;
- (B) Beacons;
- (C) Windblown devices;
- (D) Pennants, streamers, strings of light bulbs except for holiday decorations;
- (E) Animated signs;
- (F) Signs with moving or flashing lights, except as noted in the electronic scrolling message sign section. Neon signs may be used anywhere signs are permitted, except in residential districts, and provided they are one of the permitted types (wall, monument, etc.);
- (G) Any sign attached to an accessory structure if such sign is legible from the public right-of-way or from other property;
- (H) Any other attention-attracting device, except for those conforming to the dimensional, design, lighting and other standards applicable to a sign in the same location;
- (I) Any sign that obstructs or substantially interferes with any window, door, fire escape, stairway, ladder, or opening intended to provide light, air, ingress, or egress to any building;
- (J) Any sign attached to gas pumps or gas pump islands that can be read or understood from a public street by most persons of normal vision;
- (K) Off-premise and billboard signs of any kind except those allowed under this section;

- (L) Pylon signs, except those allowed under this section;
- (M) Signs mounted on or above the roofline of any building, except in the B-4 districts, where they may be permitted as a conditional use and shall count towards the total sign allotment of the site; and
- (N) Portable signs; and,
- (O) Any sign located in a public right-of-way except as provided for in Section 1369.14.

This ordinance shall be effective upon date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk

AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 1512.05 OF ITS FIRE PREVENTION CODE, AS THE SAME APPLIES TO MALICIOUS BURNING.

The City of Morgantown hereby ordains that Section 1512.05 of its Fire Prevention Code is amended as follows (new matter underlined, deleted matter struck through):

1512.05 MALICIOUS BURNING.

No person shall willfully and/or maliciously burn or assist in the burning of any materials, on property of their own, or property belonging to another on any public street, private street, right-of-way, alley, sidewalk, public or private driveway, or public or private parking lot. Materials subject to this section include but are not limited to: furniture, rubbish, debris, garbage, dumpsters, garbage receptacles, construction material, or brush. Persons found guilty of malicious burning shall be subject to a ~~mandatory \$1,000.00 fine.~~ fine of not less than one thousand dollars (\$1,000.00) nor more than two thousand dollars (\$2,000.00). Persons found guilty may be ordered to reimburse the City of Morgantown for the costs expended by its Fire Department to control, extinguish and suppress the malicious fire as determined by the established billing rate for services and equipment rendered by the Fire Department.

This Ordinance shall take effect immediately upon receipt of written confirmation of its approval by the West Virginia State Fire Commission.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 121.04 OF ITS ADMINISTRATIVE CODE, AS THE SAME APPLIES TO THE ORDER OF PROCEDURE FOR COUNCIL MEETINGS; MORE PARTICULARLY, THE LOCATION OF THE "PUBLIC PORTION" UPON THE CITY COUNCIL MEETING AGENDA.

The City of Morgantown hereby ordains that Section 121.04 of the City of Morgantown Administrative Code is amended as follows (new matter underlined, deleted matter struck through):

121.04 ORDER OF PROCEDURE.

The order of procedure for regular meetings of Council shall be as follows:

- (a) Call Council to order - Mayor
- (b) Roll call by City Clerk
- (c) Pledge to Flag
- (d) Approval of minutes.
- (e) Correspondence.
- (f) Unfinished business.
- (g) Public portion which shall be subject to rules established by Council and adopted by Resolution
- ~~(g)~~(h) Special committee reports
- ~~(h)~~ (i) New business.
- ~~(i)~~ Public portion which shall be subject to rules established by Council and adopted by resolution:
- (j) City manager's report.
- (k) Report from City Clerk.
- (l) Report from City Attorney.
- (m) Report from Council members.
- (n) Adjournment.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 163.03 OF ITS ADMINISTRATIVE CODE AS THE SAME APPLIES TO MEMBERSHIP OF THE URBAN LANDSCAPE COMMISSION.

The City of Morgantown hereby ordains that Section 163.03 of its Administrative Code is amended as follows (new matter underlined, deleted matter struck through):

163.03 MEMBERSHIP.

The Urban Landscape Commission shall consist of ~~thirteen~~ twelve members, consisting of the following: one from each ward of the City, one having expertise in Landscape Architecture, one having expertise as an Urban Forester, one having expertise as a Botanist or equivalent expertise, one being a member of the Board of Parks and Recreation Commission, ~~one being a member of the Chamber of Commerce~~ and one being a member of City Council. All persons shall be residents of the City. The City Manager shall appoint a member of the City Administration to serve as an ex-officio member of the Commission. The seven Commission members, who represent wards, shall be nominated by the City Manager, upon the recommendation of their ward Councilperson and confirmed by City Council. The remaining members shall be nominated by individual Councilpersons and confirmed by City Council.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 172.02 OF ITS ADMINISTRATIVE CODE AS THE SAME PERTAINS TO QUALIFICATIONS FOR MEMBERSHIP ON THE MORGANTOWN SISTER CITIES COMMISSION.

The City of Morgantown hereby ordains that Section 172.02 of its Administrative Code is amended as follows: (New matter underlined, deleted matter struck through):

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 from the Greater Morgantown Area as defined by the jurisdictional boundaries of the Morgantown, Monongalia Metropolitan Planning Organization. At all times, at least seven members of the Commission shall be residents of the City.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

AN ORDINANCE AUTHORIZING A LEASE AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN, LESSOR, AND BJK AVIATION, LLC. LESSEE, IN WHICH OFFICE SPACE, SPECIFICALLY SUITES 235 AND 241, ARE BEING LEASED AT THE MORGANTOWN MUNICIPAL AIRPORT FOR THE PURPOSE OF OPERATING A FLIGHT TRAINING CONCESSION.

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

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

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BASIC LAND AND FLIGHT TRAINING CONCESSION AGREEMENT

THIS AGREEMENT made and entered into this _____, by and between the City of Morgantown, a municipal corporation (hereinafter called "**City**"), and BJK AVIATION, LLC (hereinafter called "**Lessee**").

WITNESSETH:

WHEREAS, the City owns, controls, and operates the Morgantown Municipal Airport (hereinafter called "**Airport**"); and

WHEREAS, the City encourages growth and development of aviation activities at the Airport, which activities include flight training for businesses and individuals from Morgantown and the surrounding area; and

WHEREAS, the Lessee is desirous of providing flight training services to businesses and individuals from Morgantown and the surrounding area.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements herein contained to be kept and performed, and intending to be legally bound hereby, the parties hereto covenant and agree as follows:

Article I. DEFINITIONS

Section 1.01 The following words and phrases, wherever used in the Agreement shall for the purpose of this Agreement, have the following meanings:

- (a) "Advanced Flight Training" shall mean any ground or in-flight training received in preparation for obtaining a FAA Pilot Certificate or Rating other than Private Pilot. These Certificates or Ratings include, but are not limited to, Commercial Pilot, Air Transport Pilot, Flight Instructor and/or Instrument Rating
- (b) "Aircraft Operating Area" shall mean the area that contains the runways, taxiways, aircraft parking aprons/ramps, hold areas, and any other area used or intended to be used for surface maneuvering of aircraft, and any areas inside the perimeter fence which are adjacent to surface maneuvering areas. This may also be referred to as "airside."
- (c) "Airport" refers to the Morgantown Municipal Airport.
- (d) "Airport Customer" shall be any person who utilizes the Airport for the purpose of receiving instruction in aircraft flight operations.
- (e) "Basic Flight Training" shall mean any ground or in-flight training, to include required solo flight time, received in preparation for obtaining a FAA Private Pilot Certificate.
- (f) "Certificate" shall mean a certificate issued by the FAA to allow a business to operate aircraft or provide an aeronautical service.
- (g) "FAA" means the Federal Aviation Administration of the United States, or any federal agencies succeeding to its jurisdiction.

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- (h) "Leased Premises" shall mean an office located in the Terminal Building of the Airport located at 82 Hart Field Road, Suites 235 and 241, Morgantown, WV 26505. This space is to be used solely by the Lessee for the conduct of the Lessee's business.
- (i) "Person" shall mean an individual, corporation, government or governmental subdivision, partnership, association, or any other legal entity, or any representative thereof.
- (j) "Property" shall include anything of material value that is real, personal, tangible, or intangible.
- (k) "Rules and Regulations" shall mean those lawful and reasonable rules and regulations which are promulgated by the City for the orderly use of the Airport by both airlines and other operators and users of the Airport as the same may be amended, modified, or supplemented from time to time. It may also mean rules and regulations promulgated by the FAA or other Governmental entity governing conduct on airports in general and/or the Morgantown Municipal Airport specifically.

Article II. PREMISES

Section 2.01 The City hereby leases to the Lessee an office located in the Terminal Building of the Airport located at 82 Hart Field Road, Suites 235 and 241, Morgantown, WV 26505, consisting of two spaces – Suite 241 measuring approximately two hundred and forty (240) square feet and Suite 235 measuring approximately two hundred (200) square feet – more specifically identified in Exhibit A attached hereto. This space is to be used solely by the Lessee for the conduct of the Lessee's business.

Article III. GRANT OF CONCESSION

Section 3.01 The City hereby grants to the Lessee subject to the terms and conditions hereinafter contained the right to conduct and operate a Flight Training Concession at the Airport. This shall not be construed to be an exclusive concession, and it is stipulated, agreed, and understood that the City may grant concessions to other parties for operation of Flight Training services. It is further understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958 as amended.

Section 3.02 The City hereby agrees to allow the Lessee to use the Leased Premises as defined above for the purpose of operating a Flight Training operation.

Section 3.03 Lessee shall have the right to the non-exclusive use, in common with others, of the Airport parking areas, appurtenances and improvements; the right of ingress to and egress from the Leased Premises, which shall extend to Lessee's employees, guests and customers; and the right in common with other tenants of the Airport to use common areas of the Airport, including but not limited to the Airport Operating Area, roadways and other conveniences for the conduct of Lessee's business.

Section 3.04 Lessee is not authorized to offer other Aeronautical Services under this Agreement without prior written consent of the City and amendment of this Agreement by the Morgantown City Council.

Article IV. TERM OF AGREEMENT

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Section 4.01 The Term of this agreement shall be for a period of three (3) years commencing on March 1, 2013 and ending on February 29, 2016 unless terminated at an earlier date for any reason as set forth herein.

Article V. FEES

Section 5.01 In consideration for the rights and privileges granted by this Agreement, Lessee agrees to pay the City an annual rental payment of eight thousand four hundred dollars (\$8,400.00) at the rate of seven hundred dollars (\$700.00) per month. Payment will be made in advance, on or before the first business day of each month during the terms hereto and any extension thereof.

Section 5.02 Rental payments shall increase as of the first day of each calendar year (January 1) during the entire term, by the same percentage increase (if any) in the Consumer Price Index (revised) for Urban Wage Earners and Clerical Workers in Pittsburgh, PA, as published by the Bureau of Labor Statistics of the US Department of Labor (CPI) during the prior calendar year, but no more than three percent (3%). Rents shall be fixed between annual adjustments. Each calendar year's recalculated rent shall be the basis for the adjustment for the next calendar year rent. The rent shall be recalculated as soon as the CPI is published. The increase shall be effective as of January 1 of each year. In no event shall adjustment be a negative amount. If the rental rate increases, Lessee shall, within thirty (30) days of receipt of notice from City, pay to City any additional rent caused by the increase in CPI, divided by twelve (12), multiplied by the number of rental payments made by Lessee since the effective date of rental adjustment.

Section 5.03 It is agreed that a finance charge of one and one-half percent (1.5%) per month shall be added to any balance unpaid within thirty (30) days after that balance is due.

Section 5.04 All sums due hereunder shall be made payable to the City of Morgantown. All such sums, statements, and reports shall be delivered to the Airport Director, Morgantown Municipal Airport, 100 Hart Field Road, Morgantown, WV 26505.

Article VI. INSTALLATION OF IMPROVEMENTS

Section 6.01 The Lessee shall, without cost to the City, make improvements and provide and install all trade fixtures as are necessary for the customary operation of its Flight Training business.

Section 6.02 The Lessee shall have the right, at its sole expense, to install and maintain signs advertising its business. Any signs must have prior written approval of the Airport Director, as the City's Representative, both as to size and location.

Section 6.03 Lessee shall not suffer or permit any mechanic or other liens to be levied or filed against the City. All improvements, equipment, fixtures, and interior décor constructed by the Lessee, its agents, or contractors, shall conform in all respects to all applicable statutes, ordinances, building codes, and Rules and Regulations. Lessee shall be responsible for applying for and obtaining any permits required to complete improvements. Any approval given by the City shall not constitute a representation or warranty as to conformity; responsibility therefore shall at all times remain with the Lessee.

Section 6.04 All structural improvements and alterations shall, upon termination of this Agreement, become property of the Airport. All non-structural improvements and property of the Lessee must be removed upon termination of this Agreement.

Section 6.05 The Lessee may place such furnishings, property, and equipment into the Leased Premises as is necessary for the conduct of its business. Lessee shall have the right to remove

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same upon termination of this Agreement, providing the premises are repaired to the satisfaction of the City or restored to their original condition after such removal.

Section 6.06 The Lessee shall not remove or demolish, in whole or in part, any improvements within the Leased Premises without the express prior written consent of the City, which consent may be conditioned upon the obligation of the Lessee to replace the same by an improvement specified in the consent. However, City shall not withhold consent unreasonably and shall not impose unreasonable conditions upon its consent.

Article VII. MAINTENANCE OF PREMISES

Section 7.01 The City agrees to provide maintenance and custodial services in the public areas of the Terminal. Lessee is responsible for all custodial services within the Leased Premises.

Section 7.02 The City agrees to maintain, at its expense, the basic infrastructure of the Terminal to include the basic structure, heating/air conditioning systems, plumbing systems, and electrical systems provided however, such maintenance necessitated by the negligence or willful destruction of Lessee, its employees or agents, shall be at the expense of the Lessee.

Section 7.03 The City, Airport Director, or its duly appointed representative shall have the right to enter Lessee's Leased Premises to:

- (a) Inspect the Leased Premises at reasonable intervals during the Lessee's regular business hours, or at any time in case of an emergency, to determine if Lessee is in compliance with the terms and conditions of the Agreement. The City may, at its discretion, require the Lessee to effect any required maintenance or repairs at Lessee's own cost; and
- (b) Perform any and all things which the Lessee is obligated to, and has failed to do, after providing the Lessee with ten (10) days written notice to act, including maintenance, repairs, and replacements to Lessee's Leased Premises. The cost of all labor, materials, and overhead charges required for the performance of such work will be paid by Lessee to the City within ten (10) days following receipt of invoice for said charges by Lessee.

Article VIII. UTILITIES

Section 8.01 The City shall pay for all electric current, water, and natural gas that enters the Leased Premises via presently installed underground utility lines and pipes, to the Terminal, and operated by local Utility Companies. The Lessee shall be expected to exercise all practical economy in the use of such utilities and failure to do so will constitute unsatisfactory operations. The City shall have the right to insist upon and institute practices which it deems necessary, which the Lessee shall be expected to implement, to ensure no misuse or abuse of this privilege.

