



Office of the City Clerk

# The City of Morgantown

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

**AGENDA**  
**MORGANTOWN CITY COUNCIL**  
**COMMITTEE OF THE WHOLE**  
**May 29<sup>th</sup>, 2012**  
**7:00 p.m.**

**NOTE:** Committee of the Whole Meetings of the Morgantown City Council are intended to provide an opportunity for the Council to receive information, ask questions, and identify policy options in an informal setting. No official action is taken at these meetings. At this Committee of the Whole Meeting the following matters are scheduled:

**PRESENTATIONS:**

- **Partners In Education Certificates- Woodburn Elementary**
- **Presentation Concerning State Route 7/Hogback Turn Capital Improvement Initiative and Updated Right-of-Way Ordinance**
- **Presentation Update of Evansdale Work from Rob Moyer, WVU**
- **Arts Alive on the River Festival**
- **Public Portion**

**ITEMS FOR DISCUSSION**

1. **Ordinance: Parking Authority Revenue Bonds**
2. **Extractive Industry Zoning Recommendations**
3. **Discussion of Tabled Ordinance Repealing Article 721- Horizontal Drilling with Fracturing or Fracking within One Mile of the Morgantown City Limits**
4. **Recommended Draft Provisions for Allied Waste Contract**
5. **Airport Enterprise Fund Proposed Budget Considerations and Goals and Objectives**
6. **Due Diligence Process Regarding Woodburn School**
7. **Request for Qualifications- Event Coordination Services Process**
8. **Resolutions: Community Participation Program Grants**
9. **Resolution: Authorize Land and Water Conservation Fund Agreement- Acquisition of Mayfield Park Property**
10. **Protocol for Personnel Files by Council Members for Chartered Employees (City Manager, City Clerk and Judge)**

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

**AN ORDINANCE BY THE CITY OF MORGANTOWN REPEALING AN AUGUST 2, 2011, ORDINANCE WHICH AUTHORIZED THE CITY TO DEED A 294 SQUARE FOOT RIGHT OF WAY, ADJACENT TO THE "HOGBACK TURN" ON WEST VIRGINIA STATE ROUTE 7, TO THE WEST VIRGINIA DIVISION OF HIGHWAYS; AND AUTHORIZING A NEW DEED TO THE DIVISION OF HIGHWAYS FOR THE ABOVE DESCRIBED RIGHT-OF-WAY WHICH MORE ACCURATELY DESCRIBES THE WARRANTY BEING CONVEYED WITH SAID RIGHT OF WAY.**

**WHEREAS,** By Ordinance adopted by Morgantown City Council on August 2, 2011, the City Manager was authorized to execute a deed from the City to the West Virginia Division of Highways for a 294 square foot right-of-way adjacent to the "Hogback Turn" on West Virginia Route 7;

**WHEREAS,** the West Virginia Division of Highways has recently contacted the City of Morgantown and not only requested that the "quit claim" right-of-way warranty that was granted by the City in the aforementioned right-of-way deed be changed to a "special" right-of-way warranty, but also, provided the City with a new deed for consideration that would accomplish the change in warranty;

**WHEREAS,** Morgantown City Council is of the opinion that such action should be taken.

**NOW, THEREFORE,** the City of Morgantown hereby ordains that the ordinance adopted by it on August 2, 2011, pertaining to the City's granting of a 294 square foot right-of-way, adjacent to the "Hogback Turn" on West Virginia Route 7, to the West Virginia Division of Highways is repealed in its entirety; and that the City Manager is authorized to execute the right-of-way deed, hereto attached, by and on behalf of the City of Morgantown.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_  
MAYOR

ADOPTED:

FILED:

\_\_\_\_\_  
CITY CLERK

RECORDED:

PROJECT NO.: S331-7-34.05

PARCEL NO.: 1

**THIS DEED**, Made this 31<sup>st</sup> day of January, 2012, by and between **CITY OF MORGANTOWN**, West Virginia, a municipal corporation, hereinafter called Grantor, and the **WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS**, hereinafter called Grantee.

**WITNESSETH:** That for and in consideration of **FIVE HUNDRED TWENTY AND NO/100 DOLLARS (\$520.00)**, cash in hand paid, the receipt and sufficiency of which are hereby acknowledged, the Grantor does hereby **GRANT** and **CONVEY** unto the Grantee, free from all encumbrances and with covenants of **SPECIAL WARRANTY**, a right of way for public road purposes over, through, across and upon those certain tracts or parcels of land situate in the Second Ward of the City of Morgantown, Morgan District, Monongalia County, West Virginia, and shown and designated upon plans of the West Virginia Department of Transportation, Division of Highways, for the project hereinafter designated, a copy of which said plans is of record in the Office of the Clerk of the County Commission of the aforesaid County, which said real estate is more particularly bounded and described as follows:

NONCONTROLLED ACCESS RIGHT OF WAY

BEGINNING at a point in the northern existing noncontrolled access right of way line of WV Route 7 and in the division line between City of Morgantown, Parcel 1 and G. Stephen Siegwarth, Parcel 2, said point being 17.5 feet right of and at right angle to WV Route 7 centerline at Station 44+06, as shown on survey of Project No. S331-7-34.05, Monongalia County, West Virginia;

thence, easterly, with meanders of said division line 110 feet, more or less, to a point in said northern existing right of way line and 17.5 feet right of and at right angle to centerline at Station 45+69;

thence, westerly, in a reverse centerline direction, with meanders of the northern existing right of way line 119 feet, more or less, to the place of beginning and containing 294 square feet (0.007 acre), more or less.

The parcel hereinabove described is all of the real estate conveyed unto the City of Morgantown, West Virginia, a municipal corporation, by Fred S. Siegwarth and Jean Josephine Siegwarth, his wife, by quit claim deed dated March 5, 1969 and of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 683 at page 590.

The Grantor hereby releases the Grantee from all liability for any and all claims which might have been legally asserted against the Grantee as just compensation in an eminent domain

proceeding prosecuted by it against the Grantor under its power to take and damage private property for public highway purposes.

The Grantor, under penalties of perjury, declares that it is a resident entity of the State of West Virginia, and therefore exempt from the tax withholding requirements of W. Va. Code §11-21-71b.

This is a transfer exempt from West Virginia excise taxes on property transfers under Chapter 11, Article 22, Sections 1 and 2 of the Official Code of West Virginia of 1931, as amended.

WITNESS the following signature and seal.

CITY OF MORGANTOWN,  
a municipal corporation

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

STATE OF WEST VIRGINIA,

COUNTY OF \_\_\_\_\_, TO WIT:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, its \_\_\_\_\_ on behalf of City of Morgantown, a municipal corporation.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

This instrument was prepared by:

John K. McHugh, Attorney  
Legal Section, Right of Way Division  
West Virginia Division of Highways  
Building 5, Room A-631  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 26305-0430

May 15, 2012

Dear City Manager Terrence Moore, Mayor Jim Manilla, and members of City Council;

The Arts Alive on the River Festival is respectfully requesting in-kind assistance from the City of Morgantown in support of the 2012 Arts Alive on the River Festival (Arts Alive) which will be held on June 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup>, 2012 at the Hazel Ruby McQuain Riverfront Park. Arts Alive is the evolution of the former Arts on the River Festival.

More than a decade ago the Arts on the River Festival was conceived as a way to promote and support visual and performing arts in a family friendly atmosphere. The newly branded Arts Alive on the River Festival presented by EQT is expanding the festival's original concept and creating a venue that showcases the wealth of talent from the region along with greater opportunities for economic growth.

Located in the same scenic spot along the banks of the Monongahela River at Hazel Ruby McQuain Riverfront Park and Amphitheater, festival attendees still get a taste of the natural beauty the state is known for, as well as easy access to Morgantown's historic downtown businesses and hotels. The location of the Arts Alive Festival will help promote the Hazel Ruby McQuain Riverfront Park, and assist the City in encouraging the use of the park for other venues.

As in past years, they can also count on the same great area food and wine, as well as the fest's latest addition - craft-brewed beer. This time around there will simply be a wider selection.

In fact, there's not a part of the festival that hasn't been upgraded or fine-tuned. Big-name acts will now join hometown favorites on the main stage; and the Performing Arts Circle has been added to support area organizations and groups. Dozens of artists won't simply display and sell their work this year, several will also offer demonstrations. There will also be more activities for kids and interactive projects for the entire family. With so much to do and see, the festival could no longer fit its familiar two-day schedule. Instead, the festivities will kick off Friday evening and run through Sunday, June 8-10.

Arts Alive will promote Morgantown and the region in a positive manner, providing the only family friendly ARTS venue whose target market is adult oriented, not student oriented. The festival will introduce the area to new visitors who will be traveling from far away specifically to attend Arts Alive. The festival will showcase the area, and encourage people to come back and explore the shops, restaurants and recreational areas that they heard about, but didn't have the time to visit the first time around. Last year the AOTR Festival attracted upwards of 5000 visitors over a 2 day period. We expect the attendance numbers to more than double for the 2012 Arts Alive Festival.

Since this is the first year that the festival is being produced on such a great scale, it is difficult to provide estimations of the economic impact that festival attendees will have on the area, but as a starting point we have provided a list of festival expenses that are being paid to local businesses and individuals. Our current estimate of local expenses totals \$69,271.00. This is money that is coming directly from Arts Alive and being spent in the Greater Morgantown Area.

Included in this figure are the approximately 20 hotel rooms that Arts Alive is directly purchasing at Hotel Morgan, however this does not include the estimated 40-60 rooms per night that will be purchased by participating Artists, Musicians, and Vendors. This figure also does not include money that will be spent in

the area by our attendees who will be eating in local restaurants, staying in local hotels, and shopping at local stores.

The Arts Alive Festival is the ONLY arts focused festival in our area. In order for the Arts Alive on the River Festival to be a success, we need the support of the community, city government and local businesses. We are providing a wonderful opportunity to showcase the support from the City of Morgantown for this cultural event. Please consider joining us and supporting Morgantown's best summer festival. I would like to thank-you in advance for consideration of this request. If you have any questions, or need further information, please contact me at [travis@artsalivefest.com](mailto:travis@artsalivefest.com) or 304.685.7836. We are looking forward to hearing from you. Together we can make the 2012 Arts Alive on the River Festival a great success.

Sincerely,

The Arts Alive Advisory Board

Travis Carrow – Chairman

Beth Fuller – Treasurer

Lindsey Flemming – Secretary

Jeannie Kuhn

Charlie Sims

Jeff Ryan

Bryce Capodiec

Kevin Hamric

Adam Payne

**AN ORDINANCE AMENDING ARTICLE 1329.02 "DEFINITIONS" OF THE PLANNING AND ZONING CODE AS IT PERTAINS TO "EXTRACTIVE INDUSTRY", "HEAVY INDUSTRY" AND "HEAVY MANUFACTURING" DEVELOPMENT.**

WHEREAS, the advent and advancement of new and existing extractive industry technologies and practices have created the opportunity for the efficient development of natural resources contained in underground geologic formations;

WHEREAS, these technologies and practices have resulted in a new type and scale of extractive and heavy industry and heavy manufacturing development that is not recognized or adequately addressed by existing City of Morgantown Planning and Zoning Code regulations;

WHEREAS, allowing the responsible development of extractive and heavy industries and heavy manufacturing while assuring the use of best technologies and practices is in the public interest and should be done in a manner that protects our community's existing and planned development, character, quality of life, environment, and economy for current and future generations; and,

WHEREAS, the enactment of amendments to the City's Planning and Zoning Code is necessary for the protection and preservation of the safety and welfare of persons; of the viability and sustainability of property and existing and future development; of publicly-owned and/or maintained lands, resources, facilities, and infrastructure; of fresh water sources and supplies; and, to prevent inadequate or ineffective erosion and sediment control planning.

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

CLEAR ZONE – An area delineated on a site plan illustrating where structures similar to silos, grain bins, windmills, chimneys, stacks, spires, flag pole, skylights, derricks, conveyors, cooling towers, observation towers, water tanks, telecommunication facilities, etc. in excess of fifty (50) feet may collapse based on the site and structural design.

DRILLING – Digging or boring a new well for the purpose of exploring for, developing, or producing gas or other hydrocarbons, or for the purpose of injecting gas, water, or any other fluid or substance into the earth; includes induced hydraulic fracturing.

EXTRACTIVE INDUSTRY – A heavy industry use that involves ~~the~~ extraction of minerals, including solids, such as coal and ores; liquids, such as crude petroleum; and gasses, such as natural gasses. The term also includes quarrying; well operation; milling, such as crushing, screening, washing, and flotation; and other preparation customarily done at the extraction site or as a part of the extractive activity.

EXTRACTION, MINERAL MINERAL EXTRACTION – All or any part of the process involved in the mining of minerals by removing overburden and mining directly from the mineral deposits, open pit mining or minerals naturally exposed, mining by auger method, dredging and quarrying, underground mining and surface work incidental to an underground mine.

EXTRACTION, OIL AND GAS – All or any part of the process involved in the drilling, stimulating, production or waste treatment and disposal of natural crude oil, petroleum, natural gas, or other fluid hydrocarbons.

INDUCED HYDRAULIC FRACTURING – The process of injecting water, steam, gas, or other substances into a well to improve hydrocarbon recovery; commonly referred to as “hydrofracking” and/or “fracking”.

OPERATOR – For the purpose of an extractive industry use, the person or company, either proprietor or lessee, in charge and in control of the management and day-to-day operations of an extractive industry development site.

PLANNING DIRECTOR – The Director of the Department of Planning Development Services for the City of Morgantown or his or her designee.

STRUCTURE – ~~(1) A combination of materials forming an edifice or building of any kind, or any piece of work artificially built up or comprised of parts joined together in some definite manner, but excluding the following: retaining walls; fences not over six (6) feet high; platforms or decks not more than thirty (30) inches above grade and not over any basement or story below; utility mains, lines, and underground facilities; and, yard and play equipment; (2) a permanent structure built of materials in a manner that would commonly be expected to remain useful for a substantial period of time; (3) a temporary structure if built of materials in a manner that would commonly be expected to have relatively short useful life, or if built for a purpose that would be expected to be relatively short term in duration. Structure does not include vehicles, recreational vehicles or campers. Anything constructed, erected, or situated by man that requires location on the ground or attached to something having location on the ground; but not including vehicles, recreational vehicles, campers, tents less than thirty-six (36) square feet in area, retaining walls, fences not over eight (8) feet in height, yard and play equipment, utility lines, and underground facilities.~~

This ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_  
Mayor

ADOPTED:

FILED:

RECORDED:

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

**AN ORDINANCE AMENDING TABLE 1331.05.01 "PERMITTED LAND USES" OF THE PLANNING AND ZONING CODE AS IT PERTAINS TO "EXTRACTIVE INDUSTRY", "HEAVY INDUSTRY" AND "HEAVY MANUFACTURING" DEVELOPMENT.**

WHEREAS, the advent and advancement of new and existing extractive industry technologies and practices have created the opportunity for the efficient development of natural resources contained in underground geologic formations;

WHEREAS, these technologies and practices have resulted in a new type and scale of extractive and heavy industry and heavy manufacturing development that is not recognized or adequately addressed by existing City of Morgantown Planning and Zoning Code regulations;

WHEREAS, allowing the responsible development of extractive and heavy industries and heavy manufacturing while assuring the use of best technologies and practices is in the public interest and should be done in a manner that protects our community's existing and planned development, character, quality of life, environment, and economy for current and future generations; and,

WHEREAS, the enactment of amendments to the City's Planning and Zoning Code is necessary for the protection and preservation of the safety and welfare of persons; of the viability and sustainability of property and existing and future development; of publicly-owned and/or maintained lands, resources, facilities, and infrastructure; of fresh water sources and supplies; and, to prevent inadequate or ineffective erosion and sediment control planning.

