

AN ORDINANCE AMENDING A NOVEMBER 16, 2011, INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF MORGANTOWN AND THE MONONGALIA COUNTY DEVELOPMENT AUTHORITY AS THE SAME APPLIES TO THE JOINT EFFORT OF BOTH PARTIES TO DEVELOP AN ACCESS ROAD TO THE NEW NATIONAL GUARD READINESS CENTER AND BUSINESS PARK.

The City of Morgantown hereby ordains that the Amended Intergovernmental Agreement, attached hereto, is approved and the City Manager is authorized to execute the same by and on behalf of the City of Morgantown.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

AMENDED INTERGOVERNMENTAL AGREEMENT

This Amended Intergovernmental Agreement ("Agreement") entered into this ___ day of April, 2013 by and between the Monongalia County Development Authority, Morgantown, Monongalia County, West Virginia ("MCDA") a West Virginia Public Corporation and the City of Morgantown, Morgantown, Monongalia County, West Virginia ("City"), a Municipal Corporation.

WHEREAS, the City and the MCDA entered into an Intergovernmental Agreement dated, November 16, 2011; and

WHEREAS, it has become necessary to amend the Intergovernmental Agreement.

WHEREFORE, the Parties enter into this Amended Intergovernmental Agreement.

HISTORY AND BACKGROUND

The City is the owner and operator of the Morgantown Municipal Airport located in Morgantown, Monongalia County, West Virginia. The City has and is undertaking a concerted effort to bring more aviation and business activity to the Airport.

The City entered into negotiations with the State Armory Board, a body corporate and agency of the state of West Virginia regarding the possible relocation and expansion of the National Guard Unit in Morgantown, West Virginia, to property located at the Morgantown Municipal Airport owned by the City. Those negotiations included the development and construction of a new facility by the National Guard located at the Airport along with the expansion of the current services and activities of the Guard to be performed out of the new Readiness Center.

In addition to the new National Guard Readiness Center, the City, in conjunction with discussions, participation and planning with the MCDA, will develop an Access Road at the Airport as part of the overall development of the Airport and the National Guard's new Readiness Center.

WHEREFORE, The City and the MCDA enter into this Agreement for the purpose of development of the Access Road, Business Park, the new National Guard Readiness Center and the Airport area in general upon the terms and conditions set forth in this Agreement.

ARTICLE ONE DEFINITIONS

1.0 "Advance of Sale Proceeds" shall mean as it pertains to:

- A. MCDA: The One-Million, Four-Hundred and Eighty-Eight Thousand Dollars (\$1,488,000.00) plus the preliminary advance of One-Hundred Thousand Dollars (\$100,000.00) each by the MCDA and the Monongalia County Commission, or a total of One-Million, Six-Hundred and Eight-Eight Thousand Dollars (\$1,688,000.00), all payable to the MCDA.
- B. City of Morgantown: The Three-Million, Three-Hundred and Ten Thousand Dollars (\$3,310,000.00) plus the preliminary advance of One-Hundred Thousand Dollars (\$100,000.00), or a total of Two-Million, Four-Hundred and Ten Thousand Dollars (\$3,410,000.00), payable to the City of Morgantown.

- 1.1 "Agreement" shall mean this Intergovernmental Agreement including all schedules, exhibits, attachments and modifications.
- 1.2 "Access Road" shall mean Phase I of the roadway to be constructed from State Route 857 to the Guard Property and from the Access Road to the hanger area.
- 1.3 "Airport" shall mean the Morgantown Municipal Airport.
- 1.4 "Armory Property" shall mean the approximately 5.0 acres of land located at 1705 Mileground Road, Morgantown, Monongalia County, West Virginia, also known as the Battery B1-201st FA National Guard Armory facility as more particularly set forth and described in Schedule 1.4, attached to this Agreement..
- 1.5 "City" shall mean the City of Morgantown, Morgantown, Monongalia County, West Virginia, a municipal corporation.
- 1.6 "Committee" shall mean the committee appointed by the MCDA and the City to oversee the acquisition, development, and initial operation of the Access Road.
- 1.7 "DOH" shall mean the West Virginia Department of Transportation Division of Highways.
- 1.8 "FAA" shall mean the United States Federal Aviation Administration.
- 1.9 "Federal Grant" shall mean the One Million Nine Hundred Sixty Thousand Dollars (\$1,960,000) appropriation from Federal Transportation Allocation.
- 1.10 "Guard Property" shall mean the approximately 45 acre parcel of land located at the Airport owned by the City to be transferred to the State Armory Board for construction of a National Guard Readiness Center, as more particularly set forth and described in Schedule 1.10, attached to this Agreement .
- 1.11 "MCDA" shall mean the Monongalia County Development Authority, Monongalia County, West Virginia, a public corporation.
- 1.12 Phase II shall mean the roadway to be constructed from the Phase I of Access Road to the Business Park Property.
- 1.13 "TSA" shall mean the Transportation Security Administration.

