



Office of the City Clerk

# The City of Morgantown

Linda L. Little, CMC  
389 Spruce Street, Room 10  
Morgantown, West Virginia 26505  
(304) 284-7439 Fax: (304) 284-7525  
llittle@cityofmorgantown.org

**AGENDA  
MORGANTOWN CITY COUNCIL  
REGULAR MEETING  
February 19, 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 – February 5, 2013  
Special Meeting – February 5, 2013
5. **CORRESPONDENCE**
6. **PUBLIC HEARINGS:**
  - A. **PUBLIC HEARING on 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. **PUBLIC HEARING on AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 1512.05 OF ITS FIRE PREVENTION CODE, AS THE SAME APPLIES TO MALICIOUS BURNING.**
  - C. **PUBLIC HEARING on 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.**

- D. PUBLIC HEARING on 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.
- E. PUBLIC HEARING on 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.
- F. PUBLIC HEARING on 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.
- G. PUBLIC HEARING on 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.

7. UNFINISHED BUSINESS:

- A. Consideration of APPROVAL of SECOND READING(ADOPTION) 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. (First Reading Feb. 5, 2013)
- B. Consideration of APPROVAL of SECOND READING(ADOPTION) of AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 1512.05 OF ITS FIRE PREVENTION CODE, AS THE SAME APPLIES TO MALICIOUS BURNING. (First Reading Feb. 5, 2013)
- C. Consideration of APPROVAL of SECOND READING(ADOPTION) 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. (First Reading Feb. 5, 2013)**

- D. Consideration of **APPROVAL** of **SECOND READING(ADOPTION)** 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. (First Reading Feb. 5, 2013)**
- E. Consideration of **APPROVAL** of **SECOND READING (ADOPTION)** 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. (First Reading Feb. 5, 2013)**
- F. Consideration of **APPROVAL** of **SECOND READING (ADOPTION)** 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. (First Reading Feb. 5, 2013)**
- G. Consideration of **APPROVAL** of **SECOND READING(ADOPTION)** 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. (First Reading Feb. 5, 2013)**

**H. BOARDS AND COMMISSIONS**

**8. SPECIAL COMMITTEE REPORTS**

**9. NEW BUSINESS:**

- A. 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.**

- B. Consideration of APPROVAL of A RESOLUTION AUTHORIZING THE  
EXECUTION OF A GOVERNOR'S COMMUNITY PARTICIPATION GRANT,  
FUNDS FOR USE FOR THE MORGANTOWN MARKETPLACE PROJECT.**

- 10. PUBLIC PORTION WHICH SHALL BE SUBJECT TO RULES ESTABLISHED BY  
COUNCIL AND ADOPTED BY RESOLUTION**
- 11. CITY MANAGER'S REPORT:  
NEW BUSINESS:
  - 1. Fire Department Grant from the Port of Pittsburgh through the Port Security  
Program Area Maritime Security Committee**  
INFORMATION:
  - 1. Presentation of Proposed FY 2013-2014 Budget**
  - 2. Planning Commission Annual Report****
- 12. REPORT FROM CITY CLERK:**
  - 1. Appointment of Poll Workers for Municipal Election**
- 13. REPORT FROM CITY ATTORNEY**
- 14. REPORT FROM COUNCIL MEMBERS**
- 15. ADJOURNMENT**

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

**SPECIAL MEETING FEBRUARY 5, 2013:**

The special meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Tuesday, February 5, 2013 at 6:00 p.m.

**PRESENT:** Mayor Jim Manilla, Interim City Manager Jeff Mikorski, City Clerk Linda Little, and Council Members Ron Bane, Wes Nugent, Jenny Selin, Marti Shamberger, Bill Byrne and Linda Herbst.

The meeting was called to order by Mayor Manilla.

**NEW BUSINESS:**

**GOALS AND OBJECTIVES FOR FISCAL YEAR 2013-2014:**

Interim City Manager Jeff Mikorski asked Council to identify their goals for the Fiscal Year. Council Members presented their goals for the City in the new year and asked when the Budget Documents would be ready. Mr. Mikorski replied that according to the City Charter, the Budget Documents will be distributed on February 15, 2013, and thanked Council for their direction.

**ADJOURNMENT:**

There being no further business, Council adjourned at 6:40 p.m.

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

\_\_\_\_\_  
Mayor

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



**REGULAR MEETING, FEBRUARY 5, 2013:** The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers of City Hall on Tuesday, February 5, 2013 at 7:00 P.M.

**PRESENT:** Interim 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 15, 2013, and the Special Meeting of January 29, 2013 were approved as printed.

**CORRESPONDENCE:** Councilor Shamberger thanked everyone for e-mails she received in support of the Woodburn School Property project.

**HOME RULE PRESENTATION:** Mayor Andy McKenzie from Wheeling briefed Council on the "Home Rule Pilot Program" and how it has worked in Wheeling and benefited their community. After a question and answer session with Council, Lisa Dooley, Executive Director of the West Virginia Municipal League requested that Council submit any legislative items for Home Rule to the League by April 2013.

Following the presentation, Mayor Manilla announced Journalism class 215 and Boy Scout Troop 77 in attendance.

**BOARDS AND COMMISSIONS:** By acclamation of Council, Seret Cole was appointed to the Historic Landmarks Commission; Aaron Hawley was appointed to the Museum Commission; and Guy Panrell was appointed to the Ward and Boundary Commission.

**SPECIAL COMMITTEE REPORTS:** Councilor Byrne announced the upcoming Chinese New Year celebration being held at WVU and reminded that all of Council is invited to attend.

**NEW BUSINESS:**

**AN ORDINANCE AMENDING ARTICLE 367, "PARKING DISTRICTS":** The below entitled Ordinance was presented for first reading:

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.

Motion by Byrne second by Selin to pass the above entitled Ordinance to second reading. After discussion and commentary from the City Attorney, motion carried 7-0.

**AN ORDINANCE ELIMINATING THE INTERSTATE SIGN OVERLAY DISTRICT FROM THE OFFICIAL ZONING MAP:** The below entitled Ordinance is presented for first reading:

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.

Motion by Byrne second by Nugent to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**AN ORDINANCE AMENDING ARTICLE 1329.02 "DEFINITIONS":** The below entitled Ordinance was presented for first reading:

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".

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

**AN ORDINANCE AMENDING ARTICLE 1359, INTERSTATE SIGN OVERLAY DISTRICT:** The below entitled Ordinance was presented for first reading:

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

Motion by Nugent second by Bane to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**AN ORDINANCE AMENDING TABLE 1369.06.01, "PERMITTED SIGNS":** The below entitled Ordinance was presented for first reading:

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

Motion by Byrne second by Shamberger to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**AN ORDINANCE AMENDING TABLE 1369.09.01, "FREESTANDING SIGNS HEIGHT LIMITS":** The below entitled Ordinance was presented for first reading:

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.

