



Office of the City Clerk

The City of Morgantown

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**AGENDA
MORGANTOWN CITY COUNCIL
REGULAR MEETING
FEBRUARY 7, 2012
7:30 p.m.**

1. **CALL TO ORDER**
2. **ROLL CALL BY CITY CLERK**
3. **PLEDGE TO FLAG**
4. **APPROVAL OF MINUTES:** Regular Meeting January 17, 2012
Special Meeting January 20, 2012
5. **CORRESPONDENCE**
6. **PUBLIC HEARING:**
 - A. **PUBLIC HEARING of AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING AN ORDINANCE ADOPTED ON SEPTEMBER 20, 2011, PERTAINING TO ARTICLE 1155, CLEAN INDOOR AIR CODE.**
7. **UNFINISHED BUSINESS:**
 - A. Consideration of **APPROVAL of SECOND READING (ADOPTION) of AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING AN ORDINANCE ADOPTED ON SEPTEMBER 20, 2011, PERTAINING TO ARTICLE 1155, CLEAN INDOOR AIR CODE.**
(First Reading January 17, 2012)
 - B. **BOARDS AND COMMISSIONS**
8. **PUBLIC PORTION WHICH SHALL BE SUBJECT TO RULES ESTABLISHED BY CITY COUNCIL AND ADOPTED BY RESOLUTION**

9. NEW BUSINESS:

- A. Consideration of APPROVAL of FIRST READING of AN ORDINANCE BY THE CITY OF MORGANTOWN ADDING SECTION 129.14 TO ITS ADMINISTRATIVE CODE ADDRESSING THE CREATION AND ADMINISTRATION OF AN OTHER POST-EMPLOYMENT BENEFITS (OPEB) FUND.**
- B. Consideration of APPROVAL of FIRST READING of AN ORDINANCE BY THE CITY OF MORGANTOWN ADDING SECTION 129.15 TO ITS ADMINISTRATIVE CODE, CREATING A FINANCIAL STABILIZATION FUND.**
- C. Consideration of APPROVAL of FIRST READING of AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING THE EXECUTION OF A REAL ESTATE PURCHASE AGREEMENT AND RELATED DEED, AS THE SAME PERTAIN TO THE EXCHANGE OF REAL PROPERTIES BETWEEN THE CITY OF MORGANTOWN AND THE MONONGALIA COUNTY DEVELOPMENT AUTHORITY (MCDA); SAID PROPERTY OF THE CITY CURRENTLY BEING LOCATED ON THE MORGANTOWN MUNICIPAL AIRPORT, AND SAID PROPERTY OF THE MCDA CURRENTLY BEING LOCATED ADJACENT TO BOTH THE HARTMAN RUN ROAD AND THE AIRPORT.**
- D. Consideration of APPROVAL of a RESOLUTION OF THE CITY OF MORGANTOWN TO ENVIRONMENTAL PROTECTION AGENCY ADMINISTRATOR LISA P. JACKSON IN SUPPORT OF REDUCING GREENHOUSE GAS POLLUTION UNDER THE CLEAN AIR ACT.**
- E. Consideration of APPROVAL of a RESOLUTION TO ADMINISTER THE EXECUTION OF A GOVERNOR'S COMMUNITY PARTICIPATION GRANT PROGRAM, FUNDS FOR USE BY WEST VIRGINIA SENIOR LEGAL AID.**
- F. Consideration of APPROVAL of a RESOLUTION TO APPLY FOR THE WVDOT TRANSPORTATION ENHANCEMENT PROGRAM GRANT, FUNDS FOR CONSTRUCTION OF PEDESTRIAN BRIDGE TO ACCESS DECKERS CREEK RAIL TRAIL.**
- G. Consideration of APPROVAL of a RESOLUTION TO APPLY FOR THE WVDOT TRANSPORTATION ENHANCEMENT PROGRAM GRANT,**

**FUNDS FOR CONSTRUCTION AND IMPROVEMENT OF SIDEWALKS,
LIGHTING AND PEDESTRIAN AMENITIES IN THE DOWNTOWN
DISTRICT.**

- H. Consideration of **APPROVAL** of a **RESOLUTION EXPRESSING CITY COUNCIL'S SUPPORT FOR MAINTAINING THE CURRENT POPULATION THRESHOLDS FOR MPOs IN ANY NEW LEGISLATION FOR FEDERAL SURFACE TRANSPORTATION AUTHORIZATION.**

10. SPECIAL COMMITTEE REPORTS

11. REPORT FROM CITY MANAGER:

Information:

- 1. Pending Meeting with Senator Rockefeller Regarding Morgantown Municipal Airport.**

New Business:

- 1. Authorization of Bid Process for 2012 Paving Program.**
- 2. Community Development Office: RFQ for HUD Services Program.**
- 3. Capital Escrow Budget Requests and Adjustments.**

12. REPORT FROM CITY CLERK:

- A. Requirements to Change Start Time Of Regular City Council Meetings.**

13. REPORT FROM CITY ATTORNEY

14. REPORT FROM COUNCIL MEMBERS

- 15. EXECUTIVE SESSION: Pursuant to West Virginia Code Section 6-9A-4(2)(9) as it pertains to the sale, purchase or lease of realty.**

- 16. EXECUTIVE SESSION: Pursuant to West Virginia Code Section 6-9-A-(2)(A) as it pertains to personnel matters.**

17. ADJOURNMENT

REGULAR MEETING JANUARY 17, 2012:

The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Wednesday, January 17, 2012 at 7:30 P.M.

PRESENT: City Manager Terrence Moore, City Clerk Linda Little, City Attorney Steve Fanok, Deputy City Manager Jeff Mikorski, 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 on January 3, 2011 were approved as printed.

CORRESPONDENCE: Police Chief Ed Preston & Mayor Manilla presented the following awards together: On September 20, 2011 PFC Phil Scott Jr. along with West Virginia State Troopers Gallaher and Mucciola responded to the Joe Bartolo Bridge and were confronted with an individual dangling in the air while hanging from the pillar of the bridge. Without the aid of rescue equipment, without hesitation and at great risk to their personal safety, they crawled over and under the lowest rail of the bridge and grabbed the victim by his legs and torso holding onto him until back-up could arrive. They along with the PFCs' Michael Blonairz, Molly Linthicum and Joseph Patterson were able to pull the intoxicated and suicidal victim back to safety, despite his efforts to free himself and end his life, even at the risk of others. It is in keeping with the Law Enforcement Tradition, that PFC Scott, Troopers Gallaher and Mucciola be presented this "Medal of Valor", PFC's Blonairz, Linthicum and Patterson be presented this "Medal of Distinguished Service" and all six officers receive the "Lifesaving" medal for their actions.

Mayor Manilla then read a proclamation for all citizens to be a community of activity and celebrate January 19th, 2012 as "Physical Activity Day".

Pam Hodge, Chair of the Morgantown Sister Cities Commission gave a brief presentation on the recent Friendship Cities initiative and asked for Council's approval of an application from the QuanShan District, Xuzhou City, China to become a Friendship City.

Following additional comments by Dr. Sun and Professor Dan Miller, motion by Byrne, second by Selin to approve of the above referenced Friendship City status. Motion carried 7-0.

BOARDS AND COMMISSIONS: By acclamation the following students were appointed to the Youth Commission: Ananula, Yamini; Arnold, Stephanie; Dang, Elizabeth; Davis, Kristin; Faulkner, Ashley; Gerbo, Michael; Ma, Michelle; Pinto, Catalina; Radcliffe, Christopher; Sunil, Shiv; Trovato, Lucas; Walls, Thomas; Waters, Brandon; Watson, Josh; and Yu, Jennifer.

PUBLIC PORTION:

Guy Panrell, 763 South Hills Drive, addressed that the Marcellus Shale issues should not involve politics and he feels there are special interest groups at play. He also stated that money should not be budgeted to a Sister Cities initiative.

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

NEW BUSINESS:

AN ORDINANCE AMENDING ARTICLE 1155, CLEAN INDOOR AIR : The below entitled Ordinance was presented for first reading:

AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING AN ORDINANCE ADOPTED ON SEPTEMBER 20, 2011, PERTAINING TO ARTICLE 1155, CLEAN INDOOR AIR CODE.

After discussion, a minor amendment was made by City Attorney Steve Fanok. Motion by Byrne, second by Selin to approve the above entitled Ordinance with amendment to second reading. Motion carried 7-0.

SPECIAL COMMITTEE REPORTS: Councilor Nugent reported on the progress of the Traffic Commission, and their upcoming projects. Councilor Shamberger reported on the Woodburn Site Study Group meetings. Councilor Selin added that the Youth Commission has been reinstated and expressed their desire to make a presentation to Council in the near future. Mr. Moore responded that a presentation from the GMAYC would be most appropriate at an upcoming Regular Council Meeting during the Special Committee Reports portion.

CITY MANAGERS REPORT:

INFORMATION:

Item No. 1: Consideration Regarding Treescape Enhancements on High Street.

Public Works Director Terry Hough gave a brief explanation of the related options and costs of the proposed enhancements. Mr. Moore gave additional comments and discussion continued.

NEW BUSINESS:

Item No. 1: Request for Fair & Festival Permit for the 2012 Art Alive on the River Festival.

Motion by Byrne, second by Bane to approve the above referenced Festival Permit. Motion carried by acclamation of Council.

CITY CLERK'S REPORT: No Report.

CITY ATTORNEY'S REPORT: No Report.

REPORT FROM COUNCIL MEMBERS:

Councilor Bane: Councilor Bane asked for a report on the OPEB Funds 2009-2010 budget. Mr. Moore gave a brief explanation, followed by comments from Mr. Fanok in response to Councilor Bane's concern.