Section 8.02 Should the Lessee require any additional utility service other than that provided for above (such as telephone or internet lines), the Lessee agrees to bear all costs associated with installation and use of such service.

Article IX. PERFORMANCE AND SERVICE STANDARDS

Section 9.01 The Lessee hereby covenants and agrees that it will furnish prompt and efficient service adequate to meet all reasonable demands for Flight Training operations at a fair, reasonable and non-discriminatory basis, and to charge fair, reasonable and non-discriminatory prices for each unit or sale of service on a basis substantially similar to that charged by it for similar airports of comparable size within the same general area. The Lessee may make reasonable discounts, rebates and other similar types of price reductions to purchasers on a non-discriminatory basis.

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- Section 9.02 Lessee shall hold a Flight School Certificate issued by the FAA under 14 CFR Part 61 or 141 and it shall be in force for the entire term of this lease. A copy of the Certificate shall be forwarded to the Airport Director within ten (10) business days after execution of this Lease. In the event the Certificate is revoked by FAA, the Airport Director must be notified within five (5) business days. Failure to hold and maintain this Certificate will be grounds for termination of this lease.
- Section 9.03 The Aircraft provided by Lessee shall be certified and licensed by the FAA for the types of flights conducted. At least two (2) FAA licensed and certified Aircraft will be provided – one (1) capable of providing Basic Flight Training and one (1) capable of providing Advanced Flight Training. At least one (1) will be a dual equipped, single engine, land, fixed wing Aircraft fully certified as airworthy by the FAA. These Aircraft will be based and housed at the Airport. Lessee is also authorized to conduct training in multi-engine aircraft and rotorcraft as long as the basic Aircraft is provided. Aircraft will be maintained in accordance with all applicable FAA Rules and Regulations at Lessee's sole expense, in good operating order, free from mechanical defects, current in all required inspections, and in clean, neat, and attractive condition, inside and out. Aircraft used for Flight Training will be owned or be under lease to Lessee.
- Section 9.04 Lessee will provide, at a minimum, one (1) FAA Licensed Flight Instructor properly certified to give both ground and in-flight instruction in single-engine, land, fixed wing Aircraft for both Basic and Advanced Flight Training.
- Section 9.05 The Lessee shall provide all necessary publications and training aids necessary to facilitate the Basic and/or Advanced Flight Training process. These may include, but are not limited to, appropriate Federal Regulations, Airman's Information Manual, navigation charts, and equipment/charts for determining Aircraft performance.
- Section 9.06 The Lessee shall provide a quiet, comfortable space, free of significant interruptions for use by the Flight Instructor and student in the course of conducting ground instruction, pre-flight briefings, post flight briefings, and self study.
- Section 9.07 Lessee is authorized to perform such maintenance activities as necessary to meet the requirements of its Certificate in a hangar provided under separate lease.
- Section 9.08 Lessee shall be authorized to use the Fixed Base Operator waiting areas for its students and instructors. However, amenities in the waiting area are for passengers and transient aircrews only and not for use by lessee, its employees, instructors, or students.
- Section 9.09 Lessee's employees shall be clean, neat in appearance, courteous and polite. The Lessee shall not employ any Person or Persons in or about the Leased Premises who shall conduct themselves in a loud, boisterous or otherwise improper manner. Upon notification by the Airport Director to the Lessee in writing that any Person employed by the Lessee is, in the Airport Director's opinion, disorderly or otherwise unsatisfactory under this paragraph, the Lessee shall conduct a full investigation and correct the problem immediately.
- Section 9.10 The City is responsible for the safety and security of the Airport premises. Access is controlled by keys and key cards. Lessee and its employees will be granted access as necessary to conduct Lessee's business. Keys and key cards are issued to individual Persons and each Person issued a key or key card is solely authorized to use same. Keys and key cards are not to be loaned or used to allow unauthorized Persons access to the Airport Aircraft Operating Area. The City reserves the right to cancel and/or revoke access for any Person deemed a safety or security risk as necessary. In the event a Person's access is terminated for any reason, all keys

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and key cards must be returned to the Airport Director within five (5) business days. Keys or key cards that are lost and require replacement or are not returned when requested will result in a payment of fifty dollars (\$50.00) per key or key card by Lessee to the Airport.

Section 9.11 The Lessee shall abide by and be subject to all Rules and Regulations which are now, or may from time to time be promulgated by the City concerning management, operation or use of Airport facilities, or the safety of those using the same, and it shall abide by and be subject to all Rules and Regulations which are now, or may from time to time be promulgated by the FAA. The Lessee further agrees to maintain, use, and operate the Leased Premises in compliance with any and all present and future laws, ordinances, Rules and Regulations relating to public health, safety or welfare adopted by Federal, State, local or other governmental bodies or agencies, departments or officers thereof, and obtain all permits, at its sole expense, which may be necessary for the operation of its Concession.

Section 9.12 The Lessee covenants and agrees it will meet all expenses in connection with the use of its Leased Premises and be responsible for any taxes, permit fees, usage fees, license fees, or assessments lawfully levied or assessed by any taxing authority against the business owned and operated by the Lessee, the Leased Premises, concession receipts, or as a result of the Lessee's use and occupancy of Airport premises or its operation at the Airport.

Section 9.13 The Lessee does hereby covenant and agree that:

- (a) No person on the grounds of race, color, creed, age, sex, religion, national origin, or handicap shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said service or facilities.
- (b) In the construction of any improvements on the Leased Premises and the furnishing or services thereon, no person on the grounds of race, color, creed, age, sex, religion, national origin, or handicap shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination.
- (c) The Lessee shall use the Leased Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- (d) In accordance with the policy of the US Department of Transportation that Minority Business Enterprises, as defined in 49 CFR Part 23, shall have the maximum opportunity to participate in the performance of contracts such as covered by this agreement, the Lessee hereby assures no Person shall be excluded from the participation in, be denied the benefits of, or otherwise be discriminated against in connection with the award of any contract covered by 49 CFR Part 23 on the grounds of race, color, national origin, sex, or handicap. The Lessee hereby assures it will include the foregoing clauses in all subcontracts and will cause subcontractors similarly to include these clauses in further subcontracts.

In the event of breach if any of the above nondiscrimination covenants, the City shall have the right to terminate this agreement. The City, State of West Virginia, or the United States, or any combination of the foregoing Government entities, shall have the right to enforce the provisions of this Article.

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Section 9.14 The Lessee agrees that the City, its duly authorized representatives or agents may, at any reasonable time, enter into the Leased Premises for the purposes of making any inspection deemed necessary in order to determine whether Federal, State, County, or City Rules and Regulations and/or the covenants of this Agreement are being complied with, and to do any and all things which the City is obligated to do as set for the herein, or which may be deemed necessary for the general conduct and safe operation of the Airport.

Article X. ASSIGNMENT OR SUBLEASE

Section 10.01 The Lessee shall not have the right to assign or transfer the Agreement or any rights hereunder without the prior written consent of the City and amendment of this Agreement by the Morgantown City Council.

Section 10.02 The Lessee shall not sublet any part of the Leased Premises without prior written consent of the City and amendment of this Agreement by the Morgantown City Council.

Article XI. INSURANCE AND LIMITATION OF LIABILITY

Section 11.01 The Lessee covenants and agrees to secure and maintain during the term of this Agreement, the following insurance coverage. A Certificate of Insurance or copies of the individual policies shall be forwarded to the Airport Director within ten (10) business days after execution of this Lease. Such policies shall contain a provision requiring at least thirty (30) days notice of cancellation which notice shall be given in writing to the Airport Director. In the event these policies are revoked or cancelled, the Airport Director must be notified within five (5) business days. Failure to hold and maintain this insurance will be grounds for termination of this lease.

- (a) Comprehensive General Public Liability Insurance covering Lessee's operations at the Airport and its serving of Airport Customers with a combined single limit coverage of One Million Dollars (\$1,000,000), naming the City as an additional insured.
- (b) Passenger/Aircraft Liability Insurance for Training and Rental Aircraft in the minimum amount of One Million Dollars (\$1,000,000) per passenger and Two Million Dollars (\$2,000,000) per occurrence.

Section 11.02 The Lessee agrees to indemnify and hold the City, its agents, officers, representatives, and employees forever harmless from and against any and all claims, damages, judgments, attorneys fees, compensation, demands, or liability for injuries to Persons or Property caused by, arising from or in connection with the use or occupancy by the Lessee, its agents and employees of the Leased Premises or arising from, out of, or in connection with the Lessee's operations at the Airport or arising directly or indirectly out of any acts of the Lessee, its agents, servants, guests, or business invites, or by any reason of any act or omission of any such Person; provided, however the Lessee shall not be liable for any injury, damage or loss occasioned by the negligence of the City, its agents or employees. The Lessee shall give to the City prompt and timely notice of any claim or suit filed which in any way, directly or indirectly, contingently or otherwise, affects or might affect the City. Except for losses due to the negligent acts or omissions of the City, its agents or employees, the Lessee further covenants and agrees it will not hold the City, its agents or employees, responsible for any loss or damage occasioned by fire, theft, rain, flood, windstorm, hail, vandalism, or from any other cause whatsoever, whether said cause be direct, indirect, or merely a contributing factor in producing the loss or damage to any Property of the Lessee that may be located or stored on the Leased Premises or any other location at the Airport, and the Lessee agrees that storage of all Property on the Leased

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Premises or elsewhere at the Airport shall be at the Lessee's risk. The Lessee shall be responsible for all damage to Persons or Property caused by carelessness, negligence, or neglect on the part of Lessee, its agents or employees. The City shall not be liable for any loss/damage suffered by the Lessee arising out of the interruption or cessation of the business conducted by the Lessee under this Agreement.

Article XII. TERMINATION

Section 12.01 It is mutually understood and agreed that either party may terminate this Agreement, for any reason, with sixty (60) days prior written notice to the other party. It is further understood and agreed in the event the Airport were to cease operating as an air transportation facility, this Agreement would automatically terminate. It is further understood and agreed in the event the United States government or any of its agencies would assume control over the Airport in time of war or National Emergency, then this Agreement would automatically abate during such period. The City agrees to give the Lessee prior notice as is feasible upon the occurrence of such an event.

Section 12.02 Upon the happening of any one of the following events, Lessee shall be deemed to be in default of this Agreement. If Lessee is declared in default, The City may terminate this Agreement by giving the Lessee advance written notice, to be served as hereinafter provided:

- (a) Failure by the Lessee to pay fees and charges specified in this Agreement or if any part thereof is in arrears and unpaid, provided the City shall first give the Lessee written notice to remedy such failure, and if Lessee does not correct such failure within ten (10) days from receipt of such notice;
- (b) The making by the Lessee of a general assignment for the benefit of creditors;
- (c) The filing by the Lessee of a voluntary petition in bankruptcy, or the institution of proceedings in bankruptcy against the Lessee and the adjudication of the Lessee as a bankrupt pursuant to such proceedings;
- (d) The taking over of the Lessee or its assets by a court of competent jurisdiction;
- (e) The death (if an individual) or dissolution of the Lessee or the divestiture of the Lessee's estate herein by other operation of law;
- (f) The failure of the Lessee to comply with and meet all the laws or Rules and Regulations issued by the City, the FAA, or other governmental agency having jurisdiction;
- (g) The failure of the Lessee to keep and perform any of the covenants or agreements herein contained on the Part of the Lessee to be kept and performed, provided the City shall first give the Lessee written notice to remedy such failure, and if Lessee does not correct such failure within ten (10) days from receipt of such notice.

Section 12.03 The City retains the right to recover from the Lessee all minimum monthly payments due up to the time of such termination and all damages for breach of this Agreement. In the event of default by the Lessee of any of the terms of this Agreement, the Lessee shall pay to the City any costs and expenses, including reasonable attorneys fees, incurred by the City to enforce its rights under this agreement or to recover damage for Lessee's breach.

Section 12.04 No waiver of default by the City of any of the terms, covenants, or conditions hereof to be performed, kept, and observed by the Lessee shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants, and conditions herein contained to be

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performed, kept, and observed by the Lessee. The acceptance of payment by the City for any periods after default of any one of the terms, covenants, and conditions herein contained to be performed, kept, and observed by the Lessee shall not be deemed a waiver of any right on the part of the City to terminate this Agreement due to failure by the Lessee to so perform, keep, or observe any of the terms or conditions of this Agreement.

Section 12.05 Should the Leased Premises be totally or partially destroyed by fire or other casualty, either party, at its option, may terminate this Agreement by giving the other party written notice of the termination within fifteen (15) days after such destruction. In the event of termination, any payments made in advance by the Lessee shall be prorated on a daily basis and the portion attributable to the period subsequent to the destruction shall be refunded. Should the parties elect not to terminate the Agreement following total or partial destruction, the Lessee shall restore the Leased Premises to a condition similar to that immediately prior to the destruction, at its sole expense. Any such restoration of the Leased Premises shall begin as soon as reasonably possible.

Article XIII. MISCELLANEOUS

Section 13.01 The terms, covenants, and conditions made and entered into by the Agreement by the parties hereto are declared binding on their respective heirs, executors, administrators, successors, and assigns.

Section 13.02 Should any part of this Agreement be deemed invalid, only that part shall be disregarded. All other parts of the Agreement shall remain in effect.

Section 13.03 Any notice or other communication to the City or the Lessee pursuant hereto shall be deemed validly given, served, or delivered upon deposit in the United States Mail, certified and with proper postage and certification fee prepaid, address as follows:

To City: City of Morgantown
Airport Director
100 Hart Field Road
Morgantown, WV 26505

To Lessee: BJK Aviation, LLC
344 High Street Suite 301
Morgantown, WV 26505

Or such other addresses as the addressee may designate by written notice to the other party, delivered in accordance with the provisions of this paragraph.

Section 13.04 This Agreement is subject to and subordinate to the provision of any agreement made between the City and the United States Government relative to the operations, maintenance, and expansion of the Airport, the execution of which has been or may be made as a condition precedent to the transfer of Federal rights or property to the City for Airport use, or the expenditure of Federal funds for the improvement or development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, the Airport and Airways Improvement Act of 1982, the Airport and Airway Development Act of 1970, the Airport and Air Safety and Capacity Act of 1987, the Airport Safety and Capacity Expansion Act of 1990, and the Aviation Noise and Capacity Act of 1990 as they have been amended from time to time.

In the event the FAA or its successors requires modification or changes to this Agreement as a condition precedent to the granting of funds to the improvement or expansion of the Airport,

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the Lessee agrees to consent to such amendments, modifications, revisions, supplements, or deletions, of any of the terms, conditions, or requirements of the Agreement as may be reasonably required to obtain such funds.