Motion by Byrne second by Shamberger to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**AN ORDINANCE AMENDING ARTICLE 1369.10 "PROHIBITED SIGNS AND DEVICES":** The below entitled Ordinance was presented for first reading:

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.

Motion by Byrne second by Shamberger to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**AN ORDINANCE AMENDING THE FIRE PREVENTION CODE, MALICIOUS BURNING:**

The below entitled Ordinance was presented for first reading:

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

Motion by Herbst second by Byrne to pass the above entitled Ordinance to second reading. After explanation from the City Manager, motion carried 7-0.

**AN ORDINANCE AMENDING THE ADMINISTRATIVE CODE, ORDER OF PROCEDURE FOR COUNCIL MEETINGS:** The below entitled Ordinance was presented for first reading:

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.

Motion by Byrne second by Selin to pass the above entitled Ordinance to second reading. After extensive discussion, motion carried 4-3, Councilors Bane, Nugent and Manilla voted NO.

**AN ORDINANCE AMENDING THE ADMINISTRATIVE CODE, URBAN LANDSCAPE COMMISSION MEMBERSHIP:** The below entitled Ordinance was presented for first reading:

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.

Motion by Byrne second by Shamberger to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**AN ORDINANCE AMENDING THE ADMINISTRATIVE CODE, SISTER CITIES COMMISSION MEMBERSHIP:** The below entitled Ordinance was presented for first reading:

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.

Motion by Byrne second by Shamberger to pass the above entitled Ordinance to second reading. After discussion, motion by Bane to amend the language to state that two members may be from the greater Morgantown area, but they shall be ex-officio non-voting members, seconded by Nugent. After discussion on the amendment and commentary from the City Attorney, the question was called on the above stated amendment. Motion on the amendment carried 4-3. Councilors Selin, Shamberger and Byrne voted NO on the amendment. The question was called for the main motion as amended and carried 7-0, to pass to second reading.

**AN ORDINANCE AUTHORIZING A LEASE AGREEMENT FOR A FLIGHT TRAINING CONCESSION:** The below entitled Ordinance was presented for first reading:

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.

Motion by Byrne second by Shamberger to pass the above entitled Ordinance to second reading. After explanation from the City Attorney, motion carried 7-0.

**AN ORDINANCE AUTHORIZING A LEASE AGREEMENT FOR A CHARTER FLIGHT CONCESSION:** The below entitled Ordinance was presented for first reading:

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.

Motion by Byrne second by Shamberger to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**A RESOLUTION AUTHORIZING THE EXECUTION OF A GOVERNOR'S COMMUNITY PARTICIPATION GRANT, FUNDS FOR USE BY MOUNTAINFEST, LLC. FOR THE MOUNTAINFEST MOTORCYCLE RALLY:** The above entitled Resolution was presented for approval:

Motion by Byrne second by Bane to approve the above entitled Resolution. After discussion, motion carried 7-0.

**A RESOLUTION AUTHORIZING THE EXECUTION OF A GOVERNOR'S COMMUNITY PARTICIPATION GRANT, FUNDS FOR USE FOR THE MORGANTOWN MARKETPLACE PROJECT:** The above entitled Resolution was presented for approval:

Motion by Selin second by Bane to approve the above entitled Resolution. Motion carried 7-0.

**A RESOLUTION AUTHORIZING THE EXECUTION OF A GOVERNOR'S COMMUNITY PARTICIPATION GRANT, FUNDS FOR USE FOR THE COLONEL ZACKQUILL MORGAN STATUE PROJECT:** The above entitled Resolution was presented for approval:

Motion by Nugent second by Bane to approve the above entitled Resolution. After discussion, motion carried 7-0.

**A RESOLUTION AUTHORIZING THE EXECUTION OF A GOVERNOR'S COMMUNITY PARTICIPATION GRANT, FUNDS FOR USE FOR THE MEMBERS OF DIVERSITY ORGANIZATION:** The above entitled Resolution was presented for approval:

Motion by Byrne second by Shamberger to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**PUBLIC PORTION:**

Don Price, 251 Wagner Road offered the conclusion of his commentary regarding charter revision and voter turnout. He asked that the transcript of his comments be made part of the record and are attached hereto.

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

**CITY MANAGERS REPORT:**

**NEW BUSINESS:**

1. Bid Result Report for Public Works 4x4 Rubber Tire Backhoe

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

2. Capital Escrow Capital Lease Purchase of Fire Department Vehicles

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

**REPORT FROM CITY CLERK:** Ms. Little reminded candidates of the deadline for petitions and paperwork for the Municipal Election, as well as reminded citizens to contact her for an absentee ballot application if needed.

**REPORT FROM CITY ATTORNEY:** Mr. Fanok commented on the Public Portion discussion and noted that the location of the Public Portion has moved several times over the years, and that it will continue to be a source of debate for the future.

**REPORT FROM COUNCIL MEMBERS:**

Councilor Bane: Councilor Bane congratulated Council passing the resolutions for grant monies that will directly benefit the community. He also noted for the future that Council members should be mindful of keeping confidences of executive sessions for the future. He stated he supports Mr. Mikorski in his role as Manager.

Councilor Nugent: Councilor Nugent mentioned that the City of Morgantown has recently celebrated its 175<sup>th</sup> anniversary, and noted how far the City has come since 1838.

Councilor Selin: Councilor Selin thanked those who worked on the MLK Day festivities and noted its success.

Councilor Shamberger: Councilor Shamberger inquired about missing street signs and about an amnesty for fines for those who return the signs. Mr. Mikorski replied that an amnesty date could be arranged if it were the will of Council. Councilor Shamberger then inquired about burnt out street lights and the procedure for repairs. Mr. Mikorski responded that when reports come in, City workers identify the

pole and a Mon Power crew makes the repairs. Councilor Shamberger then mentioned she is looking forward to the upcoming Chinese New Year Festival at WVU and thanked those who helped with the MLK Day events.

Councilor Byrne:

Councilor Byrne commended the Municipal Airport staff for their diligence in clearing runways to keep up with the much needed emplanements. He inquired about the status of the TIF district in Sunnyside and asked the Manager for a comprehensive report.

Councilor Herbst:

Councilor Herbst announced the Empty Bowls event to feed the hungry. She asked that citizens who cut through neighborhoods to avoid traffic to slow down, and encouraged neighbors to wear light reflective colors when out exercising in the evenings.

Mayor Manilla:

Mayor Manilla thanked the Street Department for their work clearing recent snow. He mentioned that the Director position for Sunnyside Up was turned down by the most recent applicant; and additionally that the City is awaiting property appraisals. Mr. Mikorski added that the evaluation of the area must be made before the second phase of bonding could begin. The funding request for Sunnyside Up will also be made for the upcoming budget.

**EXECUTIVE SESSION:** Motion by Bane, second by Nugent, Council moved by unanimous consent into executive session pursuant to WV State Code section 9-6A-4(B)(9) in order 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; with City Manager, City Attorney, Council Members, and Attorney James Gianola present. Session entered at 8:55 p.m., session exited at 9:50 p.m.