Councilor Nugent: Councilor Nugent announced Arts Alive Festival event planners in attendance, and then complimented all the work well done on MLK Day events at the Met Theatre. He announced upcoming events at the Museum and a workshop at Scotts Run. Councilor Nugent then reminded residents to attend the Crossroads regional visioning and planning meetings.

Councilor Selin: Councilor Selin announced a retreat of the Urban Landscape Commission, as well as the reformation of the Youth Commission. She mentioned that she looks forward to new plans for the

Woodburn School. She also encouraged citizens to participate in the Crossroads regional meetings.

Councilor Shamberger:

Councilor Shamberger congratulated all those who participated in the MLK Day events.

Councilor Byrne:

Councilor Byrne concurred that the MLK Day events were excellent. He also noted in addition to the Crossroads meetings, an MPO meeting will be held to discuss the 705/Mileground intersection plans. He thanked those involved with the Art Alive Festival and commended their continuing progress, thanking the trustees for their continued support. He added that he looks forward to the City's new Friendship status with China.

Councilor Herbst:

Councilor Herbst also commended the MLK events and Arts programs in the area, and reminded citizens that area businesses also feature local art and artist.

Mayor Manilla:

Mayor Manilla commented on the success of the Arts Festival. He also complimented the City Manager, City Attorney and Council on the conclusion of the smoking ban regulations.

Mayor Manilla then proposed a budgeting line item change, recommended by Finance Director JR Sabatelli to City Council's budget line: decreasing the Operating Supplies line by \$500.00 and decreasing the Travel and Training line by \$5,000.00, thereby increasing the Contract Services line to \$5,500.00.

Motion by Nugent, second by Herbst to approve of the above referenced line item changes. Motion carried 7-0.

ADJOURNMENT: There being no further items of business or discussion, the meeting adjourned by unanimous consent at 9:04 p.m.

City Clerk

Mayor

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

SPECIAL MEETING January 20, 2012:

The special meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Friday January 20th, 2012 at 9:10 a.m.

PRESENT: Mayor Jim Manilla, Council Members Ron Bane, Wes Nugent, Jenny Selin, Bill Byrne, Marti Shamberger, Linda Herbst and Ann Kontner, Human Resources Consultant From Steptoe & Johnson.

The meeting was called to order by Mayor Manilla.

EXECUTIVE SESSION:

Motion by Nugent, second by Shamberger, to go into executive session pursuant to Section 6-9A-4-2 of the West Virginia Code in order to discuss personnel matters with the following persons present; Mayor Manilla, Council Members and Consultant. Time 9:10 a.m.

ADJOURNMENT:

There being no further business, Council adjourned at 2:10 p.m.

City Clerk

Mayor

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City of Morgantown
Community Development Office
389 Spruce Street
Morgantown, WV 26505

January 5, 2012

To: Terrence Moore, City Manager, Steve Fanok, City Attorney
From: David Bott, Community Development Administrator
Re: Urban Ventures Design Contract

The Community Development Office has advertised a Request for Qualifications for various services we might use concerning HUD programs. Urban Design Ventures, LLC was the only proposal received. This is not unusual since Mullin and Lonergan Associate, Inc. and they are the only two local firms doing this work.

Attached you will find a contract for Urban Design Ventures, LLC please review and suggest changes you see that might be needed. This is a similar contract to the one we signed three years ago for the annual CAPER (year-end report).

I would like to place this on the agenda for Council January 17, 2012.

CONTRACT FOR PROFESSIONAL SERVICES

BY AND BETWEEN

THE CITY OF MORGANTOWN, WV

AND

URBAN DESIGN VENTURES, LLC

THIS AGREEMENT, entered into this _____ day of December 2011, by and between the **City of Morgantown, West Virginia** (hereinafter referred to as the "City") and **Urban Design Ventures, LLC** (hereinafter referred to as the "Consultant").

WITNESSETH THAT:

WHEREAS, the City receives an annual Entitlement Grant from the U.S. Department of Housing and Urban Development under the Community Development Block Grant Program (CDBG); and

WHEREAS, HUD requires all Entitlement Grantees to consolidate the CDBG Program into Annual Action Plans and a Five Year Consolidated Plan; and

WHEREAS, the City is undertaking various projects and activities such as housing, community development, and economic development, as well as the preparation of its Annual Action Plans; and

WHEREAS, the City desires to hire a consulting firm to assist the City on as needed basis to render technical advice and assistance for during the course of the programs.

WHEREAS, the City has procured the services of a consulting firm, in accordance with the Federal Procurement Policies.

NOW, THEREFORE, the parties to this Agreement do mutually agree as follows:

I. SCOPE OF SERVICES –

The Consultant shall provide the following services as requested by the City of Morgantown in its Request For Proposals:

A. CDBG PROGRAM:

The Consultant shall assist the City on an as needed basis in the preparation of the following items:

1. Urban Design Ventures, LLC will assist the City of Morgantown to prepare and submit its FY 2012 Annual Action Plan, FY 2013 Annual Action Plan, and its FY 2014 Annual Action Plan using the HUD required CPMP Tool format. In addition, the Consultant will assist the City in preparing and submitting its Five Year Consolidated Plan for FY 2014 - 2018 using the CPMP Tool format
2. Coordinate and outline with the City its needs and objectives for each program year.
3. Prepare annual program budgets indicating the annual entitlement amount, program income, and other financial resources.
4. Prepare a project description for each activity to be undertaken under the program year in accordance with the HUD format.
5. Address the citizen participation requirements of the CDBG and HOME Programs, including the preparation of public notices, summaries of project activities, etc.
6. Assemble the narratives and documentation in the CPMP Tool format as required by HUD.
7. Assist in obtaining the necessary approvals and attend meetings as necessary.
8. Hand deliver the application to the HUD – Pittsburgh Area Office.
9. Assist the City's staff in responding to any HUD review comments.
10. Assist the City in preparing Section 106 Historic Reviews from the WV-SHPO.
11. Preparation of the Consolidated Annual Performance Evaluation Report (CAPER) for FY 2011, FY 2012, and FY 2013.
12. Preparation of any program modifications or amendments to approved CDBG and HOME Program years.
13. Be available and be in attendance, if requested by the City, during HUD monitoring visits.
14. Assist the City in resolving any HUD comments or concerns in regard to the CDBG and HOME Programs.
15. Perform any research that is necessary to determine program and activity eligibility.

B. ENVIRONMENTAL REVIEW RECORD (ERR)

The Consultant shall assist the City on an as needed basis in the preparation of the necessary documentation for completion of the Environmental Review Records for each program year for the release of grant funds. This does not include the preparation of an environmental impact statement for any project or activity.

C. HOME PROGRAM

The Consultant shall assist the City on an as needed basis in the preparation of the following items:

1. Preparation and creation of a HOME Consortium, which includes amendments to Five Year Consolidated Plan and Annual Action Plan.
2. Preparation of the annual budget and assistance in the distribution of grant funds to the Consortium Members.
3. Preparation of project descriptions for each activity to be undertaken under the program year, in accordance with the HUD format.
4. Assistance in the recertification of the HOME Consortium at the end of its current 3 year certification period.
5. Inclusion of the HOME Program activities in the Annual Action Plans.
6. Assist in the determination of housing needs for the homeless, elderly, special needs population, etc. in accordance with the Five Year Consolidated Plan.
7. Assistance in the preparation of environmental clearance and release of funds for HOME activities.
8. Inclusion of the performance data in the CAPER.
9. Preparation of the HOME Match Report for the CAPER.
10. Preparation of any program modification or amendments to the approved HOME Program Year.
11. Provide advice and assistance in the review of requests for funding for housing development from local agencies, non-profits, housing developers, etc.
12. Assist the HOME Consortium to certify local CHDO's and develop local CHDO capacity.
13. Assist in monitoring of CHDO activities as needed.

D. ECONOMIC DEVELOPMENT

The Consultant shall assist the City on an as needed basis in the preparation of the following items:

1. Assistance in the preparation of applications under the Section 108 Loan Guarantee Program.
2. Assistance in the preparation of EDI grants for specific projects.
3. Assistance in the preparation of the Federal grant applications for funding under USDA, ARC, etc.
4. Provide advice and assistance to the City on the need for an economic development revolving loan fund.

E. HOUSING ACTIVITIES:

The Consultant shall assist the City on an as needed basis in the preparation of the following items:

1. Provide advice and assistance to the City in regard to its on-going housing rehabilitation program.
2. Preparation of applications for additional funding for housing from the WVHDF, FHLB, and LIHTC, etc.
3. Provide advice and assistance in meeting the lead based paint requirements.
4. Assistance in the development of new housing construction and/or rehabilitation of housing by non-profit agencies in the City.
5. Assistance in identifying and analyzing the housing needs in the City of Morgantown and the HOME Consortium Area.
6. Assist the City in reviewing proposals for funds for the construction or rehabilitation of affordable housing activities.
7. Assist the City in the preparation of sub-recipient grantee agreements and monitoring of activities.

F. OTHER PROGRAMS:

The Consultant shall assist the City on an as needed basis in the preparation of the following items:

1. Provide advice and assistance in identifying planning projects.
2. Preparation of basic conditions reports for the certification of a redevelopment area.
3. Preparation of Redevelopment Area Plans and Redevelopment Proposals.

4. Preparation of applications for state and federal funds for special projects and programs.
5. Assistance in staff development and training.
6. Advise the City on additional sources of funds and funding options for projects.
7. Perform other tasks as may be assigned or requested by the City.

II. TIME OF PERFORMANCE –

The consultant shall commence work immediately upon execution of this Agreement and will be under contract until the end of December, 2014 for a period of three (3) years.