ARTICLE TWO PROPERTY TRANSFER

- 2.0 The City on the 20th day of December, 2011, entered into a Road License Agreement for the property identified in the attached Schedule 2.0 with the MCDA for the sole purpose of developing and constructing the Access Road from State Route 857 to the Guard Property and the Business Park. This License Agreement is for a term beginning on the date of execution of the Road License Agreement for the Property by the City with the MCDA and ending, and automatically terminating on the date that is the earliest to occur of completion and acceptance of construction of the Access Road by the City or the Access Road ceases to be used as a public road. The termination of the License Agreement shall occur without further notice or action on the part of the City or the MCDA. The City and the MCDA shall enter into and execute any and all documents necessary to consummate the termination of the License Agreement for the Property upon completion of construction of the Access Road.
- 2.1 In conjunction with this Agreement, the City has transferred the property identified in the attached Schedule 1.10 to the State Armory Board for the purpose of constructing and establishing the new National Guard Armory Readiness Center on the Guard Property. This transfer was in exchange for the current Armory Property located on the Mileground, Morgantown, Monongalia County, West Virginia and more particularly set forth in plat attached as Schedule 1.4.
- 2.2 Upon obtaining clear title to the Armory Property the City shall proceed to, as soon as reasonably practical, sell the Armory Property to the highest bidder (but for not less than the appraised fair market value of the property) upon terms and conditions as established by the City.
- 2.3 The proceeds received from the sale of the Armory Property shall be utilized for the development and construction of the Access Road and the Airport. The use of these funds shall be in compliance with the provisions of Article Four of this Agreement.

ARTICLE THREE ACCESS ROAD COMMITTEE

- 3.0 The development and construction of the Access Road shall be governed by a Committee as defined above, and established by the MCDA and the City. This Committee shall have the authority, responsibility, and obligation on behalf of the MCDA for the acquisition, development, operation and oversight of the Access Road as set forth in this Agreement. In relation to the acquisition of property for the Access Road only, to the extent that the MCDA exercises its power of eminent domain under Chapter 7 of the West Virginia Code, this Committee shall be an advisory Committee only. The restriction of the Committee to act in an

advisory capacity applies only to the acquisition of property for the Access Road thru eminent domain.

- 3.1 The initial Committee shall consist of four (4) members. Two (2) members shall be appointed by the MCDA, and two (2) members shall be appointed by the City.
- 3.2 The MCDA and the City shall, as soon as possible, appoint the members to the Committee. Due to the importance and responsibilities of this Committee, the City and MCDA may, but shall not be required to, appoint the Members of the Committee prior to the execution of this Agreement. In that event, the City and MCDA, by executing this Agreement, consent to, and affirm, those appointments.
- 3.3 The Committee shall develop and adopt policies and procedures for the responsibilities, obligations, requirements and operation of the Committee.
- 3.4 During the construction phase of the Access Road, the Committee shall have authority over and responsibility for the following:
 - A. Review of and recommendation to the MCDA of all construction contracts for execution.
 - B. Review, authorization, and approval of all change orders, modifications, and expansion of any contract for construction of the Access Road.
 - C. Review and approval of all expenditures. The approval by the MCDA shall be required for any expenditure by the Committee, during the construction phase of the Access Road, that is in excess of the amount set forth in the budget for the project considering the budget as a whole and all contingency line items. After completion of the Access Road any expenditure by the Committee relating to the Access Road shall require approval of the MCDA and the City prior to incurring such expenditure.
 - D. The approval of the purchase price, option contracts, purchase contracts or other methods of acquiring the property necessary for the Access Road. The Committee shall approve all option and/or purchase contracts for the property, and/or rights of way, necessary for the Access Road prior to approval and execution by the MCDA.
 - E. While not anticipated to be necessary, the Committee shall, in relation to the acquisition of property for the Access Road only, act strictly in an advisory capacity in the event MCDA exercises its power of eminent domain. The restriction of the Committee to act in an advisory capacity applies to the acquisition of property for the Access Road.
 - F. Ensuring compliance with all aspects and requirements of the FAA, the TSA, and all other government agencies, rules and regulations, and shall coordinate all such matters through the Morgantown Municipal Airport Director during planning, development and construction of the Access Road.
 - G. The oversight, review and approval of all disbursements. The Committee shall be responsible for the oversight and approval of all disbursements of funds including operating expenses for the Access Road.