**ADJOURNMENT:** There being no further items of business or discussion, the meeting adjourned by unanimous consent at 9:50 p.m.

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City Clerk

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Mayor

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



**Office of the City Manager**

# The City of Morgantown

Interim City Manager  
Jeff Mikorski, ICMA-CM  
389 SPRUCE STREET  
MORGANTOWN, WEST VIRGINIA 26505  
(304) 284-7405 FAX: (304) 284-7430  
[www.morgantownwv.gov](http://www.morgantownwv.gov)

## **City Manager's Report for City Council February 19, 2013**

### New Business:

#### **1. Fire Department Grant from the Port of Pittsburgh through the Port Security Program Area Maritime Security Committee**

The Morgantown Fire Department submitted an application in 2009 that was just now accepted by the Port of Pittsburgh Area Maritime Security Committee for \$168,175. This funding will provide the City of Morgantown and the WV Region 2 Monongalia River Task Force divers with the means to execute safe dive operations. With this grant there is a \$56,059 local match requirement.

### Information Items:

#### **1. Presentation of the Proposed FY 2013-2014 Budget**

#### **2. Planning Commission 2012 Report**

According to West Virginia State law the Planning Commission must make an annual report to City Council regarding the operation of the Planning Commission and the status of planning within its jurisdiction. The 2012 Planning Commission annual report is included the meeting packet.

**PORT OF PITTSBURGH**  
**AREA MARITIME SECURITY COMMITTEE (AMSC)**  
**FY2009 PORT SECURITY GRANT PROGRAM**  
**2009-PU-T9-K031**  
**INVESTMENT JUSTIFICATION #IJ 9**  
**SUB-GRANTEE AWARD AGREEMENT**  
**BETWEEN**  
**PORT OF PITTSBURGH COMMISSION**  
**AND**  
**THE CITY OF MORGANTOWN**

This agreement, between the Port of Pittsburgh Commission, as Fiduciary Agent (hereinafter referred to the FA) and City of Morgantown (herein referred to as Sub-grantee) June 1, 2009 through the 31 day of May 2013, and will be automatically renewed with any Grant Adjustment Notifications (GAN) extending the expiration date. The Sub-grantee understands and agrees that this grant award shall be subject to and incorporate the following terms and conditions. The Sub-grantee shall include provisions appropriate to effectuate the purposes of those conditions in all contracts of employment, consultant's agreements, and contracts issued under its approved applications.

**I. Authority**

**A.** This Agreement is undertaken pursuant to § 46 USC 70107 and the Maritime Transportation Security Act of 2002 to pass through federal preparedness assistance awarded to the Port of Pittsburgh sector area by the Federal Emergency Management Agency (hereinafter FEMA) under the Fiscal Year 2009 Port Security Grant Program.

**B. Purpose and Amount of Award:** This agreement establishes the terms, conditions, assurances and certifications under which the Fiduciary Agent shall award to the Sub-Grantee an allocation of funds from Fiscal Year 2009 Port Security Grant Program (hereinafter PSGP FY2009), Award Number 2009-PU-T9-K031, in the amount of \$168,175 for Dive Equipment/Side Sonar and ROV in accordance with the Investment Justification (Exhibit A) and Budget (Exhibit B) approved by the Area Maritime Security Committee, which are attached hereto and made a part of this Agreement.

## **II. Applicable Rules/Regulations**

**A. Applicability of Federal Regulations and Conditions:** The Sub-Grantee must comply with the Office of Management and Budget (OMB) Circulars, as applicable: A-21 Cost of Principles for Educational Institutions; A-87 Cost Principles for State, Local and Indian Tribal Governments; A-122 Cost Principles for Non-Profit Organizations; A-102 Uniform Administrative Requirements for Grants and Agreements with State and Local Governments; A-110 Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organization, and 48 C.F.R. Part 31 et. Seq. Contract Cost Principles and Procedures. The Sub-Grantee shall assure that these conditions apply to all recipients of assistance or funds. Copies of these OMB Circulars are available for download on OMB website at [www.whitehouse.gov/OMB/grant/index.html](http://www.whitehouse.gov/OMB/grant/index.html).

**B. Federal Standard Assurances and Additional Assurances and Certifications:** The Sub-grantee agrees to be bound by and/or comply with the Federal Standard Assurances and certifications required by the federal government. These include Assurances – Non-Construction Programs, Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters and Drug-Free Workplace Requirements; and Accounting and System and Financial Capability /Questionnaire.

**C. Non-Supplanting Stipulation:** The Sub-grantee shall not use grant funds to supplant state or local funds or other resources that would otherwise have been made available for this project. Further, if a position created by grant is filled from within, the vacancy created by this action must be filled within 60 days. If the vacancy is not filled within 60 days, the Sub-grantee must stop charging the grant for the new position. Upon filling the vacancy, the Sub-grantee may resume charging for the grant position and must supply the name of the replacement person to the FA.

**D. Environmental and Historic Preservation Requirements:** Sub-grantee shall comply with applicable Federal, State and local environmental and historic preservation (EHP) requirements and shall provide any information requested by FEMA to ensure compliance with applicable laws, including: National Environmental Policy Act, National Historic Preservation Act, Endangered Species Act, and Executive Orders on Floodplains (11988), Wetlands (11990) and Environmental Justice (12898). Failure of the Sub-grantee to meet Federal, State and local EHP requirements and obtain applicable permits may jeopardize Federal funding. Sub-grantee shall not undertake any project having the potential to impact EHP resources without the prior approval of FEMA including, but not limited to communications towers, physical security enhancements, new construction and modifications to buildings that are 50 years old or greater. Sub-grantee must comply with all conditions placed on the project as the result of the EHP review. Any change to the approved project scope of work will require re-evaluation for compliance with these EHP requirements. If ground-disturbing activities occur during

project implementation, the Sub-grantee must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, the Sub-grantee will immediately cease construction in that area and notify the FA and the appropriate State Historic Preservation Office.

**E. Audit:** The Sub-grantee agrees to comply with the requirements of OMB Circulars A-133 for States, Local Governments, and Non-Profits or Government Auditing Standards, 1994 Revision for Commercial/For-Profit Organizations as applicable. If the Sub-recipient expends \$500,000 or more of Federal funds during its fiscal year, the sub-recipient must submit an organization-wide financial and compliance report. In addition, the sub-grantee agrees to submit a copy of the project's annual audit (required) to the PPC.

**F. Report Requirements:** The Sub-grantee agrees to submit, at such times and in such form as may be prescribed, reports as the FA may reasonably require, such as quarterly financial reports (SF-269) no later than the 15<sup>th</sup> day of January, April, July and October and the Semi-Annual progress reports by the 15<sup>th</sup> of January and July during each year this Agreement is effective, as well as final financial reports and evaluation reports. The final progress report must be filed with the FA within thirty (30) days after the termination of the last year of the grant award. The FA must receive the final progress report prior to the final cost report being paid.