NOW THEREFORE, the Morgantown City Council hereby ordains that Table 1331.05.01 "Permitted Land Uses" of the Planning and Zoning Code of the City of Morgantown is amended as follows (deleted matter struck through; new matter underlined):

Table 1331.05.01: Permitted Land Uses

Uses	R-1	R-1A	R-2	R-3	PRO	B-1	B-2	B-4	OI	B-5	I-1	Supplemental Regulations
Caretaker's Residence	C	C	C	C			C		C	C	P	
Mineral Extraction Extractive Industry											P	<u>31</u>
Industry, Heavy											C	<u>32</u>
Manufacturing, Heavy											P	<u>32</u>

This ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_  
Mayor

ADOPTED:

FILED:

RECORDED:

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

**AN ORDINANCE AMENDING ARTICLE 1331.06 "SUPPLEMENTAL REGULATIONS PERTAINING TO PERMITTED LAND USES TABLE" OF THE PLANNING AND ZONING CODE AS IT PERTAINS TO "EXTRACTIVE INDUSTRY", "HEAVY INDUSTRY" AND "HEAVY MANUFACTURING" DEVELOPMENT.**

WHEREAS, the advent and advancement of new and existing extractive industry technologies and practices have created the opportunity for the efficient development of natural resources contained in underground geologic formations;

WHEREAS, these technologies and practices have resulted in a new type and scale of extractive and heavy industry and heavy manufacturing development that is not recognized or adequately addressed by existing City of Morgantown Planning and Zoning Code regulations;

WHEREAS, allowing the responsible development of extractive and heavy industries and heavy manufacturing while assuring the use of best technologies and practices is in the public interest and should be done in a manner that protects our community's existing and planned development, character, quality of life, environment, and economy for current and future generations; and,

WHEREAS, the enactment of amendments to the City's Planning and Zoning Code is necessary for the protection and preservation of the safety and welfare of persons; of the viability and sustainability of property and existing and future development; of publicly-owned and/or maintained lands, resources, facilities, and infrastructure; of fresh water sources and supplies; and, to prevent inadequate or ineffective erosion and sediment control planning.

NOW THEREFORE, the Morgantown City Council hereby ordains that Article 1331.06 "Supplemental Regulations Pertaining to Permitted Land Uses Table" of the Planning and Zoning Code of the City of Morgantown is amended as follows (new matter underlined):

- (31) The following regulations are specific to EXTRACTIVE INDUSTRY development:
  - (a) Extractive Industry uses are considered Major Developments of Significant Impact of a Regional Scale for the purpose of site plan review and approval.
  - (b) Regardless of zoning classification, property annexed into the City still obligated to a mineral, oil, and/or gas rights lease agreement with another party may exercise such lease for the surface extraction development of minerals, oil and/or gas as established under said lease for a period not to exceed seven (7) years following annexation. If development of significant impact site plan approval is not obtained within three (3) years of annexation, then the surface extraction development right shall expire unless otherwise permitted under this ordinance. All extractive industry development, regardless of zoning classification, must comply with related site plan review and performance standards of this ordinance.

(c) A recreational vehicle or camper may be utilized as a caretaker's residence for a period not to exceed eighteen (18) months. After eighteen (18) months, the caretaker's residence on an extractive industry development site must meet the supplemental regulations for all single-family dwelling units provided in Article 1331.06(16).

(32) HEAVY INDUSTRY and HEAVY MANUFACTURING uses are considered Major Developments of Significant Impact of a Regional Scale for the purpose of site plan review and approval.

This ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_  
Mayor

ADOPTED:

FILED:

RECORDED:

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

**AN ORDINANCE AMENDING ARTICLE 1355 "I-1, INDUSTRIAL DISTRICT" OF THE PLANNING AND ZONING CODE AS IT PERTAINS TO "EXTRACTIVE INDUSTRY", "HEAVY INDUSTRY" AND "HEAVY MANUFACTURING" DEVELOPMENT.**

WHEREAS, the advent and advancement of new and existing extractive industry technologies and practices have created the opportunity for the efficient development of natural resources contained in underground geologic formations;

WHEREAS, these technologies and practices have resulted in a new type and scale of extractive and heavy industry and heavy manufacturing development that is not recognized or adequately addressed by existing City of Morgantown Planning and Zoning Code regulations;

WHEREAS, allowing the responsible development of extractive and heavy industries and heavy manufacturing while assuring the use of best technologies and practices is in the public interest and should be done in a manner that protects our community's existing and planned development, character, quality of life, environment, and economy for current and future generations; and,

WHEREAS, the enactment of amendments to the City's Planning and Zoning Code is necessary for the protection and preservation of the safety and welfare of persons; of the viability and sustainability of property and existing and future development; of publicly-owned and/or maintained lands, resources, facilities, and infrastructure; of fresh water sources and supplies; and, to prevent inadequate or ineffective erosion and sediment control planning.

NOW THEREFORE, the Morgantown City Council hereby ordains that Article 1355 "I-1, Industrial District" of the Planning and Zoning Code of the City of Morgantown is amended as follows (deleted matter struck through; new matter underlined):

**1355.01 PURPOSE.**

The purpose of the Industrial District (I-1) is to allow for the development of research and industrial parks, wholesale business, manufacturing and the like while ensuring the health and safety of Morgantown residents. Industrial districts are intended to be located on major thoroughfares where truck traffic does not disrupt local streets.

**1355.02 PERMITTED AND CONDITIONAL USES.**

See the Permitted Land Use Table 1331.05.01.

**1355.03 LOT PROVISIONS.**

- (A) The minimum lot size shall be two (2) acres.
- (B) The minimum lot frontage shall be 60 feet.
- (C) The minimum lot depth shall be 100 feet.

(D) Maximum lot coverage shall be 40 percent.

1355.04 SETBACKS AND ENCROACHMENTS.

(A) The following setbacks shall be required for all principal structures, except as otherwise provided in Section 1363.02(B) Yard, Building Setbacks and Open Space Exceptions:

- (1) Minimum Front setback ..... 50 feet
- (2) Minimum Side setback..... 30 feet
- (3) Minimum Rear setback ..... 30 feet

(B) The minimum setback for accessory structures on a lot shall be five (5) feet from the rear property line and five (5) feet from each side property line when abutting another I-1 District zoned property. No accessory structures are permitted within the front setback, or within the side setback along a public or private street. Where an I-1 District abuts another zoning district, a minimum setback of thirty (30) feet shall be provided for the yard along the shared zoning district boundary line.

(C) On a corner lot, the front lot line shall be the lot line having the shortest dimension along the street right-of-way line. The required side yard setback on the side facing a street shall be one and one-half (1.5) times the normal side yard setback requirement.

1355.05 BUILDING HEIGHT AND USE.

(A) The maximum height of a principal structure shall not exceed sixty-five (65) feet, except as provided in Section 1363.02(A), Height Exceptions.

(B) The maximum height of an accessory structure shall not exceed thirty-five (35) feet.

1355.06 PARKING AND LOADING STANDARDS.

All uses within this district shall conform to the off-street parking and loading requirements in Article 1365, Parking, Loading and Internal Roadways.

1355.07 LANDSCAPING.

Landscaping and screening as required in Article 1367, Landscaping and Screening, shall be provided for all uses, unless otherwise noted.

1355.08 PERFORMANCE STANDARDS.

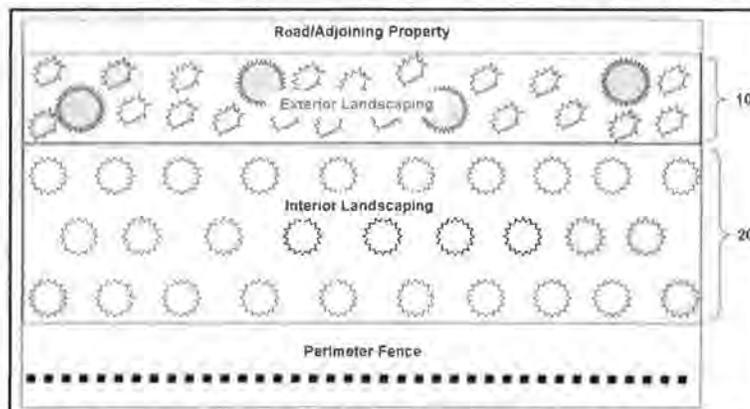
(A) A Light Industrial Use is one which ordinarily uses only light machinery; is conducted entirely within enclosed substantially-constructed buildings; does not use the open area around such buildings for storage of raw materials or manufactured products or for any other industrial purpose and conforms to the following performance standards:

- (1) Smoke. No smoke is emitted of a density greater than No. 1 according to the Ringlemann's Scale, except that smoke of a density not in excess of No. 2 of Ringlemann's Scale shall be permitted for a period not in excess of six minutes in any hour.
- (2) Fly Ash. No particles from any flue or smokestack shall be permitted to escape beyond the confines of the building in which it is produced.
- (3) Dust. No dust of any kind produced by the industrial operations shall be permitted to escape beyond the confines of the building in which it is produced.

- (4) Odor. No noxious or obnoxious odor of any kind shall be permitted to extend beyond the lot line.
  - (5) Gases and Fumes. No gases or fumes toxic to persons or injurious to property shall be permitted to escape beyond the building in which they occur.
  - (6) Glare. No glare shall be seen from any street or any residential area.
  - (7) Vibration. No intense earth shaking vibration shall be created or maintained by any industry beyond the property on which it is located.
  - (8) Noise and Sound. A maximum of 70 decibels at the property line is permitted. Noise is required to be muffled so as not to become objectionable due to intermittence, beat frequency or shrillness. Sound may equal but may not exceed street traffic noise in the vicinity during a normal day shift work period.
  - (9) Exhaust Control. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with any operation shall not be discharged into the open air unless it is equipped with an exhaust muffler, mufflers, or an exhaust box constructed of noncombustible materials designed and installed to sufficiently suppress disruptive noise and vibrations and prevent the escape of noxious or obnoxious gases or fumes. All such equipment shall be maintained in good operating condition according to manufacturer's specifications.
- (B) An ~~Heavy Industrial~~ or Heavy Manufacturing Use is one which requires both buildings and open area for manufacturing, fabricating, processing, extraction, heaving, repairing, dismantling, storage or disposal of equipment, raw materials, manufactured products or wastes ~~except certain conditional uses listed in Table 11 hereinafter~~, and provided the use conforms to the following performance standards:
- (1) Smoke. No smoke is emitted of a density greater than No. 2 according to the Ringlemann's Scale, except that smoke of a greater density shall be permitted for a period not in excess of six minutes in any one hour.
  - (2) Fly Ash. No particles from any flue or smokestack shall exceed 0.3 grains per cubic foot of flue gas at a stack temperature of 500 degrees Fahrenheit.
  - (3) Dust. No dust of any kind produced ~~by on the industrial operations development site~~ shall be permitted to escape beyond the limits of the property being used. Watering, wetting or other methods or materials must be used to control dust to adjacent properties. Watering, wetting, chemical suppression, or any other dust control measures which result in deposition of the dust control media and/or the captured dust upon the ground surface, or upon surfaces draining to the ground surface, shall be subject to regulation under City Code Article 929 "Stormwater Management and Surface Water Discharge Control" of the City of Morgantown.
  - (4) Odor. No noxious or obnoxious odor of any kind shall be permitted to extend beyond the lot lines.
  - (5) Gases and Fumes. No gases or fumes toxic to persons or injurious to property shall be permitted to escape beyond the building in which they occur.
  - (6) Glare. No glare shall be seen from any street or any residential area.
  - (7) Vibration. No intense earth shaking vibration shall be created or maintained by any industry beyond the property on which it is located.

- (8) **Noise and Sound.** A maximum of 70 decibels at the property line is permitted. Noise is required to be muffled so as not to become objectionable due to intermittence, beat frequency or shrillness. Sound may equal but not exceed street traffic noise in the vicinity during a normal day shift work period.
- (9) **Exhaust Control.** Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with any operation shall not be discharged into the open air unless it is equipped with an exhaust muffler, mufflers, or an exhaust box constructed of noncombustible materials designed and installed to sufficiently suppress disruptive noise and vibrations and prevent the escape of noxious or obnoxious gases or fumes. All such equipment shall be maintained in good operating condition according to manufacturer's specifications.
- (10) **Perimeter Landscaping and Fencing.** For the purpose of screening, buffering, and security, the following improvements shall be installed within thirty (30) days after commencement of development.
- (a) **Landscaping.** Where a heavy industry, heavy manufacturing, or extractive industry development site abuts a nonindustrial property (zoned or used) or public or private street, a thirty (30) foot landscaping transitional yard shall be installed the length of said common border as follows:
- (i) A ten (10) foot wide exterior landscaping transition area containing three (3) to four (4) medium to large trees and fifteen (15) to twenty (20) evergreen shrubs per 100 linear feet.
  - (ii) A twenty (20) foot wide interior landscaping transition area containing parallel, staggered and/or concentric rows of evergreen trees or evergreen hedge planted eight (8) to twelve (12) feet on center per 100 linear feet.
  - (iii) Trees shall have a minimum two inch (2) caliper and shrubs shall be at least three (3) gallons in size.
- (b) **Fencing.** A minimum ten (10) foot black vinyl-coated chain link fence must be erected the entire perimeter of a heavy industry, heavy manufacturing, or extractive industry development site between the landscaping transitional yards and the development site. Prominently displayed no trespassing signs are required on all four or more sides of the perimeter fencing.