Section 13.05 The City agrees it shall not, during the term of this Agreement, grant to any other individual, firm, or corporation an on-site Flight Training Concession under terms or conditions more favorable than those in this Agreement in respect to fees, time for payment, insurance, privileges, and performance and service standards.

Section 13.06 The parties do hereby covenant and warrant this Agreement contains the entire Agreement between the City and the Lessee for the purposes set forth in the preamble hereinabove; that there are no claims, promises, representations, or conditions not herein contained, either oral or written, which shall or may be charged or enforced or enforceable unless reduced to writing and signed by both of the parties hereto.

Section 13.07 This Agreement shall be governed by the laws of West Virginia.

IN WITNESS WHEREOF, the parties hereunto have caused this Agreement to be executed by their proper officers the day and years above written.

CITY OF MORGANTOWN

By: _____
City Manager

ATTEST:

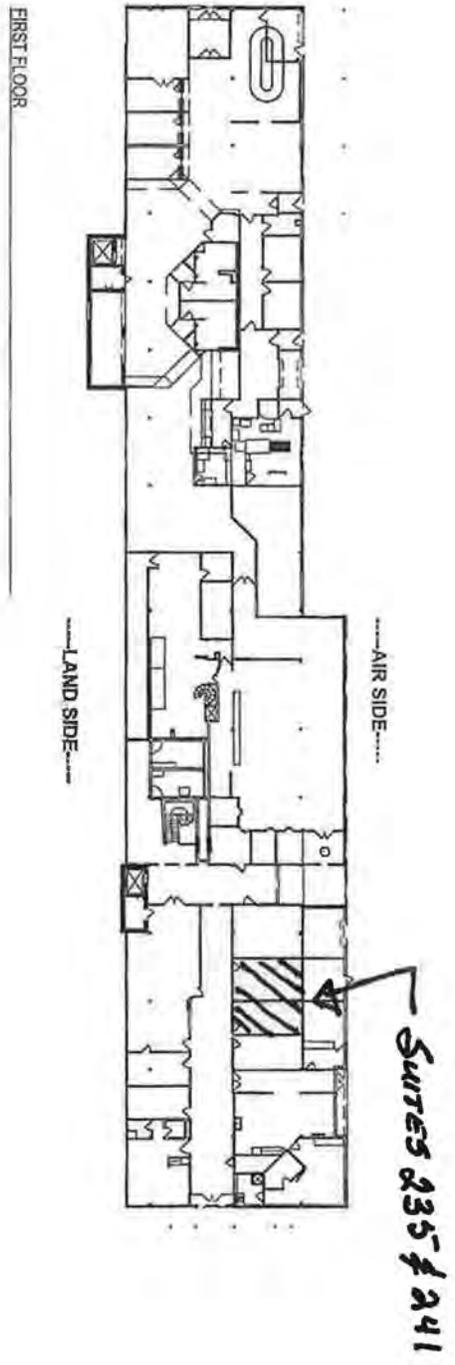
City Clerk

BJK AVIATION, LLC

By: _____
President

ATTEST:

EXHIBIT A



BASIC LAND AND FLIGHT TRAINING CONCESSION AGREEMENT

Exhibit 1

AN ORDINANCE AUTHORIZING A LEASE AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN, LESSOR, AND AC EXPRESS, INC., LESSEE, IN WHICH OFFICE SPACE, SPECIFICALLY SUITE 229, IS BEING LEASED AT THE MORGANTOWN MUNICIPAL AIRPORT FOR THE PURPOSE OF OPERATING A CHARTER FLIGHT CONCESSION.

The City of Morgantown hereby ordains that its City Manager is authorized to execute the Agreement hereto attached by of the City of Morgantown.

The Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

BASIC LAND AND FLIGHT CHARTER CONCESSION AGREEMENT

THIS AGREEMENT made and entered into this _____, by and between the City of Morgantown, a municipal corporation (hereinafter called "**City**"), and AC EXPRESS, INC. (hereinafter called "**Lessee**").

WITNESSETH:

WHEREAS, the City owns, controls, and operates the Morgantown Municipal Airport (hereinafter called "**Airport**"); and

WHEREAS, the City encourages growth and development of aviation activities at the Airport, which activities include flight charters for businesses and individuals from Morgantown and the surrounding area; and

WHEREAS, the Lessee is desirous of providing flight charter services to businesses and individuals from Morgantown and the surrounding area.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements herein contained to be kept and performed, and intending to be legally bound hereby, the parties hereto covenant and agree as follows:

Article I. DEFINITIONS

Section 1.01 The following words and phrases, wherever used in the Agreement shall for the purpose of this Agreement, have the following meanings:

- (a) "Aircraft Operating Area" shall mean the area that contains the runways, taxiways, aircraft parking aprons/ramps, hold areas, and any other area used or intended to be used for surface maneuvering of aircraft, and any areas inside the perimeter fence which are adjacent to surface maneuvering areas. This may also be referred to as "airside."
- (b) "Airport" refers to the Morgantown Municipal Airport.
- (c) "Airport Customer" shall be any person who utilizes the Airport for the purpose of chartering an aircraft for a passenger or cargo flight, embarking or debarking from a charter aircraft, or shipping or receiving cargo from a charter aircraft, in use by the Lessee.
- (d) "Certificate" shall mean a certificate issued by the FAA to allow a business to operate aircraft or provide an aeronautical service.
- (e) "Charter Aircraft" shall mean an aircraft used to transport passengers or goods for hire not in scheduled service.
- (f) "Charter Flight" shall mean a flight to transport passengers or goods for hire not in scheduled service.
- (g) "FAA" means the Federal Aviation Administration of the United States, or any federal agencies succeeding to its jurisdiction.

- (h) "Leased Premises" shall mean an office located in the Terminal Building of the Airport located at 82 Hart Field Road, Suite 229, Morgantown, WV 26505. This space is to be used solely by the Lessee for the conduct of the Lessee's business.
- (i) "Person" shall mean an individual, corporation, government or governmental subdivision, partnership, association, or any other legal entity, or any representative thereof.
- (j) "Property" shall include anything of material value that is real, personal, tangible, or intangible.
- (k) "Rules and Regulations" shall mean those lawful and reasonable rules and regulations which are promulgated by the City for the orderly use of the Airport by both airlines and other operators and users of the Airport as the same may be amended, modified, or supplemented from time to time. It may also mean rules and regulations promulgated by the FAA or other Governmental entity governing conduct on airports in general and/or the Morgantown Municipal Airport specifically.

Article II. PREMISES

Section 2.01 The City hereby leases to the Lessee an office located in the Terminal Building of the Airport located at 82 Hart Field Road, Suite 229, Morgantown, WV 26505 – measuring approximately two hundred (200) square feet – more specifically identified in Exhibit A attached hereto. This space is to be used solely by the Lessee for the conduct of the Lessee's business.

Article III. GRANT OF CONCESSION

Section 3.01 The City hereby grants to the Lessee subject to the terms and conditions hereinafter contained the right to conduct and operate a Charter Flight Concession at the Airport. This shall not be construed to be an exclusive concession, and it is stipulated, agreed, and understood that the City may grant concessions to other parties for operation of charter flight services. It is further understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958 as amended.

Section 3.02 The City hereby agrees to allow the Lessee to use the Leased Premises as defined above for the purpose of operating a Charter Flight operation.

Section 3.03 Lessee shall have the right to the non-exclusive use, in common with others, of the Airport parking areas, appurtenances and improvements; the right of ingress to and egress from the Leased Premises, which shall extend to Lessee's employees, guests and customers; and the right in common with other tenants of the Airport to use common areas of the Airport, including but not limited to the Airport Operating Area, roadways and other conveniences for the conduct of Lessee's business.

Section 3.04 Lessee is not authorized to offer other Aeronautical Services under this Agreement without prior written consent of the City and amendment of this Agreement by the Morgantown City Council.

Article IV. TERM OF AGREEMENT

Section 4.01 The Term of this agreement shall be for a period of three (3) years commencing on March 1, 2013 and ending on February 29, 2016 unless terminated at an earlier date for any reason as set forth herein.

Article V. FEES

Section 5.01 In consideration for the rights and privileges granted by this Agreement, Lessee agrees to pay the City an annual rental payment of four thousand two hundred dollars (\$4,200.00) at the rate of three hundred and fifty dollars (\$350.00) per month. Payment will be made in advance, on or before the first business day of each month during the terms hereto and any extension thereof.

Section 5.02 Rental payments shall increase as of the first day of each calendar year (January 1) during the entire term, by the same percentage increase (if any) in the Consumer Price Index (revised) for Urban Wage Earners and Clerical Workers in Pittsburgh, PA, as published by the Bureau of Labor Statistics of the US Department of Labor (CPI) during the prior calendar year, but no more than three percent (3%). Rents shall be fixed between annual adjustments. Each calendar year's recalculated rent shall be the basis for the adjustment for the next calendar year rent. The rent shall be recalculated as soon as the CPI is published. The increase shall be effective as of January 1 of each year. In no event shall adjustment be a negative amount. If the rental rate increases, Lessee shall, within thirty (30) days of receipt of notice from City, pay to City any additional rent caused by the increase in CPI, divided by twelve (12), multiplied by the number of rental payments made by Lessee since the effective date of rental adjustment.

Section 5.03 It is agreed that a finance charge of one and one-half percent (1.5%) per month shall be added to any balance unpaid within thirty (30) days after that balance is due.

Section 5.04 All sums due hereunder shall be made payable to the City of Morgantown. All such sums, statements, and reports shall be delivered to the Airport Director, Morgantown Municipal Airport, 100 Hart Field Road, Morgantown, WV 26505.

Article VI. INSTALLATION OF IMPROVEMENTS

Section 6.01 The Lessee shall, without cost to the City, make improvements and provide and install all trade fixtures as are necessary for the customary operation of its Charter Flight business.

Section 6.02 The Lessee shall have the right, at its sole expense, to install and maintain signs advertising its business. Any signs must have prior written approval of the Airport Director, as the City's Representative, both as to size and location.

Section 6.03 Lessee shall not suffer or permit any mechanic or other liens to be levied or filed against the City. All improvements, equipment, fixtures, and interior décor constructed by the Lessee, its agents, or contractors, shall conform in all respects to all applicable statutes, ordinances, building codes, and Rules and Regulations. Lessee shall be responsible for applying for and obtaining any permits required to complete improvements. Any approval given by the City shall not constitute a representation or warranty as to conformity; responsibility therefore shall at all times remain with the Lessee.

Section 6.04 All structural improvements and alterations shall, upon termination of this Agreement, become property of the Airport. All non-structural improvements and property of the Lessee must be removed upon termination of this Agreement.

Section 6.05 The Lessee may place such furnishings, property, and equipment into the Leased Premises as is necessary for the conduct of its business. Lessee shall have the right to remove same upon termination of this Agreement, providing the premises are repaired to the satisfaction of the City or restored to their original condition after such removal.

Section 6.06 The Lessee shall not remove or demolish, in whole or in part, any improvements within the Leased Premises without the express prior written consent of the City, which consent may be conditioned upon the obligation of the Lessee to replace the same by an improvement specified in the consent. However, City shall not withhold consent unreasonably and shall not impose unreasonable conditions upon its consent.

Article VII. MAINTENANCE OF PREMISES

Section 7.01 The City agrees to provide maintenance and custodial services in the public areas of the Terminal. Lessee is responsible for all custodial services within the Leased Premises.

Section 7.02 The City agrees to maintain, at its expense, the basic infrastructure of the Terminal to include the basic structure, heating/air conditioning systems, plumbing systems, and electrical systems provided however, such maintenance necessitated by the negligence or willful destruction of Lessee, its employees or agents, shall be at the expense of the Lessee.

Section 7.03 The City, Airport Director, or its duly appointed representative shall have the right to enter Lessee's Leased Premises to:

- (a) Inspect the Leased Premises at reasonable intervals during the Lessee's regular business hours, or at any time in case of an emergency, to determine if Lessee is in compliance with the terms and conditions of the Agreement. The City may, at its discretion, require the Lessee to effect any required maintenance or repairs at Lessee's own cost; and
- (b) Perform any and all things which the Lessee is obligated to, and has failed to do, after providing the Lessee with ten (10) days written notice to act, including maintenance, repairs, and replacements to Lessee's Leased Premises. The cost of all labor, materials, and overhead charges required for the performance of such work will be paid by Lessee to the City within ten (10) days following receipt of invoice for said charges by Lessee.

Article VIII. UTILITIES

Section 8.01 The City shall pay for all electric current, water, and natural gas that enters the Leased Premises via presently installed underground utility lines and pipes, to the Terminal, and operated by local Utility Companies. The Lessee shall be expected to exercise all practical economy in the use of such utilities and failure to do so will constitute unsatisfactory operations. The City shall have the right to insist upon and institute practices which it deems necessary, which the Lessee shall be expected to implement, to ensure no misuse or abuse of this privilege.

Section 8.02 Should the Lessee require any additional utility service other than that provided for above (such as telephone or internet lines), the Lessee agrees to bear all costs associated with installation and use of such service.

Article IX. PERFORMANCE AND SERVICE STANDARDS

Section 9.01 The Lessee hereby covenants and agrees that it will furnish prompt and efficient service adequate to meet all reasonable demands for charter flight operations at a fair, reasonable and non-discriminatory basis, and to charge fair, reasonable and non-discriminatory prices for each unit or sale of service on a basis substantially similar to that charged by it for similar airports of comparable size within the same general area. The Lessee may make reasonable discounts, rebates and other similar types of price reductions to purchasers on a non-discriminatory basis.

Section 9.02 Lessee shall hold a FAA Charter Certificate granted under 14CFR Part 135 and it shall be in force for the entire term of this lease. A copy of the Certificate shall be forwarded to the

Airport Director within ten (10) business days after execution of this Lease. In the event the Certificate is revoked by FAA, the Airport Director must be notified within five (5) business days. Failure to hold and maintain this Certificate will be grounds for termination of this lease.

Section 9.03 The Charter Aircraft provided by Lessee shall be certified and licensed by the FAA for the types of flights conducted. Aircraft will be maintained in accordance with all applicable FAA Rules and Regulations. Aircraft used for Charter Flights will be owned or be under lease to Lessee.

Section 9.04 Lessee will employ pilots licensed by FAA that meet the requirements of Lessee's Certificate.

Section 9.05 Lessee is authorized to perform such maintenance activities as necessary to meet the requirements of its Certificate in a hangar provided under separate lease.

Section 9.06 Lessee shall be authorized to use the Fixed Base Operator waiting areas for its clients and passengers. However, amenities in the waiting area are for passengers and transient aircrews only and not for use by lessee or its employees.

Section 9.07 Lessee's employees shall be clean, neat in appearance, courteous and polite. The Lessee shall not employ any Person or Persons in or about the Leased Premises who shall conduct themselves in a loud, boisterous or otherwise improper manner. Upon notification by the Airport Director to the Lessee in writing that any Person employed by the Lessee is, in the Airport Director's opinion, disorderly or otherwise unsatisfactory under this paragraph, the Lessee shall conduct a full investigation and correct the problem immediately.