**G. Assign-ability:** The Sub-grantee shall not assign any interest in this Agreement and shall not transfer any interest, whether by assignment of novation, without the prior consent of the FA, except as specified herein.

**H. Continuation Funding:** Sub-grantee understands that the awarding of this grant in no way assures or implies continuation of funding beyond the project duration indicated in this grant award. If a continuation application is approved, federal funds available under the current grant and corresponding cash matching funds must be expended or obligated and documented prior to the implementation of the continuation grant and expenditure of funds.

**I. Third Party Participation:** No contract or agreement may be entered into by the Sub-grantee for execution of project activities or provision of services to a grant project other than purchase of supplies or standard commercial or maintenance services which are not incorporated in the approved application. Any such arrangements shall provide that the Sub-grantee will retain ultimate control and responsibility for the project and that these conditions shall bind the contractor. In any case, where the Sub-grantee enters into a contract with third parties, and when such contracts are not contrary to law, the FA shall not be obligated or liable for any breach of contract or other actions in law to any party

other than the original Sub-grantee.

**J. Waiver:** It is agreed that the failure of the FA to insist upon the strict performance of any provision of this agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such a breach, shall not constitute a waiver of any rights assigned to FA under this Agreement.

**K. Title to Property:** Effective control and accountability must be maintained for all personal property. Sub-grantees must adequately safeguard all such property and must assure that it is used solely for authorized grant purposes. Subject to the obligations and conditions set forth in OMB Circulars A-102 and A-110, title to Non-expendable property acquired in whole or in part with grant funds shall be vested in the Sub-grantee upon termination of the grant. Non-expendable property is defined as any item having a useful life of more than one year and an acquisition cost of \$5000 or more per unit. At the time the final request for payment is submitted, the Sub-grantee must file with the FA a copy of the Property Control Record Form (Exhibit C), listing all such property acquired with grant funds. Sub-grantees should exercise caution in the use, maintenance, protection, and preservation of such property during the period of project use.

**L. Indemnity and Hold Harmless:** Sub-grantee shall indemnify, defend and hold harmless the PPC and its officers, directors, employees and agents from and against all liability, loss, cost or expense (including attorney's fees) by reason of liability imposed upon the FA, arising out of or related to Sub-grantee's performance under this Agreement, whether caused by or contributed to by the FA or any other party indemnified herein, including but not limited to any misfeasance, malfeasance, negligent or intentional acts of Sub-grantee, its officers, agents, or employees, or its subcontractors or their officers, agents, and employees unless such loss is caused solely by the malfeasance, misfeasance, or negligence of the FA, its officers, directors, employees or agents.

**M. Insurance:** Sub-grantee shall carry general liability insurance, commercial property loss and casualty insurance, errors and omissions insurance, professional liability insurance and/or professional liability malpractice insurance sufficient to protect Sub-grantee from any liability arising out of professional obligations performed pursuant to the requirements of this Agreement. Such insurance policies shall name the PPC as an additional insured. If Sub-grantee has claims-made coverage and subsequently changes insurance carriers during the term of this Agreement, it shall obtain from its new carrier errors and omissions insurance, professional liability insurance and/or professional malpractice carrier an endorsement for retroactive coverage. Prior to performing any services under this Agreement and at such times thereafter as the PPC may reasonably

request, Sub-grantee shall provide the FA with current certificates of insurance for all coverage required by the terms of this Agreement, naming the FA as an additional insured.

**N. Confidentiality and Non-Disclosure:** The Sub-grantee agrees to furnish the FA with certain confidential information relating to the grant award. The FA agrees to review, examine, inspect or obtain such confidential information only for the purposes described herein, and to otherwise hold confidential and proprietary information or trade secrets in trust confidence, except to the extent that information is determined to be a public record of FA under the Pennsylvania Right-to-Know Law. The FA agrees not to disclose any such confidential information to any third party, except to the U.S. Government.

**O. Availability of Project Assets:** The Sub-grantee agrees, upon written or verbal request by the Captain of the Port of Pittsburgh (COTP) or his designee to make assets, including equipment, materials, studies, reports or other assets or project information available to the United States Coast Guard or Federal, state or local law enforcement agencies in a timely manner.

### **III. Operational Procedures**

**A. Project Implementation:** Sub-grantee agrees to implement this project within sixty 60 days following the effective date of the grant award, or this Agreement may be to cancellation. Evidence of project implementation is to be reported within the first sixty days.

**B. Accounting Requirements:** The Sub-grantee agrees to record all project costs, both federal and matching share, following generally accepted fund accounting procedures. A separate account number or cost recording system must separate all project costs from the sub-grantees other or general expenditures. Adequate documentation for all project costs, both federal and matching share must be maintained. Federal share documentation must clearly indicate that the funds expended were the PSGP FY2009 federal funds. Adequate documentation is defined in the PPC Purchasing Process document attached to this Agreement as Exhibit D, which is part of this Agreement.

**C. Payment and Utilization of Funds:** Funds awarded are to be expended only for purposes and activities covered by the Sub-grantee's Investment Justification and Budget as attached hereto. Project funds (both federal and matching share) may not be expended prior to the grant award start date. Project funds will be made available through a reimbursement procedure as provided by the FA's policy and procedure,

as per Exhibit D. No payment of funds shall be made to Sub-grantee during any period of time within which the Sub-grantee is in default on filing any informational or financial Reports required by the FA. All claims for reimbursement must be accompanied by copies of all supporting documentation (i.e. time sheet, proof of payment Travel vouchers, invoices, etc.) Claims for reimbursement should be submitted as incurred. Payments will be adjusted to correct previous overpayment and disallowances or underpayments resulting from audit.

**D. Grant Adjustments:** The Sub-Grantee must obtain prior written approval from the AMSC and FEMA for major project changes. These include, but are not limited to: (a) changes of substance in project activities, designs or research plans set forth in the Approved application; (b) changes or deviations which might alter the project scope or intent; (c) changes in the project director and/or key professional personnel identified in the approved application; (d) changes in the approved budget with exception of those changes permitted in accordance with provisions cited later in this section, and (e) change in the length of the grant period. Equipment not included in the approved Budget may deviate from quantities of equipment in the approved budget as long as the total dollar amount of the equipment budgeted is not exceeded, provided written notification is submitted to the FA. Both the FA and the Sub-grantee shall maintain this notification in the project file. Sub-grantees may not add to the specified equipment without prior approval of FEMA unless the total dollar amount of the equipment is budgeted.

**E. Procurement Standards, Procedures and Reimbursement:** Sub-grantees shall adhere to and use the FA's Purchasing Process (Exhibit D).

**F. Monitoring:** Sub-grantee agrees to allow the FA reasonable access to the grant grant project for the purposes of monitoring programmatic progress and the financial and business management aspects of the grant award to ensure the project objectives are met and funds are spent and accounted for properly. Access shall include inspection of financial and program reports, site-visits, teleconferences and/or such other means necessary for the FA to carry out its monitoring obligations.