III. COMPENSATION AND METHOD OF PAYMENT –

The following hourly rates apply to this Agreement based on work requested by the City as outlined in the scope of services:

- ◆ Walter J. Haglund - \$135 per hour
- ◆ Karl M. Haglund - \$95 per hour
- ◆ Jon G. Haglund - \$85 per hour
- ◆ Sarah M. Stutts - \$75 per hour
- ◆ Ron Kobelenske - \$50 per hour

These hourly rates include all travel, telephone, postage, mailing, copying and miscellaneous expenses. The City will not be billed for any additional costs. These rates will remain in effect for the three (3) year period covered by this contract.

The Consultant shall submit an invoice at the end of each calendar month for services rendered during that month. Each invoice shall clearly indicate the work that has been performed by the Consultant.

For consideration of the services to be rendered under the terms of this Agreement, the City shall pay the Consultant the following fees:

A. CDBG and HOME Programs – (Optional)

The Consultant will provide technical services under this portion of the Agreement for a lump sum amount or hourly basis for compensation.

B. Environmental Review Record – (Optional)

Should the City of Morgantown request the Consultant to prepare an environmental review record for an annual program year, the cost would be a lump sum not-to-exceed amount of \$3,500 for each program year.

C. Preparation of the Consolidated Annual Performance Evaluation Reports – CAPER (F.Y. 2011, 2012 and 2013) –

The Consultant shall advise and assist the City in the preparation of the Consolidated Annual Performance Evaluation Report (CAPER), in a format to be prescribed by HUD with the CPMP tool for a lump sum not-to-exceed amount of \$5,000 per CAPER.

D. Preparation of the Annual Action Plan (F.Y. 2012, 2013 and 2014) – (Optional)

The Consultant shall advise and assist the City in the preparation of the Annual Action Plan, in a format to be prescribed by HUD with the CPMP tool for a lump sum not-to-exceed amount of \$4,500 per Annual Action Plan.

E. Preparation of the Five Year Consolidated Plan for FY 2014-2018 – (Optional)

The Consultant shall advise and assist the City in the preparation of the Five Year Consolidated Plan, in a format to be prescribed by HUD with the CPMP tool for a lump sum not-to-exceed amount of \$14,000.

F. Section 108 Loan Guarantee Program – (Optional)

If the City wishes the Consultant to prepare an application for Section 108 Loan Guarantees, the Consultant will provide a lump sum amount or hourly basis for compensation.

G. Other Programs and Special Studies – (Optional)

The Consultant will provide technical services under this portion of the Agreement for a lump sum amount or hourly basis for compensation.

IV. OTHER TERMS AND CONDITIONS

This Agreement is subject to the General Terms and Conditions, a copy of which is attached, and in which the City of Morgantown is referred to as "City" and Urban Design Ventures, LLC is referred to as "Consultant."

This Agreement may be amended only by written agreement of the parties here to.

IN WITNESS WHEREOF, the parties hereto have signed below by and through their authorized representatives.

CITY OF MORGANTOWN, WV

ATTEST:

By: _____

By: _____

URBAN DESIGN VENTURES, LLC

ATTEST:

By: _____

By: _____

Karl M. Haglund, Vice President

Walter J. Haglund, President

**CONTRACT FOR PROFESSIONAL SERVICES
PART II - TERMS AND CONDITIONS
(For Contracts Over \$10,000)**

1. **Termination of Contract for Cause.** If, through any cause, the Consultant shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Contract, the City shall there upon have the right to terminate this Contract by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Consultant under this Contract shall, at the option of the City, become its property and the Consultant shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

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

2. **Termination for Convenience of the City.** The City may terminate this Contract at any time by giving at least ten (10) days notice in writing to the Consultant. If the Contract is terminated by the City as provided herein, the Consultant will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the Consultant, Paragraph 1 hereof relative to termination shall apply.
3. **Changes.** The City may, from time to time, request changes in the scope of the services of the Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of the Consultant's compensation, which are mutually agreed upon by and between the City and the Consultant shall be incorporated in written amendments to this Contract.
4. **Personnel.**
 - a. The Consultant represents that he has, or will secure at his own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City.
 - b. All the services required hereunder will be performed by the Consultant or under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and Local law to perform such services.

- c. None of the work or services covered by this Contract shall be sub-contracted without the prior written approval of the City. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Contract.
5. **Assignability.** The Consultant shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or notation), without the prior written consent of the City. Provided, however, that claims for money by the Consultant from the City under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the City.
6. **Reports and Information.** The Consultant, at such times and in such forms as the City may require, shall furnish the City such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.
7. **Records and Audits.** The Consultant shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the City to assure proper accounting for all project funds. These records will be made available for audit purposes to the City, or any of their duly authorized representatives, and will be retained for three years after the expiration of this Contract unless permission to destroy them is granted by the City.
8. **Confidentiality.** All of the reports, information, data, etc., prepared or assembled by the Consultant under this Contract are confidential and the Consultant agrees that they shall not be made available to any individual or organization without the prior written approval of the City.
9. **Copyright.** No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Consultant.
10. **Compliance with Local Laws.** The Consultant shall comply with all applicable laws, ordinances and codes of the State and local governments, and shall commit no trespass on any public or private property in performing any of the work embraced by this Contract.
11. **Equal Employment Opportunity.** During the performance of this Contract, the Consultant agrees as follows:
- a. The Consultant will not discriminate against any employee or applicant for employment because of race, religion, sex, color, or national origin. The Consultant will take affirmative action to ensure that applicants are

employed, and that employees are treated during employment without regard to their race, religion, sex, color, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Developer setting forth the provisions of this nondiscrimination clause.

- b.** The Consultant will, in all solicitation or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.
- c.** The Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each sub-consultant, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
- d.** The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- e.** The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- f.** In the event of the Consultant's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- g.** The Consultant will include the provisions of paragraph (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontract or purchase order as the U.S. Department of HUD may direct as a means of enforcing such

provisions including sanctions for noncompliance: Provided, however, that in the event the Consultant becomes involved in, or is threatened with, litigation with a Sub-Consultant or vender as a result of such direction by the U.S. Department of HUD, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

12. **Title VI of the Civil Rights Act of 1964.** No person shall, on the grounds of race, religion, sex, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal funds.
13. **Section 109 of the Housing and Community Development Act of 1974.** No person in the United States shall on the grounds of race, religion, sex, color, national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this Title.
14. **Section “3” Compliance in the Provision of Training, Employment and Business Opportunities.**
 - a. Every applicant, recipient, contracting party, Consultant and Sub-Consultant shall incorporate, or cause to be incorporated, in all contracts for work in connection with a Section 3 covered project, the following clause (referred to as a Section 3 clause):
 - i. The work to be performed under this Contract is on a project assisted under a program providing direct Federal financial assistance from the U.S Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
 - ii. The parties to the Contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto set forth in 24 CFR Part 135 and all other applicable rules and orders issued there under prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
 - iii. The Consultant will send to each labor organization or representative of workers with which he has a collective bargaining

agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

- iv. The Consultant will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the Sub-Consultant is in violation of these regulations. The Consultant will not subcontract with any Sub-Consultant where it has notice of knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the Sub-Consultant has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- v. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its Consultants and Sub-Consultants, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

15. **Interest of Certain Federal Officials.** No member of or Delegate to the Congress of the United States and no Resident Commissioner, shall be admitted to any share or part of this Contract or to any benefit to arise from the same.

16. **Interest of Members, Officers, or Employees of City, Member of Local Governing Body, or other Public Officials.** No member, officer, or employee of the City, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter, shall have any interest, direct or indirect in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under the Contract.

17. **Interest of Certain State Officials.** No member or Representative to the Legislature of the State shall be permitted to any share or part of this Contract or to any benefit to arise from the same.

18. **Age Discrimination Act of 1975.** No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.
19. **Section 504 of the Rehabilitation Act of 1973 - Affirmative Action for Handicapped Workers.**
- a. The Consultant will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Consultant agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: Employment, up grading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
 - b. The Consultant agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
 - c. In the event of the Consultant's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
 - d. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Consultant's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
 - e. The Consultant will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Consultant is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
 - f. The Consultant will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each Sub-Consultant or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal

Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

20. Equal Opportunity.

- a. Consultant shall not discriminate against any employee, applicant for employment, independent Consultant or any other person because of race, color, religious creed, ancestry, national origin, age, sex, or handicap status.

Consultant shall take affirmative action to ensure that applicants who are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, age, sex, or handicap status. Such affirmative action shall include but is not limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training.

Consultant shall post in conspicuous places, available to employees, agents, applicants for employment, and other persons a notice to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

- b. Consultant shall in advertisements or requests for employment placed by it or on its behalf, state all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age, sex, or handicap status.
- c. Consultant shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Consultant.
- d. It shall be no defense to a finding of noncompliance with the Contract Compliance Regulations issued by the State Human Relations (Rights) Commission of this nondiscrimination clause that Consultant had delegated some of its employment practices to any union, training program or other source or recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Consultant was not on notice of the third-party discrimination or made a good faith effort to correct it; such factor shall be considered in mitigation in determining appropriate sanctions.
- e. Where the practices of a union or of any training program or other source of recruitment will result in the exclusion of minority group persons, so that Consultant will be unable to meet its obligations under the Contract

Compliance Regulations issued by the State Human Relations (Rights) Commission, or this nondiscrimination clause, Consultant shall then employ and fill vacancies through other nondiscriminatory employment procedures.