**Graphic 1355.08.01: Perimeter Landscaping and Fencing – Industry**



- (c) Entrance Gate specifications. All perimeter fences shall be equipped with at least one (1) entrance gate. The gate shall meet the following specifications:
  - (i) Each gate shall be not less than twelve (12) feet wide and be composed of two (2) gates, each of which is not less than size (6) feet wide, or one (1) sliding gate not less than twelve (12) feet wide. If two (2) gates are used, gates shall latch and lock in the center of the span;
  - (ii) The gates shall be provided with a combination catch and locking attachment device for a padlock, and shall be kept locked except when being used for access to the site; and,
  - (iii) The person in charge of the development site must provide the Morgantown Fire Department with a Knox Padlock or Knox Box entry system or equivalent on the gate to access the site in case of an emergency.
- (d) Administrative Adjustment. The Planning Director may approve administrative adjustments to the perimeter landscaping and fencing design if it is found that the adjustments:
  - (i) Are consistent with the spirit and intent of the landscaping and fencing requirements; and,
  - (ii) Will not adversely affect the proposed development, use of adjacent property or neighborhoods, or obstruct sight lines at intersections; and,
  - (iii) Are necessary to accommodate an alternative or innovative design that achieves the same or better degree the objective of the landscaping and fencing standard to be modified.
- (11) Signage. For development that involves the use, storage, or generation of highly flammable, toxic, explosive, or hazardous materials, the following signage shall be provided as approved or designated by the City Fire Marshal.
  - (a) Prominently displayed permanent weatherproof retroreflective signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED" shall be posted upon completion of the perimeter fencing at the entrance gate(s) or in any other appropriate location. Sign lettering shall be at least four (4) inches in height and shall be red on a white background or white on a red background.
  - (b) Prominently displayed permanent weatherproof labels must be located on each tank containing highly flammable, toxic, explosive, or hazardous materials indicating the exact chemicals that are contained in the tank. Sign lettering shall be at least six (6) inches in height, contrasting with the background color.
- (12) Waste Disposal. All waste and hazardous materials used, stored, or generated by the development may only be discharged into above-ground and/or axle-mounted tanks. Waste materials shall be removed from the site and transported to an approved and permitted off-site disposal facility no less frequently than every thirty (30) days. Wastewater stored in on-site above-ground and/or axle-mounted tanks shall be removed as necessary, except:
  - (a) Domestic sanitary sewage shall be discharged to a public sanitary sewer, as required under City Code Article 921 "Sewer Regulations" of the City of Morgantown. Such discharge shall conform to the rules and regulations of the Morgantown Utility Board; and,

- (b) Certain limited process/industrial waste may be discharged to the public sanitary sewer, but only as allow and regulated under City Code Article 923 "Industrial Wastes" of the City of Morgantown. Any such allowed industrial discharge shall conform to the rules and regulations of the Morgantown Utility Board.
- (c) Any liquid, or semi-liquid, waste not characterized as domestic sanitary sewage or as allowed industrial discharge, as described in items (a) and/or (b) above, shall be disposed of as herein provided above.
- (13) Security. At all times, the development site shall have a minimum of one security camera mounted inside the perimeter fencing. Signs shall be posted on the fence or wall of the site to indicate that activity on the site may be recorded by video surveillance. Camera systems shall be maintained in proper operating condition and shall be designed and located to meet the following requirements:

  - (a) Capture clear video images (day and night) of all traffic entering and exiting the gate(s).
  - (b) Be equipped with motion detection technology.
  - (c) Be equipped with panning technology to pan immediately to any motion detected at or near the gate(s).
  - (d) Show the date and time of all activity on the footage.
  - (e) Be capable of being viewed at the monitoring facility.

The person in charge of the development site shall maintain video data for a period of five (5) business days. At the request of City law enforcement officials, the person in charge of the development shall make available recorded footage required herein.
- (14) Storage of equipment. On-site storage of equipment is prohibited on the development site except when servicing on-going operations. No vehicle or item of machinery shall be parked or stored on any public street, right-of-way or in any development site driveway entrance which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for the operations of the development site. The Morgantown Fire Department shall be the entity that determines whether equipment on the site constitutes a fire hazard.
- (15) Private roads and driveway entrances. Prior to the commencement of development, all private roads and driveway entrances to the development site shall be at least twenty-four (24) feet wide and have an overhead clearance of at least fourteen (14) feet. At a minimum, the road shall be surfaced with bituminous surface treatment (e.g., chip seal), however asphalt and concrete paving are preferred. Roads shall not be surfaced with gravel or caliche. All private roads shall have a concrete drive approach constructed in accordance with City design standards. In particular cases these requirements governing surfacing of private roads may be altered at the discretion of the City Engineer after consideration of all circumstances including, but not limited to, the following: distances from public streets and highways; distances from nonindustrial property (zoned or used); topographical features; nature of the soil; and, exposure to wind.

- (C) An Extractive Industry Use involves the extraction of minerals, including solids, such as coal and ores; liquids, such as crude petroleum; and gasses, such as natural gasses. In addition to the Heavy Industry or Heavy Manufacturing Use performance standards provided in Article 1355.08(B), extractive industry uses shall conform to the following performance standards:
- (1) Minimum area. The tract of land on which an extractive industry use is to be developed must have a minimum area of five (5) acres.
  - (2) External Setbacks. An extractive industry development must be a distance, calculated from the outermost boundary of its development site in a straight line without regard to intervening structures or objects, of no less than:
    - (a) 625 feet from the R-1, R-1A, R-2, R-3, and PUD Districts.
    - (b) 625 feet from the property boundary on which the following protected uses exist:
      - (i) A dwelling unit located within any zoning district other the R-1, R-1A, R-2, R-3, and PUD Districts.
      - (ii) A church or place of worship.
      - (iii) A hospital.
      - (iv) A public or private school (K-12).
      - (v) A day care facility.
      - (vi) A park.
    - (c) 100 feet from the 1% (100-year) floodplain.
    - (d) 1,000 feet from the Morgantown Utility Board public water supply intake.
    - (e) 1,000 feet from the 1% (100-year) floodplain of the Monongahela River south or upstream of the Morgantown Lock and Dam.
  - (3) External Setback Exception. With variance approval by the Board of Zoning Appeals, the external setbacks provided in paragraph (b) above may be reduced to not less than 300 feet when there is the written consent of sixty (60) percent of the surface property owners within the external setback exception radius area between 300 feet and 625 feet around said extractive industry development site. In the event such consent is not obtained, and upon providing evidence of an attempt to obtain written consent of sixty (60) percent of the surface property owners, then the distance may be reduced to not less than 300 feet with variance approval by the Board of Zoning Appeals. For protection of the public health, safety and welfare, the Board of Zoning Appeals may impose additional requirements for a reduction of such distance, and take into account the presence of natural or man-made barriers.
    - (a) External setback exception applicants shall adhere to the following written consent or objection verification methodology:

- (i) A consent/objection form provided by the Planning Department shall be used by the applicant to obtain consent or objection from all surface property owners as described above. Only one consent/objection form may be obtained from each property owner. Said form shall at a minimum include the name and contact information of the applicant and the operator; a description of the proposed extractive industry development; a map illustrating the location and extent of the proposed extractive industry development site and the external setback exception radius area; the name and address of the surface property owner; the tax map and parcel number(s) owned by the individual surface property owner; and, signature lines to provide written consent or objection by the individual surface property owner.
- (ii) The applicant shall submit to the Planning Department a complete list of the names and addresses of all property owners for parcels that are, in whole or in part, within 625 feet of the proposed extractive industry development site. Such information shall be obtained from the Monongalia County Assessor's Office.
- (iii) The applicant shall be responsible for sending by certified mail the consent/objection form described above to all property owners with the radius of 300 feet and 625 feet around the proposed extractive industry development site.
- (iv) For those surface property owners for which consent or objection is not obtained on the form described above, evidence of an attempt to obtain same shall be provided by returned unopened certified mailings and/or certified mail receipts. Certified unopened mailings returned due to incorrect address shall not be sufficient evidence of an attempt to obtain consent or objection.
- (b) Applicants seeking a reduction of the external setback shall submit all obtained consent/objection forms, returned unopened certified mailings, certified mail receipts, and a summary sheet of the results of the effort to obtain written consent or objection from all of the surface property owners within the external setback exception radius area. The summary sheet shall include at a minimum the following:
  - (i) A map illustrating the location of the proposed extractive industry development site and the external setback exception radius area.
  - (ii) Total number of properties within the external setback exception radius area.
  - (iii) Total number of property owners within the external setback exception radius area.
  - (iv) Total number of consenting properting owners within the external setback exception radius area.
  - (v) Total number of objecting property owners within the external setback exception radius area.
  - (vi) Total number of nonresponsive property owners within the external setback exception radius area.

- (viii) Total number of returned unopened certified mailings.
- (ix) Total number of certified mail receipts.
- (x) Total number of obtained consent/objection forms.
- (c) Applicants shall use ethical methods to obtain written consent/objection forms. The Board of Zoning Appeals should reject an external setback exception variance request if it finds that there is evidence of coercion, deception, compensation, or similar ethical misconduct on behalf of the applicant seeking a reduction of the external setback.
- (d) Pursuant to Article 1381.03(E) of this ordinance, at least ten (10) days prior to the Board of Zoning Appeals hearing on the external setback exception variance approval, the applicant shall notify all owners of property within 625 feet of the public hearing by mail.
- (4) Signage. A sign shall be prominently displayed at the perimeter gate(s) enclosing the development site. Such sign(s) shall be durable weatherproof material, maintained in good condition and, unless otherwise required by the City, shall have a surface area of not less than two (2) square feet nor more than four (4) square feet and shall be lettered with the following:
  - (a) Mine, quarry, or well name and number.
  - (b) Name of operator.
  - (c) The emergency 911 number.
  - (d) Telephone numbers of two (2) persons responsible for the extractive industry site who may be contacted in case of emergency.
- (5) Water Impoundment. Freshwater impoundments are permitted on extractive industry development sites. Freshwater impoundments may be earthen impoundments or semi-portable axle-mounted above-ground storage tanks.
  - (a) Freshwater storage shall be prevented from putrefaction and/or becoming a mosquito breeding habitat.
  - (b) Freshwater earthen pits shall be securely enclosed by a six (6) foot tall black vinyl-coated chain link fence.
- (6) Secondary containment. Secondary containment using existing best practices shall be required for all equipment and storage facilities; be capable of containing a release of no less than one hundred twenty-five (125) percent of the total combined volume of all storage containers; and, have a freeboard of no less than eight (8) inches. In addition, for oil and gas extraction development, an earthen perimeter berm of not less than two (2) feet shall be developed around the entire development site and meet at a minimum the following standards:
  - (a) The earthen perimeter berm shall confine a containment volume of no less than one hundred twenty-five (125) percent of the total combined volume of all liquids utilized in the preparation, drilling, and completion of the well.
  - (b) The areas confined within the secondary containment facilities, and within the earthen perimeter berm, including the walls of the secondary containment facilities and the earthen berm, shall all be covered by a synthetic impermeable liner. Joints and seams within said liner shall be chemically or thermally fused so that it serves as a single, continuous unit.

- (c) Access roadways into the development site shall be configured and designed in such a way as to not compromise the containment integrity of the perimeter earthen berm.
- (7) Waste Disposal.
- (a) Portable closed steel storage tanks must be used for storing liquid hydrocarbons. Tanks must meet American Petroleum Institute (API) standards. All tanks must have a vent line, flame arrester, and pressure relief valve. No tank battery shall be within one hundred (100) feet of any combustible structure.
- (b) Drilling mud, cuttings, liquid hydrocarbons, flowback, produced water, and all other field waste derived or resulting from or connected with extraction shall only be discharged into above-ground axle-mounted tanks (closed loop mud and closed loop fracking system).
- (c) Waste materials shall be removed from the site and transported to an off-site disposal facility no less frequently than every thirty (30) days. Wastewater stored in on-site tanks shall be removed as necessary.
- (d) All waste disposal shall be documented using manifest procedures. The manifests shall record the complete chain of custody from the retrieval at the development site to the ultimate disposal location, for all volumes/units of waste generated and removed from the development site. All such documentation shall be provided to the City of Morgantown and/or the Morgantown Utility Board upon their request.
- (8) Gas emission or burning. As a temporary and necessary safety function of the extractive industry operation, venting or burning by open flame (e.g., flaring) is exempt from light and glare regulations as required in this Article and acceptable under the following conditions:
- (a) No person shall allow, cause, or permit gases to be vented into the atmosphere or to be burned by open flame except as allowed by applicable state and federal laws, rules, and regulations.
- (b) Such venting or open flame shall not be located closer than three hundred (300) feet from any building not used in development site operations. Every reasonable effort should be made to screen such venting or open flame in such a way as to minimize detrimental effects to adjacent property owners.
- (c) In order to ensure community awareness and security, the following notifications must be provided by the operator before any temporary burning or flaring activity is to begin:
- (i) At least ten (10) calendar days, public educational press release and advance notice sent to all primary local news media outlets.
- (ii) At least five (5) calendar days, published notice in a local newspaper of general circulation.
- (iii) At least 72 hours, written notification to the City Fire Chief and MECCA 9-1-1.
- (d) Flaring or burning of gas or petroleum of any kind after an oil or gas well is in production is prohibited.

- (9) Security. In addition to the standards provided in 1355.08(B)(13) above, camera systems shall be designed and located to meet the following requirements:
- (a) Be equipped to capture clear video images (day and night) of all production equipment located on the site.
  - (b) Be equipped with panning technology to pan immediately to any motion detected at or near production equipment located on the site.
- (10) Cleanup and Maintenance.
- (a) With the exception of freshwater, any spill, leak, or malfunction resulting in five (5) gallons or more shall be reported within twenty-four (24) hours to the Morgantown Utility Board and the West Virginia Department of Environmental Protection. Regardless of the amount of fluid resulting from the spill, leak, or malfunction, the operator shall remove or cause to be removed all waste materials from any public or private property affected by such spill, leak, or malfunction. Clean-up operations must begin immediately.
  - (b) The twenty-four (24) hour reporting period provided in item (a) above shall apply to discharges occurring within a containment area of the development site. For any discharge which occurs outside of a containment area, the Morgantown Utility Board and the West Virginia Department of Environmental Protection shall be notified immediately.
  - (c) Rainfall onto the development site for which containment barriers are required shall be captured by the required containment barriers and be collected and disposed of as is required for spilled wastes, except the occurrence of rainfall shall not require report notification to the Morgantown Utility Board and/or the West Virginia Department of Environmental Protection. Rainfall may not be left to undermine the capability of secondary containment to contain a release of no less than one hundred twenty-five (125) percent of the total combined volume of all storage containers.
  - (d) The development site and public space within one hundred (100) feet shall at all times be kept free of debris, pools of water or other liquids, contaminated soil, weeds, brush, trash, or other waste material.
  - (e) Oil and gas extraction development. After well drilling has been completed and the well is either producing or temporarily plugged for later production and delivery to market, the operator shall clean the drill site, remove derrick(s) and all appurtenant equipment thereto, complete interim restoration activities, and repair all property damage caused by such operations within ninety (90) days.
- (11) Site Restoration. Within six (6) months following the abandonment of an extractive industry development site, including permanent well plugging, the operator shall be responsible for the restoration of the development site to its original condition as nearly as practicable. Abandonment shall be approved by the City Engineer after restoration of the development site has been accomplished in conformity with the following requirements at the discretion of the City Engineer:
- (a) All production, derricks, tanks, towers, and other appurtenant surface equipment and installations shall be removed from the development site.
  - (b) All concrete foundations, piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the development site, unless otherwise directed by the City.

(c) All holes and depressions shall be filled with clean, compactable soil.

(d) All waste, refuse or waste material shall be removed from the development site.

(C D) Provisions and Exceptions to Light Industrial and Industrial Uses.

- (1) Parking space requirements may be waived by the Board of Zoning Appeals where 50 percent or more of the area in a block was occupied by business or industrial structures at the time of passage of this Ordinance.
- (2) One-half of an alley abutting the rear of a lot may be included in the rear yard, but such alley space shall not be included for loading and unloading berths.
- (3) Chimneys, cooling towers, elevator bulkheads, fire towers, penthouses, tanks, water towers, transmission towers, derricks or essential mechanical appurtenances may be erected to any height not prohibited by other laws or ordinances.