#### **IV. Termination of Grant**

This agreement will terminate upon completion of the project or May 31, 2013 whichever comes first.

- A. This grant may be terminated or fund payment suspended by the PPC where there is failure to comply with terms and conditions.
1. The grant application form and attachments
  2. The grant award contract
  3. Any state or federal law to which compliance is required
  4. An audit report which includes audit exceptions not answered to the satisfaction of

the FA.

- B. Upon such finding, the FA shall notify the Sub-grantee in writing to correct any deficiencies found. If said deficiencies are not correct within twenty (20) days, the FA will suspend or cancel grant application after furnishing written notice to the Sub-grantee.
- C. This agreement may be terminated by the Sub-grantee in the there is a failure of the FA to perform any of its obligations under this Agreement.
- D. Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions, wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

**V. Conflict of Interest:**

Personnel and other officials connected with this grant shall adhere to the requirements given below:

**A. Advice:** No individual, public official, ore employee of a state or unit of local government or of non-governmental grantees/sub-grantees shall participate personally through decision, approval, disapproval, recommendations, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which these funds are used, where to his knowledge he or his immediate family, partners, organization other than a public agency in which he is serving as officer, director, trustee, partner, or employee or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest.

**B. Appearance:** In the use of these grant funds, officials or employees of state or local units of government and non-government grantee/sub-grantees shall avoid any action which might result in, ore create the appearance of:

1. using his or her official position for private gain
2. Giving preferential treatment to any person
3. Losing complete independence or impartiality
4. Making an official decision outside official channels; or
5. Affecting adversely the confidence of the public in the integrity of the government or the program.

## **VI. Products / Income from Grants**

**A. Copyrights:** Except as otherwise provided in the terms and conditions of this Agreement, the Sub-grantee or a contractor paid through this grant is free to copyright any books, publications or other copyrightable materials developed in the course of or under this grant. However, the federal awarding agency reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes

1. The copyright in any work developed under this grant or through a contract under this grant; and,
2. Any rights of the copyright to which a Sub-grantee or sub-contractor purchases ownership of, with grant support.

The federal government's rights identified above must be conveyed to the publisher and the language of the publisher's release form must ensure the preservation of these rights. Any royalties received from copyrights and patents during the grant period may be retained by the Sub-grantee.

**B. Publications:** The Sub-grantee may, publish, at its own expense, the results of grant activity without prior review of the FA provided that any publication (written, oral or visual) contains an acknowledgment of the Port Security Grant support. The Sub-grantee agrees that any publication (written, visual, or sound, but excluding press releases, newsletters, and issue analyses) issued by the Sub-grantee describing programs or projects funded in whole or in part with Federal funds, shall contain the following statement: "This project was supported by the Port Security Grant Program FY2009 awarded by the Federal Emergency Management Agency, U.S. Department of Homeland Security."

**C. Program Income:** All program income generated by this grant during the project period must be reported to the FA following the month earned and must be put back into the project to be used to reduce the federal participation in the program in accordance with OMB Circular A-110.

## **VII. General Provisions**

**A. Dispute Resolution:** If a dispute arises out of or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree to submit the dispute to a Dispute Resolution Committee consisting of three representatives. One representative shall be selected by the Sub-grantee, one shall be selected by the FA and one shall be selected by the Captain of the Port. The Committee shall meet promptly after submission of the dispute and each party shall have an opportunity to present information to the Committee in support of its respective position relative to the dispute. Within 20 days of the Committee session to hear the dispute, the Committee shall render a decision on the dispute, which decision shall be made by majority vote of the Committee. The decision of the Committee shall be final and binding on the parties. The parties agree that judgment based upon

the decision rendered by the Committee may be entered in any court having jurisdiction of this agreement.

**B. Modification:** No modification, termination or attempted waiver of this Agreement or any provision hereof shall be valid unless in writing signed by both parties to this Agreement.

**C. Notices:** All notices, requests, demands and other communications required or permitted to be made under this Agreement shall be in writing and shall be given by personal delivery, by certified mail, return receipt requested, first class postage prepaid, or by nationally recognized overnight delivery service, in each case addressed to the party entitled to receive the same at the address specified below. Either party may change the address to which communications are to be sent by giving notice of such change of address in conformity with the provisions of this Section providing for the giving of notice. Notice shall be deemed to be effective, if personally delivered, when delivered; if mailed, at midnight on the third business day after being sent by certified mail; and if sent by nationally recognized overnight delivery service, on the next business day following delivery to such delivery service.

If to the FA:

Ms. Mary Ann Bucci  
Fiduciary Agent  
Pittsburgh Area Maritime Security Committee  
425 Sixth Avenue – Suite 2990  
Pittsburgh, PA 15219  
(412) 201-7331 – Office  
(412) 398-7188 – Cell  
(412) 201-7337 - Fax  
[mary\\_ann@port.pittsburgh.pa.us](mailto:mary_ann@port.pittsburgh.pa.us)

If to the Sub-grantee:

Lt. Brian Tolka  
City of Morgantown  
228 South High Street  
Morgantown, WV 26505  
304-291-7479 - Office



**Development Services**  
389 Spruce Street  
Morgantown, WV 26505  
304.284.7431

## MEMORANDUM

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Date: Friday, February 15, 2013  
To: Jeff Mikorski, Interim City Manager ..... *via email*  
RE: Planning Commission's 2012 Annual Report to City Council

West Virginia State Code § 8A-2-11(9) provides that the Planning Commission, "Make an annual report to the appropriate governing body concerning the operation of the planning commission and the status of planning within its jurisdiction."

The Planning Commission met last evening, approved the attached 2012 Annual Report, and respectfully requests that it be communicated to City Council in the City Manager's Report during Council's February 19, 2013 meeting.

On behalf of the Planning Commission, thank you for your assistance.

Att: Planning Commission 2012 Annual Report





## Citizen Planners

The success of local planning policies, programming, and services depends largely on the commitment and integrity of residents appointed by the Morgantown City Council to serve on various planning-related commissions, boards, and committees. Morgantown is fortunate to enjoy a well-informed public that is willing to serve the role of "Citizen Planner." The following table identifies these volunteers and their respective terms as of January 1, 2013.