- f. Consultant shall comply with all laws prohibiting discrimination in hiring or employment opportunities. In the event of Consultant's noncompliance with the nondiscrimination clause of this Contract or with any such laws, this Contract may, after hearing and adjudication, be terminated or suspended, for further State contracts, and such other sanctions may be imposed and remedies invoked as provided by the Contract Compliance Regulations.
- g. Consultant shall actively recruit minority Sub-Consultants or Sub-Consultants with substantial minority representation among their employees.
- h. Consultant shall include the provisions of this nondiscrimination clause in ever subcontract, so that provisions will be binding upon each Sub-Consultant.

21. **Prohibition against Payments of Bonus or Commission.** The assistance provided under this Contract shall not be used in the payment of any bonus or commission for the purpose of obtaining approval of the application for such assistance, or approval of applications for additional assistance, or any other approval or concurrence of required under this Contract, Title I of the Housing and Community Development Act of 1974 as amended or regulations with respect thereto; provided, however, that reasonable fees or bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as program costs.
22. **Interest of Consultant.** The Consultant covenants that it presently has no interest and shall not acquire any interest direct or indirect which would conflict in any manner or degree with the performance of its services hereunder. The Consultant further covenants, that in the performance of this Agreement, it will not knowingly employ any person having any such interest.
23. **Severability.** Should any section or any part of any section of this Contract be rendered void, invalid or unenforceable by any court of law, for any reason, such a determination shall not render void, invalid or unenforceable any other section or part of any section of this Contract.

City of Morgantown

Finance Department

389 Spruce Street

Morgantown, WV 26505

Phone (304) 284-7407/Fax 7418

jsabatelli@cityofmorgantown.org

MEMO

DATE: 2/3/2012

TO: Terrence Moore, ICMA-CM, City Manager

FROM: Joseph R. Sabatelli, CPA, Finance Director *JRS*

RE: Capital Escrow Mid-Year Budget Adjustment

The following items are mid-year budget adjustments for the Capital Escrow Fund for the current fiscal year ending June 30, 2012. The adjustments are broken down into three types, additional needs/requirements of the City, partner requests that were overlooked during the prior year budget process, and new requests for funding/additional funding from outside agencies.

As explained in previous meetings and information, there was a great need to purchase items that include recruitment costs and a front line truck for snow removal. The amount available as a Fund Balance Carryover was less than originally anticipated due to a larger list of accounts payable for projects that carry over from the prior year. Also, the adjustments needed for the Farmers Market Pavilion are due to an increase in pledges and contributions from the previous adjustment. Due to these activities, the following budget adjustment is recommended:

Increase Expense - Recruitment	\$ 5,000
Increase Expense - Public Works Vehicle	\$ 27,971
Decrease Fund Balance Carryover	\$ 98,333
Decrease Expense – Computer Finance	(\$ 6,257)
Increase Expense – MRTC	\$ 10,000
Decrease Expense – Contingencies	(\$ 135,047)
Increase Expense – Farmers Market Pavilion	\$ 52,154
Increase Revenue – Farmers Market Contribution	(\$ 52,154)

As previously noted, there was an error and some agencies that typically receive contributions from the City of Morgantown were not included in the previous budget. As per direction, these agencies are listed below with corresponding amounts noted with the approval needed from City Council. The contingencies expense will be reduced by each amount approved, which totals \$30,000 for all listed. The purposes of these funds are for general operations and to continue their related projects as described in the funding requests made for the current fiscal year.

Morgantown Area Youth Services Project	\$ 10,000
Celebration of America	\$ 2,000
Morgantown Area Economic Partnership	\$ 15,000
Friends of Decker's Creek	\$ 3,000

The City has received additional funding requests to be reviewed and voted upon by City Council. Should all amounts be approved, the result will be a decrease to the contingencies expense of \$15,560. The amounts for the Vision 4 Our Children Coalition are requested to fund 1 contract employee to maintain a website for the Coalition while the amount requested for Mainstreet Morgantown is requested to supplement the health insurance of its executive director. The Historic Landmarks Commission increase is related to a contract that was entered into by the Commission but not budgeted for by the City.

Vision 4 Our Children Coalition c/o GMCT	\$ 1,560
Mainstreet Morgantown	\$ 4,000
Historic Landmarks	\$ 10,000

BOARDS AND COMMISSIONS - TERMS EXPIRED AND CURRENT VACANCIES

***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.**

URBAN LANDSCAPE COMMISSION: 2 YEAR TERM:

Urban Forester still vacant. Nominated by CM, from each ward, 13 members with staggered terms, 1 councilmember, and non-ward members must represent specific category.

***POLICE & FIRE CIVIL SERVICE COMMISSIONS APPOINT NEW PRESIDENTS 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.

1-10-12

AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING AN ORDINANCE ADOPTED ON SEPTEMBER 20, 2011 , PERTAINING TO ARTICLE 1155, CLEAN INDOOR AIR CODE.

The City of Morgantown hereby ordains that ORD 11-41, as adopted on September 20, 2011, which amended various sections of Article 1155, the City's Clean Indoor Air Code, is amended as follows (new matter underlined, deleted matter struck through):

1155.02 FINDINGS AND PURPOSE.

- (a) The United States Surgeon General has determined that involuntary inhalation of tobacco smoke ~~is~~:
- (1) ~~is~~ is ~~▲ a~~ cause of numerous diseases in healthy nonsmokers; and
 - (2) ~~is~~ is ~~▲ a~~ major contributor to indoor air pollution; and
 - (3) ~~has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer.~~ Places children, unborn children of pregnant women, elderly people, and individuals with cardiovascular and/or respiratory disease at special risk;
 - (4) ~~that children, hospitality workers, elderly people and individuals with cardiovascular and/or respiratory disease are at special risk.~~ Is a trigger for acute episodes of respiratory distress and myocardial infarction;
 - (5) increases the lifetime exposure to carcinogenic tobacco smoke of both smokers and non-smokers;
 - (6) burdens the health care system by increasing the number and frequency of required hospital admissions and emergency visits thereby increasing the public and private expenditures required for the treatment;
 - (7) reduces the life expectancy of persons consistently exposed to secondary smoke; and
 - (8) causes substantial losses in productivity through smoking related absences from work and school
- (b) Accordingly, the purposes of this Article are:
- (1) to protect the public health and welfare by prohibiting smoking in enclosed public places;
 - (2) to prohibit smoking in places of employment;
 - (3) to recognize that where the need to breathe smoke-free air conflicts with the desire to smoke, the need to breathe smoke-free air shall have priority.
 - (4) to facilitate smoking cessation by active smokers; and
 - (5) to discourage non-smokers from taking up the habit and thereby developing a nicotine addiction.

1155.03 DEFINITIONS.

The following words and phrases, whenever used in this article shall be construed as defined in this section:

- (a) ~~“Employee” means a person who is employed by an employer in consideration~~

~~for direct or indirect monetary wages or profits of a person who volunteers his or her services for a nonprofit entity.~~

- ~~(b) "Employer" means a person, business, partnership, association or corporation, including a municipal corporation, trust, or nonprofit entity that employs the paid or volunteer services of one or more individual persons.~~
- ~~(c) "Enclosed area" means all space between a floor and a ceiling that is enclosed or partially enclosed with: (i) solid walls or windows, inclusive of doorways; or (ii) solid walls with partitions and no windows, inclusive of doorways, that extend from the floor to the ceiling.~~
- ~~(d) "Place of employment" means any area under the control of a public or private employer that employees are required to enter, leave, or pass through during the course of employment, including private offices, work areas, restrooms, conference and classrooms, break rooms and cafeterias, and other common areas. A private resident, unless used to provide licensed child care, foster care, adult care or other similar social service care on the premise, is not a "place of employment."~~
- ~~(e) "Public place" means any area to which the public is invited or in which the public is permitted, regardless of whether the building is owned in whole or in part by private persons or the city, or other local government entities. A "public place" includes, but is not limited to, hospitals, restaurants, retail stores, offices, commercial establishments, elevators, indoor theaters, public transit, libraries, museums, concert halls, public conveyances, educational facilities, nursing homes, auditoriums, meeting rooms, schools, exhibition halls, convention facilities, polling places, private clubs, gaming facilities, healthcare facilities or institutions, educational facilities, ticket areas, public hearing facilities, public restrooms, waiting areas, lobbies, bars, taverns, bowling alleys, skating rinks, reception areas, attorney's and doctor's offices. A private residence is not a "public place" unless used to provide licensed child care, foster care, adult care, or other similar social service care on premises.~~
- ~~(f) "Retail store" means any establishment that sells goods or services directly to members of the general public including but not limited to grocery stores, specialty stores, department stores, pharmacies, banks, automobile dealerships, showrooms, professional offices, service stations, repair or maintenance stores, barber or beauty shops, cleaners and laundromats.~~
- ~~(g) "Smoking" means inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, pipe, plant or other smoking equipment in any manner or in any form.~~
- (a) "Bar" means an area which is primarily devoted to the serving of alcoholic beverages, for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages.
- (b) "Cigar Bar" means an establishment devoted to the storage, sale and smoking of cigars. A cigar bar must generate 60% or more of its total gross annual income from the on-site sale of cigars and the rental of on-site humidors. A humidor

means an enclosure or fixture that is stationary and used for the humidification of cigars that is on the premises of the establishment. The cigar bar must prohibit the smoking of all other tobacco products. The cigar bar must be physically separated from any areas of the same or adjacent establishment in which smoking is prohibited. Access to the establishment must be by street or sidewalk entrance. The cigar bar must have an installed on-site humidor and the establishment must have appropriate ventilation with no functioning return of air ducts in the smoking area.