(D E) Supplementary Regulations.

- (1) There shall be one principal entrance to the industrial site from any major thoroughfare bordering the tract, which shall be designed so that traffic at its intersection with the major thoroughfare may be controlled and so that there will be adequate storage space for traffic destined to enter the thoroughfare or to leave the industrial site.
- (2) There shall be direct entrances or exits from parking areas or structures onto the adjoining major thoroughfare, but a service drive parallel to the main traffic-way may be provided for such access. Traffic on the service drive shall enter the main traffic-way via the principal entry.
- (3) The owner or owners shall provide a plan for the installation of adequate facilities for the disposal of human and industrial wastes meeting the approval of the State Department of Health.
- (4) The owner or owners of the site shall establish in the restrictions, which are a part of the plot for the subdivision, a perpetuating organization for the maintenance of the industrial site, such as roads and planting areas, the approval of building plans and other improvements, and the future maintenance of the site.

This ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_  
Mayor

ADOPTED:

FILED:

RECORDED:

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

**AN ORDINANCE AMENDING TABLE 1365.04.01 “MINIMUM OFF-STREET PARKING REQUIREMENTS” OF THE PLANNING AND ZONING CODE AS IT PERTAINS TO “EXTRACTIVE INDUSTRY”, “HEAVY INDUSTRY” AND “HEAVY MANUFACTURING” DEVELOPMENT.**

WHEREAS, the advent and advancement of new and existing extractive industry technologies and practices have created the opportunity for the efficient development of natural resources contained in underground geologic formations;

WHEREAS, these technologies and practices have resulted in a new type and scale of extractive and heavy industry and heavy manufacturing development that is not recognized or adequately addressed by existing City of Morgantown Planning and Zoning Code regulations;

WHEREAS, allowing the responsible development of extractive and heavy industries and heavy manufacturing while assuring the use of best technologies and practices is in the public interest and should be done in a manner that protects our community’s existing and planned development, character, quality of life, environment, and economy for current and future generations; and,

WHEREAS, the enactment of amendments to the City’s Planning and Zoning Code is necessary for the protection and preservation of the safety and welfare of persons; of the viability and sustainability of property and existing and future development; of publicly-owned and/or maintained lands, resources, facilities, and infrastructure; of fresh water sources and supplies; and, to prevent inadequate or ineffective erosion and sediment control planning.

NOW THEREFORE, the Morgantown City Council hereby ordains that Table 1365.04.01 “Minimum Off-Street Parking Requirements” of the Planning and Zoning Code of the City of Morgantown is amended as follows (deleted matter struck through; new matter underlined):

Table 1365.04.01: Minimum Off-Street Parking Requirements

Use	Minimum Off-Street Parking Requirement
<u>Industry, Heavy</u>	<u>1 space per employee plus 1 space per vehicle used in the operation of the industry plus 5 customer/visitor spaces</u>
<u>Industry, Light</u>	<u>1 space per employee plus 1 space per vehicle used in the operation of the industry plus 5 customer/visitor spaces</u>
<del>Mineral Extraction</del> <u>Extractive Industry</u>	<u>1 space per employee plus 1 space per vehicle used in the operation of the facility plus 5 customer/visitor spaces</u>

This ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_  
Mayor

ADOPTED:

FILED:

RECORDED:

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

**AN ORDINANCE AMENDING ARTICLE 1385 "SITE PLAN REVIEW" OF THE PLANNING AND ZONING CODE AS IT PERTAINS TO "EXTRACTIVE INDUSTRY", "HEAVY INDUSTRY" AND "HEAVY MANUFACTURING" DEVELOPMENT.**

WHEREAS, the advent and advancement of new and existing extractive industry technologies and practices have created the opportunity for the efficient development of natural resources contained in underground geologic formations;

WHEREAS, these technologies and practices have resulted in a new type and scale of extractive and heavy industry and heavy manufacturing development that is not recognized or adequately addressed by existing City of Morgantown Planning and Zoning Code regulations;

WHEREAS, allowing the responsible development of extractive and heavy industries and heavy manufacturing while assuring the use of best technologies and practices is in the public interest and should be done in a manner that protects our community's existing and planned development, character, quality of life, environment, and economy for current and future generations; and,

WHEREAS, the enactment of amendments to the City's Planning and Zoning Code is necessary for the protection and preservation of the safety and welfare of persons; of the viability and sustainability of property and existing and future development; of publicly-owned and/or maintained lands, resources, facilities, and infrastructure; of fresh water sources and supplies; and, to prevent inadequate or ineffective erosion and sediment control planning.

NOW THEREFORE, the Morgantown City Council hereby ordains that Article 1385 "Site Plan Review" of the Planning and Zoning Code of the City of Morgantown is amended as follows (deleted matter struck through; new matter underlined):

**1385.01 SITE PLAN REVIEW REQUIRED.**

No land within the jurisdiction of the City of Morgantown shall be developed or altered for the purpose of constructing buildings or establishing uses without first having received site plan approval from either the Planning Department staff, or the Morgantown Planning Commission or the Morgantown Board of Zoning Appeals. It shall be the duty of the Planning Director, or his/her designee, in conjunction with other appropriate departments and agencies, to perform complete and thorough review of all plans submitted to the Planning Department.

**1385.02 APPLICATION.**

- (A) All applications for site plan review shall be made on application forms prescribed by the Planning Department and follow established submittal deadlines.

- (B) Major development projects often become issues of significant contention between applicants and residents living adjacent to and in the vicinity of the property to be rezoned. Too often this results in difficult and argumentative public hearings before the Municipal Planning Commission and City Council. In most cases, opposition to a rezoning request is based on legitimate concerns over the well-being and preservation of a neighborhood, but sometimes opposition results from a simple lack of communication and understanding between the applicant and the neighborhood residents. The City, therefore, strongly advises any person that is considering applying for a DSI or a Major DSI to discuss the proposal with residents living within 200 feet of the property to be rezoned and with the leadership of any organized neighborhood organizations that represent the area before making application to the Planning Department. The Department can assist by providing contact information for individuals who should be consulted.
- (C) All site plans for development in the B-4 district also shall be submitted to the Downtown Design Review Committee for review and recommendations prior to any formal public hearing or final approval.

1385.03 DESIGN AND IMPROVEMENTS REQUIREMENTS.

- (A) Requirements, standards and specifications for engineering design for construction of improvements for site plans shall be equal to or greater than the minimum requirements, standards, and specifications established for design and improvements by the City Engineer. In addition to the plan sheets specified below, the applicant shall submit a complete drainage report, including calculations and justifications. The City Engineer may approve and/or require other engineering designs or practices when deemed necessary.
- (B) The proper management of storm water runoff is essential in the land development process. The City has adopted a separate storm water management ordinance that considers criteria related to total disturbed area, total/modified impervious area, sedimentation and erosion control and other criteria. Development plans are reviewed for, and must demonstrate compliance with this ordinance.

1385.04 SITE PLAN REVIEW.

There are four types of site plan reviews which have different application requirements and approval procedures. Types 2, 3 and 4 shall be reviewed by an internal technical review team, whose membership shall include the City Manager or his designee, the Chief Code Enforcement Officer, the City Engineer, a representative from the Morgantown Utility Board, and the city's Fire Department. The types of review are:

- Type I..... Administrative Review, by the Planning Director, of Simple Site Plans
- Type II..... Administrative Review, by the Planning Director, of Detailed Site Plans
- Type III..... Planning Commission Review of Developments of Significant Impact
- Type IV..... Board of Zoning Appeals Review of Conditional Uses

1385.05 REVIEW THRESHOLDS.

In order to determine what type of review a project receives, the following standards have been established and noted for specific land uses in the land use table of this Ordinance.

- (A) Developments of Significant Impact may include but are not limited to:
  - Residential Projects: 12 to 99 dwelling units
  - Commercial Projects: 15,000 square feet of gross floor area
  - Office / Institutional Projects: 15,000 square feet of gross floor area
  - Industrial Projects: 0 square feet to 99,999 square feet of gross floor area
  - Mixed Use Projects: 15,000 square feet of gross floor area
- (B) Major Developments of Significant Impact may include but are not limited:
  - Residential Projects: 100 or more dwelling units
  - Commercial Projects: 100,000 or more square feet of gross floor area
  - Office / Institutional Projects: 100,000 or more square feet of gross floor area
  - Industrial Projects: 100,000 or more square feet of gross floor area
  - Mixed Use Projects: 100,000 or more square feet of gross floor area

1385.06 TYPE I: ADMINISTRATIVE REVIEW OF SIMPLE SITE PLANS.

- (A) All applications for permits for single family residential and two-family residential primary and secondary structures shall be accompanied by the following:
  - (1) A site plan drawn to scale, that includes the following for the use of the Planning Director:
    - (a) The actual dimensions, size, square footage, and shape of the lot to be built upon;
    - (b) The exact sizes and locations on the lot of existing structures, if any;
    - (c) The location(s), square footage(s), and dimensions of the all proposed principal, accessory, and/or temporary structure(s) and/or alteration(s);
    - (d) The location of the lot with respect to adjacent rights-of-way and easements;
    - (e) The existing and proposed uses of the structure(s) and land;
    - (f) The location and dimensions of off-street parking and means of ingress and egress for such space;
    - (g) Height of all structures;
    - (h) Setbacks;
    - (i) Grading plan;
    - (j) Stormwater management plan;
    - (k) Erosion and sediment control plan; and,
    - (l) Signature of applicant.

1385.07 TYPE II: ADMINISTRATIVE REVIEW OF DETAILED SITE PLANS.

- (A) All applications for permits for non-residential, multi-family structures, and temporary uses that do not constitute a development of significant impact, shall be accompanied by the following:

- (1) A site plan (3 copies), drawn to scale, that includes the following for the use of the Planning Director:
  - (a) The actual dimensions, size, square footage, and shape of the lot to be built upon as shown on an actual survey by a registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law, said survey to be provided by the applicant;
  - (b) The exact sizes and locations on the lot of existing structures, if any;
  - (c) The location(s), square footage(s), and dimensions of the all proposed principal, accessory, and/or temporary structure(s) and/or alteration(s);
  - (d) The location of the lot with respect to adjacent rights-of-way;
  - (e) The existing and proposed uses of the structure(s) and land;
  - (f) The number of employees, families, housekeeping units, bedrooms, or rental units the structure is designed to accommodate;
  - (g) The location and dimensions of off-street parking and means of ingress and egress for such space;
  - (h) Height of all structures;
  - (i) The clear zone for structures similar to silos, grain bins, windmills, chimneys, stacks, spires, flag pole, skylights, derricks, conveyors, cooling towers, observation towers, water tanks, telecommunication facilities, etc. in excess of fifty (50) feet in height;
  - (j) Setbacks;
  - (k) Buffer yard and screening, if applicable;
  - (l) Location of garbage collection area and screening;
  - (m) Location of existing and/or proposed signage;
  - (n) Layout of all internal roadways;
  - (o) Location and size of stormwater management facilities;
  - (p) Utility lines and easements;
  - (q) Grading plan;
  - (r) Erosion and sediment control plan; and,
  - (s) Signature of applicant.
- (2) Drainage plan and drainage calculations that bear the name, address, signature and seal of a registered professional engineer, with floodplain zones clearly denoted, a typical of all swales, and a design of the drop inlets;
- (3) If applicable, design of stormwater management facility and drainage calculations that bear the name, address, and seal of a registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law and that meet the requirements of this ordinance, the City's stormwater management ordinance and all other applicable local, state and federal regulations;
- (4) Parking and landscaping plan;
- (5) Sign plan;

- (6) Approved WV Division of Highways Access Permit, if applicable;
  - (7) Sediment and erosion control plan as approved by the West Virginia Department of Environmental Protection, ~~and the City of Morgantown,~~ and the Morgantown Utility Board;
  - (8) Any other such information concerning the lot or neighboring lots as may be required by the Planning Director to determine conformance with, and provide for the enforcement of, this ordinance; where deemed necessary, the Planning Director may require that in the case of accessory structures or minor additions, all dimensions shown on plans relating to the size of the lot and the location of the structure(s) thereon be based on an actual survey by a registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law, said survey to be provided by the applicant;
- (B) No site plan shall be accepted unless it is complete and is verified as to the correctness of information given by the signature of the applicant attesting thereto.
  - (C) Site plans shall be reviewed by an AICP certified planner, and such reviews may include other agencies that the City believes to have a direct or indirect interest in the development site.
  - (D) At least five (5) days prior to planning staff conducting its review, the Planning Director shall notify the planning commissioner representing the ward in which the project is proposed that the plan will be reviewed.
  - (E) Site plans approved by the Planning Director authorize only the use, arrangement, and construction set forth in such approved site plans and no other use, arrangement or construction. Furthermore, the approval of a site plan shall not be construed to be approval of any violation of the provisions of this ordinance. The issuance of a building permit by the City based upon site plans given approval by the Planning Director shall not prevent the City from thereafter requiring the correction of errors in said site plans or from preventing operations from being carried on thereunder when in violation with this ordinance. Site plan approval does not eliminate the need to obtain an approved building permit and the applicant's responsibility to meet all other requirements established by local, state and federal regulations.
  - (F) One copy of the site plan submitted for a permit as required in subsection (C) above for the Planning Department shall be returned to the applicant after the Planning Director has marked such copy as either approved or disapproved as to the provisions of this ordinance and attested to same by his signature on such copy. The original, similarly marked, shall be retained by the Planning Director.

1385.08 TYPE III: PLANNING COMMISSION REVIEW OF DEVELOPMENTS OF SIGNIFICANT IMPACT AND MAJOR DEVELOPMENTS OF SIGNIFICANT IMPACT.

- (A) Developments of Significant Impact are those that have a Citywide impact. Such impacts would typically involve the transportation network, environmental features such as parks or stream corridor, and local schools.
  - (1) All applications for a Development of Significant Impact shall be accompanied by the following:
    - (a) A site plan (14 copies), drawn to scale, that includes the following for the use of the Planning Director:

- (i) The actual dimensions, size, square footage, and shape of the lot to be built upon as shown on an actual survey by a licensed land surveyor or registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law, said survey to be provided by the applicant;
- (ii) The exact sizes and locations on the lot of existing structures, if any;
- (iii) The location(s), square footage(s), and dimensions of the all proposed principal, accessory, and/or temporary structure(s) and/or alteration(s);
- (iv) The location of the lot with respect to adjacent rights-of-way;
- (v) The existing and proposed uses of the structure(s) and land;
- (vi) The number of employees, families, housekeeping units, bedrooms, or rental units the structure(s) is designed to accommodate;
- (vii) The location and dimensions of off-street parking and means of ingress and egress for such space;
- (viii) Height of all structure(s);
- (ix) The clear zone for structures similar to silos, grain bins, windmills, chimneys, stacks, spires, flag pole, skylights, derricks, conveyors, cooling towers, observation towers, water tanks, telecommunication facilities, etc. in excess of fifty (50) feet in height;
- ~~(ix x)~~ Setbacks;
- ~~(x xi)~~ Buffer yard and screening, if applicable;
- ~~(xi-xii)~~ Location of garbage collection area and screening;
- ~~(xii xiii)~~ Location of ~~sign~~ existing and/or proposed signage;
- ~~(xiii xiv)~~ Layout of all internal roadways;
- ~~(xiv xv)~~ Location of stormwater management facilities;
- ~~(xv xvi)~~ Utility lines and easements; and
- ~~(xvi xvii)~~ Signature of applicant.
- (b) Grading plans and drainage plans and calculations are not required for Planning Commission site plan review, but shall be required prior to issuance of any building permits. Such plans shall be prepared by a registered design professional licensed by the State of West Virginia, and as authorized by West Virginia State law; and shall also meet all applicable local, state and federal regulations.
- (c) A complete list of the names and addresses of all property owners for parcels that are, in whole or in part, within 200 feet of any property line of the lot(s) to be developed. Such information shall be obtained from the Monongalia County Assessor's Office.
- (d) Parking plan.
- (e) Landscaping plan.
- (f) Sign plan.