Citizen Planner	Date of Original Appointment	Current Term	Tenure (in months)
<b>Planning Commission</b>			
Peter DeMasters, President 6 <sup>th</sup> Ward Representative	03/21/06	01/01/11 – 12/31/13	82.5
Carol Pyles, Vice-President 7 <sup>th</sup> Ward Representative	09/17/08	01/01/13 – 12/31/15	53.5
Sam Loretta 1 <sup>st</sup> Ward Representative	06/20/06	01/01/12 – 12/31/14	79.5
Tim Stranko 2 <sup>nd</sup> Ward Representative	03/21/07	01/01/12 – 12/31/14	70.5
William Wyant 3 <sup>rd</sup> Ward Representative	07/20/10	01/01/11 – 12/31/13	30.5
William Petros 4 <sup>th</sup> Ward Representative	01/19/10	01/01/13 – 12/31/15	36.5
Michael Shuman 5 <sup>th</sup> Ward Representative	08/04/09	01/01/13 – 12/31/15	42
Jennifer Selin City Councilor	07/02/07	City Council term ending 06/30/13	67
Dr. Ken Martis Administration Representative	05/01/01	at will of City Manager	141.5
<i>PC Tenure Summary:</i>	Total: 603.5 mos. or 50.3 yrs. Average: 67 mos. or 5.6 yrs.		
<b>Board of Zoning Appeals</b>			
Bernie Bossio, Chair	01/04/05	01/01/12 – 12/31/14	97.5
Leanne Cardoso, Vice-Chair	08/21/07	01/01/13 – 12/31/15	65.5
George Papandreas	02/06/08	01/01/12 – 12/31/14	60
James Shaffer	02/07/06	01/01/13 – 12/31/15	84
Tom Shamberger	02/06/08	01/01/11 – 12/31/13	60
<i>BZA Tenure Summary:</i>	Total: 367 mos. or 30.6 yrs. Average: 73.4 mos. or 6.1 yrs.		

The tenure trends illustrated in the table above for the Morgantown's Planning Commission and Board of Zoning Appeals demonstrates a high level of stability, understanding, commitment, capacity, and leadership among these volunteer committees that Morgantown is very fortunate to enjoy.

The following table identifies attendance trends for the 2010, 2011, and 2012 calendar years. Please note that six (6) Planning Commission hearings and two (2) Board of Zoning Appeals hearings were canceled during this period due to the lack of respective business matters.

Citizen Planner	2010		2011		2012		Attendance Rate
	Absent	Present	Absent	Present	Absent	Present	
<b>Planning Commission</b>							
Peter DeMasters, Pres. 6 <sup>th</sup> Ward Representative	0	9	1	11	0	10	97%
Carol Pyles, Vice-Pres. 7 <sup>th</sup> Ward Representative	1	8	3	9	3	7	77%
Sam Loretta 1 <sup>st</sup> Ward Representative	0	9	3	9	2	8	84%
Tim Stranko 2 <sup>nd</sup> Ward Representative	1	8	3	9	3	7	77%
Barbara Ferrell 3 <sup>rd</sup> Ward Representative	3	2	N/A	N/A	N/A	N/A	40%
William Wyant 3 <sup>rd</sup> Ward Representative	0	2	3	9	0	10	88%
William Petros 4 <sup>th</sup> Ward Representative	1	7	0	12	4	6	83%
Michael Shuman 5 <sup>th</sup> Ward Representative	2	7	1	11	2	8	84%
Jennifer Selin City Councilor	1	8	2	10	1	9	87%
Dr. Ken Martis Administration Representative	0	9	3	9	3	7	81%
<b>Board of Zoning Appeals</b>							
Bernie Bossio, Chair	2	8	1	11	2	10	85%
Leanne Cardoso, Vice-Chair	2	8	2	10	1	11	85%
George Papandreas	3	7	2	10	2	10	79%
James Shaffer	3	7	5	7	4	8	65%
Tom Shamberger	0	10	0	12	2	10	94%

## **Planned Unit Developments (PUDs)**

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As of January 1, 2013, there have been six (6) Planned Unit Development (PUD) Outline Plans recommended by the Planning Commission and approved by City Council. The following narrative provides a brief update on the history and status for each PUD.

- **Square at Falling Run** – PUD Outline Plan was approved in 2003. Phase I to construct “The Augusta” was completed and tenants occupied the buildings in September 2007. A temporary certificate of occupancy was issued pending, among others, the development of at least 124 permanent parking spaces. The Planning Division reports that the developer has since filed bankruptcy and most if not all of the related realty has been acquired by West Virginia University. Once all related pending litigation has been concluded, the Planning Commission will submit a recommendation to City Council to rescind the PUD zoning designation.
- **SC Bodner** – PUD Outline Plan was approved in 2006 and an amendment approved in 2008. The construction of “Mountaineer Place Apartments” has been completed and occupancy permits issued Fall 2010. The only remaining element is a gateway enhancement project within the Stewart Street and University Avenue right-of-way, which will satisfy the PUD’s open space requirement. The Planning Division reports that Construction Business and Occupation Tax revenues generated by the development were earmarked by the Office of City Manager for this project along with a financial commitment made by “Sunnyside Up”. The Planning Division reports that once all revenues are collected, thereby maximizing the project budget and design elements, construction will be initiated soon thereafter.
- **Grand Central Apartments** – PUD Outline Plan was approved in 2007 and an amendment approved in December 2008. The amendment approval included, among others, a condition that the PUD Development Plan be reviewed and approved by the Planning Commission within 18 months following City Council approval of the Outline Plan. The PUD Development Plan was not submitted and City Council, with the recommendation of the Planning Commission, consequentially enacted Ordinance 10-34 in September 2010 rescinding the PUD designation and reclassifying the subject realty to its previous zoning.
- **Westminster House** – PUD Outline Plan was approved in December 2008 and amendments were approved November 2009, February 2011, October 2011, and December 2011 extending the deadline to submit the PUD Development Plan. City Council, with the recommendation of the Planning Commission and consent of the developer, enacted Ordinance 12-48 in November 2012 rescinding the PUD designation and reclassifying the subject realty to its previous zoning. In addition, the Planning Commission approved a temporary use to allow leased parking spaces on the property’s gravel lots through June 30, 2013.
- **Habitat for Humanity** – PUD Outline Plan was approved in July 2009 and an amendment was approved February 2011 to extend the deadline to submit the PUD Development Plan. City Council, with the recommendation of the Planning Commission and consent of the developer, enacted Ordinance 12-03 in January 2012 rescinding the PUD designation and reclassifying the subject realty to its previous zoning.
- **Beech View Place** – PUD Outline Plan was approved in March 2010. Construction is currently underway with project delivery targeted for August 2013.