Section 9.08 The City is responsible for the safety and security of the Airport premises. Access is controlled by keys and key cards. Lessee and its employees will be granted access as necessary to conduct Lessee's business. Keys and key cards are issued to individual Persons and each Person issued a key or key card is solely authorized to use same. Keys and key cards are not to be loaned or used to allow unauthorized Persons access to the Airport Aircraft Operating Area. The City reserves the right to cancel and/or revoke access for any Person deemed a safety or security risk as necessary. In the event a Person's access is terminated for any reason, all keys and key cards must be returned to the Airport Director within five (5) business days. Keys or key cards that are lost and require replacement or are not returned when requested will result in a payment of fifty dollars (\$50.00) per key or key card by Lessee to the Airport.

Section 9.09 The Lessee shall abide by and be subject to all Rules and Regulations which are now, or may from time to time be promulgated by the City concerning management, operation or use of Airport facilities, or the safety of those using the same, and it shall abide by and be subject to all Rules and Regulations which are now, or may from time to time be promulgated by the FAA. The Lessee further agrees to maintain, use, and operate the Leased Premises in compliance with any and all present and future laws, ordinances, Rules and Regulations relating to public health, safety or welfare adopted by Federal, State, local or other governmental bodies or agencies, departments or officers thereof, and obtain all permits, at its sole expense, which may be necessary for the operation of its Concession.

Section 9.10 The Lessee covenants and agrees it will meet all expenses in connection with the use of its Leased Premises and be responsible for any taxes, permit fees, usage fees, license fees, or assessments lawfully levied or assessed by any taxing authority against the business owned and operated by the Lessee, the Leased Premises, concession receipts, or as a result of the Lessee's use and occupancy of Airport premises or its operation at the Airport.

Section 9.11 The Lessee does hereby covenant and agree that:

- (c) No person on the grounds of race, color, creed, age, sex, religion, national origin, or handicap shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said service or facilities.
- (d) In the construction of any improvements on the Leased Premises and the furnishing or services thereon, no person on the grounds of race, color, creed, age, sex, religion, national origin, or handicap shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination.
- (e) The Lessee shall use the Leased Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- (f) In accordance with the policy of the US Department of Transportation that Minority Business Enterprises, as defined in 49 CFR Part 23, shall have the maximum opportunity to participate in the performance of contracts such as covered by this agreement, the Lessee hereby assures no Person shall be excluded from the participation in, be denied the benefits of, or otherwise be discriminated against in connection with the award of any contract covered by 49 CFR Part 23 on the grounds of race, color, national origin, sex, or handicap. The Lessee hereby assures it will include the foregoing clauses in all subcontracts and will cause subcontractors similarly to include these clauses in further subcontracts.

In the event of breach if any of the above nondiscrimination covenants, the City shall have the right to terminate this agreement. The City, State of West Virginia, or the United States, or any combination of the foregoing Government entities, shall have the right to enforce the provisions of this Article.

Section 9.12 The Lessee agrees that the City, its duly authorized representatives or agents may, at any reasonable time, enter into the Leased Premises for the purposes of making any inspection deemed necessary in order to determine whether Federal, State, County, or City Rules and Regulations and/or the covenants of this Agreement are being complied with, and to do any and all things which the City is obligated to do as set for the herein, or which may be deemed necessary for the general conduct and safe operation of the Airport.

Article X. ASSIGNMENT OR SUBLEASE

Section 10.01 The Lessee shall not have the right to assign or transfer the Agreement or any rights hereunder without the prior written consent of the City and amendment of this Agreement by the Morgantown City Council.

Section 10.02 The Lessee shall not sublet any part of the Leased Premises without prior written consent of the City and amendment of this Agreement by the Morgantown City Council.

Article XI. INSURANCE AND LIMITATION OF LIABILITY

Section 11.01 The Lessee covenants and agrees to secure and maintain during the term of this Agreement, the following insurance coverage. A Certificate of Insurance or copies of the individual policies shall be forwarded to the Airport Director within ten (10) business days after execution of this Lease. Such policies shall contain a provision requiring at least thirty (30) days

notice of cancellation which notice shall be given in writing to the Airport Director. In the event these policies are revoked or cancelled, the Airport Director must be notified within five (5) business days. Failure to hold and maintain this insurance will be grounds for termination of this lease.

- (a) Comprehensive General Public Liability Insurance covering Lessee's operations at the Airport and its serving of Airport Customers with a combined single limit coverage of One Million Dollars (\$1,000,000), naming the City as an additional insured.
- (b) Passenger/Aircraft Liability Insurance for Charter Operations in the minimum amount of One Million Dollars (\$1,000,000) per passenger and Two Million Dollars (\$2,000,000) per occurrence.

Section 11.02 The Lessee agrees to indemnify and hold the City, its agents, officers, representatives, and employees forever harmless from and against any and all claims, damages, judgments, attorneys fees, compensation, demands, or liability for injuries to Persons or Property caused by, arising from or in connection with the use or occupancy by the Lessee, its agents and employees of the Leased Premises or arising from, out of, or in connection with the Lessee's operations at the Airport or arising directly or indirectly out of any acts of the Lessee, its agents, servants, guests, or business invites, or by any reason of any act or omission of any such Person; provided, however the Lessee shall not be liable for any injury, damage or loss occasioned by the negligence of the City, its agents or employees. The Lessee shall give to the City prompt and timely notice of any claim or suit filed which in any way, directly or indirectly, contingently or otherwise, affects or might affect the City. Except for losses due to the negligent acts or omissions of the City, its agents or employees, the Lessee further covenants and agrees it will not hold the City, its agents or employees, responsible for any loss or damage occasioned by fire, theft, rain, flood, windstorm, hail, vandalism, or from any other cause whatsoever, whether said cause be direct, indirect, or merely a contributing factor in producing the loss or damage to any Property of the Lessee that may be located or stored on the Leased Premises or any other location at the Airport, and the Lessee agrees that storage of all Property on the Leased Premises or elsewhere at the Airport shall be at the Lessee's risk. The Lessee shall be responsible for all damage to Persons or Property caused by carelessness, negligence, or neglect on the part of Lessee, its agents or employees. The City shall not be liable for any loss/damage suffered by the Lessee arising out of the interruption or cessation of the business conducted by the Lessee under this Agreement.

Article XII. TERMINATION

Section 12.01 It is mutually understood and agreed that either party may terminate this Agreement, for any reason, with sixty (60) days prior written notice to the other party. It is further understood and agreed in the event the Airport were to cease operating as an air transportation facility, this Agreement would automatically terminate. It is further understood and agreed in the event the United States government or any of its agencies would assume control over the Airport in time of war or National Emergency, then this Agreement would automatically abate during such period. The City agrees to give the Lessee prior notice as is feasible upon the occurrence of such an event.

Section 12.02 Upon the happening of any one of the following events, Lessee shall be deemed to be in default of this Agreement. If Lessee is declared in default, The City may terminate this Agreement by giving the Lessee advance written notice, to be served as hereinafter provided:

- (a) Failure by the Lessee to pay fees and charges specified in this Agreement or if any part thereof is in arrears and unpaid, provided the City shall first give the Lessee written notice to remedy such failure, and if Lessee does not correct such failure within ten (10) days from receipt of such notice;
- (b) The making by the Lessee of a general assignment for the benefit of creditors;
- (c) The filing by the Lessee of a voluntary petition in bankruptcy, or the institution of proceedings in bankruptcy against the Lessee and the adjudication of the Lessee as a bankrupt pursuant to such proceedings;
- (d) The taking over of the Lessee or its assets by a court of competent jurisdiction;
- (e) The death (if an individual) or dissolution of the Lessee or the divestiture of the Lessee's estate herein by other operation of law;
- (f) The failure of the Lessee to comply with and meet all the laws or Rules and Regulations issued by the City, the FAA, or other governmental agency having jurisdiction;
- (g) The failure of the Lessee to keep and perform any of the covenants or agreements herein contained on the Part of the Lessee to be kept and performed, provided the City shall first give the Lessee written notice to remedy such failure, and if Lessee does not correct such failure within ten (10) days from receipt of such notice.

Section 12.03 The City retains the right to recover from the Lessee all minimum monthly payments due up to the time of such termination and all damages for breach of this Agreement. In the event of default by the Lessee of any of the terms of this Agreement, the Lessee shall pay to the City any costs and expenses, including reasonable attorneys fees, incurred by the City to enforce its rights under this agreement or to recover damage for Lessee's breach.

Section 12.04 No waiver of default by the City of any of the terms, covenants, or conditions hereof to be performed, kept, and observed by the Lessee shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants, and conditions herein contained to be performed, kept, and observed by the Lessee. The acceptance of payment by the City for any periods after default of any one of the terms, covenants, and conditions herein contained to be performed, kept, and observed by the Lessee shall not be deemed a waiver of any right on the part of the City to terminate this Agreement due to failure by the Lessee to so perform, keep, or observe any of the terms or conditions of this Agreement.

Section 12.05 Should the Leased Premises be totally or partially destroyed by fire or other casualty, either party, at its option, may terminate this Agreement by giving the other party written notice of the termination within fifteen (15) days after such destruction. In the event of termination, any payments made in advance by the Lessee shall be prorated on a daily basis and the portion attributable to the period subsequent to the destruction shall be refunded. Should the parties elect not to terminate the Agreement following total or partial destruction, the Lessee shall restore the Leased Premises to a condition similar to that immediately prior to the destruction, at its sole expense. Any such restoration of the Leased Premises shall begin as soon as reasonably possible.

Article XIII. MISCELLANEOUS

Section 13.01 The terms, covenants, and conditions made and entered into by the Agreement by the parties hereto are declared binding on their respective heirs, executors, administrators, successors, and assigns.

Section 13.02 Should any part of this Agreement be deemed invalid, only that part shall be disregarded. All other parts of the Agreement shall remain in effect.

Section 13.03 Any notice or other communication to the City or the Lessee pursuant hereto shall be deemed validly given, served, or delivered upon deposit in the United States Mail, certified and with proper postage and certification fee prepaid, address as follows:

To City: City of Morgantown
Airport Director
100 Hart Field Road
Morgantown, WV 26505

To Lessee: AC Express, Inc.
714 Venture Drive #133
Morgantown, WV 26508

Or such other addresses as the addressee may designate by written notice to the other party, delivered in accordance with the provisions of this paragraph.

Section 13.04 This Agreement is subject to and subordinate to the provision of any agreement made between the City and the United States Government relative to the operations, maintenance, and expansion of the Airport, the execution of which has been or may be made as a condition precedent to the transfer of Federal rights or property to the City for Airport use, or the expenditure of Federal funds for the improvement or development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, the Airport and Airways Improvement Act of 1982, the Airport and Airway Development Act of 1970, the Airport and Air Safety and Capacity Act of 1987, the Airport Safety and Capacity Expansion Act of 1990, and the Aviation Noise and Capacity Act of 1990 as they have been amended from time to time.

In the event the FAA or its successors requires modification or changes to this Agreement as a condition precedent to the granting of funds to the improvement or expansion of the Airport, the Lessee agrees to consent to such amendments, modifications, revisions, supplements, or deletions, of any of the terms, conditions, or requirements of the Agreement as may be reasonably required to obtain such funds.

Section 13.05 The City agrees it shall not, during the term of this Agreement, grant to any other individual, firm, or corporation an on-site Charter Flight Concession under terms or conditions more favorable than those in this Agreement in respect to fees, time for payment, insurance, privileges, and performance and service standards.

Section 13.06 The parties do hereby covenant and warrant this Agreement contains the entire Agreement between the City and the Lessee for the purposes set forth in the preamble hereinabove; that there are no claims, promises, representations, or conditions not herein contained, either oral or written, which shall or may be charged or enforced or enforceable unless reduced to writing and signed by both of the parties hereto.

Section 13.07 This Agreement shall be governed by the laws of West Virginia.

IN WITNESS WHEREOF, the parties hereunto have caused this Agreement to be executed by their proper officers the day and years above written.

CITY OF MORGANTOWN

By: _____
City Manager

ATTEST:

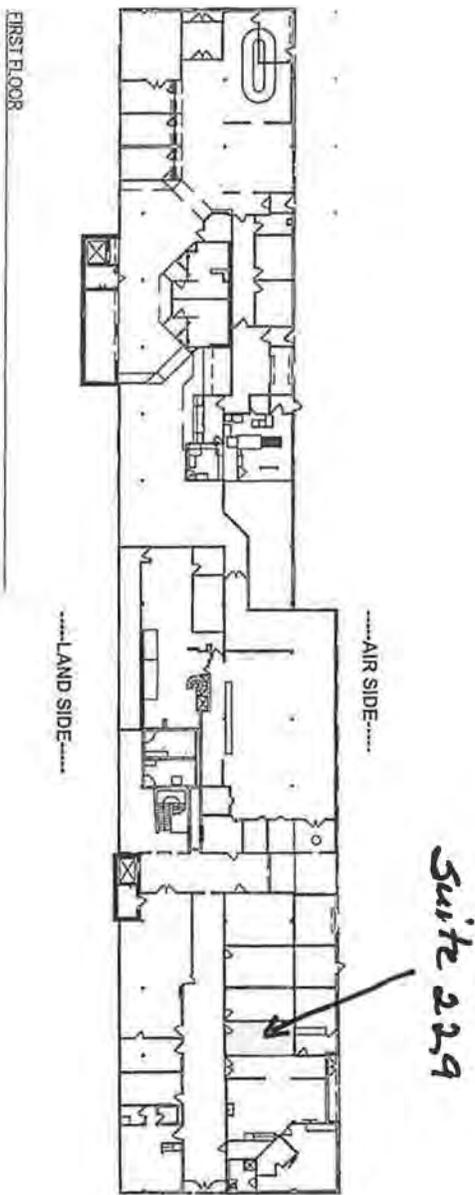
City Clerk

AC EXPRESS, INC.

By: _____
President

ATTEST:

EXHIBIT A



BASIC LAND AND FLIGHT CHARTER CONCESSION AGREEMENT

Exhibit 1

RESOLUTION

WHEREAS, the City of Morgantown submitted the necessary paperwork to obtain \$4,000 for the MountainFest LLC(a 501(c)(3) organization) through the Governor's Community Participation Grant Program, and the grant application has been approved for funding; and

WHEREAS, the grant (12LEDA0175) will allow the MountainFest Motorcycle Rally to purchase equipment, staging, promotions, or security for the event ; and

WHEREAS, Morgantown City Council is of the opinion that this will be of great benefit to the residents of Morgantown, and therefore agrees to administer the grant contract.

NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown this 5th day of February, 2013, that the City agrees to the conditions of the contract and authorizes the Mayor to sign the West Virginia Development Office contract, and City Manager to administer the execution of the grant

Mayor

City Clerk

GOVERNOR'S COMMUNITY PARTICIPATION

GRANT PROGRAM CONTRACT

between the

WEST VIRGINIA DEVELOPMENT OFFICE

and the

CITY OF MORGANTOWN

THIS AGREEMENT, entered into this 1st day of July, 2011, by the West Virginia Department of Finance and Administration on behalf of the West Virginia Development Office hereinafter called the "WVDEVO" and the City of Morgantown and its authorized officers, agents, and representatives, hereinafter called the "Grantee."

WITNESS THAT:

WHEREAS, the WVDEVO has promised and agreed to assist the Grantee to perform such tasks hereafter described in the scope of services, which is to be partially financed by funds made available through the Governor's Community Participation Grant program.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. **Assistance of the Grantee**. The WVDEVO hereby agrees to assist the Grantee including all authorized officers, agents, and representatives, to perform such tasks and functions as set forth below in the scope of services.

2. **Scope of Services**. The Grantee, or its designated agent, shall do, perform and carry out, in a satisfactory and proper manner as determined by the WVDEVO, and appropriate regulatory agencies, if required, all duties, tasks, and functions necessary to conduct the MountainFest Motorcycle Rally. The project will include equipment, staging, promotion, and security for the event.

3. **Personnel**. The Grantee represents that it has, or will secure at its own expense, personnel with the necessary qualifications and experience required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with WVDEVO.

4. **Time Performance**. The Grantee will commence its duties under this Contract on July 1, 2011, and such duties shall be undertaken and completed in such sequences as to assure their expeditious completion in the light of the purpose of the Contract; but, in any event, all of the services required hereunder shall be completed by June 30, 2013. The completion date of this contract may only be extended by mutual written agreement of both parties dependent on the reappropriation of funds under the Governor's Community Participation Grant program. If no such agreement exists, the Grantee shall not receive payment for services rendered or work performed relative to this grant after June 30, 2013.

5. **Compensation**. In consideration of the services rendered by the Grantee, the WVDEVO agrees to pay the Grantee the sum of \$4,000. This amount constitutes complete compensation for all services rendered. In no

instance shall the agreed upon compensation exceed \$4,000 without the written consent of the Governor of the State of West Virginia.

6. **Method of Payment.** In order to receive payments under the terms of this Agreement, the Grantee shall submit the following: (a) a Letter of Transmittal containing a progress report, and (b) a Request for Payment Financial Report. The final ten percent shall be made available upon submission of certification of completion and acceptance of the project by the Grantee. Upon receipt of said documents, the WVDEVO shall review the same for reasonableness and appropriateness.

7. **Changes.** The WVDEVO and the Grantee may, from time to time, require changes in the scope of the services of the work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Grantee's compensation and work to be performed, which are mutually agreed upon by and between the WVDEVO and the Grantee, shall be incorporated in written amendments to this Contract.

8. **Sub-Grantees and Reversion of Property.** The Grantee may administer funds on behalf of sub-grantees, provided that such a sub-grantee is certified as a nonprofit organization by the United States Internal Revenue Service and the West Virginia Secretary of State's Office. Should such a sub-grantee cease to exist, all commodities or supplies purchased with funds provided under the auspices of this Contract by or for the sub-grantee shall become the property of the Grantee.

9. **Competitive Bid Procedures.** Competitive bidding shall be pursued in all instances. The Grantee must follow the more stringent of either state or local purchasing regulations. The West Virginia Purchasing Division requirements, at a minimum, are as follows: Commodities and services expected to cost \$2,500 or less require no bids, however, competition is encouraged. Purchases between \$2,500.01 and \$5,000 require three verbal bids to be documented on a verbal bid quotation summary. Purchases \$5,000.01 to \$25,000 require three written bids.

The Grantee shall solicit competitive, sealed bids for commodities and supplies related to this project which have an estimated value of over \$25,000. Any attempts by the Grantee to segregate the project into sections having an estimated value of less than \$25,000 shall be cause for termination of this agreement under the provisions of Paragraph 28. These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions West Virginia Code §59-3. This notice shall be published by the Grantee in the newspaper with the largest circulation serving the general area once a week for two successive weeks preceding the final bid date.

The Grantee shall also, where feasible, solicit sealed bids by listing the project in the F. W. Dodge Reports, sending requests by mail to prospective suppliers or contractors, and by posting notice on a bulletin board in a public place. The Grantee shall have available upon request for review by the WVDEVO or its designated representative, bid documents and other evidence of compliance with these procedures.

10. **Project Wage Rates.** Every contract involving construction, reconstruction, demolition, improvement, enlargement, painting, decoration, alteration, and/or repair work which involves the employment of any contractor and/or subcontractor necessary for the undertaking and completion of this project, regardless of the source of funds utilized to pay such contract, must comply with the West Virginia Act on Wages on Construction of Public Improvements, West Virginia Code §21-5A. **This law applies to all construction contracts, regardless of cost.**

The receipt and utilization of funds procured under this agreement mandate that all construction contracts necessary for the undertaking and completion of this project, regardless of the source of funds utilized to pay such construction contracts, must comply with the provisions of West Virginia Code § 21-5A.

Such provisions shall include the payment of the Fair Minimum Wage Rates as determined by the West Virginia Commissioner of Labor for each craft or classification of all workmen needed to perform the contract in the locality in which the public work is performed. For projects involving federal funds which are covered by the provisions of the Davis Bacon Act (40 U.S.C. 276-a 276a-5), the Grantee shall cause the contractor and/or subcontractors to pay the higher wage rate, federal or state.

Further, the Grantee shall note this requirement in the advertisement for bids and print these wage rates on all bid documents. The Grantee shall also have available upon request for review by the WVDEVO or its designated representative, bid documents and other evidence of compliance including copies of contractor's payrolls.

11. **Construction.** The Grantee shall procure construction contracts in accordance with West Virginia Code §5-22-1. **The state and its subdivisions shall, except as provided in this section, solicit competitive bids for every construction project exceeding \$25,000 in total cost.**

Further, the receipt and utilization of funds procured under this agreement mandate that ALL CONSTRUCTION CONTRACTS NECESSARY FOR THE UNDERTAKING AND COMPLETION OF THIS PROJECT, regardless of the source of funds utilized to pay such construction contracts, must comply with the provisions of West Virginia Code § 21-5A.

The term construction shall mean any construction, reconstruction, improvement, enlargement, painting, decorating, or repair of any public improvement let to contract. These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions West Virginia Code §59-3. This notice shall be published by the Grantee in the newspaper with the largest circulation serving the general area once a week for two successive weeks preceding the final bid date.

Any contracts under this agreement must comply with the West Virginia Act on Wages on Construction of Public Improvements, West Virginia Code §21-5A. This law applies to all construction contracts, regardless of cost. The Grantee shall note this requirement in the advertisement for bids and print these wage rates on all bidding blanks.

The Grantee shall designate the time and place for opening such construction bids in accordance with West Virginia Code §5-22-2.

12. **Bonding.** The Grantee shall secure bonding in accordance with West Virginia Code §5-22-1. All bids submitted pursuant to this chapter shall include a valid bid bond or other surety as approved by the state of West Virginia or its subdivisions. Following the solicitation of such bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: provided, that the state and its subdivisions may reject all bids and solicit new bids.

In the procurement of contracts or subcontracts for construction of less than \$100,000, the Grantee shall follow local or State requirements relating to bid guarantees, performance bonds, and payment bonds, provided that the Grantee's and State's interests are adequately protected and that such contracts can be executed in a timely manner.

In the procurement of contracts or subcontracts for construction that exceed \$100,000, the Grantee shall obtain the following:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. This bid guarantee shall consist of a firm commitment such as bid bond, certified check, or other negotiable instrument accompanying a bid that the bidder will, upon acceptance of the bid, execute the contractual documents as may be required with the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. This performance bond shall be executed by the successful contractor in connection with the contract to secure fulfillment of the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. This payment bond shall be executed in connection with a contract to assure payment is required by law of all persons supplying labor and materials in the execution of the work provided for in the contract.

13. **Architecture and Engineering.** The Grantee shall procure architectural or engineering services in accordance with West Virginia Code §5G. In the procurement of architectural and engineering services for projects estimated to cost \$250,000 or more, the Grantee shall publish a Class II legal ad in compliance with West Virginia Code §59-3. In the procurement of services for projects estimated to cost less than \$250,000, the Grantee shall conduct discussions with three or more professional firms.

14. **Design-Build.** The Grantee shall procure design-build projects in accordance with West Virginia Code §5-22A-1. This applies solely to building projects. Highways, water, sewer, and all other public works projects are specifically prohibited from using the design-build method.

15. **Environmental and Historical Assessment.** The Grantee shall comply with all applicable federal, state and local environmental and historical preservation laws and regulations. The Grantee acknowledges this requirement and certifies that the project will be in compliance with such laws and regulations.

16. **Equal Employment Opportunity.** With respect to employment in carrying out the program objectives, the Grantee agrees that it will not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, national origin, or physical handicap.

17. **Facilities Accessible to the Handicapped.** The Grantee shall require any facilities constructed under the auspices of this Contract to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A117.1-1961, as modified (41CFR101-17.1703 and (13CFR309.14)). The Grantee shall be responsible for conducting inspections to ensure compliance with these specifications.

18. **Facilities Operation.** The Grantee shall operate and maintain all facilities constructed under the auspices of this Contract in accordance with minimum standards as may be required or prescribed by the applicable federal, state and local statute, law, ordinance or regulation as to actual construction procedures, as well as maintenance and operation of such facilities upon completion.

19. **Interest of Members of WVDEVO and Others.** No officer, member or employee of the WVDEVO or officer, member or employee of the Grantee who exercises any function or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Contract which affects his personal interest or the interest of any corporation, partnership, or association in which he is directly or indirectly interested or has any personal or pecuniary interest, nor shall any officer, member of, or employee of, the Grantee or any member of its governing body, or officer, member, or employee of the contractor have any interest, direct or indirect, in this Contract or the proceeds thereof.

20. **Officials Not To Benefit.** No member of the Legislature of the State of West Virginia, or individual performing a service for the Grantee in connection with this project, shall be admitted to any share thereof or to any benefit to arise from this Agreement.

21. **Inspections of Project Records.** At any time during normal business hours and as often as the WVDEVO or its designated representative may deem necessary, there shall be made available to the WVDEVO or its

designated representative for examination, all of its records with respect to all matters covered by this Contract and permit the WVDEVO or its designated representative to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records and personnel, conditions of employment and other data relating to all matters covered by this Contract during the entire time period beginning with project approval and ending three years after the final disbursement of grant funds.

22. **Project Audits.** (a) The Grantee shall cause an audit of this program to be included in the audit of the Grantee performed by the West Virginia State Auditor's Office, Chief Inspection Division, or its designated representative in accordance with West Virginia Code §6-9-7. The audit shall be performed in conformance with generally acceptable accounting procedures.

(b) In accordance West Virginia Code §12-4-14, if the grantee is not audited by the West Virginia State Auditor's Office and the grantee received state funds or grants in the amount of fifteen thousand dollars or more, the grantee shall file an audit of the disbursement of funds with the legislative auditor's office. The audit shall be filed within two years of the disbursement of funds or grants by the grantee and shall be made by an independent certified public accountant at the cost of the corporation, association or other organization, and must show that the funds or grants were spent for the purposes intended when the grant was made. State funds or audits of state funds or grants under fifteen thousand dollars (\$15,000) may be authorized by the joint committee on government and finance to be conducted by the legislative auditor's office at no cost to the grantee.

23. **Reporting.** The Grantee shall submit any reports requested by the WVDEVO concerning financial status and program progress. Failure to provide such reports as required by WVDEVO in a timely manner shall be cause for termination of this Contract under the terms of Paragraph 7.

24. **Fiscal Management.** The Grantee shall be responsible for establishing and maintaining adequate procedures and internal financial controls governing the management and utilization of funds provided under this Contract, as well as funds provided as the Grantee's matching share.

25. **Political Activity.** No officer or employee of the Grantee whose principal employment is in connection with any activity which is financed in whole or in part pursuant to this agreement shall take part in any of the activities expressly prohibited by the Hatch Act.

26. **Repayment.** The Grantee shall refund to the State any expenditures determined to be made for an ineligible purpose for which State funds were received.

27. **Resolution of Disputes.** Resolution of disputes between the State and the Grantee concerning administrative and programmatic matters during the terms of this Agreement shall be initiated through consultation and discussion at the State's Administrative Offices with final decision on questions of policy or fact being determined by the Director of the Community Development Division or his/her designated representative. Nothing in this Agreement shall be construed as making the final decision on a question of law, or to limit in any manner any remedies or recourses available under applicable laws. Citizen's complaints or disputes regarding Grantee performance or actions relative to the approved project are the responsibility of the Grantee.

28. **Termination of Contract for Cause.** If, through any cause, the Grantee shall fail to fulfill in a necessary and proper manner his obligations under this Contract, or if the Grantee shall violate any of the covenants, agreements, or stipulations of this Contract, the WVDEVO shall thereupon have the right to terminate this Contract by giving written notice to the Grantee of such termination and specifying the effective date thereof, at least fifteen days before the effective date of such termination. The Grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed on the described project.

Notwithstanding the above, the Grantee shall not be relieved of liability to the WVDEVO for damages sustained by the WVDEVO by virtue of any breach of the Contract by the Grantee, and the WVDEVO may withhold any payments to the Grantee for the purpose of set-off until such time as the exact amount of damages due the WVDEVO from the Grantee is determined.

29. **Termination for Convenience of WVDEVO.** The WVDEVO may terminate this Contract at any time by giving written notice to the Grantee of such termination and specifying the effective date of termination. If the Contract is terminated by the WVDEVO as provided herein, the Grantee will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Grantee covered by this Contract, less payments of compensation previously made.

30. **Termination by the Grantee.** The Grantee may unilaterally rescind this agreement at any time prior to the commencement of the project. After project commencement, this agreement may be rescinded, modified, or amended only by mutual agreement. A project shall be deemed commenced when the Grantee makes any expenditure or incurs any obligation with respect to the project.

31. **Signing.** This Contract shall be signed by the Executive Director of the West Virginia Development Office and by the Mayor of the City of Morgantown upon authorization of the City of Morgantown by adoption and passage of a resolution, motion or similar official action.

IN WITNESS WHEREOF, the WVDEVO and the Grantee have executed this Agreement as of the date first above written.

**STATE OF WEST VIRGINIA
WEST VIRGINIA DEVELOPMENT OFFICE**

J. Keith Burdette, Executive Director

CITY OF MORGANTOWN

By: _____
Jim Manilla, Mayor

Federal Employee Identification Number

F.E.I.N.

Project Number: 12LEDA0175



State of West Virginia
Earl Ray Tomblin
Governor

Office of the Governor
State Capitol
1900 Kanawha Boulevard, East
Charleston, WV 25305

Telephone: (304) 558-2000
Toll Free: (888) 438-2731
Fax: (304) 342-7025
www.governor.wv.gov

September 6, 2012

The Honorable Jim Manilla
Mayor
City of Morgantown
389 Spruce Street
Morgantown, West Virginia 26505

Dear Mayor Manilla:

Thank you for your application to the Governor's Community Participation Grant Program.