- 3.5 The Committee shall prepare and approve a budget and timetable for the acquisition, development and construction of the Access Road. This budget shall be approved by the committee and the City prior to adoption by the MCDA.
- 3.6 The City and the MCDA understand and agree that the Access Road may be developed in two phases. Phase I being developed first and encompassing the design, development and construction of the Access Road from CR 857 to Station 16+50, and from the hanger area located at Station 100+00 to the Access Road located at Station 113+00 as shown on the plans prepared by Alpha and Associates and conditionally approved by the West Virginia Division of Highways. Phase II being developed second and encompassing the design, extension, development and construction of the Access Road from Station 16+50.00, as shown on the plans prepared by Alpha and Associates and conditionally approved by the West Virginia Division of Highways, to the entrance of the Business Park.
- 3.7 The City and MCDA agree to diligently pursue, and as soon as possible, fully develop and construct Phase II of the Access Road. The City and the MCDA agree that the proceeds from the sale of the Armory Property shall not be used for Phase II of the Access Road.
- 3.8 Appointees on the Committee of the MCDA and the City shall be responsible for updating and keeping their respective bodies fully informed regarding the activities of the Committee.

ARTICLE FOUR INITIAL FUNDING

- 4.0 The initial funding available for the Access Road and Business Park is estimated to be Six Million Seven Hundred Eighty-Two Thousand Dollars (\$6,782,000). The source of this funding has been identified as follows:
 - A. One Million Nine Hundred Sixty Thousand Dollars (\$1,960,000) from the Federal Grant to the project.
 - B. Four Million Three Hundred Thousand Dollars (\$4,300,000) from the estimated sale proceeds of the Armory Property after the land transfer with the State Armory Board.
 - C. Five Hundred Twenty-Two Thousand Dollars (\$522,000) from the City of Morgantown from Business and Occupation taxes to be generated on the construction on the Guard Property.
- 4.1 The estimated cost for the development and construction of the Access Road, extension of utilities to the Guard Property is Six Million Seven Hundred Fifty-Eight Thousand Dollars (\$6,758,000). These expenditures, and any applicable change orders are to be paid from the initial funding identified in Section 4.0 above for the project. These amounts are estimates and may vary once design, engineering and construction contracts are awarded, and considering

subsequent change orders. The City shall be responsible for any and all additional funding needed to complete the Access Road and extension of all utilities. However, since the proceeds from the sale of the Armory Property and the reinvestment of the Business & Occupation tax payments from the City on the construction of the Guard Property will not be fully known and immediately available, interim funding has been secured. The interim funding for this construction shall be provided as follows:

- A. One Million Nine Hundred and Sixty Thousand Dollars (\$1,960,000) in the form of a Federal Grant. This funding has been appropriated by the United States Congress and is currently held by the DOH.
 - B. Three Million One Hundred Thirty Four Thousand Dollars (\$3,134,000) to be contributed by the City as an Advance on Sale Proceeds of the Armory Property.
 - C. One Million Six Hundred Eighty-Eight Thousand Dollars (\$1,688,000) to be contributed by the MCDA in the form of an Advance on the Sale Proceeds of the Armory Property.
- 4.2 The City and MCDA understand and agree that the Advance on the Sale Proceeds provided by the MCDA is to be used as interim funding until the sale of the Armory Property is completed.
- 4.3 The Advance on the Sale Proceeds from the MCDA shall be interest free and provide for repayment as more fully described in Section 4.4 of this Agreement.
- 4.4 The Advance on Sale Proceeds from MCDA shall be repaid in full upon the sale of the Armory Property. The repayment to the MCDA shall be disbursed from the closing proceeds of the sale after the payment of all costs and expenses associated with the sale of the Armory Property. The disbursement from the sale proceeds to repay the MCDA advance shall have first priority and shall be paid prior to disbursement of any other funds to any other parties including but not limited to the Advance on Sale Proceeds by the City. Notwithstanding, that the Advance on Sale Proceeds by the MCDA is to be repaid from the proceeds of sale from the Mileground Armory. The City shall repay not less than Four Hundred Eighty Eight Thousand Dollars (\$488,000.00) to the MCDA on or before June 30, 2014.
- 4.5 After repayment of the Advance on sale proceeds by the MCDA, the Advance on Sale Proceeds by the City shall be repaid from the sale proceeds of the Armory Property. Any remaining proceeds shall, after the payment of all normal operating expenses, development costs and construction of the Access Road and infrastructure, be delivered to the Airport.