## 2013 Planned Activities

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- **Comprehensive Plan Update** – In December 2011, the City of Morgantown, Town of Star City, and the Morgantown-Monongalia Metropolitan Planning Organization (MMMPO) embarked in an unprecedented collaborative effort to develop a shared vision for the future of the region. The process, called “Crossroads – It’s Time to Chart Our Future,” engaged a diverse group of stakeholders, citizens and community leaders in identifying needs, aspirations, and the preferred direction of the future growth for Monongalia County. The vision serves as a foundation for three plans: the City of Morgantown’s Comprehensive Plan Update, the Town of Star City’s Comprehensive Plan Update, and the MMMPO’s regional Long-Range Transportation Plan (LRTP). Attendance during the various group and one-on-one interviews and public workshops over the past thirteen months has included (separately) over 350 participants. Presentation of the final document to City Council for adoption is anticipated in the second quarter of 2013. Immediately following adoption, the Planning Commission will be prioritizing strategies and initiating implementation that will include scheduled status reporting.
- **2010 Downtown Strategic Plan Implementation** – The Planning Commission has prioritized the catalytic projects identified in the Downtown Strategic Plan. Planning Division staffing levels since the adoption of the plan and the obligations of updating the Comprehensive Plan have stalled staff initiated implementation tasks. However, several of the catalytic Downtown Strategic Plan projects will be folded into, as intended, Comprehensive Plan Update implementation. Related Planning and Zoning Code text and map amendment recommendations to City Council are anticipated to begin during the 2013 calendar year.
- **Citizen Planner Training** – As of January 1, 2013, there are no members of the Planning Commission or the Board of Zoning Appeals filling unexpired terms. This membership stability appears to be the first in several years and is particularly critical now as the City pursues the Comprehensive Plan Update adoption and implementation. The “Crossroads” planning project has created opportunities for training partnerships for the members of Planning Commissions and Boards of Zoning Appeals of Morgantown, Star City, and Monongalia County. Of particular note is a potential partnership the Planning Division is engaging with WVU’s College of Law Land Use and Sustainable Development Law Clinic and their efforts to develop citizen planner training programming statewide and their new “Mountain State Land Use Academy.”
- **Modernization of Planning and Zoning Code Fee Schedule** – Fees associated with Planning and Zoning Code related applications and petitions have remained the same for a number of years. The Planning Division will be asked to conduct a cost revenue analysis and compare same to related planning and zoning fee schedules within the region and across the state. As the fee schedule is a part of the Planning and Zoning Code, amendments, if warranted, may be recommended by the Planning Commission to City Council during the 2013 calendar year.
- **Modernization of Subdivision Regulations** – The Planning Commission and City Council completed the lengthy task of modernizing and codifying the City’s zoning regulations in 2006. The fundamental purpose of this endeavor was to implement progressive land use policies and strategies as well as comply with the State Legislature’s similar effort in 2004 to modernize the State’s Planning Enabling Law. Changes in State Code have created opportunities to streamline the review and approval of subdivision petitions. Incorporating these opportunities in Morgantown’s Planning and Zoning Code requires a major amendment to the City’s subdivision regulations. This project remains a priority and will require General Fund support to outsource the project. Given the pending Comprehensive Plan Update adoption, a major subdivision regulation amendment may not be initiated until 2013 or 2014.



Office of the City Clerk

# The City of Morgantown

Linda L. Little, CMC  
389 Spruce Street, Room 10  
Morgantown, West Virginia 26505  
(304) 284-7439 Fax: (304) 284-7525  
[llittle@cityofmorgantown.org](mailto:llittle@cityofmorgantown.org)

## **MEMORANDUM**

**TO:** Mayor Manilla and Members of Morgantown City Council

**FROM:** Linda L. Little, City Clerk, CMC

**DATE:** February 11, 2013

**RE:** City Election Update

According to the City Code (105.16), City Council is charged with appointing poll workers to conduct the Election in each precinct in the City on April 30, 2013. A motion would be in order to approve the attached list and replacements that may be necessary up to and including the day of election.

lll  
cc: file  
enclosure







## BOARDS AND COMMISSIONS - TERMS EXPIRED AND CURRENT VACANCIES

### YOUTH COMMISSION:

TERMS FOR THE YOUTH COMMISSION HAVE EXPIRED. ATTACHED IS THE NEW LIST FOR 2013. COUNCIL CAN APPROVE THAT LIST AT THE REGULAR MEETING ON FEBRUARY 19, 2013. OATHS WILL BE GIVEN AT THEIR MARCH MEETING AND PRESENTATION BY THE COMMISSION WILL BE ON THE AGENDA FOR THE COW FEBRUARY 26, 2013. High School Students residing in the Metropolitan area.

**\*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.*

2/14/13

[Company Name]

2/6/2013

Name	Committee Assignment	Title	Home Phone	Cell Phone	E-Mail Address
Brandon Waters	Executive (Social Awareness)	Chairman	(304)708.0070	(304)612.5783	<a href="mailto:barw@comcast.net">barw@comcast.net</a>
Ishika Desai	Executive (Education)	Co-Vice Chairwoman	(304)292.0683	(304)685.1279	<a href="mailto:ishikaaa19@gmail.com">ishikaaa19@gmail.com</a>
Ashley Faulkner	Executive (Safety)	Co-Vice Chairwoman	(304)241.1655	(304)282.8274	<a href="mailto:ashlevvw@aol.com">ashlevvw@aol.com</a>
Maria Solano	Social Awareness	Chairwoman	(304)777.2269	(304)216.9928	<a href="mailto:msolano2013@gmail.com">msolano2013@gmail.com</a>
Daniel Pan	Social Awareness	Member	(304)598.7528	(304)376.4494	<a href="mailto:dpan0012@frontier.com">dpan0012@frontier.com</a>
Emma Mathers	Social Awareness	Member	(304)594.0530	(304)276.0329	<a href="mailto:emmamathers@comcast.net">emmamathers@comcast.net</a>
Kiana Hoyle	Education	Chairwoman	(304)241.4374	(304)319.2045	<a href="mailto:kiana.hoyle@gmail.com">kiana.hoyle@gmail.com</a>
Henna Bhatia	Education	Member	(304)974.2105	(724)814.4695	<a href="mailto:hennabhatia@gmail.com">hennabhatia@gmail.com</a>
Josh Watson	Education	Member	(304)599.4453	(304)276.5725	<a href="mailto:ldrake814@gmail.com">ldrake814@gmail.com</a>
Ally Orinick	Safety	Chairwoman	(304)296.7936	(681)285.5404	<a href="mailto:aorinick11@gmail.com">aorinick11@gmail.com</a>
Mady Duarte	Safety	Member	(304)296.9846	(304)216.9008	<a href="mailto:mady12@comcast.net">mady12@comcast.net</a>
Shruthi Sreekumar	Safety	Member	(304)599.7875	(304)290.3265	<a href="mailto:aki_autumn96@vaheo.com">aki_autumn96@vaheo.com</a>
Yamini Anantula	Social Awareness	Member	(304)212.4686	(304)276.9510	<a href="mailto:yamini_anantula@hotmail.com">yamini_anantula@hotmail.com</a>



**Development Services**  
389 Spruce Street  
Morgantown, WV 26505  
304.284.7431

## MEMORANDUM

---

Date: Thursday, February 14, 2013  
To: Jeff Mikorski, Interim City Manager .....*via email*  
RE: Ordinance Amending Article 367 "Parking Districts"  
City Council Second Reading – February 19, 2013  
Minor revision addressing "One-day Visitor Permit" provision

In response to concerns expressed by members of City Council relating to the "One-day Visitor Permit" provisions included in the ordinance to amend Article 367 "Parking Districts" of the City of Morgantown Traffic Code, I respectfully submit the following minor revision for City Council's consideration.