I, along with Senator Beach, am pleased to approve your request in the amount of \$4,000. These funds will enable you to conduct the MountainFest Motorcycle Rally. The project will include equipment, staging, promotion and security for the event.

To proceed with this project, please fax this letter to 304-558-2246, or mail a copy to: Community Participation Program, West Virginia Development Office, 1900 Kanawha Boulevard, East, Charleston, West Virginia 25305. Please note that funds should not be obligated prior to the full execution of a contract with the State of West Virginia.

We are pleased to work with you to make this improvement a reality for the citizens of Morgantown.

Sincerely,

A handwritten signature in cursive script that reads "Earl Ray Tomblin".

Earl Ray Tomblin
Governor

ERT:kf

Project Number: 12LEDA0175

RESOLUTION

WHEREAS, the City of Morgantown submitted the necessary paperwork to obtain \$8,000 for the Morgantown Marketplace through the Governor's Community Participation Grant Program, and the grant application has been approved for funding; and

WHEREAS, the grant (12LEDA0515) will allow the City to install a pavilion, sidewalks, and landscaping at the site of the Morgantown Marketplace ; and

WHEREAS, Morgantown City Council is of the opinion that this will be of great benefit to the residents of Morgantown, and therefore agrees to administer the grant contract.

NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown this 5th day of February, 2013, that the City agrees to the conditions of the contract and authorizes the Mayor to sign the West Virginia Development Office contract, and City Manager to administer the execution of the grant

Mayor

City Clerk

**GOVERNOR'S COMMUNITY PARTICIPATION
GRANT PROGRAM CONTRACT**

between the

WEST VIRGINIA DEVELOPMENT OFFICE

and the

CITY OF MORGANTOWN

THIS AGREEMENT, entered into this 1st day of July, 2011, by the West Virginia Department of Finance and Administration on behalf of the West Virginia Development Office hereinafter called the "WVDEVO" and the City of Morgantown and its authorized officers, agents, and representatives, hereinafter called the "Grantee."

WITNESS THAT:

WHEREAS, the WVDEVO has promised and agreed to assist the Grantee to perform such tasks hereafter described in the scope of services, which is to be partially financed by funds made available through the Governor's Community Participation Grant program.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. **Assistance of the Grantee.** The WVDEVO hereby agrees to assist the Grantee including all authorized officers, agents, and representatives, to perform such tasks and functions as set forth below in the scope of services.
2. **Scope of Services.** The Grantee, or its designated agent, shall do, perform and carry out, in a satisfactory and proper manner as determined by the WVDEVO, and appropriate regulatory agencies, if required, all duties, tasks, and functions necessary to approve your request in the amount of \$8,000. These funds will enable you to construct the Morgantown Marketplace. The project will include the installation of a pavilion, sidewalks and landscaping.
3. **Personnel.** The Grantee represents that it has, or will secure at its own expense, personnel with the necessary qualifications and experience required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with WVDEVO.
4. **Time Performance.** The Grantee will commence its duties under this Contract on July 1, 2011, and such duties shall be undertaken and completed in such sequences as to assure their expeditious completion in the light of the purpose of the Contract; but, in any event, all of the services required hereunder shall be completed by June 30, 2013. The completion date of this contract may only be extended by mutual written agreement of both parties dependent on the reappropriation of funds under the Governor's Community Participation Grant program. If no such agreement exists, the Grantee shall not receive payment for services rendered or work performed relative to this grant after June 30, 2013.
5. **Compensation.** In consideration of the services rendered by the Grantee, the WVDEVO agrees to pay the Grantee the sum of \$8,000. This amount constitutes complete compensation for all services rendered. In no

instance shall the agreed upon compensation exceed \$8,000 without the written consent of the Governor of the State of West Virginia.

6. **Method of Payment.** In order to receive payments under the terms of this Agreement, the Grantee shall submit the following: (a) a Letter of Transmittal containing a progress report, and (b) a Request for Payment Financial Report. The final ten percent shall be made available upon submission of certification of completion and acceptance of the project by the Grantee. Upon receipt of said documents, the WVDEVO shall review the same for reasonableness and appropriateness.

7. **Changes.** The WVDEVO and the Grantee may, from time to time, require changes in the scope of the services of the work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Grantee's compensation and work to be performed, which are mutually agreed upon by and between the WVDEVO and the Grantee, shall be incorporated in written amendments to this Contract.

8. **Sub-Grantees and Reversion of Property.** The Grantee may administer funds on behalf of sub-grantees, provided that such a sub-grantee is certified as a nonprofit organization by the United States Internal Revenue Service and the West Virginia Secretary of State's Office. Should such a sub-grantee cease to exist, all commodities or supplies purchased with funds provided under the auspices of this Contract by or for the sub-grantee shall become the property of the Grantee.

9. **Competitive Bid Procedures.** Competitive bidding shall be pursued in all instances. The Grantee must follow the more stringent of either state or local purchasing regulations. The West Virginia Purchasing Division requirements, at a minimum, are as follows: Commodities and services expected to cost \$2,500 or less require no bids, however, competition is encouraged. Purchases between \$2,500.01 and \$5,000 require three verbal bids to be documented on a verbal bid quotation summary. Purchases \$5,000.01 to \$25,000 require three written bids.

The Grantee shall solicit competitive, sealed bids for commodities and supplies related to this project which have an estimated value of over \$25,000. Any attempts by the Grantee to segregate the project into sections having an estimated value of less than \$25,000 shall be cause for termination of this agreement under the provisions of Paragraph 28. These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions West Virginia Code §59-3. This notice shall be published by the Grantee in the newspaper with the largest circulation serving the general area once a week for two successive weeks preceding the final bid date.

The Grantee shall also, where feasible, solicit sealed bids by listing the project in the F. W. Dodge Reports, sending requests by mail to prospective suppliers or contractors, and by posting notice on a bulletin board in a public place. The Grantee shall have available upon request for review by the WVDEVO or its designated representative, bid documents and other evidence of compliance with these procedures.

10. **Project Wage Rates.** Every contract involving construction, reconstruction, demolition, improvement, enlargement, painting, decoration, alteration, and/or repair work which involves the employment of any contractor and/or subcontractor necessary for the undertaking and completion of this project, regardless of the source of funds utilized to pay such contract, must comply with the West Virginia Act on Wages on Construction of Public Improvements, West Virginia Code §21-5A. **This law applies to all construction contracts, regardless of cost.**

The receipt and utilization of funds procured under this agreement mandate that all construction contracts necessary for the undertaking and completion of this project, regardless of the source of funds utilized to pay such construction contracts, must comply with the provisions of West Virginia Code § 21-5A.

Such provisions shall include the payment of the Fair Minimum Wage Rates as determined by the West Virginia Commissioner of Labor for each craft or classification of all workmen needed to perform the contract in the locality in which the public work is performed. For projects involving federal funds which are covered by the provisions of the Davis Bacon Act (40 U.S.C. 276-a 276a-5), the Grantee shall cause the contractor and/or subcontractors to pay the higher wage rate, federal or state.

Further, the Grantee shall note this requirement in the advertisement for bids and print these wage rates on all bid documents. The Grantee shall also have available upon request for review by the WVDEVO or its designated representative, bid documents and other evidence of compliance including copies of contractor's payrolls.

11. **Construction.** The Grantee shall procure construction contracts in accordance with West Virginia Code §5-22-1. **The state and its subdivisions shall, except as provided in this section, solicit competitive bids for every construction project exceeding \$25,000 in total cost.**

Further, the receipt and utilization of funds procured under this agreement mandate that ALL CONSTRUCTION CONTRACTS NECESSARY FOR THE UNDERTAKING AND COMPLETION OF THIS PROJECT, regardless of the source of funds utilized to pay such construction contracts, must comply with the provisions of West Virginia Code § 21-5A.

The term construction shall mean any construction, reconstruction, improvement, enlargement, painting, decorating, or repair of any public improvement let to contract. These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions West Virginia Code §59-3. This notice shall be published by the Grantee in the newspaper with the largest circulation serving the general area once a week for two successive weeks preceding the final bid date.

Any contracts under this agreement must comply with the West Virginia Act on Wages on Construction of Public Improvements, West Virginia Code §21-5A. This law applies to all construction contracts, regardless of cost. The Grantee shall note this requirement in the advertisement for bids and print these wage rates on all bidding blanks.

The Grantee shall designate the time and place for opening such construction bids in accordance with West Virginia Code §5-22-2.

12. **Bonding.** The Grantee shall secure bonding in accordance with West Virginia Code §5-22-1. All bids submitted pursuant to this chapter shall include a valid bid bond or other surety as approved by the state of West Virginia or its subdivisions. Following the solicitation of such bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: provided, that the state and its subdivisions may reject all bids and solicit new bids.

In the procurement of contracts or subcontracts for construction of less than \$100,000, the Grantee shall follow local or State requirements relating to bid guarantees, performance bonds, and payment bonds, provided that the Grantee's and State's interests are adequately protected and that such contracts can be executed in a timely manner.

In the procurement of contracts or subcontracts for construction that exceed \$100,000, the Grantee shall obtain the following:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. This bid guarantee shall consist of a firm commitment such as bid bond, certified check, or other negotiable instrument accompanying a bid that the bidder will, upon acceptance of the bid, execute the contractual documents as may be required with the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. This performance bond shall be executed by the successful contractor in connection with the contract to secure fulfillment of the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. This payment bond shall be executed in connection with a contract to assure payment is required by law of all persons supplying labor and materials in the execution of the work provided for in the contract.

13. **Architecture and Engineering.** The Grantee shall procure architectural or engineering services in accordance with West Virginia Code §5G. In the procurement of architectural and engineering services for projects estimated to cost \$250,000 or more, the Grantee shall publish a Class II legal ad in compliance with West Virginia Code §59-3. In the procurement of services for projects estimated to cost less than \$250,000, the Grantee shall conduct discussions with three or more professional firms.

14. **Design-Build.** The Grantee shall procure design-build projects in accordance with West Virginia Code §5-22A-1. This applies solely to building projects. Highways, water, sewer, and all other public works projects are specifically prohibited from using the design-build method.

15. **Environmental and Historical Assessment.** The Grantee shall comply with all applicable federal, state and local environmental and historical preservation laws and regulations. The Grantee acknowledges this requirement and certifies that the project will be in compliance with such laws and regulations.

16. **Equal Employment Opportunity.** With respect to employment in carrying out the program objectives, the Grantee agrees that it will not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, national origin, or physical handicap.

17. **Facilities Accessible to the Handicapped.** The Grantee shall require any facilities constructed under the auspices of this Contract to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A111.1-1961, as modified (41CFR101-17.1703 and (13CFR309.14)). The Grantee shall be responsible for conducting inspections to ensure compliance with these specifications.

18. **Facilities Operation.** The Grantee shall operate and maintain all facilities constructed under the auspices of this Contract in accordance with minimum standards as may be required or prescribed by the applicable federal, state and local statute, law, ordinance or regulation as to actual construction procedures, as well as maintenance and operation of such facilities upon completion.

19. **Interest of Members of WVDEVO and Others.** No officer, member or employee of the WVDEVO or officer, member or employee of the Grantee who exercises any function or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Contract which affects his personal interest or the interest of any corporation, partnership, or association in which he is directly or indirectly interested or has any personal or pecuniary interest, nor shall any officer, member of, or employee of, the Grantee or any member of its governing body, or officer, member, or employee of the contractor have any interest, direct or indirect, in this Contract or the proceeds thereof.

20. **Officials Not To Benefit.** No member of the Legislature of the State of West Virginia, or individual performing a service for the Grantee in connection with this project, shall be admitted to any share thereof or to any benefit to arise from this Agreement.

21. **Inspections of Project Records.** At any time during normal business hours and as often as the WVDEVO or its designated representative may deem necessary, there shall be made available to the WVDEVO or its

designated representative for examination, all of its records with respect to all matters covered by this Contract and permit the WVDEVO or its designated representative to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records and personnel, conditions of employment and other data relating to all matters covered by this Contract during the entire time period beginning with project approval and ending three years after the final disbursement of grant funds.

22. **Project Audits.** (a) The Grantee shall cause an audit of this program to be included in the audit of the Grantee performed by the West Virginia State Auditor's Office, Chief Inspection Division, or its designated representative in accordance with West Virginia Code

§6-9-7. The audit shall be performed in conformance with generally acceptable accounting procedures.

(b) In accordance West Virginia Code §12-4-14, if the grantee is not audited by the West Virginia State Auditor's Office and the grantee received state funds or grants in the amount of fifteen thousand dollars or more, the grantee shall file an audit of the disbursement of funds with the legislative auditor's office. The audit shall be filed within two years of the disbursement of funds or grants by the grantee and shall be made by an independent certified public accountant at the cost of the corporation, association or other organization, and must show that the funds or grants were spent for the purposes intended when the grant was made. State funds or audits of state funds or grants under fifteen thousand dollars (\$15,000) may be authorized by the joint committee on government and finance to be conducted by the legislative auditor's office at no cost to the grantee.

23. **Reporting.** The Grantee shall submit any reports requested by the WVDEVO concerning financial status and program progress. Failure to provide such reports as required by WVDEVO in a timely manner shall be cause for termination of this Contract under the terms of Paragraph 7.

24. **Fiscal Management.** The Grantee shall be responsible for establishing and maintaining adequate procedures and internal financial controls governing the management and utilization of funds provided under this Contract, as well as funds provided as the Grantee's matching share.

25. **Political Activity.** No officer or employee of the Grantee whose principal employment is in connection with any activity which is financed in whole or in part pursuant to this agreement shall take part in any of the activities expressly prohibited by the Hatch Act.

26. **Repayment.** The Grantee shall refund to the State any expenditures determined to be made for an ineligible purpose for which State funds were received.

27. **Resolution of Disputes.** Resolution of disputes between the State and the Grantee concerning administrative and programmatic matters during the terms of this Agreement shall be initiated through consultation and discussion at the State's Administrative Offices with final decision on questions of policy or fact being determined by the Director of the Community Development Division or his/her designated representative. Nothing in this Agreement shall be construed as making the final decision on a question of law, or to limit in any manner any remedies or recourses available under applicable laws. Citizen's complaints or disputes regarding Grantee performance or actions relative to the approved project are the responsibility of the Grantee.

28. **Termination of Contract for Cause.** If, through any cause, the Grantee shall fail to fulfill in a necessary and proper manner his obligations under this Contract, or if the Grantee shall violate any of the covenants, agreements, or stipulations of this Contract, the WVDEVO shall thereupon have the right to terminate this Contract by giving written notice to the Grantee of such termination and specifying the effective date thereof, at least fifteen days before the effective date of such termination. The Grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed on the described project.