- (c) “Hookah Lounge” means an establishment where patrons share tobacco from a communal hookah which is placed at each table. The smoking of all other tobacco products is prohibited. This establishment shall not be granted a food establishment permit. A food establishment permit would disqualify the establishment as a Hookah Lounge.
- (d) “Employee” means any person employed by an employer for direct or indirect monetary wages or anything of value, or any person who volunteers for a non-profit entity.
- (e) “Employer” means any entity or person who employs the paid or volunteer services of one or more persons.
- (f) “Enclosed Area” means all space between a floor and ceiling which is enclosed, that is bounded on at least two sides by walls, doorways or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind.
- (g) “Place of Employment” means any enclosed area under the control of a public or private employer that employees are required to enter, leave or pass through during the course of employment, including: private offices, work areas, restrooms, conference and classrooms, break rooms, cafeterias, and other common areas. A private residence, unless used to provide licensed child care, foster care, adult care, or other similar social service on the premises, is not a place of employment. Vehicles provided by an employer for use by employees, during the course of employment shall be considered as places of employment for purposes of these regulations.
- (h) “Private Club” means an entity falling within the definition of Private Club as set forth in Section 60-7-2 of the West Virginia Code, for purposes of State Control of Alcoholic Liquors.
- (i) “Public Place” means any enclosed area to which the public is invited or in which the public is permitted, regardless of whether the building is owned in whole or in part by private persons or governmental entities. A “public place” includes, but is

not limited to: hospitals, restaurants, retail stores, offices, commercial establishments, elevators, indoor theaters, public transit, libraries, museums, concert halls, public conveyances, bowling alleys, educational facilities, nursing homes, auditoriums, meeting rooms, schools, exhibition halls, convention facilities, polling places, bars, private clubs, gaming facilities, healthcare facilities or clinics, enclosed shopping centers, retail service establishments, financial institutions, educational facilities, ticket areas, public hearing facilities, public restrooms, waiting areas, attorney's and doctor's offices. A private residence is not a "public place" unless used to provide licensed childcare, foster care, adult care, or other similar social service care on the premises.

- (j) "Retail Store" means any establishment that sells goods or services directly to members of the general public including but not limited to grocery stores, specialty stores, department stores, pharmacies, banks, automobile dealerships, showrooms, professional offices, service stations, repair or maintenance stores, barber or beauty shops, cleaners, and laundromats.
- (k) "Tobacco Business" means an establishment utilized primarily for the sale of tobacco products and the smoking thereof on site; and at least 75% of the total annual gross sales of the business are from the sale of tobacco and tobacco related products. The sale of such other products shall be considered incidental if such sales generate less than 25% of the total annual gross sales. A retail tobacco store cannot possess a food service permit.
- (l) "Smoking" means inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, pipe, plant or other smoking equipment in any manner or in any form.

155.04 REGULATIONS FOR ENCLOSED CITY FACILITIES.

All facilities including buildings, vehicles owned or operated by the City of Morgantown or any agency that receives any monetary support from the City of Morgantown shall be subject to the provisions of this regulation.

1155.05 REGULATION OF SMOKING IN ENCLOSED PUBLIC PLACES.

- (a) Smoking shall be prohibited in all enclosed public places within the City of Morgantown, including, but not limited to the following places:
 - (1) All means of public transit, including taxis and buses, and all areas, including ticket, boarding and waiting areas.
 - (2) All retail stores; and tobacco businesses.
 - (3) All restaurants, bars and gaming establishments private clubs, video lottery parlors and bars.
 - (4) Every room, chamber or place of meeting or public assembly, including

school buildings under the control of any board, council, commission, committee, including joint committees or agencies of the City of Morgantown or any political subdivision of the State is subject to the jurisdiction of the City.

(5) All patient rooms, waiting rooms and other public areas in health facilities, including but not limited to hospitals, clinics, pharmacies, physical therapy facilities, doctors' offices and dentists' offices.

(6) Enclosed shopping malls.

~~(b) Notwithstanding any other provision of this section, a person who controls any establishment or facility described in this action may declare that entire establishment or facility as non-smoking.~~

~~(c)~~(b) In any dispute arising under this article, the health concerns of the non-smoker shall be given precedence.

1155.06 REGULATION OF SMOKING IN ENCLOSED PLACES OF EMPLOYMENT.

(a) It shall be the responsibility of employers to provide a smoke-free workplace for employees.

(b) Each employer having an enclosed place of employment located within the City of Morgantown shall adopt, implement, make known and maintain a written smoking policy which shall contain the following requirements:

Smoking shall be prohibited in all enclosed facilities within a place of employment, ~~without exception~~. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

(c) All employers shall supply a written copy of the smoking policy, upon request, to any existing or prospective employee.

1157.07 WHERE SMOKING NOT REGULATED.

(a) Notwithstanding any other provisions of this article to the contrary, the following areas shall not be subject to the smoking restrictions of this article:

~~(1) Private residences, except when used as a child care facility, adult care or other similar social service care.~~

~~(2) Twenty five percent (25%) of hotel and motel rooms rented to guests.~~

~~(3) Bingo operations that distribute more than one hundred bingo cards or bingo sheets as allowed under WV Code Section 47-20-28a as stipulated by the WV State Supreme Court of Appeals, Dec. 2, 2003.~~

(1) Hookah lounges.

(2) Private residences, except when used as a child care facility, adult care, foster care or other similar social care.

(3) Cigar bars doing business in Morgantown prior to date of adoption of this Regulation shall be considered as grandfathered. Any such existing business desiring grandfathering recognition by the City of Morgantown

shall, within sixty days of the adoption of this grandfathering amendment, provide proof to the City Manager that (1) it meets the definition of a cigar bar, as defined within this regulation and (2) was in business as a cigar bar prior to the adoption of this Regulation. No such grandfathered business shall be allowed to expand the square footage of its smoking area beyond that which existed at the time this Regulation was adopted. Smoke must be actively exhausted from the cigar bar, may not infiltrate into adjoining residences, apartments or enclosed public spaces and must be vented to the atmosphere in such manner that it will not be drawn back into the building from which emanates or into an adjoining structure. Any such cigar bar that ceases doing business for more than sixty (60) consecutive calendar days shall lose its grandfathered status and smoking therein shall be prohibited.

(4) Bingo operations operating under West Virginia Code Section 47-20-28a that distribute more than one hundred bingo cards or bingo sheets, but only for so long as the statutory interpretation of said code section provided by the West Virginia Supreme Court in the case of Foundation for Independent Living et.al. V. The Cabell-Huntington Board of Health, 591 s.E. 2d 749, (WV 2003) remains the law.

- (b) Notwithstanding any other provisions of this section, any person who controls any establishment described in this section may declare that entire establishment as a non-smoking facility.

1155.08 POSTING OF SIGNS.

- (a) Because ordinances regulating smoking are primarily self-enforcing, their success depends heavily upon adequate signage.
- (b) ~~Non-smoking~~ “No Smoking” signs shall be conspicuously posted in every building or other place where smoking is regulated by this article, by the owner, operator, manager or other person having control of such building or other place.
- (c) Cigar Bars must clearly post Red/White signage stating “NO ONE UNDER 21 YEARS OF AGE ADMITTED.”

1155.09 ENFORCEMENT.

- (a) Enforcement of this ordinance shall be implemented by the City Manager or his or her designated agent.
- (b) Notice of the provisions set forth in this regulation shall be given to all applicants for a business license in the City of Morgantown.
- (c) Any citizen who desires to register a complaint under this ordinance may initiate enforcement with the City Manager or his or her designated agent.
- (d) The City Manager or his or her designated agent shall inspect for compliance of this ordinance.
- (e) Any owner, manager, operator or employee of any establishment regulated by this ~~regulation~~ Article shall inform persons violating this ~~regulation~~ Article of the

appropriate provisions thereof.

1155.10 NON-RETALIATION

No person or employer shall discharge, refuse to hire or in any way retaliate against any employee, applicant for employment or member of the public because such person exercises any rights afforded by this Article.

1155.11 OTHER APPLICABLE LAWS

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws, ordinances or regulations.

1155.12 SEVERABILITY.

If any portion of this Article or the application thereof shall be held invalid, the other provisions of this Article shall not be affected, and to this end the provisions of this Article are declared to be severable.

1155.99 VIOLATIONS AND PENALTIES

A. Willful violation of this Clean Indoor Air Article is an unlawful act.

(1) Any person who owns, manages, operates or otherwise controls the use of a premise shall commit a willful violation if they:

(a) Knowingly permit smoking on a premises subject to their control in an area where smoking is prohibited by the provisions of this Clean Indoor Air Article, or

(b) Knowingly violate any other provision of this Clean Indoor Air Article

(2) Any person smoking in an area of a premise where smoking is prohibited with knowledge that he or she is in a non-smoking area commits a willful violation of this Clean Indoor Air Article.

B. Any person who violates any provision of this article shall be guilty of an infraction.

(a) The first infraction shall result in a fine of one hundred dollars (\$100.00).

(b) A second violation within a twelve-month period shall result in a fine of two hundred and fifty dollars (\$250.00).

(c) A fine between two hundred and fifty dollars (\$250.00) and five

hundred dollars (\$500.00) shall be levied for each additional violation of this article within a twelve-month period.

The City Manager, at his or her option may seek a petition for injunctive relief against any person or establishment who violates this article.

This ordinance shall be effective ~~January 1, 2012~~ March 9, 2012. The City of Morgantown recognizes that the Monongalia County Board of Health has adopted similar smoking regulations for Monongalia County, and that the Board of Health's regulations state that "existing establishments covered by this Regulation may apply to the Monongalia County Board of Health for an extension (of the initial effective date of the Regulation, which is March 9, 2012) on a case by case basis to meet capital improvement requirements not to be unreasonably withheld." For that reason, the City of Morgantown will honor any such extension issued by the Monongalia County Board of Health.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

AN ORDINANCE BY THE CITY OF MORGANTOWN ADDING SECTION 129.14 TO ITS ADMINISTRATIVE CODE ADDRESSING THE CREATION AND ADMINISTRATION OF AN OTHER POST-EMPLOYMENT BENEFITS (OPEB) FUND.