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### Provision included in First Reading of the Ordinance:

One-day Visitor Permit  
(1 to a maximum of 8 permits per occurrence)..... \$5.00 per occurrence

### Minor Revision:

One-day Visitor Permit ..... \$5.00 per  
24-hour event period\*

\* Regardless of the number of One-day Visitor Permits issued; maximum number of One-Day Visitor Permits to be established in rules promulgated under this section.

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I understand in consulting with City Attorney Stephen Fanok that a member of City Council can make a motion to include this minor revision during Council's consideration of the ordinance's second reading without requiring the ordinance to be considered again on first reading.

cc: Stephen Fanok, City Attorney (via email)  
Tom Arnold, Parking Authority Director (via email)  
Terry Hough, City Engineer (via email)

**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
First Resident Permit.....	\$5.00 per year
Each additional Resident Permit.....	\$10.00 per year
Visitor Permits (all types except One-day Visitor Permit) .....	\$5.00 per year
One-day Visitor Permit (1 to a maximum of 8 permits per occurrence).....	\$5.00 per occurrence

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 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, 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 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 shall be ex officio, non-voting members selected from the Greater Morgantown Area as defined by the jurisdictional boundaries of the Morgantown, Monongalia Metropolitan Planning Organization. At all times, seven members of the Commission shall be residents of the City.

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 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:

# DRAFT

## 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.

# DRAFT

- (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**

# DRAFT

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

# DRAFT

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.

# DRAFT

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

# DRAFT

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.

# DRAFT

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

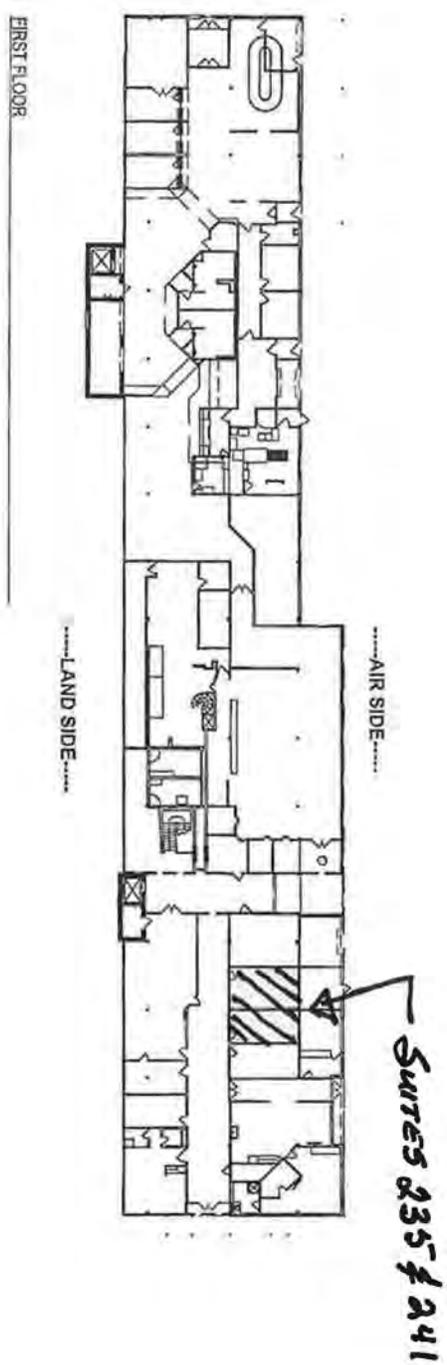
**BJK AVIATION, LLC**

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

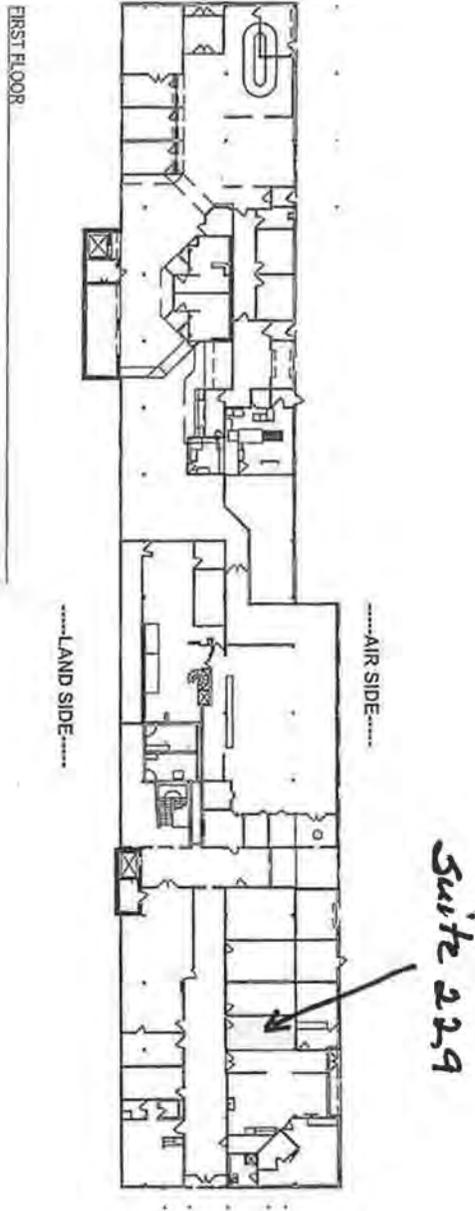
**AC EXPRESS, INC.**

By: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_

*EXHIBIT A*



**BASIC LAND AND FLIGHT CHARTER CONCESSION AGREEMENT**

Exhibit 1

## **RESOLUTION**

*WHEREAS, \$10,000 in the Governor's Community Partnership Grant Program funding was set aside by the West Virginia Legislature for the City of Morgantown to create and install a statue of Colonel Zackquill Morgan, founder of Morgantown; and,*

*WHEREAS, the City of Morgantown has applied for funding through the West Virginia Development Office; and,*

*WHEREAS, the Governor's Community Participation Grant Program requires that a local government unit enter into a contractual agreement with the West Virginia Development Office to receive and administer grant funds.*

*NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown City Council this 19th day of February, 2013 that the Mayor is hereby authorized to execute said agreement and any other necessary documents on behalf of the City Council, and that he be empowered to sign the contract and any agreement necessary to obtain these funds for project number 13LEDA0189.*

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

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



**RESOLUTION**

*WHEREAS, \$30,000 in the Governor's Community Partnership Grant Program funding was set aside by the West Virginia Legislature for the City of Morgantown to construct the Morgantown Market Place, a venue for public events such as the Downtown Farmers' Market; and,*

*WHEREAS, the City of Morgantown has applied for funding through the West Virginia Development Office; and,*

*WHEREAS, the Governor's Community Participation Grant Program requires that a local government unit enter into a contractual agreement with the West Virginia Development Office to receive and administer grant funds.*

*NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown City Council this 19th day of February, 2013, that the Mayor is hereby authorized to execute said agreement and any other necessary documents on behalf of the City Council, and that he be empowered to sign the contract and any agreement necessary to obtain these funds for project number 13LEDA0189.*

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*Mayor*

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*City Clerk*