- (g) Approved WV Division of Highways Access Permit, if applicable.
  - (h) Any other such information concerning the lot or neighboring lots as may be required by the Planning Director to determine conformance with, and provide for the enforcement of, this ordinance; where deemed necessary, the Planning Director may require that in the case of accessory structures or minor additions, all dimensions shown on plans relating to the size of the lot and the location of the structure(s) thereon be based on an actual survey by a registered land surveyor or registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law, said survey to be provided by the applicant.
- (5 2) For uses development which, in the opinion of the City Engineer, may create excessive negative ~~traffic~~ impacts on traffic and/or dedicated City streets roadways, rights-of-way, or improvements in the immediate vicinity that serve the use, the City may require an analysis of the proposed development's impact on current or future traffic flows and/or dedicated City roadways, rights-of-way, or improvements, at the developer's expense, prepared by a qualified professional engineer. The Planning Commission may also take consideration of a development and refer such development to the City Engineer to ask his or her opinion as to whether a traffic impact study, transportation route plan, and/or transportation route protection agreement may be warranted.
- (a) Traffic Impact Study. If the traffic impact study indicates that the projected traffic impact of the use would result in a two (2) full letter grade decline in the existing Level of Service (e.g., going from a Level of Service B to a Level of Service D) of any dedicated City street directly serving the use, such finding may be considered sufficient grounds for denial of the project, or a requirement that sufficient improvements be made to said streets, at the developer's expense, or that the project be reduced in size and scope to the point where no such negative impact on the Level of Service results. Level of Service refers to the traffic grading system described in the latest edition of the Highway Capacity Manual, published by the Transportation Research Board.
  - (b) Transportation Route Plan. A transportation route plan shall include a map of routes and roads for equipment, supplies, chemicals or waste products used or produced by the development. The plan shall include a list of the length of all public roads that will be used for site ingress and egress to Morgantown corporate limits. The map shall also show the location of any areas within the City along the transportation route proposed for truck staging or storage related to the development's operations. The City may restrict the hours of operation of vehicles when the proposed transportation route passes through a designated school zone, heavily used roadways or intersections, or along local residential streets. In the event of construction detours, roadway closure or roadway deterioration along an approved transportation route, the City Engineer may amend the approved transportation route plan.

(c) Transportation Route Protection Agreement. For development which, in the opinion of the City Engineer may damage or create excessive deterioration to dedicated City roadways, rights-of-way, or improvements, the City may require a transportation route protection agreement. The agreement shall stipulate that the City roadways, rights-of-way, and improvements shall be maintained equal to or better than the original condition; stipulate any required major improvements and restrictions; stipulate the manner in which dirt, dust, mud and debris is to be controlled from leaving the development site; and, required bond.

(i) For the purpose of this article, "Required Major Improvements" are those modifications to City roadways, rights-of-way, or improvements that are necessitated by the high volumes of heavy traffic anticipated for the development and may include but are not limited to sight distance improvements, signage, signalization, road widening, construction of new roadways, and acquisition of rights-of-way.

(ii) For the purpose of this article, "Restrictions" are requirements directed at the protection of the vehicular and pedestrian traveling public, including but not limited to routing, pilot vehicles, hours of operation, etc.

(iii) For the purpose of this article, "Anticipated Damage" is the added potential stress placed on City roadways, rights-of-way, or improvements due to increased continuous use by heavy vehicles.

(iv) The approved route(s) shall be filmed before commencement of development.

(v) The person in charge of the development site shall provide a 24 hour point-of-contact for use by the City Engineer.

(vi) Bond. A bond or similar surety acceptable to the City shall be based on the degree of anticipated damage to City roadways, rights-of-way, or improvements up to the following maximum amounts:

- \$100,000 ..... Paved Mile
- \$ 35,000 ..... Tar and Chipped Mile
- \$ 25,000 ..... Graveled Mile

(3) Emergency Action Response Plan. For development that involves the use and/or storage of large volumes of highly flammable, toxic matter, or explosive materials, the City may require an emergency action response plan. A emergency action response plan shall, at a minimum:

(a) Be submitted for review to and placed on file with the City Engineer, City Fire Chief, City Police Chief, the Morgantown Utility Board, and the Monongalia County Homeland Security and Emergency Management Agency.

(b) Establish written procedures to minimize any hazard resulting from highly flammable, toxic matter, or explosive materials.

(c) Identify and describe specific measures of how existing best practices will be managed and maintained regarding protection of the public and how practices are consistent with applicable federal, state, and local laws and regulations.

- (d) Be kept current with any additions, modifications, and/or amendments concerning all related activities including construction, facility upgrades, and processes and production associated with the use of highly flammable, toxic matter or explosive materials. Updated plans shall be submitted for review to and placed on file with the City Engineer, City Fire Chief, City Police Chief, the Morgantown Utility Board, and the Monongalia County Homeland Security and Emergency Management Agency within five (5) business days after any additions, modifications, and/or amendments to said plan.
- (e) Be kept on site, including updated plans.
- (f) Provide for:
  - (i) Prompt and effective response by the person in charge of the development site to emergencies regarding leaks or releases that can affect public health, safety, and welfare; fire or explosions; and natural disasters and severe weather.
  - (ii) Effective means to notify and communicate required and pertinent information to local fire, police, and public officials during an emergency.
  - (iii) The availability of personnel, equipment, tools, and materials as necessary at the scene of an emergency.
  - (iv) Measures to be taken to reduce public exposure to injury.
  - (v) Emergency shutdown of highly flammable, toxic matter or explosive materials and related site.
  - (vi) The safe restoration of service and operations following an emergency or incident.
  - (vii) A follow-up incident investigation to determine the cause of the incident and require the implementation of corrective measures.
  - (viii) An emergency notifications page that indicates all emergencies must be reported to MECCA 9-1-1.
  - (ix) Drive-to-maps from public rights-of-way to the development site.
- (4) Hazardous Materials Management Plan. For development that involves the use, storage, or generation of hazardous materials and wastes, the City may require a hazardous materials management plan. A hazardous materials management plan shall, at a minimum:
  - (a) Be submitted for review to and placed on file with the City Engineer, City Fire Chief, City Police Chief, the Morgantown Utility Board, and the Monongalia County Homeland Security and Emergency Management Agency.
  - (b) Include contact information for the owner, onsite manager, property manager, environmental manager, and tenants.
  - (c) Include operations information that includes but is not limited to the total number of employees and hours of operation for each day of the week; public access and whether it restricted or unrestricted; and, hazardous-waste generator.

- (d) Include a site and facilities plan that includes but is not limited to floor layout with uses; hazardous materials storage areas and containers with methods of secondary containment; interior (floor drain) and exterior (stormwater) drainage systems with locations of connections to public sanitary and stormwater systems.
  - (e) Include and maintain an inventory of all hazardous materials and wastes used, stored, or generated by the development.
  - (f) Identify and describe specific measures of how existing best practices will be managed and maintained for the proper use, storage, disposal of hazardous materials and wastes; prevent pollution; reduce the risk of spills; how practices are consistent with applicable federal, state, and local laws and regulations.
  - (g) Include a spill contingency plan responding to spills of hazardous materials and/or wastes that includes but is not limited to emergency contacts; spill response procedures including cleanup protocol, supplies, equipment disposal; and employee training.
- (2 5) No site plan shall be accepted unless it is complete and is verified as to the correctness of information given by the signature of the applicant attesting thereto.
- (3 6) The Planning Department shall send written notification to property owners within 200 feet of any property line of the development of the time, date and location of the Planning Commission meeting at which the project will be considered.
- (4 7) The Planning Director may require that the lot and location of the building thereon shall be staked out on the ground before construction of a dwelling unit or primary structure is begun. The Planning Director, where deemed appropriate, may require the same for accessory structures or minor additions. In any case, it shall be the owner's responsibility to ensure that a structure is placed on his property according to his approved site plan (zoning review) and as required by any applicable City ordinance.
- (6 8) Site plans approved by the Planning Commission authorize only the use, arrangement, and construction set forth in such approved site plans and no other use, arrangement or construction. Furthermore, the approval of a site plan shall not be construed to be approval of any violation of the provisions of this ordinance. The issuance of a building permit based upon site plans given approval by the Planning Commission shall not prevent the Planning Director from thereafter requiring the correction of errors in said site plans or from preventing operations from being carried on thereunder when in violation with this ordinance. Site plan approval does not eliminate the need to obtain an approved building permit and the applicant's responsibility to meet all other requirements established by local, state and federal regulations.
- (7 9) One copy of the site plan submitted for a permit to the Planning Department shall be returned to the applicant after the Planning Director has marked such copy as either approved or disapproved as to the provisions of this ordinance and attested to same by his/her signature on such copy. The original, similarly marked, shall be retained by the Planning Director.

(10) Electronic Submittal of Final Plans and Other Documents. Final plans or other documents required to be submitted under the Type III Site Plan review that will be archived must be submitted in an electronic format specified by the Planning Director as a condition to issuance of any type of permit, approval, or other action related to the final plans or documents. The Planning Director shall provide a schedule indicating which documents must be provided electronically, at which point during the approval process, and other information as necessary for archiving purposes.

(B) Planning Commission Review of Major Developments of Significant Impact of a Regional Scale. The review process shall be identical to that for Developments of Significant Impact, except as otherwise noted in the plan submission requirements listed below.

Major developments of significant impact are those that are of such scope and scale that they have an impact on the region in terms of the transportation network, the environment, the schools, etc. Such projects could include regional shopping centers, and large scale residential developments, heavy industry, heavy manufacturing, and extractive industry. All applications for a Major Development of Significant Impact shall be accompanied by a site plan submitted under the seal and signature of a registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law. All sheets shall be 24" x 36" size drawn to scale at a minimum 1"=50' and a maximum 1"=10' with the exception of the maps on Sheet One, unless otherwise approved by the City Engineer. Eighteen (18) copies of the site plans shall be submitted for review and shall observe the following format:

- (1) Sheet One (Title Sheet). The following information shall be submitted as part of Sheet One:
  - (a) Full legal description with sufficient reference to section corners and boundary map of the subject project, including appropriate benchmark references;
  - (b) Name of the project;
  - (c) Name and address of the owner, developer, and person who prepared the plans;
  - (d) Total acreage within the project and the number of residential dwelling units or the gross square footage of non-residential buildings whichever is applicable;
  - (e) Existing zoning of the subject land and all adjacent lands;
  - (f) Boundary lines of adjacent tracts of land, showing owners of record;
  - (g) A key or vicinity map at a scale of one inch equals four hundred feet or less, showing the boundaries of the proposed project and covering the general area within which it is to be located;
  - (h) A statement of the proposed uses, stating the type and size of residential and non-residential buildings, and the type of business, commercial or industry, so as to reveal the effect of the project on traffic, fire hazards, or congestion of population;
  - (i) Any existing or proposed covenants and restrictions affecting property owners and/or homeowners associations; and
  - (j) Statement of proposed starting and completion dates for the project, including any proposed phasing and sequencing.

- (2) Sheet Two (Existing Site Conditions). The following information shall be submitted as part of Sheet Two:
- (a) Location, widths, and type of construction of all existing streets, street names, alleys, or other public ways and easements, street classifications as per the approved regional transportation plan, railroad and utility rights-of-way or easements, parks, wooded areas, cemeteries, watercourses, drainage ditches, designated wetlands, low areas subject to flooding, permanent buildings, bridges, and other data considered pertinent by the Planning Commission or the Planning Director for the subject land, and within three hundred (300) feet of the proposed project or six hundred twenty-five (625) feet for extractive industry development;
  - (b) Existing water mains, fire hydrants, storm sewers, sanitary sewers, culverts, bridges, and other utility structures or facilities within, adjacent to, or serving the subject land, including pipe sizes, grades, and exact locations, as can best be obtained from public or private records;
  - (c) Existing contours based in U.S.G.S. datum with intervals of not more than two (2) feet. Elevations shall be based on sea level datum; and
  - (d) The water elevation at the date of the survey of rivers, lakes, streams, or designated wetlands within the project or affecting it, as well as the approximate high and low water elevation of such rivers, lakes, streams, or designated wetlands. The plan shall also show the boundary line of the regulatory 100-year flood. The plan shall also show the base flood elevation of the regulatory 100-year flood at any building location along with the elevation of the lowest finished floor. All elevations shall be based on sea level datum;
- (3) Sheet Three (Proposed Site Conditions). The following information shall be submitted as part of Sheet Three:
- (a) Location, widths, and type of construction of all existing and proposed streets, street names, alleys, or other public ways and easements, railroad and utility rights-of-way or easements, parks, wooded areas, cemeteries, watercourses, drainage ditches, designated wetlands, low areas subject to flooding, permanent buildings, bridges, and other data considered pertinent by the Planning Commission or the Planning Director for the subject land, and within three hundred (300) feet of the proposed project or six hundred twenty-five (625) feet for extractive industry development;
  - (b) Existing and proposed water mains, fire hydrants, storm sewers, sanitary sewers, culverts, bridges, and other utility structures or facilities within, adjacent to, or serving the subject land, including pipe sizes, grades, and exact locations, as can best be obtained from public or private records;
  - (c) Water Supply Plan. For development that involves the use of water at higher volumes than customarily associated with nonindustrial-type development, the City may require, in coordination with the Morgantown Utility Board, a water supply plan. A water supply plan must include at least the identification of the water source(s); the development and use of freshwater impoundments, if applicable; when and where water withdrawals will occur; necessary operational water volumes; potential competing water users; and cumulative impact of the development's water consumption to the public water system, watersheds and/or groundwater.