The City of Morgantown hereby ordains that a new section 129.14 is added to its Administrative Code, which reads as follows:

129.14 OTHER POST-EMPLOYMENT BENEFITS (OPEB) FUND.

a. Purpose.

There is hereby created an Other Post-Employment Benefits (OPEB) Fund for the purpose of payment of current and future retirement benefits other than pensions of employees eligible to receive those benefits under the City's self-funded life and health insurance plan (the "Plan"), as well as to offset any liabilities as determined by a qualified actuarial study. The participation in and any coverage under this Code Section shall not constitute nor be construed to constitute a specific, accrued or vested benefit for any specific employee or retiree. The OPEB Fund is established as a savings and investment fund for the sole purpose of paying the City's self-funded health insurance plan for current and future retirees as described above, and, as such, is restricted in nature.

b. Administration.

The Finance Director shall be authorized to establish any accounts (i.e. checking, savings, certificates of deposit, investment) necessary for the operation, maintenance and investments associated with this fund, and the Finance Department shall administer such funds and accounts. The OPEB Fund is to be administered and operated in accordance with the provisions of Governmental Accounting Standards Board Statements 43 and 45 and as the same may be amended or superseded. The following administrative rules shall be followed for the OPEB Fund:

- (1) Accounting – The Department of Finance and Support Services will maintain a set of records separate from all other funds of the City for the purpose of accounting for the financial activities and transactions of this fund.
- (2) Investments – Amounts and types of investments shall be limited to those authorized by the State Code of the State of West Virginia Section 8-13-22 or its amendments and successors, as well as the current or future general investment policies established by City of Morgantown Administration. Any and all investment income or loss associated with the activities of this fund shall be reinvested in the fund and there will be no distinction between principal and income and thus the same restrictions shall apply to both.
- (3) Contributions – The City shall contribute amounts as required by future budgetary ordinances or resolutions. Contributions shall also be made at least once per year

from the Life and Health Fund. Whereas the Life and Health Fund is the administrative fund for the City's self-funded health insurance plan, it must maintain a reasonable reserve, and therefore no contributions shall be made from the Life and Health Fund unless this reasonable reserve is available, which will be determined by the Department of Finance. The excess amounts in the Life and Health Fund, as previously described, may not be used for any other purpose other than as a contribution to the OPEB Fund, unless the assets available in the OPEB Fund are greater than or equal to the actuarially determined liability of Other Post-Employment Benefits.

- (4) Disbursements and Expenses – Amounts may be expended or disbursed from the OPEB Fund for costs associated with the payment of life, health and other post-employment benefits of retirees eligible under the City's self-funded health insurance plan. Such costs shall be calculated in the same manner used to calculate the monthly premiums paid by the City's other operating funds and departments to the Life and Health Fund for such associated costs. All amounts will be disbursed directly to the Life and Health fund for these costs and no individual shall be eligible to receive a direct payment of their eligible benefits from this fund. Other such reasonable operating expenses associated with the fund, such as fees for accountants, legal counsel, actuarial services, etc., shall constitute a charge against and shall be paid from this fund; however, there will be no administrative type charges for services performed by other departments paid to any other fund for such services, i.e. bookkeeping services performed by the Finance Department.

- (5) Termination – This fund may only be closed if all liabilities for eligible employees under the City's self-funded health insurance plan have been satisfied, meaning there are no outstanding amounts due and payable and, according to the City's self-funded health insurance plan, no current or future employee or retiree will be eligible to receive the life, health, or other post employment benefits. Upon termination and closing of this fund, all assets within it shall be placed within the City's General Fund.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

AN ORDINANCE BY THE CITY OF MORGANTOWN ADDING SECTION 129.15 TO ITS ADMINISTRATIVE CODE, CREATING A FINANCIAL STABILIZATION FUND.

The City of Morgantown hereby ordains that a new Section 129.15 is added to its Administrative Code, which reads as follows:

129.15 FINANCIAL STABILIZATION FUND.

There is hereby created a Financial Stabilization Fund. The Financial Stabilization Fund may receive appropriations, gifts, and grants from any other funds made available. This account may be funded over a period of years up to the maximum level allowable by the State Code of the State of West Virginia Section 8-37-3 or its amendments and successors. These funds may be used to cover the General Fund's operating short falls and any other purpose City Council considers appropriate.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING THE EXECUTION OF A REAL ESTATE PURCHASE AGREEMENT AND RELATED DEED, AS THE SAME PERTAIN TO THE EXCHANGE OF REAL PROPERTIES BETWEEN THE CITY OF MORGANTOWN AND THE MONONGALIA COUNTY DEVELOPMENT AUTHORITY (MCDA); SAID PROPERTY OF THE CITY CURRENTLY BEING LOCATED ON THE MORGANTOWN MUNICIPAL AIRPORT, AND SAID PROPERTY OF THE MCDA CURRENTLY BEING LOCATED ADJACENT TO BOTH THE HARTMAN RUN ROAD AND THE AIRPORT.

The City of Morgantown hereby ordains that its City Manager is authorized to execute not only the Real Estate Purchase Agreement hereto attached, but also, the City of Morgantown deed referenced within said Real Estate Purchase Agreement, 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:

REAL ESTATE PURCHASE AGREEMENT

THIS CONTRACT OF SALE ("Agreement") made and entered into this _____ day of February, 2012, (the "Effective Date") by and between CITY OF MORGANTOWN, Morgantown, West Virginia, a Municipal Corporation, party of the first part, ("City"); and the MONONGALIA COUNTY DEVELOPMENT AUTHORITY, a West Virginia Public Corporation, party of the second part, ("MCDA").

WITNESSETH: That for and in consideration of the sum of TEN and No/100 Dollars (\$10.00), cash in hand paid, the receipt of which is hereby acknowledged, the City agrees to sell, and the MCDA agrees to buy, all those certain parcels of real estate containing in total 95.7 acres, more or less, located in Union District, Monongalia County, West Virginia, more particularly set forth in Exhibit A attached to this Agreement (referred to in this agreement as the "Business Park Property"), and as shown on a plat prepared by Alpha & Associates, Inc., a copy of which has been provided to MCDA.

FOLLOWING TERMS AND CONDITIONS:

(1) The total consideration for the Property shall be the sum of Seven Hundred Eighty Five Thousand Dollars (\$ 785,000.00), payable as follows:

- (a) The Transfer of approximately 13 acres owned by the MCDA and located on Hartman Run Road in Morgantown, WV ("the Hartman Run Road Property") and more fully described in Exhibit B, attached to this Agreement and having a fair market value of Seven Hundred Fifty Thousand Dollars (\$750,000.00)
- (b) The balance of the purchase price, Thirty Five Thousand Dollars (\$35,000.00) in cash at the time of closing.

(2) The values of the Business Park Property and the Hartman Run Road Property set forth above have been established by certified fair market value appraisals and agreed to by the City and the MCDA.

(3) The sale of Property shall be consummated within sixty (60) days of the date of completion and acceptance by the City of the Morgantown Municipal Airport Access Roadway and extension of the utilities, as more particularly set forth on the plat and plans for the Morgantown Municipal Airport Access Road as prepared by Alpha and Associates, Inc. The Closing shall be held at a time, place and in a manner to be mutually agreed upon by the parties.

(4) The City and the MCDA agree to work together in the design, development, construction and obtaining financing for Phase II of the Access Road.

(5) At the closing, the MCDA shall execute a General Warranty Deed conveying good and marketable title to the City, of the Hartman Run Road Property free and clear of any and all liens and encumbrances of any kind, character or nature. There shall be expressly reserved and excepted from this conveyance all mineral, oil and gas rights owned by the MCDA. Provided however, the reservation and exception of the mineral, oil and gas rights shall not include the right of entry or use of the surface for any reason whatsoever without the express written consent of the City. Such Consent may be granted or denied in the sole and absolute discretion of the City. The deed shall be prepared at the expense of the MCDA. The MCDA shall transfer and turn over possession of the property to City at the time of Closing, unless otherwise agreed to in writing, executed by the parties.

(6) At the closing, the City shall execute a General Warranty Deed conveying good and marketable title to the MCDA, the Business Park Property free and clear of any and all liens and encumbrances of any kind, character or nature. There shall be expressly reserved and excepted from this conveyance all mineral, oil and gas rights owned by the City. Provided however, the reservation

and exception of the mineral, oil and gas rights shall not include the right of entry or use of the surface for any reason whatsoever without the express written consent of the MCDA. The deed shall be prepared at the expense of the City. The City shall transfer and turn over possession of the property to the MCDA at the time of Closing, unless otherwise agreed to in writing, executed by the parties.

(7) The MCDA shall cause the title to the Business Park Property, and the City shall cause title to the Hartman Run Road Property, to be examined by an attorney selected by them. In the event the examination discloses any apparent objections to the title to either Property, the MCDA or the City as the case may be, shall notify the other party in writing prior to the closing of this transaction. If any objections to title shall appear to be valid, the MCDA and the City as the case may be, shall attempt to remove the same. In the event the MCDA or the City as the case may be, does not remove the objections to title once notified, the MCDA or the City as the case may be may:

(a) Correct the defects in the title and deduct or add, as the case may be, the costs and expenses of correcting those defects from the purchase price of the Property; and/or

(b) Institute an action on behalf of the City or the MCDA as the case may be, in the Circuit Court of Monongalia County West Virginia to quiet title and remove the defects.