Notwithstanding the above, the Grantee shall not be relieved of liability to the WVDEVO for damages sustained by the WVDEVO by virtue of any breach of the Contract by the Grantee, and the WVDEVO may withhold any payments to the Grantee for the purpose of set-off until such time as the exact amount of damages due the WVDEVO from the Grantee is determined.

29. **Termination for Convenience of WVDEVO.** The WVDEVO may terminate this Contract at any time by giving written notice to the Grantee of such termination and specifying the effective date of termination. If the Contract is terminated by the WVDEVO as provided herein, the Grantee will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Grantee covered by this Contract, less payments of compensation previously made.

30. **Termination by the Grantee.** The Grantee may unilaterally rescind this agreement at any time prior to the commencement of the project. After project commencement, this agreement may be rescinded, modified, or amended only by mutual agreement. A project shall be deemed commenced when the Grantee makes any expenditure or incurs any obligation with respect to the project.

31. **Signing.** This Contract shall be signed by the Executive Director of the West Virginia Development Office and by the Mayor of the City of Morgantown upon authorization of the City of Morgantown by adoption and passage of a resolution, motion or similar official action.

IN WITNESS WHEREOF, the WVDEVO and the Grantee have executed this Agreement as of the date first above written.

**STATE OF WEST VIRGINIA
WEST VIRGINIA DEVELOPMENT OFFICE**

J. Keith Burdette, Executive Director

CITY OF MORGANTOWN

By: _____
Jim Manilla, Mayor

Federal Employee Identification Number

F.E.I.N.



C101612

Office of the Governor
State Capitol
1900 Kanawha Boulevard, East
Charleston, WV 25305

State of West Virginia
Earl Ray Tomblin
Governor

Telephone: (304) 558-2000
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Fax: (304) 342-7025
www.governor.wv.gov

September 6, 2012

The Honorable Jim Manilla
Mayor
City of Morgantown
389 Spruce Street
Morgantown, West Virginia 26505

2ND COPY

Dear Mayor Manilla:

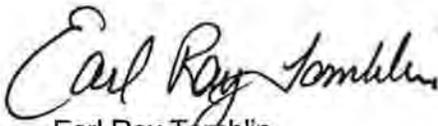
Thank you for your application to the Governor's Community Participation Grant Program.

I, along with Delegate Barill, Delegate Fleischauer, Delegate Marshall, and Delegate Pasdon, am pleased to approve your request in the amount of \$8,000. These funds will enable you to construct the Morgantown Marketplace. The project will include the installation of a pavilion, sidewalks and landscaping.

To proceed with this project, please fax this letter to 304-558-2246, or mail a copy to: Community Participation Program, West Virginia Development Office, 1900 Kanawha Boulevard, East, Charleston, West Virginia 25305. Please note that funds should not be obligated prior to the full execution of a contract with the State of West Virginia.

We are pleased to work with you to make this improvement a reality for the citizens of Morgantown.

Sincerely,


Earl Ray Tomblin
Governor

ERT:kf

Project Number: 12LEDA0515

RESOLUTION

WHEREAS, the City of Morgantown submitted the necessary paperwork to obtain \$5,000 for the Colonel Zackquill Morgan Statue project through the Governor's Community Participation Grant Program, and the grant application has been approved for funding; and

WHEREAS, the grant (12LEDA0176) will allow the construction and installation of the Colonel Zackquill Morgan Statue in Morgantown ; and

WHEREAS, Morgantown City Council is of the opinion that this will be of great benefit to the residents of Morgantown, and therefore agrees to administer the grant contract.

NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown this 5th day of February, 2013, that the City agrees to the conditions of the contract and authorizes the Mayor to sign the West Virginia Development Office contract, and City Manager to administer the execution of the grant

Mayor

City Clerk

**GOVERNOR'S COMMUNITY PARTICIPATION
GRANT PROGRAM CONTRACT**

between the

WEST VIRGINIA DEVELOPMENT OFFICE

and the

CITY OF MORGANTOWN

THIS AGREEMENT, entered into this 1st day of July, 2011, by the West Virginia Department of Finance and Administration on behalf of the West Virginia Development Office hereinafter called the "WVDEVO" and the City of Morgantown and its authorized officers, agents, and representatives, hereinafter called the "Grantee."

WITNESS THAT:

WHEREAS, the WVDEVO has promised and agreed to assist the Grantee to perform such tasks hereafter described in the scope of services, which is to be partially financed by funds made available through the Governor's Community Participation Grant program.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. **Assistance of the Grantee**. The WVDEVO hereby agrees to assist the Grantee including all authorized officers, agents, and representatives, to perform such tasks and functions as set forth below in the scope of services.
2. **Scope of Services**. The Grantee, or its designated agent, shall do, perform and carry out, in a satisfactory and proper manner as determined by the WVDEVO, and appropriate regulatory agencies, if required, all duties, tasks, and functions necessary to construct and install the Colonel Zackquill Morgan statue. The statue is to be placed on publically-owned property.
3. **Personnel**. The Grantee represents that it has, or will secure at its own expense, personnel with the necessary qualifications and experience required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with WVDEVO.
4. **Time Performance**. The Grantee will commence its duties under this Contract on July 1, 2011, and such duties shall be undertaken and completed in such sequences as to assure their expeditious completion in the light of the purpose of the Contract; but, in any event, all of the services required hereunder shall be completed by June 30, 2013. The completion date of this contract may only be extended by mutual written agreement of both parties dependent on the reappropriation of funds under the Governor's Community Participation Grant program. If no such agreement exists, the Grantee shall not receive payment for services rendered or work performed relative to this grant after June 30, 2013.
5. **Compensation**. In consideration of the services rendered by the Grantee, the WVDEVO agrees to pay the Grantee the sum of \$5,000. This amount constitutes complete compensation for all services rendered. In no

instance shall the agreed upon compensation exceed \$5,000 without the written consent of the Governor of the State of West Virginia.

6. **Method of Payment.** In order to receive payments under the terms of this Agreement, the Grantee shall submit the following: (a) a Letter of Transmittal containing a progress report, and (b) a Request for Payment Financial Report. The final ten percent shall be made available upon submission of certification of completion and acceptance of the project by the Grantee. Upon receipt of said documents, the WVDEVO shall review the same for reasonableness and appropriateness.

7. **Changes.** The WVDEVO and the Grantee may, from time to time, require changes in the scope of the services of the work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Grantee's compensation and work to be performed, which are mutually agreed upon by and between the WVDEVO and the Grantee, shall be incorporated in written amendments to this Contract.

8. **Sub-Grantees and Reversion of Property.** The Grantee may administer funds on behalf of sub-grantees, provided that such a sub-grantee is certified as a nonprofit organization by the United States Internal Revenue Service and the West Virginia Secretary of State's Office. Should such a sub-grantee cease to exist, all commodities or supplies purchased with funds provided under the auspices of this Contract by or for the sub-grantee shall become the property of the Grantee.

9. **Competitive Bid Procedures.** Competitive bidding shall be pursued in all instances. The Grantee must follow the more stringent of either state or local purchasing regulations. The West Virginia Purchasing Division requirements, at a minimum, are as follows: Commodities and services expected to cost \$2,500 or less require no bids, however, competition is encouraged. Purchases between \$2,500.01 and \$5,000 require three verbal bids to be documented on a verbal bid quotation summary. Purchases \$5,000.01 to \$25,000 require three written bids.

The Grantee shall solicit competitive, sealed bids for commodities and supplies related to this project which have an estimated value of over \$25,000. Any attempts by the Grantee to segregate the project into sections having an estimated value of less than \$25,000 shall be cause for termination of this agreement under the provisions of Paragraph 28. These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions West Virginia Code §59-3. This notice shall be published by the Grantee in the newspaper with the largest circulation serving the general area once a week for two successive weeks preceding the final bid date.

The Grantee shall also, where feasible, solicit sealed bids by listing the project in the F. W. Dodge Reports, sending requests by mail to prospective suppliers or contractors, and by posting notice on a bulletin board in a public place. The Grantee shall have available upon request for review by the WVDEVO or its designated representative, bid documents and other evidence of compliance with these procedures.

10. **Project Wage Rates.** Every contract involving construction, reconstruction, demolition, improvement, enlargement, painting, decoration, alteration, and/or repair work which involves the employment of any contractor and/or subcontractor necessary for the undertaking and completion of this project, regardless of the source of funds utilized to pay such contract, must comply with the West Virginia Act on Wages on Construction of Public Improvements, West Virginia Code §21-5A. **This law applies to all construction contracts, regardless of cost.**

The receipt and utilization of funds procured under this agreement mandate that all construction contracts necessary for the undertaking and completion of this project, regardless of the source of funds utilized to pay such construction contracts, must comply with the provisions of West Virginia Code § 21-5A.

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The receipt and utilization of funds procured under this agreement mandate that all construction contracts necessary for the undertaking and completion of this project, regardless of the source of funds utilized to pay such construction contracts, must comply with the provisions of West Virginia Code § 21-5A.

Such provisions shall include the payment of the Fair Minimum Wage Rates as determined by the West Virginia Commissioner of Labor for each craft or classification of all workmen needed to perform the contract in the locality in which the public work is performed. For projects involving federal funds which are covered by the provisions of the Davis Bacon Act (40 U.S.C. 276-a 276a-5), the Grantee shall cause the contractor and/or subcontractors to pay the higher wage rate, federal or state.

Further, the Grantee shall note this requirement in the advertisement for bids and print these wage rates on all bid documents. The Grantee shall also have available upon request for review by the WVDEVO or its designated representative, bid documents and other evidence of compliance including copies of contractor's payrolls.

11. **Construction.** The Grantee shall procure construction contracts in accordance with West Virginia Code §5-22-1. **The state and its subdivisions shall, except as provided in this section, solicit competitive bids for every construction project exceeding \$25,000 in total cost.**

Further, the receipt and utilization of funds procured under this agreement mandate that ALL CONSTRUCTION CONTRACTS NECESSARY FOR THE UNDERTAKING AND COMPLETION OF THIS PROJECT, regardless of the source of funds utilized to pay such construction contracts, must comply with the provisions of West Virginia Code § 21-5A.

The term construction shall mean any construction, reconstruction, improvement, enlargement, painting, decorating, or repair of any public improvement let to contract. These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions West Virginia Code §59-3. This notice shall be published by the Grantee in the newspaper with the largest circulation serving the general area once a week for two successive weeks preceding the final bid date.

Any contracts under this agreement must comply with the West Virginia Act on Wages on Construction of Public Improvements, West Virginia Code §21-5A. This law applies to all construction contracts, regardless of cost. The Grantee shall note this requirement in the advertisement for bids and print these wage rates on all bidding blanks.

The Grantee shall designate the time and place for opening such construction bids in accordance with West Virginia Code §5-22-2.

12. **Bonding.** The Grantee shall secure bonding in accordance with West Virginia Code §5-22-1. All bids submitted pursuant to this chapter shall include a valid bid bond or other surety as approved by the state of West Virginia or its subdivisions. Following the solicitation of such bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: provided, that the state and its subdivisions may reject all bids and solicit new bids.

In the procurement of contracts or subcontracts for construction of less than \$100,000, the Grantee shall follow local or State requirements relating to bid guarantees, performance bonds, and payment bonds, provided that the Grantee's and State's interests are adequately protected and that such contracts can be executed in a timely manner.

In the procurement of contracts or subcontracts for construction that exceed \$100,000, the Grantee shall obtain the following:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. This bid guarantee shall consist of a firm commitment such as bid bond, certified check, or other negotiable instrument accompanying a bid that the bidder will, upon acceptance of the bid, execute the contractual documents as may be required with the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. This performance bond shall be executed by the successful contractor in connection with the contract to secure fulfillment of the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. This payment bond shall be executed in connection with a contract to assure payment is required by law of all persons supplying labor and materials in the execution of the work provided for in the contract.

13. **Architecture and Engineering.** The Grantee shall procure architectural or engineering services in accordance with West Virginia Code §5G. In the procurement of architectural and engineering services for projects estimated to cost \$250,000 or more, the Grantee shall publish a Class II legal ad in compliance with West Virginia Code §59-3. In the procurement of services for projects estimated to cost less than \$250,000, the Grantee shall conduct discussions with three or more professional firms.

14. **Design-Build.** The Grantee shall procure design-build projects in accordance with West Virginia Code §5-22A-1. This applies solely to building projects. Highways, water, sewer, and all other public works projects are specifically prohibited from using the design-build method.

15. **Environmental and Historical Assessment.** The Grantee shall comply with all applicable federal, state and local environmental and historical preservation laws and regulations. The Grantee acknowledges this requirement and certifies that the project will be in compliance with such laws and regulations.

16. **Equal Employment Opportunity.** With respect to employment in carrying out the program objectives, the Grantee agrees that it will not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, national origin, or physical handicap.

17. **Facilities Accessible to the Handicapped.** The Grantee shall require any facilities constructed under the auspices of this Contract to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A117.1-1961, as modified (41CFR101-17.1703 and (13CFR309.14)). The Grantee shall be responsible for conducting inspections to ensure compliance with these specifications.

18. **Facilities Operation.** The Grantee shall operate and maintain all facilities constructed under the auspices of this Contract in accordance with minimum standards as may be required or prescribed by the applicable federal, state and local statute, law, ordinance or regulation as to actual construction procedures, as well as maintenance and operation of such facilities upon completion.

19. **Interest of Members of WVDEVO and Others.** No officer, member or employee of the WVDEVO or officer, member or employee of the Grantee who exercises any function or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Contract which affects his personal interest or the interest of any corporation, partnership, or association in which he is directly or indirectly interested or has any personal or pecuniary interest, nor shall any officer, member of, or employee of, the Grantee or any member of its governing body, or officer, member, or employee of the contractor have any interest, direct or indirect, in this Contract or the proceeds thereof.

20. **Officials Not To Benefit.** No member of the Legislature of the State of West Virginia, or individual performing a service for the Grantee in connection with this project, shall be admitted to any share thereof or to any benefit to arise from this Agreement.

21. **Inspections of Project Records.** At any time during normal business hours and as often as the WVDEVO or its designated representative may deem necessary, there shall be made available to the WVDEVO or its

designated representative for examination, all of its records with respect to all matters covered by this Contract and permit the WVDEVO or its designated representative to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records and personnel, conditions of employment and other data relating to all matters covered by this Contract during the entire time period beginning with project approval and ending three years after the final disbursement of grant funds.

22. **Project Audits.** (a) The Grantee shall cause an audit of this program to be included in the audit of the Grantee performed by the West Virginia State Auditor's Office, Chief Inspection Division, or its designated representative in accordance with West Virginia Code §6-9-7. The audit shall be performed in conformance with generally acceptable accounting procedures.