- (e d) Building setback lines, showing dimensions;
  - (e e) Full description and details, including engineering calculations, for provision of storm water drainage plans and facilities, as required by the City's stormwater management ordinance;
  - (e f) Internal and perimeter sidewalk system/pedestrian circulation plan; and
  - (f g) Proposed contours with intervals of not more than two (2) feet. The plan shall also show the contour line for the floodway fringe boundary.
  - (g-h) Show the location and detail plans for all trash dumpsters.
- (4) Sheet Four (Erosion Control Plan). The following information shall be submitted as part of Sheet Four and shall be reviewed prior to issuance of a building permit:
- (a) Location, widths, and type of construction of all existing and proposed streets, street names, alleys, or other public ways and easements, railroad and utility rights-of-way or easements, parks, wooded areas, cemeteries, watercourses, drainage ditches, designated wetlands, low areas subject to flooding, permanent buildings, bridges, and other data considered pertinent by the Planning Commission or the Planning Director for the subject land, and within three hundred (300) feet of the proposed project;
  - (b) Proposed contours with intervals of not more than two (2) feet.
  - (c) Details of terrain and area drainage, including the identity and location of watercourses, intermittent and perennial streams, receiving waters, and springs, and the total acreage of land that will be disturbed.
  - (d) The direction of drainage flow and the approximate grade of all existing or proposed streets.
  - (e) Detailed plans and locations of all surface and subsurface drainage devices, walls, dams, sediment basins, storage reservoirs, and other protective devices to be constructed with, or as part of, the proposed project, together with a map showing drainage area, the complete drainage network, including outfall lines and natural drainage ways which may be affected by the proposed development, and the estimated runoff of the area served by the drains.
  - (f) A description of the methods to be employed in disposing of soil and other material that is removed from the grading site, including the location of the disposal site.
  - (g) Measures for soil erosion and sediment control which must meet or ~~exceed~~ exceed the methods and standards adopted by the City of Morgantown, the Morgantown Utility Board, and by the West Virginia Department of Natural Resources ~~and/or~~ (as set forth in the West Virginia Handbook For Erosion Control in Developing Areas) and which must comply with the design principles, performance standards, and requirements set forth in this chapter.
  - (h) A schedule of the sequence of installation of planned erosion and sediment control measures as related to the progress of the project, including the total area of soil surface that is to be disturbed during each stage, the anticipated starting and completion dates, and a schedule for the maintenance of such measures.
  - (i) Include the following notes on the sheet:

- (i) "All erosion control practices shall be in accordance with the WVDNR "West Virginia Handbook For Erosion Control In Developing Areas" dated October 1992 and the SCS "Field Office Technical Guide."
    - (ii) "The City Engineer has the right to require additional erosion control measures in the field as conditions warrant."
  - (j) Copies of the letter of intent and response from the Monongalia County Soil and Water Conservation District office for compliance, when required.
  - (k) Any other information reasonably required by the Planning Commission or Planning Director to properly evaluate the plan.
- (5) Sheet Five (Landscape Plan). A landscape plan prepared to the standards specified in this zoning ordinance.
- (6) Sheet Six (Plat-like dedication sheet, if necessary). The following information shall be submitted as part of Sheet Five if a plat-like dedication document for easements and rights-of-way is deemed necessary by the Planning Commission or its authorized designee:
- (a) Parcels of land proposed to be dedicated or reserved for public use, or reserved for common use of all property owners within the project, with the proposed conditions and maintenance requirements, if any, shall be designated as such and clearly labeled on the plans;
  - (i b) Radii, internal angles, points of curvature; tangent bearings and lengths of all arcs, chord, and chord bearings; and
  - (ii c) Accurate location of all survey monuments erected, corners and other points established in the field in their proper places.
- (7) All sheets shall contain the following information:
- (a) The proposed name by which the project shall be legally and commonly known;
  - (b) Date of survey, scale, and north point;
  - (c) All lots or outlots intended for sale or lease shall be designated with boundary lines and numbered or labeled for identification purposes;
  - (d) Private parks, common areas, or excluded parcels shall be designated as such and clearly labeled on the plans;
  - (e) A traffic impact study, if required by the City Engineer;
  - (f) Such other information as may be deemed necessary for proper review of the site plan by the Planning Director, City Engineer, or Planning Commission;
  - (g) All necessary reference points tying the subject property to the appropriate section corners;
  - (h) Each sheet shall be sealed and signed by the professional preparing the drawings;
  - (i) All sheets shall be tied to state plane coordinates for horizontal and vertical controls;
  - (j) Names and addresses of the parties within 200 feet of the property; and,

- (k) The applicant must provide self-addressed stamped envelopes in sufficient quantities to provide notification to the parties identified in the item above. Return address is not required.

1385.09 TYPE IV: BZA REVIEW OF CONDITIONAL USE PERMITS.

(A) All applications for a Conditional Use Permit shall be accompanied by the following:

- (1) A site plan (8 copies), drawn to scale, that includes the following:
  - (a) The actual dimensions, size, square footage, and shape of the lot to be built upon as shown on an actual survey by a licensed land surveyor or registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law.
  - (b) The exact sizes and locations on the lot of existing structures, if any.
  - (c) The location(s), square footage(s), and dimensions of the all proposed principal, accessory, and/or temporary structure(s) or and/or alteration(s).
  - (d) The location of the lot with respect to adjacent rights-of-way.
  - (e) The existing and proposed uses of the structure(s) and land.
  - (f) The number of employees, families, housekeeping units, bedrooms, or rental units the structure is designed to accommodate.
  - (g) The location and dimensions of off-street parking and means of ingress and egress for such space.
  - (h) Height of all structure(s).
  - (i) Setbacks.
  - (j) Buffer yard and screening, if applicable.
  - (k) Location of garbage collection area and screening.
  - (l) Location of sign existing and/or proposed signage.
  - (m) Roadway typical detail for internal roadways.
  - (n) Location and size of stormwater management facilities.
  - (o) Utility lines and easements.
  - (p) Grading Plan.
  - (q) Erosion and Sediment Control Plan.
  - (r) Signature of applicant.
- (2) Drainage plan and drainage calculations that bear the name, address, signature and seal of a registered professional engineer, with floodplain zones clearly denoted, and design details of all drainage facilities.
- (3) If applicable, design of stormwater management facilities and drainage calculations that bear the name, address, and seal of a registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law and that meet the requirements of this ordinance and the City's stormwater management ordinance and all other applicable local, state and federal regulations.
- (4) Parking plan.

- (5) Landscaping plan.
  - (6) Sign plan.
  - (7) Approved WV Division of Highways Access Permit, if applicable.
  - (8) Approved State of West Virginia NPDES General Permit for Storm Water Associated with Industrial (Construction) Activity, if applicable
  - (9) A traffic impact study, if required by the City Engineer.
  - (10) Any other such information concerning the lot or neighboring lots as may be required by the Planning Director to determine conformance with, and provide for the enforcement of, this ordinance; where deemed necessary, the Planning Director may require that in the case of accessory structures or minor additions, all dimensions shown on plans relating to the size of the lot and the location of the structure(s) thereon be based on an actual survey by a registered land surveyor or registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law, said survey to be provided by the applicant.
- (B) No site plan shall be accepted unless it is complete and is verified as to the correctness of information given by the signature of the applicant attesting thereto.
  - (C) The Planning Director may require that the lot and location of the building thereon shall be staked out on the ground before construction of a dwelling unit or primary structure is begun. The Planning Director, where deemed appropriate, may require the same for accessory structures or minor additions. In any case, it shall be the owner's responsibility to ensure that a structure is placed on his property according to his approved site plan (zoning review) and as required by any applicable city ordinance.
  - (D) Site plans approved by the Board of Zoning Appeals may authorize the use, arrangement, and construction set forth in such approved site plans. Furthermore, the approval of a site plan shall not be construed to be approval of any violation of the provisions of this ordinance. The issuance of a building permit based upon site plans given approval by the Board of Zoning Appeals shall not prevent the Planning Director from thereafter requiring the correction of errors in said site plans or from preventing operations from being carried on thereunder when in violation with this ordinance. Site plan approval does not eliminate the need to obtain an approved building permit and the applicant's responsibility to meet all other requirements established by local, state and federal regulations.
  - (E) One copy of the site plan submitted for a permit as required in subsection (C) above for the Planning Department shall be returned to the applicant after the Planning Director has marked such copy as either approved or disapproved as to the provisions of this ordinance and attested to same by his signature on such copy. The original, similarly marked, shall be retained by the Planning Director.

1385.10 OTHER REQUIRED SUBMITTALS.

The Applicant shall be required to submit written documentation of the following, when applicable:

- (A) Utility encroachment approvals;
- (B) Other local, state, and federal approvals, including other City boards, commissions, or departments;
- (C) Inspection and testing agreements with the Engineering Department;

- (D) Outside reviews as required by the City;
- (E) Easements and rights-of-ways not on a plat-like document shall be submitted in the form prescribed by the Engineering Department and include both a full legal description and a drawing exhibit; and,
- (F) Traffic impact study.

1385.11 RESUBMITTAL OF PLANS.

Submit five (5) complete sets of the final, revised plans showing conditions required by the Board of Zoning Appeals or the Planning Commission.

1385.12 REJECTION STATEMENT.

- (A) The Planning Director may reject any submittal for the following reasons:
  - (1) Incomplete application;
  - (2) The drawing set or supporting documents not complete; or
  - (3) Poor legibility.
- (B) After the review of an approved submittal, the Planning Director shall render a decision in writing, which decision shall consist of either:
  - (1) Approval of the site plan based upon the determination that the proposed plan complies with the general, design and performance standards set forth in this Ordinance;
  - (2) Disapproval of the site plan based upon the determination that the proposed project does not meet the general, design and performance standards set forth in this Ordinance;
  - (3) Approval of the site plan subject to any conditions, modifications and restrictions as required by the Planning Director which will ensure that the project meets the general, design and performance standards set forth in this Ordinance.

1385.13 DEVIATION FROM THE APPROVED SITE PLAN AND ADDITIONS TO EXISTING STRUCTURES.

- (A) If the installation of the elements on the site plan materially deviate from the approved site plan (as determined by the Planning Director or City Engineer), the site plan shall be resubmitted to the Commission or Board for a new site plan approval in accordance with the procedures and requirements for site plan approval. For purposes of this section, material deviation is one that:
  - (A 1) Adds, removes, or reconfigures an internal street or relocates an access point;
  - (B 2) Affects a condition of site plan approval that was established by the Commission or Board during the site plan approval stage;
  - (C 3) Reduces the area devoted to open spaces or buffer landscaping;
  - (D 4) Involves the enlargement of a nonresidential building footprint on the site due to future additions that are more than 10 percent of the gross floor area or 5,000 square feet, whichever is less.
- (B) Minor changes that do not constitute material deviation shall be reviewed and approved by the City Planning and Engineering staff.

1385.14 RECORD DRAWINGS AND CERTIFICATE OF COMPLETION AND COMPLIANCE.

Where applicable, the developer or owner shall cause record drawings to be prepared and submitted to the Planning Director for all streets, drainage ditches and facilities, utility pipes and structures, and finished grade elevations for the project. Said record drawings shall be filed with the Planning Director prior to the release of any performance assurances. Record drawings, including the approved final plat shall be submitted in electronic format and in paper format, in a manner prescribed by the City Engineer.

(A) General Requirements: Plans are to contain a certification statement that the improvements have been installed in reasonable compliance with the original design plans with respect to horizontal locations and grades and any deviations of locations, grade or material used are shown in these record drawings. Said certification is to be sealed and signed.

(B) Specific Requirements:

(1) Grading or Development Plan(s)

Grades:

- (a) Major drainage swales and percents of slope;
- (b) Pad grades;
- (c) Street grades;
  - (i) Centerline and curb if street is bituminous pavement with concrete curb. Centerline only if streets are concrete and placed with electronic control. (Maximum 50 ft. spacing)
  - (ii) All sag and crest points.
- (d) Paved swales, if any, at 50 ft. intervals;
- (e) Lake or pond if applicable;
- (f) Locations of sidewalk ramps.

(2) Plan and Profiles.

(a) Sanitary Sewers:

- (i) Invert elevations and percents of slope;
- (ii) Top of casting elevations;
- (iii) Lateral locations based on distances along main from manholes;
- (iv) Locations of each manhole or structure (to make sure they are sufficiently within designated easements to permit future excavation to system if needed);
- (v) Designate any material change from design plans; where plans show any alternatives, indicate alternative actually used.

(b) Storm Sewers:

- (i) Invert elevations and percents of slope;
- (ii) Top of casting elevations;

- (iii) Location of pipe and structures (to make sure they are within designated easements);
  - (iv) Designate any material change from design plans; where plans show any alternatives, indicate alternate actually used.
- (c) Streets:
- (i) Grades
  - (ii) All low and high points;
  - (iii) All percents of slope;
  - (iv) Any deviation of alignment;
  - (v) Grades and dimensions on acceleration and deceleration lanes if applicable.

1385.15 EXPIRATION DEADLINES.

- (A) Approval of site plans shall expire two years from the date of approval if the project has not been completed. The Planning Commission or the Board of Zoning Appeals, at its discretion, may grant extensions for a period up to two years.
- (B) Bonded improvements must be completed within two years of issuance of land alteration permit.
- (C) Request for extension must be submitted in writing stating the justification for the extension.

This ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_  
Mayor

ADOPTED:

FILED:

RECORDED:

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

**AN ORDINANCE BY THE CITY OF MORGANTOWN REPEALING ARTICLE 721 OF THE CITY OF MORGANTOWN BUSINESS AND TAXATION CODE, AS THE SAME APPLIES TO WELL DRILLING.**

The City of Morgantown hereby ordains that Article 721 of its Business and Taxation Code is repealed in its entirety.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_  
MAYOR

ADOPTED:

FILED:

\_\_\_\_\_  
CITY CLERK

RECORDED:

## City of Morgantown Contract Changes

1. Page 19 IV (1.) Change residential billing with properties with 2 or more units becomes commercially billed.
2. Page 11 The City may assume billing of the residents for any billing cycle (quarterly) after first year of the agreement. City must provide contractor 60 days notice before taking over billing. Reduction in unit costs will not be less than \$1 per month for the City doing the billing.
3. Page 18 III (D.) Service Frequencies for recycling will be 1x /week.
  - a. Size 65 gallon for residents
  - b. Sixe 32 gallon for senior citizens
  - c. Republic retains ownership of the carts and provides the maintenance
  - d. Carts delivered within 6 months of signed agreement
  - e. City shall have sole decision on color of the carts
4. Page 21 V. New menu of Materials to be recycled.

Glass bottles and jars (green, clear, and brown)	Metal Beverage and Food Cans
Paper Milk and Juice Cartons	Aluminum Cans
Egg Cartons	Plastic Bottles (#1-#7)
Magazines	Junk Mail
Boxboard for Dry Food Containers	Cardboard
	Newspaper
	Dry Non-coated Food Paper
5. Page 8 II. Change to 5 year term with 2 five year extensions.
6. City of Morgantown will mail an informational letter to the residents introducing the recycling program and the menu of products that will be recycled.
7. Page 30 Exhibit of Residential Pricing for 1x/wk for trash and recycling service.

October 1, 2012 – September 30, 2013	\$15.25/month
October 1, 2013 – September 30, 2014	\$15.25/month
October 1, 2014 - September 30, 2015	\$15.50/month
October 1, 2015 – September 30, 2016	\$16.00/month
October 1, 2016 – September 30, 2017	\$16.50/month
8. Page 31 Exhibit – Commercial Pricing  
Beginning October 1, 2012 rates will increase 5% and by 3% on each anniversary date.