(8) MCDA and the City as the case may be shall, during the term of this Agreement and prior to closing, be permitted to enter the Property for purposes of conducting inspections, surveys, examinations, soil sampling, core drillings and such other due diligence, as is reasonably necessary and required by the respective parties. MCDA and the City as the case may, be shall notify the other party in advance of any activities to be conducted on the respective properties.

(9) If either party fails or refuses to perform their obligations hereunder, including the furnishing of good title as herein defined and transfer of possession, the other party may at their option;

(a) Rescind this Agreement and recover all deposits and other amounts paid by them hereunder, or

(b) Enforce this Agreement by appropriate action, including, but not limited to, an action for specific performance. The parties shall give the other party written notice of election with respect to exercise of these options.

(10) It is agreed that the parties will, during the period between the Effective Date and the delivery of possession, maintain their respective Properties in the same condition as they are now.

(11) The City shall, at no cost to the MCDA, provide any and all reasonably necessary rights-of-way and easements to get utility services to the Business Park Property. The City and the MCDA agree to work together to get the utilities and infrastructure to the Business Park Property. The City and MCDA shall work together to explore any and all available funding, grants and revenue sources to provide for construction of Phase II of the Access Road, and for the extension of utilities and infrastructure to the Business Park Property.

(12) MCDA and the City understand and agree that upon transfer, Business Park property transferred shall have deed restrictions similar to the following:

- Federal Aviation Regulation (FAR) Part 77 (recodified as 14 Code of Federal Regulations (CFR) Part 77) surfaces must be adhered to relating to any building, structure, poles, trees, or other objects on the property. The City will retain a right of entry onto the property conveyed to cut, remove, or lower any object, natural or otherwise, of height in excess of 14 CFR Part 77 surfaces relating to the airport. The public right shall include the right to require the marking or lighting as obstructions to air navigation, any and all objects that may, at any time, project or extend above said surfaces.

- A notice consistent with the requirements of 14 CFR Part 77 (FAA Form 7460-1) must be filed prior to constructing any facility, structure, or other item on the property.
- The property shall not be used to create electrical interference with communication between the installation upon the airport and aircraft, make it difficult for fliers to distinguish between airport, or endanger the landing, taking off, or maneuvering of aircraft.
- A right of flight for the passage of aircraft in the airspace above the surface of the property shall be maintained (easement) specifying that any noise inherent in the operation of any aircraft used for navigation shall be allowed. The property shall not be used to create a potential for attracting birds or other wildlife that may pose a hazard to aircraft in accordance with current FAA guidance.

(13) The City understands, agrees, represents and warrants that the City shall be responsible to reimburse the Airport for the fair market value of the Hartman Run Road Property received by the City as compensation for the transfer of the Business Park Property. Reimbursement by the City to the Airport shall occur within a reasonable period of time after receiving title to the property. Such reasonable period of time shall not exceed five (5) years from the date of closing on the property. It is understood that the above referenced reimbursement to the Airport may include the City's dedication of the Hartman Run Road Property to the exclusive use of the Airport rather than the payment of any funds by the City to the Airport.

(14) The City and the MCDA recognize, understand and agree that this Real Estate Purchase Agreement is contingent upon approval of the Agreement and the transfer of the Property by the FAA. Approval by the FAA is a condition precedent to the consummation of the contract.

(15) This Agreement may not be assigned by either party without the written consent of the other party. Any assignment of this Agreement by either shall be in writing.

(16) The parties to this Agreement mutually agree that it shall be binding upon their respective heirs, executors, administrators, successors, or assigns.

(17) By signing this Agreement below, the parties each acknowledge, understand, accept, represent and warrant that each has been afforded an opportunity to, and has been advised to retain and consult with their own legal counsel and such other professional advisors as may reasonably be required by the parties to review and fully understand this Agreement and the implications, rights, duties and obligations of the Parties under this Agreement.

(18) This Agreement shall be construed under, and governed by, the laws of the state of West Virginia.

(19) Both the parties agree that this contract contains the final and entire agreement between the parties hereto and they shall not be bound by any terms, conditions, statements, or representations, oral or written, not herein contained.

WITNESS the following signatures and seals the day and year first above written:

CITY OF MORGANTOWN:

By: _____

Its: _____

MONONGALIA COUNTY DEVELOPMENT
AUTHORITY

By: _____

Its: _____

EXHIBIT B

PARCEL 'A':

Beginning at an iron pin on the Northern Right-of-Way of Monongalia County Secondary Route 62/1, said iron pin being the property corner between the City of Morgantown and the Monongalia County Development Authority; thence with the Northern Right-of-Way of Monongalia County Secondary Route 62/1 S. 68° - 00' E. a distance of 154.33 feet to an iron pin; thence leaving the Right-of-Way of Monongalia County Secondary Route 62/1 with the following calls:

N. 25° - 41' - 30" E. a distance of 503.63 feet to an iron pin;

N. 39° - 08' E. a distance of 352.42 feet to an iron pin;

N. 60° - 43' - 15" W. a distance of 213.53 feet to a point on the property line dividing the City of Morgantown and the Monongalia County Development Authority; thence with said property line S. 27° - 11' - 40" W. a distance of 870.00 feet to an iron pin and Point of Beginning, said parcel containing 3.144 ACRES, more or less, and more particularly shown on "Exhibit A" hereto attached, and being part of that real estate conveyed to Grantor, City of Morgantown, by the Monongalia County Development Authority by deed dated September 6, 1994, recorded in the Office of the County Clerk of Monongalia County, West Virginia in Deed Book 1095, at Page 113.

PARCEL 'B':

Beginning at a point on the property line separating the City of Morgantown and the Monongalia County Development Authority, said point being 48.64 feet from an iron pin marking a property corner common to the above identified owners; thence with said property line N. 80° - 03' W. a distance of 140.54 feet to a point; thence leaving said property line with the following calls:

N. 9° - 57' E. a distance of 60.00 feet to a point;

S. 80° - 03' E. a distance of 140.54 feet to a point;

S. 96° - 57' W. a distance of 60.00 feet to the point of beginning, above described parcel containing 0.194 ACRES, more or less, and more particularly shown on "Exhibit B" hereto attached, and being part of the real estate conveyed to Grantor, City of Morgantown, by Ruth Fleming Huse and Lloyd H. Huse, her husband, by deed dated October 11, 1935, recorded in the Office of the County Clerk of Monongalia County, West Virginia in Deed Book 273, at Page 266.

EXHIBIT B

Beginning at a point at the intersection of the Right-of-Ways of Hartman Run Road - West Virginia Route 857 & Monongalia County Secondary 62 - and "Landfill Road" - Monongalia County Secondary 62/1; thence with the Northern Right-of-Way of said "Landfill Road" S 68° - 00' E a distance of 124.87 feet to a common corner with property owned by the City of Morgantown and the Morgantown Corporation Limit; thence with said Corporation Line and City of Morgantown property N 27° - 21' - 50" E a distance of 1136.45 feet to an iron pin and common corner with property owned by the City of Morgantown and the Morgantown Corporation Limit; thence with said Corporation Line and City of Morgantown Property N 80° - 03' W a distance of 591.07 feet to a point on the Eastern Right-of-Way of Hartman Run Road; thence with the Eastern Right-of-Way of Hartman Run Road the following calls;

S 19° - 39' W a distance of 68.13 feet,

N 70° - 21' W a distance of 5.00 feet to the Point of Tangency of a curve having a radius of 955.00 feet, thence with said curve a distance of 385.83 feet to the Point of Curvature; thence continuing with the Eastern Right-of-Way of Hartman Run Road the following calls;

S 3° - 30' E a distance of 574.38 feet,

S 86° - 30' W a distance of 15.00 feet,

S 3° - 30' E a distance of 60.54 feet to the point of beginning, as shown on the exhibit hereto attached and declared to be a part of this order. This annexation area contains 9.594 acres more or less.

RESOLUTION OF THE CITY OF MORGANTOWN TO ENVIRONMENTAL PROTECTION AGENCY ADMINISTRATOR LISA P. JACKSON IN SUPPORT OF REDUCING GREENHOUSE GAS POLLUTION UNDER THE CLEAN AIR ACT.

WHEREAS, the decade from 2000 to 2010 was the warmest on record, and 2005 and 2010 tied for the hottest years on record; and

WHEREAS, the current level of CO₂ in the atmosphere is approximately 392 parts per million (ppm); and

WHEREAS, one of the world's leading climate scientists, Dr. James Hansen, stated in 2008: "If humanity wishes to preserve a planet similar to that on which civilization developed and to which life on Earth is adapted, paleoclimate evidence and climate change suggest that CO₂ will need to be reduced from its current 385 ppm to at most 350ppm"; and

WHEREAS, according to the Global Humanitarian Forum climate change is already responsible every year for some 300,000 deaths, 325 million people seriously affected, and economic losses worldwide of U.S. \$125 billion; and

WHEREAS, extreme weather events are striking with increased frequency, with deadly consequences for people and wildlife; in the United States alone:

- *2005 had the most hurricanes on record since 1851;*
- *blizzards plagued the Northeast during the winter of 2011;*
- *intense rainfall and snowmelt forced the Mississippi River to overflow its banks across the Midwest and South in summer 2011;*
- *the unprecedented 2011 Texas drought lead the U.S. Department of Agriculture to declare the entire state a natural disaster zone;*
- *heat waves scorched the Midwest and East in summer 2011, with many cities hitting record-high temperatures and for example, Oklahoma on pace to break its record for days over 100 degrees; and*

WHEREAS, climate change is threatening food security as crop growth and yields diminish and droughts, floods and changes in snowpack depth are disrupting water supplies; and