(b) In accordance West Virginia Code §12-4-14, if the grantee is not audited by the West Virginia State Auditor's Office and the grantee received state funds or grants in the amount of fifteen thousand dollars or more, the grantee shall file an audit of the disbursement of funds with the legislative auditor's office. The audit shall be filed within two years of the disbursement of funds or grants by the grantee and shall be made by an independent certified public accountant at the cost of the corporation, association or other organization, and must show that the funds or grants were spent for the purposes intended when the grant was made. State funds or audits of state funds or grants under fifteen thousand dollars (\$15,000) may be authorized by the joint committee on government and finance to be conducted by the legislative auditor's office at no cost to the grantee.

23. **Reporting.** The Grantee shall submit any reports requested by the WVDEVO concerning financial status and program progress. Failure to provide such reports as required by WVDEVO in a timely manner shall be cause for termination of this Contract under the terms of Paragraph 7.

24. **Fiscal Management.** The Grantee shall be responsible for establishing and maintaining adequate procedures and internal financial controls governing the management and utilization of funds provided under this Contract, as well as funds provided as the Grantee's matching share.

25. **Political Activity.** No officer or employee of the Grantee whose principal employment is in connection with any activity which is financed in whole or in part pursuant to this agreement shall take part in any of the activities expressly prohibited by the Hatch Act.

26. **Repayment.** The Grantee shall refund to the State any expenditures determined to be made for an ineligible purpose for which State funds were received.

27. **Resolution of Disputes.** Resolution of disputes between the State and the Grantee concerning administrative and programmatic matters during the terms of this Agreement shall be initiated through consultation and discussion at the State's Administrative Offices with final decision on questions of policy or fact being determined by the Director of the Community Development Division or his/her designated representative. Nothing in this Agreement shall be construed as making the final decision on a question of law, or to limit in any manner any remedies or recourses available under applicable laws. Citizen's complaints or disputes regarding Grantee performance or actions relative to the approved project are the responsibility of the Grantee.

28. **Termination of Contract for Cause.** If, through any cause, the Grantee shall fail to fulfill in a necessary and proper manner his obligations under this Contract, or if the Grantee shall violate any of the covenants, agreements, or stipulations of this Contract, the WVDEVO shall thereupon have the right to terminate this Contract by giving written notice to the Grantee of such termination and specifying the effective date thereof, at least fifteen days before the effective date of such termination. The Grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed on the described project.

Notwithstanding the above, the Grantee shall not be relieved of liability to the WVDEVO for damages sustained by the WVDEVO by virtue of any breach of the Contract by the Grantee, and the WVDEVO may withhold any payments to the Grantee for the purpose of set-off until such time as the exact amount of damages due the WVDEVO from the Grantee is determined.

29. **Termination for Convenience of WVDEVO.** The WVDEVO may terminate this Contract at any time by giving written notice to the Grantee of such termination and specifying the effective date of termination. If the Contract is terminated by the WVDEVO as provided herein, the Grantee will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Grantee covered by this Contract, less payments of compensation previously made.

30. **Termination by the Grantee.** The Grantee may unilaterally rescind this agreement at any time prior to the commencement of the project. After project commencement, this agreement may be rescinded, modified, or amended only by mutual agreement. A project shall be deemed commenced when the Grantee makes any expenditure or incurs any obligation with respect to the project.

31. **Signing.** This Contract shall be signed by the Executive Director of the West Virginia Development Office and by the Mayor of the City of Morgantown upon authorization of the City of Morgantown by adoption and passage of a resolution, motion or similar official action.

IN WITNESS WHEREOF, the WVDEVO and the Grantee have executed this Agreement as of the date first above written.

**STATE OF WEST VIRGINIA
WEST VIRGINIA DEVELOPMENT OFFICE**

J. Keith Burdette, Executive Director

CITY OF MORGANTOWN

By: _____
Jim Manilla, Mayor

Federal Employee Identification Number

F.E.I.N.

Project Number: 12LEDA0176



State of West Virginia
Earl Ray Tomblin
Governor

Office of the Governor
State Capitol
1900 Kanawha Boulevard, East
Charleston, WV 25305

Telephone: (304) 558-2000
Toll Free: (888) 438-2731
Fax: (304) 342-7025
www.governor.wv.gov

September 17, 2012

The Honorable Jim Manilla
Mayor
City of Morgantown
389 Spruce Street
Morgantown, West Virginia 26505

Dear Mayor Manilla:

Thank you for your application to the Governor's Community Participation Grant Program.

I, along with Senator Beach, am pleased to approve your request in the amount of \$5,000. These funds will enable you to construct and install the Colonel Zackquill Morgan Statue. The statue is to be placed on publically owned property.

To proceed with this project, please fax this letter to 304-558-2246, or mail a copy to: Community Participation Program, West Virginia Development Office, 1900 Kanawha Boulevard, East, Charleston, West Virginia 25305. Please note that funds should not be obligated prior to the full execution of a contract with the State of West Virginia.

We are pleased to work with you to make this improvement a reality for the citizens of Morgantown.

Sincerely,

A handwritten signature in cursive script that reads "Earl Ray Tomblin".

Earl Ray Tomblin
Governor

ERT:kf

Project Number: 12LEDA0176

RESOLUTION

WHEREAS, the City of Morgantown submitted the necessary paperwork to obtain \$1,000 for the Members of Diversity(a 501(c)(3) organization) through the Governor's Community Participation Grant Program, and the grant application has been approved for funding; and

WHEREAS, the grant (12LEDA0516) will allow the Members of Diversity to purchase equipment and materials to assist in conducting career fairs and career training for Morgantown youth; and

WHEREAS, Morgantown City Council is of the opinion that this will be of great benefit to the residents of Morgantown, and therefore agrees to administer the grant contract.

NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown this 5th day of February, 2013, that the City agrees to the conditions of the contract and authorizes the Mayor to sign the West Virginia Development Office contract, and City Manager to administer the execution of the grant

Mayor

City Clerk

**GOVERNOR'S COMMUNITY PARTICIPATION
GRANT PROGRAM CONTRACT**

between the

WEST VIRGINIA DEVELOPMENT OFFICE

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WITNESS THAT:

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1. **Assistance of the Grantee.** The WVDEVO hereby agrees to assist the Grantee including all authorized officers, agents, and representatives, to perform such tasks and functions as set forth below in the scope of services.
2. **Scope of Services.** The Grantee, or its designated agent, shall do, perform and carry out, in a satisfactory and proper manner as determined by the WVDEVO, and appropriate regulatory agencies, if required, all duties, tasks, and functions necessary to approve your request in the amount of \$4,000. These funds will enable you to purchase equipment and materials to assist Members of Diversity in conducting career fairs and career search training for Morgantown youths.
3. **Personnel.** The Grantee represents that it has, or will secure at its own expense, personnel with the necessary qualifications and experience required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with WVDEVO.
4. **Time Performance.** The Grantee will commence its duties under this Contract on July 1, 2011, and such duties shall be undertaken and completed in such sequences as to assure their expeditious completion in the light of the purpose of the Contract; but, in any event, all of the services required hereunder shall be completed by June 30, 2013. The completion date of this contract may only be extended by mutual written agreement of both parties dependent on the reappropriation of funds under the Governor's Community Participation Grant program. If no such agreement exists, the Grantee shall not receive payment for services rendered or work performed relative to this grant after June 30, 2013.
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The Grantee shall also, where feasible, solicit sealed bids by listing the project in the F. W. Dodge Reports, sending requests by mail to prospective suppliers or contractors, and by posting notice on a bulletin board in a public place. The Grantee shall have available upon request for review by the WVDEVO or its designated representative, bid documents and other evidence of compliance with these procedures.

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The Grantee shall designate the time and place for opening such construction bids in accordance with West Virginia Code §5-22-2.

12. **Bonding.** The Grantee shall secure bonding in accordance with West Virginia Code §5-22-1. All bids submitted pursuant to this chapter shall include a valid bid bond or other surety as approved by the state of West Virginia or its subdivisions. Following the solicitation of such bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: provided, that the state and its subdivisions may reject all bids and solicit new bids.

In the procurement of contracts or subcontracts for construction of less than \$100,000, the Grantee shall follow local or State requirements relating to bid guarantees, performance bonds, and payment bonds, provided that the Grantee's and State's interests are adequately protected and that such contracts can be executed in a timely manner.

In the procurement of contracts or subcontracts for construction that exceed \$100,000, the Grantee shall obtain the following:

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13. **Architecture and Engineering.** The Grantee shall procure architectural or engineering services in accordance with West Virginia Code §5G. In the procurement of architectural and engineering services for projects estimated to cost \$250,000 or more, the Grantee shall publish a Class II legal ad in compliance with West Virginia Code §59-3. In the procurement of services for projects estimated to cost less than \$250,000, the Grantee shall conduct discussions with three or more professional firms.

14. **Design-Build.** The Grantee shall procure design-build projects in accordance with West Virginia Code §5-22A-1. This applies solely to building projects. Highways, water, sewer, and all other public works projects are specifically prohibited from using the design-build method.

15. **Environmental and Historical Assessment.** The Grantee shall comply with all applicable federal, state and local environmental and historical preservation laws and regulations. The Grantee acknowledges this requirement and certifies that the project will be in compliance with such laws and regulations.

16. **Equal Employment Opportunity.** With respect to employment in carrying out the program objectives, the Grantee agrees that it will not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, national origin, or physical handicap.

17. **Facilities Accessible to the Handicapped.** The Grantee shall require any facilities constructed under the auspices of this Contract to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A11/1-1961, as modified (41CFR101-17.1703 and (13CFR309.14)). The Grantee shall be responsible for conducting inspections to ensure compliance with these specifications.

18. **Facilities Operation.** The Grantee shall operate and maintain all facilities constructed under the auspices of this Contract in accordance with minimum standards as may be required or prescribed by the applicable federal, state and local statute, law, ordinance or regulation as to actual construction procedures, as well as maintenance and operation of such facilities upon completion.

19. **Interest of Members of WVDEVO and Others.** No officer, member or employee of the WVDEVO or officer, member or employee of the Grantee who exercises any function or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Contract which affects his personal interest or the interest of any corporation, partnership, or association in which he is directly or indirectly interested or has any personal or pecuniary interest, nor shall any officer, member of, or employee of, the Grantee or any member of its governing body, or officer, member, or employee of the contractor have any interest, direct or indirect, in this Contract or the proceeds thereof.

20. **Officials Not To Benefit.** No member of the Legislature of the State of West Virginia, or individual performing a service for the Grantee in connection with this project, shall be admitted to any share thereof or to any benefit to arise from this Agreement.

21. **Inspections of Project Records.** At any time during normal business hours and as often as the WVDEVO or its designated representative may deem necessary, there shall be made available to the WVDEVO or its

designated representative for examination, all of its records with respect to all matters covered by this Contract and permit the WVDEVO or its designated representative to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records and personnel, conditions of employment and other data relating to all matters covered by this Contract during the entire time period beginning with project approval and ending three years after the final disbursement of grant funds.

22. **Project Audits.** (a) The Grantee shall cause an audit of this program to be included in the audit of the Grantee performed by the West Virginia State Auditor's Office, Chief Inspection Division, or its designated representative in accordance with West Virginia Code

§6-9-7. The audit shall be performed in conformance with generally acceptable accounting procedures.

(b) In accordance West Virginia Code §12-4-14, if the grantee is not audited by the West Virginia State Auditor's Office and the grantee received state funds or grants in the amount of fifteen thousand dollars or more, the grantee shall file an audit of the disbursement of funds with the legislative auditor's office. The audit shall be filed within two years of the disbursement of funds or grants by the grantee and shall be made by an independent certified public accountant at the cost of the corporation, association or other organization, and must show that the funds or grants were spent for the purposes intended when the grant was made. State funds or audits of state funds or grants under fifteen thousand dollars (\$15,000) may be authorized by the joint committee on government and finance to be conducted by the legislative auditor's office at no cost to the grantee.

23. **Reporting.** The Grantee shall submit any reports requested by the WVDEVO concerning financial status and program progress. Failure to provide such reports as required by WVDEVO in a timely manner shall be cause for termination of this Contract under the terms of Paragraph 7.

24. **Fiscal Management.** The Grantee shall be responsible for establishing and maintaining adequate procedures and internal financial controls governing the management and utilization of funds provided under this Contract, as well as funds provided as the Grantee's matching share.

25. **Political Activity.** No officer or employee of the Grantee whose principal employment is in connection with any activity which is financed in whole or in part pursuant to this agreement shall take part in any of the activities expressly prohibited by the Hatch Act.

26. **Repayment.** The Grantee shall refund to the State any expenditures determined to be made for an ineligible purpose for which State funds were received.

27. **Resolution of Disputes.** Resolution of disputes between the State and the Grantee concerning administrative and programmatic matters during the terms of this Agreement shall be initiated through consultation and discussion at the State's Administrative Offices with final decision on questions of policy or fact being determined by the Director of the Community Development Division or his/her designated representative. Nothing in this Agreement shall be construed as making the final decision on a question of law, or to limit in any manner any remedies or recourses available under applicable laws. Citizen's complaints or disputes regarding Grantee performance or actions relative to the approved project are the responsibility of the Grantee.

28. **Termination of Contract for Cause.** If, through any cause, the Grantee shall fail to fulfill in a necessary and proper manner his obligations under this Contract, or if the Grantee shall violate any of the covenants, agreements, or stipulations of this Contract, the WVDEVO shall thereupon have the right to terminate this Contract by giving written notice to the Grantee of such termination and specifying the effective date thereof, at least fifteen days before the effective date of such termination. The Grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed on the described project.

Notwithstanding the above, the Grantee shall not be relieved of liability to the WVDEVO for damages sustained by the WVDEVO by virtue of any breach of the Contract by the Grantee, and the WVDEVO may withhold any payments to the Grantee for the purpose of set-off until such time as the exact amount of damages due the WVDEVO from the Grantee is determined.

29. **Termination for Convenience of WVDEVO.** The WVDEVO may terminate this Contract at any time by giving written notice to the Grantee of such termination and specifying the effective date of termination. If the Contract is terminated by the WVDEVO as provided herein, the Grantee will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Grantee covered by this Contract, less payments of compensation previously made.

30. **Termination by the Grantee.** The Grantee may unilaterally rescind this agreement at any time prior to the commencement of the project. After project commencement, this agreement may be rescinded, modified, or amended only by mutual agreement. A project shall be deemed commenced when the Grantee makes any expenditure or incurs any obligation with respect to the project.

31. **Signing.** This Contract shall be signed by the Executive Director of the West Virginia Development Office and by the Mayor of the City of Morgantown upon authorization of the City of Morgantown by adoption and passage of a resolution, motion or similar official action.

IN WITNESS WHEREOF, the WVDEVO and the Grantee have executed this Agreement as of the date first above written.

**STATE OF WEST VIRGINIA
WEST VIRGINIA DEVELOPMENT OFFICE**

J. Keith Burdette, Executive Director

CITY OF MORGANTOWN

By: _____
Jim Manilla, Mayor

Federal Employee Identification Number

F.E.I.N.

Project Number: 12LEDA0516