**RESOLUTION**

*WHEREAS, City Administration has presented to Morgantown City Council a 2012-2013 budget for the Morgantown Municipal Airport Fund and Airport Improvement Fund and has requested that City Council review and approve the same;*

*WHEREAS, the budget in question, a copy of which is hereto attached, appears to not only be in proper form, but also, acceptable as to income and expenditures set forth therein;*

*WHEREAS, City Council is of the opinion that it should approve said budget.*

*NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown this \_\_\_\_\_ day of \_\_\_\_\_, 2012, that the 2012-2013 Morgantown Municipal Airport Fund and Airport Improvement Fund Budget hereto attached is approved.*

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

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

**MORGANTOWN MUNICIPAL AIRPORT  
2013 PROPOSED OPERATING BUDGET**

		ACTUAL	ACTUAL	ACTUAL	ADOPTED	PROPOSED
		FY2009	FY2010	FY2011	BUDGET	BUDGET
					FY2012	FY2013
<b>REVENUE:</b>						
<b>560</b>	<b>AIRPORT OPERATIONS</b>					
	<u>Rents</u>					
346.04	Office Rent	170,714	172,212	196,341	200,288	206,991
346.06	Restaurant Rent	6,000	10,672	13,100	16,800	17,400
385.02	Car Rental	32,816	36,697	36,328	37,418	38,180
346.02	Hangar Rent	84,330	103,185	96,622	114,600	110,531
346.03	Byers Hangar Rent	900	900	1,065	900	900
		<b>294,759</b>	<b>323,666</b>	<b>343,456</b>	<b>370,006</b>	<b>374,003</b>
	<u>Parking</u>					
342.14	Meters	-	-	-	-	-
342.15	Car Rental Parking	3,680	4,000	3,840	3,840	3,840
		<b>3,680</b>	<b>4,000</b>	<b>3,840</b>	<b>3,840</b>	<b>3,840</b>
	<u>Other</u>					
369.13	AIP Support	583,909	1,392,751	878,937	-	-
346.11	Arpt. Advertising	9,296	9,296	7,505	6,297	6,296
346.05	Airline Landing	33,984	30,705	22,484	38,404	30,000
342.16	Vending Machines	4,300	7,923	5,428	14,000	6,000
366.03	Marketing Grant	10,000	10,000	15,000	15,000	15,000
380.00	Interest	363	67	48	100	50
399.04	Miscellaneous	6,146	6,539	12,935	15,000	10,000
399.07	Grant administration	5,438	7,073	1,885	1,500	-
		<b>653,435</b>	<b>1,464,354</b>	<b>944,222</b>	<b>90,301</b>	<b>67,346</b>
<b>TOTAL AIRPORT OPERATIONS</b>		<b>951,875</b>	<b>1,792,020</b>	<b>1,291,518</b>	<b>464,147</b>	<b>445,189</b>
<b>562</b>	<b>FBO OPERATIONS</b>					
345.10	Fuel Sales - Jet A	1,175,440	968,179	1,277,723	1,500,000	1,755,000
345.13	Fuel Sales - Military	696,393	155,003	144,273	150,000	143,000
345.14	Fuel Sales - Avgas	325,276	346,539	332,119	385,000	392,000
345.15	Fuel Sales Adjustment	(10,948)	-	-	-	-
345.18	Sales - Oil & Prist	854	1,285	732	2,000	1,000
345.20	Catering	320	28	92	500	200
345.21	Pilot Supplies	930	1,525	1,073	1,500	1,300
346.05	Landing & Parking Fees	43,298	44,116	54,840	50,000	50,000
346.09	De-icing	7,990	34,029	30,065	30,000	36,000
399.04	Misc (callouts, fbo fees, etc)	5,706	7,913	7,085	14,000	7,500
380.00	Interest	28	20	26	50	50
<b>TOTAL FBO OPERATIONS</b>		<b>2,245,287</b>	<b>1,558,637</b>	<b>1,848,028</b>	<b>2,133,050</b>	<b>2,386,050</b>
369.12	General Fund Support	-	-	-	-	-

<b>TOTAL REVENUE</b>	<b>3,197,161</b>	<b>3,350,658</b>	<b>3,139,546</b>	<b>2,597,197</b>	<b>2,831,239</b>
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**EXPENDITURES:**

**561 AIRPORT OPERATIONS**

Personnel Services:

03.00	Salaries and Wages	217,553	222,489	225,333	250,018	270,737
04.00	Social Security	13,731	14,463	14,477	16,121	17,406
05.00	Health and Life Insurance	70,955	79,769	89,008	106,218	97,536
07.00	Retirement	16,631	18,209	23,856	26,847	33,155
08.00	Medicare	3,229	3,382	3,386	3,770	4,071
10.00	Overtime	5,946	11,784	9,814	10,000	10,000
10.03	Vac & SL Adj	8,166	(9,164)	1,089	-	-
		<b>336,211</b>	<b>340,932</b>	<b>366,963</b>	<b>412,974</b>	<b>432,905</b>

Contracted Services:

11.00	Telephone	10,978	7,855	9,461	8,000	8,000
13.01	Utilities/Electric	77,035	86,731	78,547	72,000	80,000
13.02	Utilities/Gas	50,219	24,206	28,030	25,000	25,000
13.03	Utilities/Water	3,184	4,561	3,029	5,000	4,500
13.09	Utilities/Storm Sewer	6,155	7,712	8,951	9,000	9,000
14.00	Travel & Training	2,285	1,574	3,063	4,000	4,000
15.00	Building Maintenance	24,454	22,614	9,786	25,000	25,000
15.03	Hangar Maintenance	635	-	74	1,000	5,000
15.20	Airfield Maintenance	18,742	13,791	43,240	12,000	15,000
16.00	Equipment Maintenance	16,537	22,337	33,392	20,000	20,000
17.00	Vehicle Maintenance	10,387	9,754	17,381	6,000	5,000
18.00	Postage	-	-	194	-	300
20.00	Advertising	19,743	19,678	29,915	35,000	25,000
22.00	Dues & Subscriptions	702	745	415	1,000	1,000
23.00	Professional Services	-	130	-	-	-
24.00	Audit Costs	2,000	2,000	2,200	2,000	2,250
26.00	Workers Compensation	6,324	3,874	6,315	5,907	5,410
26.01	Property & Liability Insurance	38,048	37,883	41,688	38,000	39,000
26.02	Unemployment Compensation	-	1,355	-	-	-
30.00	Contracted Services	82,075	28,233	21,769	14,251	24,000
31.00	Fire Service Fees	5,711	5,711	3,526	5,711	5,711
48.00	Administrative Fee	10,000	10,000	10,000	10,000	10,000
		<b>385,212</b>	<b>310,744</b>	<b>350,976</b>	<b>298,869</b>	<b>313,171</b>

Commodities:

40.12	Hand Tools	299	410	113	500	500
41.01	Office Supplies	4,131	2,502	4,145	2,500	3,000
41.05	Janitorial Supplies	5,097	3,972	4,415	4,000	5,000
41.20	Concession Supplies	7,839	4,689	3,742	7,500	4,000
43.00	Vehicle Supplies	8,679	10,460	4,377	3,000	5,000
45.00	Uniforms	2,863	2,505	2,702	1,500	1,500
		<b>28,909</b>	<b>24,538</b>	<b>19,494</b>	<b>19,000</b>	<b>19,000</b>

Capital Outlay:

56.00	Land improvement	-	-	-	-	-
59.02	Cap. Outlay/Equipment	1,112	6,545	-	5,000	3,000
65.00	Depreciation	1,007,670	1,048,289	1,074,795	-	-
58.00	Capital Outlay/Improvements	-	-	-	-	-

72.00	Lease Interest	-	-	18,428	-	17,328
		<b>1,008,782</b>	<b>1,054,834</b>	<b>1,093,223</b>	<b>5,000</b>	<b>20,328</b>
	<u>Contributions:</u>					
00.00	Contingency	-	-	-	1,177	464
		-	-	-	<b>1,177</b>	<b>464</b>
<b>TOTAL AIRPORT OPERATIONS</b>		<b>1,759,114</b>	<b>1,731,048</b>	<b>1,830,656</b>	<b>737,020</b>	<b>785,868</b>
<b>563</b>	<b>FBO OPERATIONS</b>					
	<u>Personnel Services:</u>					
03.00	Salaries and Wages	174,990	183,803	188,578	188,981	193,038
04.00	Social Security	11,531	12,208	12,597	12,337	12,588
05.00	Health and Life Insurance	85,698	94,308	100,263	106,218	97,536
07.00	Retirement	15,121	16,501	20,366	20,717	23,979
08.00	Medicare	2,679	2,855	2,946	2,885	2,944
10.00	Overtime	11,927	15,214	18,132	10,000	10,000
		<b>301,946</b>	<b>324,889</b>	<b>342,882</b>	<b>341,138</b>	<b>340,085</b>
	<u>Contracted Services:</u>					
11.00	Telephone	7,678	7,546	7,997	8,000	8,000
14.00	Travel & Training	909	2,710	542	2,500	3,000
16.00	Equipment Maintenance	4,565	4,433	6,932	2,000	2,500
18.00	Postage	-	-	-	-	-
19.02	Equipment Rent (fuel trucks)	18,000	16,500	9,750	-	-
26.00	Workers Compensation	4,193	5,355	6,953	7,546	7,357
26.01	Property & Liability Insurance	11,306	12,020	18,030	12,200	21,200
26.02	Unemployment Compensation	6,500	4,118	6,509	-	-
30.00	Contracted Services	2,538	2,238	2,469	2,000	2,400
32.00	Credit Card Fees	48,176	42,474	41,834	44,000	44,000
		<b>103,864</b>	<b>97,393</b>	<b>101,016</b>	<b>78,246</b>	<b>88,457</b>
	<u>Commodities:</u>					
41.01	Office Supplies	1,919	1,221	2,231	1,500	2,000
41.21	Operating Supplies	992	1,268	42	1,500	-
46.10	Jet Fuel	1,305,680	695,576	1,014,614	1,115,070	1,300,000
46.12	Avgas	252,623	260,005	301,854	299,723	280,000
46.15	Oil/Prist/Glycol (deicing fluid)	9,749	21,801	14,092	20,000	15,000
46.20	Catering Supplies	1,642	971	882	2,000	1,000
46.21	Pilot Supplies	2,123	987	543	1,000	1,000
		<b>1,574,728</b>	<b>981,828</b>	<b>1,334,258</b>	<b>1,440,793</b>	<b>1,599,000</b>
	<u>Capital Outlay:</u>					
59.02	Equipment	-	-	-	-	-
	<u>Contributions:</u>					
65.00	Depreciation	3,724	-	-	-	-
65.10	Amortization	5,825	5,825	(1,843)	-	-
66.00	Contributions to AIP	-	-	-	-	-
		<b>9,549</b>	<b>5,825</b>	<b>(1,843)</b>	<b>-</b>	<b>-</b>
<b>TOTAL FBO OPERATIONS</b>		<b>1,990,087</b>	<b>1,409,935</b>	<b>1,776,313</b>	<b>1,860,177</b>	<b>2,027,542</b>

Non Expense Line Budget Items -					
Contingency Net to Contingency					
CLT Capital Lease Principal	-	-	-	-	17,829
<b>TOTAL EXPENDITURES</b>	<b>3,749,201</b>	<b>3,140,983</b>	<b>3,606,969</b>	<b>2,597,197</b>	<b>2,831,239</b>
	=====	=====	=====	=====	=====
<b>EXCESS (DEFICIENCY) OF</b>					
<b>REVENUES OVER EXPENDITURES</b>	<b>(552,039)</b>	<b>209,675</b>	<b>(467,423)</b>	<b>-</b>	<b>(0)</b>

Morgantown Municipal Airport  
 Airport Improvement Fund

Proposed  
 Budget FY2013

Revenues

94.94	FAA 3512	Taxiway Improvements	900,000
94.94	State 3512		100,000
94.94	FAA 3612	Terminal Renovation	500,000
94.94	State 3612		60,000
			<u>1,560,000</u>
94.940.341.00	PFC		43,900
94.940.380	Interest		50
94.940.369.00	Contribution From Airport Fund		-
			<u>43,950</u>
<b>TOTAL REVENUES</b>			<b>1,603,950</b>

Expenditures

94.941	Grant 3512/FAA and State	1,000,000
94.941	Grant 3612/FAA and State	600,000
94.941	Local Match/PFC	-
94.941	Local Match/Capital Outlay	-
94.941	Contingency	3,950
<b>Total Expenditures</b>		<b><u>1,603,950</u></b>
<b>EXCESS/(DEFICIENCY)</b>		<b>-</b>
<b>FUND BALANCE BEGINNING</b>		
<b>FUND BALANCE ENDING</b>		



## The City of Morgantown

Public Works Department

389 Spruce Street

Morgantown, West Virginia 26505

Terry L. Hough, P.E., P.S., CFM

Director of Public Works and Engineering

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PRELIMINARY REPORT

May 25, 2012

Subject: General Condition of Woodburn School

To: Terrence Moore, ICMA-CM  
City Manager

Terry Hough, P.E., P.S., CFM  
Director of Public Works and Engineering

From: Trevor Lloyd, P.E., CFM  
Staff Engineer

### INTRODUCTION

This report is in response to a request from the City Manager to assess the general conditions of the three structures that comprise Woodburn Elementary School. The goal of this report is to give the reader a general idea of what issues would need to be addressed or further investigated if the property were acquired by the City. The structures referenced in this report are the "main building", the "modular building", and the "gymnasium." The author recognizes that there was an expansion to the main building some time ago, but for this report the expansion and main building will be referenced just as the "main building." Those readers who are NOT familiar with the school buildings referenced above may seek further explanation upon request by contacting the Engineering Department of the City of Morgantown.

All observations are based on visual inspection only. No specific materials testing or detailed investigations were completed for this report. It should be noted that many issues are highly dependent on use of the buildings and that the author conducted this analysis with the assumption that the buildings would be used in their current condition as a community center. Cost estimates are not included.

### GYMNASIUM AND MODULAR BUILDINGS

These buildings appear to be in good condition. Minor repairs and regular maintenance would be required to keep the buildings in good standing. Both are accessible from grade.

## MAIN BUILDING

**Structural:** The portico on the front of the building has sustained significant cracking in the brick façade as well as significant damage around one of the roof drains. As for the remainder of the building, the structural integrity appears to be in good condition. There are no visible signs of significant bowing, sagging or leaning of the major structural members or walls. There are however areas of the façade that need work. The work ranges from cleaning to repointing the brick. Although the work is minor, it should be done soon to prevent more serious and potentially very expensive problems.

**Roof:** There are two large roof areas and several smaller roof areas. All of the roofs appear to have an EPDM “rubber” roofing membrane fully adhered to mechanically fastened insulation. The two large roof areas appear to be in fair condition. A standard maintenance program would provide several more years of service. The smaller roof areas are more of a concern. One roof area needs to be completely replaced. Another of the smaller roof areas is deteriorating quickly due to poor design/installation and will probably need to be replaced in the near future. There are two masonry chimneys that are showing signs of age. These chimneys should be repointed or refaced before the elements damage them further.