ARTICLE FIVE
ACCESS ROAD

- 5.0 MCDA shall oversee and coordinate the development and construction of the Access Road. The MCDA shall utilize the Committee for this purpose and the Committee shall have full authority to proceed and complete its responsibilities in relation to the Access Road. The development and construction of the Access Road shall be in accordance with the plat and survey of the Access Road attached as Schedule 5.0 and the budget as developed by the Committee.
- 5.1 The Committee shall, in accordance with architects, engineers, and legal counsel for the development of the Access Road, address all matters associated with the Access Road such as ownership of the right of way and Access Road, limited or controlled access to the Access Road, utility easements and rights of way and all other matters as may come before it pertaining to the Access Road as the City and MCDA deem appropriate.
- 5.2 MCDA understands, agrees and accepts that once the Access Road is complete that the Access Road and right of way shall fully comply with the Federal Grant including, but not limited to, any requirements that the Access Road be owned by either the DOH or the City. MCDA agrees to cooperate fully to provide for the orderly and complete transfer of the Access Road right of way to the DOH or the City, in compliance with the Federal Grant, federal, state, or municipal requirements or directives. The transfer of the Access Road and right of way shall be done in the same phases as the construction. Upon completion of Phase I, MCDA shall transfer Phase I to the City or DOH. MCDA understands and agrees that any and all parcels acquired for the Access Road, whether the Access Road is completed or not, shall, upon written request of the City, transfer free of charge to the City or their designee. MCDA and the City further understand and agree that the Parcel identified in the attached Schedule 2.0, shall automatically revert back to the City specifically set forth in Section 2.0 of this Agreement.
- 5.3 The Committee shall take into consideration and provide for, and comply with, all FAA, TSA, and all other applicable government agency requests, and directives in the development and construction of the Access Road, and shall coordinate all such requirements through the Morgantown Municipal Airport Director.
- 5.4 MCDA through the Committee shall be responsible for acquiring all necessary rights of way, easements, and approvals for development of the Access Road. In relation to the acquisition of property for the Access Road only, the Committee shall act in an advisory capacity regarding the MCDA's use of its eminent domain power. The restriction of the Committee to act in an advisory capacity applies strictly to the acquisition of property for the Access Road. All acquisition costs and expenses shall be approved by the Committee in accordance with this Agreement.
- 5.5 MCDA shall enter into an extension agreement of the engineering and design contract with Alpha and Associates identifying with specificity the completion of

the design engineering and construction of the Access Road including assistance on property and rights of way acquisitions as the Committee deems necessary.

- 5.6 MCDA shall enter into such other professional services contracts as required and negotiated by the Committee from time to time.

ARTICLE SIX ACCOUNTING AND RECORD KEEPING

- 6.0 The Access Road shall be developed and operated on a stand alone basis. As such, the construction, development and operation of the Access Road shall be accounted for as its own separate entity or department for internal reporting purposes.
- 6.1 The day to day financial and accounting services shall be provided for the MCDA by the City. The City shall establish and maintain, for accounting purposes, a separate set of accounts for the Access Road. The annual accounting and reporting of the development and operations of the Access Road shall be provided in cooperation with, and direction from, the independent auditors for the MCDA.
- 6.2 The City shall be responsible for and maintain all funds initially contributed by the City, MCDA, and the Federal Grant and all funds generated by any source for construction of the Access Road.
- 6.3 Subject to the provision of Section 6.4 below, the City shall upon request of the Committee pay from the funds set forth above in Article Four, all reviewed and approved invoices. The City and MCDA each reserve the right to pay, modify, question, challenge, or otherwise reject any invoice relating to the project notwithstanding any approval by the Committee.
- 6.4 In the event the City or MCDA reject or otherwise fail to approve any invoice submitted for payment by the Committee, the rejecting entity shall provide the Committee with the basis for the rejection and recommended action for removal of the objection.
- 6.5 Any invoice, request for payment, or other request for distribution of funds relating to acquisition, development, construction and operation of the Access Road that is in excess of the amount set forth in the budget for the project considering the budget as a whole and all contingency line items shall require the approval of the City and MCDA.
- 6.6 The City and MCDA agree to respond within twenty business days regarding any approval of expenditures required by this Agreement.

ARTICLE SEVEN
MISCELLANEOUS

- 7.0 This Agreement contains the understanding and agreement of the parties regarding the development and operation of the Access Road. This Agreement may be amended from time to time by the parties. Any amendment, modification, or change to the provisions of this Agreement shall be in writing, signed by all of the parties.
- 7.1 The City and MCDA represent and warrant that by executing this Agreement each has the requisite power and authority to enter into this Agreement and that this Agreement has been duly authorized and approved by the City and MCDA.
- 7.2 In the event any aspect of this Agreement shall be determined to be unenforceable or contrary to governing laws, rules and regulations, or ordinances such provision shall be modified or stricken as the case may be to bring this Agreement into compliance. The modification or removal of any such provision shall not affect the enforceability of the remainder of this Agreement.
- 7.3 The City and the MCDA shall appoint a representative to act as the contact person for their respective organization with the Committee. This contact person may or may not also be a member of the Committee.
- 7.4 This Agreement shall at all times be governed by the laws of the state of West Virginia.
- 7.0 Time is of the essence in the performance of this Agreement.

MONONGALIA COUNTY
DEVELOPMENT AUTHORITY

CITY OF MORGANTOWN

By: Russell Lorince
Its: Vice President

By: Jeff Mikorski
Its: Interim City Manager