WHEREAS, scientists have concluded that by 2100 as many as one in 10 species may be on the verge of extinction due to climate change; and

WHEREAS, the world's ice is rapidly melting threatening water supplies, raising sea levels, and jeopardizing ice-dependent animals so severely that Arctic summer sea ice is half the area and thickness it was several decades ago; and

WHEREAS, according to Scientific American, sea level is rising faster along the U.S. East Coast than it has for at least 2,000 years, and is accelerating in pace, threatening coastal wildlife and the 40 percent of the world's population that lives within 60 miles of the coast; and

WHEREAS, for four decades, the Clean Air Act has protected the air we breathe through a proven, comprehensive, successful system of pollution control that saves lives and creates economic benefits exceeding its costs by many times; and

WHEREAS, with the Clean Air Act, air quality in this country has improved significantly since 1970, despite major growth both in our economy and industrial production; and

WHEREAS, between 1970 and 1990, the six main pollutants covered by the Clean Air Act — particulate matter and ground-level ozone (both of which contribute to smog and asthma), carbon monoxide, lead, sulfur and nitrogen oxides (the acid gases that cause acid rain) — were reduced by between 47 percent and 93 percent, and airborne lead was virtually eliminated; and

WHEREAS, the Clean Air Act has produced economic benefits valued at \$2 trillion or 30 times the cost of regulation; and

WHEREAS, the U.S. Supreme Court ruled in Massachusetts vs. EPA (2007) that greenhouse gases are “air pollutants” as defined by the Clean Air Act and the Environmental Protection Agency has the authority to regulate them;

WHEREAS, The city of Morgantown lends its support in the fight against climate change and for clean air, having endorsed a resolution to support the U.S. Mayors Climate Protection Agreement in February, 2007.

NOW THEREFORE BE IT RESOLVED, that climate change is not an abstract problem for the future or one that will only affect far-distant places but rather climate change is happening now, we are causing it, and the longer we wait to act, the more we lose and the more difficult the problem will be to solve;

BE IT FURTHER RESOLVED on this ____ day of February, 2012, Morgantown City Council, on behalf of the residents of Morgantown, do hereby urge the administrator of the Environmental Protection Agency, Lisa P. Jackson, and President Barack Obama to move swiftly to fully employ and enforce the Clean Air Act to do our part to reduce carbon in our atmosphere to no more than 350 parts per million.

MAYOR

CITY CLERK

RESOLUTION

WHEREAS, the City of Morgantown submitted the necessary paperwork to obtain \$3,000 for West Virginia Senior Legal Aid through the Governor's Community Participation Grant Program, and the grant application has been approved for funding; and

WHEREAS, the grant (11LEDA0664) will allow the West Virginia Senior Legal Aid to purchase office equipment and supplies; and

WHEREAS, Morgantown City Council is of the opinion that this program will be of great benefit to the senior residents of state and the city that utilize the services of the West Virginia Senior Legal Aid.

NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown this 7th day of February, 2012, that the City agrees to the conditions of the contract and authorizes the Mayor to sign the West Virginia Development Office contract, and City Manager to administer the execution of the grant

Mayor

City Clerk

11LEDA 06664
KF KD



State of West Virginia
Earl Ray Tomblin
Governor

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

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

October 19, 2011

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

Dear Mayor Manilla:

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

I, along with Delegate Barill, Delegate Fleischauer, Delegate Marshall, and Delegate Pasdon, am pleased to approve your request in the amount of \$3,000. These funds will enable you to purchase office equipment and supplies for West Virginia Senior Legal Aid.

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

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

Sincerely,

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

Earl Ray Tomblin
Governor

ERT:kf

Project Number: 11LEDA0664

GOVERNOR'S COMMUNITY PARTICIPATION

GRANT PROGRAM CONTRACT

between the

WEST VIRGINIA DEVELOPMENT OFFICE

and the

CITY OF MORGANTOWN

THIS AGREEMENT, entered into this 1st day of July, 2010, by the West Virginia Department of Finance and Administration on behalf of the West Virginia Development Office hereinafter called the "WVDEVO" and the City of Morgantown and its authorized officers, agents, and representatives, hereinafter called the "Grantee."

WITNESS THAT:

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

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

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

2. **Scope of Services**. The Grantee, or its designated agent, shall do, perform and carry out, in a satisfactory and proper manner as determined by the WVDEVO, and appropriate regulatory agencies, if required, all duties, tasks, and functions necessary to purchase office equipment and supplies for West Virginia Senior Legal Aid.

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

4. **Time Performance**. The Grantee will commence its duties under this Contract on July 1, 2010, and such duties shall be undertaken and completed in such sequences as to assure their expeditious completion in the light of the purpose of the Contract; but, in any event, all of the services required hereunder shall be completed by June 30, 2012. The completion date of this contract may only be extended by mutual written agreement of both parties dependent on the reappropriation of funds under the Governor's Community Participation Grant program. If no such agreement exists, the Grantee shall not receive payment for services rendered or work performed relative to this grant after June 30, 2012.

5. **Compensation**. In consideration of the services rendered by the Grantee, the WVDEVO agrees to pay the Grantee the sum of \$3,000. This amount constitutes complete compensation for all services rendered. In

no instance shall the agreed upon compensation exceed \$3,000 without the written consent of the Governor of the State of West Virginia.

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

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

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

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

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

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

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

The receipt and utilization of funds procured under this agreement mandate that all construction contracts necessary for the undertaking and completion of this project, regardless of the source of funds

utilized to pay such construction contracts, must comply with the provisions of West Virginia Code § 21-5A.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21. **Inspections of Project Records.** At any time during normal business hours and as often as the WVDEVO or its designated representative may deem necessary, there shall be made available to the WVDEVO or its designated representative for examination, all of its records with respect to all matters covered by this Contract and permit the WVDEVO or its designated representative to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records and personnel, conditions of employment and other data relating to all matters covered by this Contract during the entire time period beginning with project approval and ending three years after the final disbursement of grant funds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

J. Keith Burdette, Executive Director

CITY OF MORGANTOWN

By: _____
Jim Manilla, Mayor

Federal Employee Identification Number

F.E.I.N.

RESOLUTION

WHEREAS, the City of Morgantown, West Virginia, is eligible to seek funding under the West Virginia Department of Transportation's Transportation Enhancement Program in cooperation with the United States Department of Transportation, Federal Highway Administration;

WHEREAS, the Transportation Enhancement Grant Program is a reimbursement program that requires a twenty percent (20%) local match from the City of Morgantown; and

WHEREAS, the City of Morgantown is making application for \$280,000 which is to include \$70,000 of local match funding; and

WHEREAS, the funding will be used to construct the Greenmont Pedestrian Bridge; and

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF MORGANTOWN, WEST VIRGINIA, this 7th day of February, 2012, after due consideration of the proposal agrees to recommend the application for Transportation Enhancement Program Grant funding for:

Construction of an 80 foot pedestrian bridge to cross the Deckers Creek and allow residents from Greenmont and South Park access to the Deckers Creek rail-trail

Mayor

City Clerk

RESOLUTION

WHEREAS, the City of Morgantown, West Virginia, is eligible to seek funding under the West Virginia Department of Transportation's Transportation Enhancement Program in cooperation with the United States Department of Transportation, Federal Highway Administration;

WHEREAS, the Transportation Enhancement Grant Program is a reimbursement program that requires a twenty percent (20%) local match from the City of Morgantown; and

WHEREAS, the City of Morgantown is making application for \$350,000 which is to include \$87,500 of local match funding; and

WHEREAS, the funding will be used to provide streetscape improvements on a block of Walnut Street from High Street to Spruce Street; and

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF MORGANTOWN, WEST VIRGINIA, this 7th day of February, 2012, after due consideration of the proposal agrees to recommend the application for Transportation Enhancement Program Grant funding for:

Construction of accessible sidewalks, curbing, improve lighting, and create pedestrian amenities that will encourage pedestrian traffic while maintaining historic character of the historic downtown district on the block of Walnut Street from High Street to Spruce Street.

Mayor

City Clerk

RESOLUTION

WHEREAS, *the Morgantown Monongalia Metropolitan Planning Organization (MPO) is dedicated to improving metropolitan transportation planning through fostering communication among local elected officials, transportation advocates, citizens, business, and other within our State; and,*

WHEREAS, *regional planning is an important part of creating accountable and transparent transportation investments; and,*

WHEREAS, *one of the most important policy decisions in the next federal surface transportation authorizations is the explicit inclusion of local elected officials, as the closes unit of government to the people, to represent their communities in transportation investment decisions; and,*

WHEREAS, *continuing regional partnerships is critical to ensuring local implementation of federal transportation vision and priorities and furthering the local-state-federal partnership; and,*

WHEREAS, *transportation infrastructure needs extend beyond jurisdictional boundaries and population levels and crumbling bridges, aging highways, rail, ports, and mass transit are in dire need of maintenance and improvement across urban, suburban and rural America; and*

WHEREAS, *increasing the MPO threshold eliminates smaller communities and their local elected official inclusion in the regional planning process and reduces the ability of communities to improve through sound transportation investments; and.*

WHEREAS, *the current designation of MPOs at 50,000 population allows continuation of the progress realized since the inception of MPOs for growing and existing communities to address issues of job access, congestion, safety, air quality, and livability through a transparent process with local elected officials as a cornerstone - tying investments to community and citizen needs;*

NOW, THEREFORE, BE IT RESOLVED, *this 7th day of February, 2012, that the Morgantown City Council expresses its support for maintaining the current population thresholds for MPOs in any new legislation for Federal Surface Transportation Authorization.*

MAYOR

CITY CLERK