**Roof Drainage:** Nearly all of the scuppers, conductor heads, and roof drain bodies need repairs of some kind. Some repairs will require full replacement of parts but most repairs are fairly minor. The downspouts are in fair condition but require minor adjustments to bring them into good working order.

**Electrical:** The building has a 400 amp, 3 phase service. This level of service could easily serve most purposes for which the building would be used. There are two 200 amp breaker panels in the basement that appear to be up to code and in good condition. The first floor has two 100 amp panels. One of them is very old and should be disconnected and the wiring rerouted to one of the panels in the basement. The other 100 amp panel appears to be much newer and in good condition. The second floor has one 100 amp panel that is similar to the older panel on the first floor. This panel should be removed and replaced with a new 200 amp panel. Also, some work may need to be done at the electrical service entry point in order to modernize the meter configuration.

**Plumbing:** Water supply seems to be in working order. The bathroom fixtures are old but still serviceable with the exception of two commodes in the boys room on the second floor. Drainage however, is a major problem. Interviews with building staff revealed that water does not drain properly in several locations of the building. These problems could be related or isolated instances. A thorough plumbing investigation would need to be done. It is highly likely that the sanitary drainage pipes for the building are clay and have partially collapsed resulting in slow drainage. This is a very common problem for a building of this age. There are a couple of ways to address this issue but none are simple or inexpensive.

**HVAC:** The heating and cooling systems of the school are very old but still in working order. Based on interviews, the building does not heat or cool evenly but is adequate to

keep from freezing in the winter months. Based on observation, some areas have a damp feel and musty smell. This is typically caused by poor circulation and leads to mold issues. The costs associated with modernizing and properly balancing an HVAC system for this building would be very high.

**Fire Safety Systems:** The fire alarm control panel appears to be modern. However, many of the alarm system devices are outdated and would require replacement. Most of the "EXIT" signs need to be replaced with modern signs which include battery backups. Many of the smoke detectors need replaced. Emergency lighting appears to be in compliance with current standards. There is currently no sprinkler system for the building. Installation of a sprinkler system would depend on too many issues to be discussed in this report. The hood system in the kitchen facility is non-compliant and needs to be replaced. A more in depth inspection by the Morgantown Fire Department will be needed to fully determine any other fire safety issues.

**Ingress and Egress:** There appears to be an ample amount of egress from the building on the basement and first floor levels. The second floor egress however requires attention. There are two fire escapes on the north and east sides of the building. The east fire escape is in good condition and requires minor upgrades. The north fire escape is in poor condition and is non-compliant with current standards on several levels. The north fire escape should be removed. Design work should be done in order to develop options for second floor emergency egress. Options developed would most likely result in reconfiguring the interior walls of the second floor or installation of a new fire escape.

**Accessibility:** There are several existing doors and hallways with less than a 32" clear opening and therefore do not meet Americans with Disabilities Act (ADA) guidelines. There are no accessible entrances to the main building from the immediate site. Sidewalks are not accessible to parking, and the building is not accessible from a public sidewalk. At the interior, there are several thresholds at doors with steps, steep ramps, or offsets, thus preventing accessible transition between spaces. The stairwell landings from the second floor to the first floor are undersized per International Building Code (IBC). There would be a large cost involved in bringing this building up to ADA standards.

## CONCLUSION

In summary, the Woodburn Elementary School in its current state supports its function. However, if the building were to change owners and fall under the jurisdiction of the City, whether the new owner be the City or a private business, several building and fire code deficiencies would have to be addressed before the building could be occupied. As this report does not include cost estimates for the necessary work, the only comment that can be made is that there are some rehabilitation issues that will be very costly both in the immediate future as well as the long term. Additional investigation would be required to more accurately determine these costs.

The point of contact for this report is Trevor Lloyd, Staff Engineer for the City of Morgantown. Phone: (304) 284-7412. E-mail: [tlloyd@cityofmorgantown.org](mailto:tlloyd@cityofmorgantown.org)

**RESOLUTION**

*WHEREAS, the City of Morgantown must submit the necessary paperwork to obtain \$5,000 for the construction of a Zackquill Morgan Statue which has been listed as a project for a Community Participation Program Grant; and*

*WHEREAS, the grant would help to fund the construction and installation of the Zackquill Morgan Statue ;and*

*WHEREAS, Morgantown City Council is of the opinion that this project is of great benefit to the residents of Morgantown.*

*NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown this 5th day of June, 2012, that the City agrees to apply for and administer the Community Participation Grant Program, Project Number 12LEDA0176, funds for use for the Zackquill Morgan Statue through "Your Community Foundation".*

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*Mayor*

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*City Clerk*

**RESOLUTION**

*WHEREAS, the City of Morgantown must submit the necessary paperwork to obtain \$1,000 for a "Members of Diversity" project which has been listed as a project for a Community Participation Program Grant; and*

*WHEREAS, the grant would help to improve the organization meet its goals of advancing diversity through the purchase of equipment or materials; and*

*WHEREAS, Morgantown City Council is of the opinion that this project is of benefit to the residents of Morgantown as a diverse community.*

*NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown this 5th day of June, 2012, that the City agrees to apply for and administer the Community Participation Grant Program, Project Number 12LEDA0516, funds for use by "Members of Diversity", a 501(c)3 organization.*

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*Mayor*

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*City Clerk*

**RESOLUTION**

*WHEREAS, the City of Morgantown must submit the necessary paperwork to obtain \$4,000 for the MountainFest Motorcycle Rally which has been listed as a project for a Community Participation Program Grant; and*

*WHEREAS, the grant would help to purchase equipment, staging, or promotional material; and*

*WHEREAS, Morgantown City Council is of the opinion that this project is of benefit to the residents of Morgantown and to provide a travel destination event for bringing thousands of visitors into the community.*

*NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown this 5th day of June, 2012, that the City agrees to apply for and administer the Community Participation Grant Program, Project Number 12LEDA0175, funds for use by "MountainFest Motorcycle Rally" .*

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*Mayor*

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*City Clerk*

**RESOLUTION**

*WHEREAS, the City of Morgantown must submit the necessary paperwork to obtain \$8,000 for the Morgantown Marketplace which has been listed as a project for a Community Participation Program Grant; and*

*WHEREAS, the grant would help to fund the construction of the Marketplace pavilion ;and*

*WHEREAS, Morgantown City Council is of the opinion that this project is of great benefit to the residents of Morgantown and the future of the Downtown Farmers Market.*

*NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown this 5th day of June, 2012, that the City agrees to apply for and administer the Community Participation Grant Program, Project Number 12LEDA0515, funds for use for the Morgantown Marketplace.*

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*Mayor*

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*City Clerk*

## **RESOLUTION**

*WHEREAS, the City of Morgantown submitted the necessary paperwork to obtain \$100,000.00 for Mayfield Park from the National Park Service through the Land and Water Conservation Fund; and*

*WHEREAS, The Mayfield Park grant application has been approved for funding; and*

*WHEREAS, the grant funds can be used by the City of Morgantown to purchase the park that includes 2.055 acres of property; and*

*WHEREAS, the land purchased with National Park Service funds will be restricted to outdoor recreational use; and*

*WHEREAS, Morgantown City Council is of the opinion this grant will benefit the Morgantown community, and therefore agrees to administer the grant contract and match the grant with at least \$100,000 of local funds.*

*NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown this 5<sup>th</sup> day of June, 2012, that the City agrees to the conditions of the contract and authorizes the City Manager to administer its execution.*

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*Mayor*

---

*City Clerk*

**THE STATE OF WEST VIRGINIA**  
**WEST VIRGINIA DEVELOPMENT OFFICE**  
**And The**  
**CITY OF MORGANTOWN**  
**PROVIDING FOR**  
**LAND AND WATER CONSERVATION FUND**  
**GRANT ASSISTANCE**

**THIS AGREEMENT**, made this, the April 4, 2012, by and between City of Morgantown, a public corporation, as party of the first part, and hereinafter referred to as "Grantee", and the STATE OF WEST VIRGINIA, by the Commissioner of Finance and Administration on behalf of the West Virginia Development Office (WVDO) thereof, as part of the second part, hereinafter referred to as "WVDO".

**WITNESS THAT: WHEREAS**, the State of West Virginia, by its WVDO, submitted a proposal to the Department of Interior, National Park Service (NPS), for the purpose of obtaining Federal matching funds for the development of a park facility, as more fully described in the NPS Land and Water Conservation Fund (LWCF) Project Agreement, a copy of which is attached hereto and marked Attachment A.

**WHEREAS**, the project calls for a total estimated cost of \$200,000.00 and requests Federal assistance in the amount of \$100,000.00 and;

**WHEREAS**, the WVDO 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 NPS's LWCF Program.

**1. Scope of Services.**

The Grantee shall do, perform and carry out in a satisfactory and proper manner as determined by the WVDO as set forth in the NPS's LWCF Grants Manual, to acquire 2.055 acres of parkland known as Mayfield Park, in Morgantown, West Virginia,

The LWCF Grants Manual can be found at the following web address:

[www.nps.gov/ncrc/programs/lwcf](http://www.nps.gov/ncrc/programs/lwcf).

That the Grantee shall comply with the General Provisions contained in the LWCF Project Agreement, a copy of which is attached to this contract and marked Attachment B.

That the Grantee will furnish its share of the total estimated cost as set forth in the project proposal referred to hereinabove.

That the Grantee will develop all of the said recreation facilities which are set forth in the project proposal in accordance with the plans and project proposals and that it will carry out all of the terms thereof, including the General Provisions forming a part thereof.

### **Boundary Map and Deed Restrictions.**

#### **a) Section 6(f)(3) Boundary Map**

The Grantee must, prior to receiving grant funds, supply the WVDO with a boundary map of the assisted property. The map must be legally sufficient to identify the assisted property as defined in the LWCF Act of 1965, as amended.

#### **b) Deed Restriction**

The Grantee must also, prior to receiving grant funds, supply the WVDO with a "Deed Restriction" to be approved for the Grantee to record in its County Courthouse. The language in this restriction must reference Section 6(f)(3) of the Land and Water Conservation Fund Act of 1965, as amended. Once this preliminary "Deed Restriction" is approved by the WVDO, the Grantee must then send a copy of the recorded "Deed Restriction" to the WVDO prior to receiving grant funds. The recorded "Deed Restriction" shall include the final 6(f)(3) Boundary Map that should have been approved prior as stated above in Section 2.a. of this contract.

### **3. Project Schedule.**

a) Acquisition Schedule: For acquisition projects, the Grantee shall submit a schedule for property acquisition. The schedule shall include estimated dates for the major milestones in the property acquisition process. Some of the items that may be included are; preliminary purchase agreement, necessary legal searches, appraisal, title search, survey, inspection of structures, document preparation, loan preparation, and estimated closing date. Each project is unique and therefore this list is only a starting point for the required schedule. Consultation with your realtor or appraiser is recommended for the schedule preparation.

b) Construction Schedule: For construction projects, the Grantee shall submit a construction schedule 30 days prior to the commencement of construction. The schedule shall include the estimated start dates for the major milestones in the construction process. Some of the items that may be included are; permit approvals, start of construction, erosion control and site stabilization, stake-out of project elements, demolition, grading stake-out, building footer preparation, utility installation, landscaping. Each project is unique and therefore this list is only a starting point for the required schedule. Consultation with your design professional is recommended for the schedule preparation.

### **4. Required Project Signs.**

c) LWCF Acknowledgement Sign: NPS requires a suitable permanent sign acknowledging the LWCF assistance at all project sites. Such signs shall acknowledge the federal-state-local partnership role in creating high quality outdoor recreation areas and facilities. The Grantee shall permanently install the sign near the entrance to the project site in clear view of park users. This must be completed prior to the final inspection described in Section 9.c.iii. The WVDO can assist the Grantee in creating the artwork and information needed for a sign manufacture to use in creating the sign. Contact the WVDO for sign specifications.

- d) Equal Opportunity Sign: The Grantee shall permanently install a sign referencing the Civil Rights Act of 1964. The sign must give contact information of where an individual may send their complaint if they believe discrimination is happening at the facility. This information can either be incorporated into the LWCF Acknowledgment Sign or a sign that is installed separately. Contact the WVDO for sign specifications.
- e) Sign Expenses: The cost of the signs is an allowable expense as part of the initial capital investment, and may be shared by LWCF assistance. Replacement costs as a part of the project operation and maintenance are not allowable expenses.

**5. Time and Performance.**

The Grantee will commence its duties under this contract on April 4, 2012, and such duties shall but, in any event, all of the services required hereunder shall be completed by December 31, 2012. The completion date of this Contract may only be extended by mutual agreement of both parties.

The Grantee shall have the project under construction within six (6) months after execution of this agreement by both parties. The Grantee further understands that if the project is not under construction within a six-month period, the WVDO will reevaluate its obligation to provide funds for the project.

**6. Changes.**

The WVDO and the Grantee may, from time to time, require changes in the scope of 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 WVDO and the Grantee, shall be incorporated in written amendments to this Contract.

**7. Grantee Assistance.**

WVDO agrees to pay the Grantee the sum of up to \$100,000.00 for allowable costs that are necessary, reasonably, and directly allowable to an approved, eligible activity specifically identified in the approved project. The grantee will disburse State and Federal funds only for an authorized purpose in connection with said recreation project.

The Grantee will refund the West Virginia Development Office of the State of West Virginia any expenditures determined to be made for an ineligible purpose for which Federal reimbursement was received, for transmittal to the Department of the Interior, National Park Service, of the United States of America.

8. **Method of Payment.**

- a) **General Payment Information:** To be eligible for any and all payments of the grant amount, the Grantee shall submit a letter of request along with the Standard Form 270 - "Request for Advancement or Reimbursement" and other supporting documentation (i.e. invoices, AIA Document G702) as may be required by the WVDO, detailing each segment of work completed on a percentage of completion basis under this contract, no more frequently than once a month. The WVDO will base the reimbursement amount on a percentage basis of total project completion. Ten-percent of the grant amount will be held until all elements of the project are complete and acceptance of the project by the Grantee.
- b) **First Payment Requirements:** Prior to the release of any grant funds, the Grantee must fulfill the requirements in Section 2, Boundary Map and Deed Restrictions, of this Contract.
- c) **Final Payment Requirements:** Prior to the final payment of grant funds, the WVDO will complete a successful final on-site inspection as stated in Section 9.c.iii. of this Contract.

9. **Project Inspections.**

- a) **Administrative Records:** At any time during normal business hours and as often as the WVDO may deem necessary, there shall be made available to the WVDO for examination all of the records with respect to all matters covered by this Contract and permit the WVDO to audit, examine, and make excerpts or transcripts from such records, and to make audit 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.
- b) **Reporting:** The Grantee shall submit any reports requested by the WVDO concerning financial status and program progress. Failure to provide such reports as required by WVDO in a timely manner shall be cause for termination of this Contract under the terms of Section 22 of this document.
- c) **Construction Progress:**
  - i. **Construction Schedule:** The Grantee shall submit the appropriate schedule as stated in Section 3 of this Contract. This document, supplied by the Grantee, will be used by the WVDO to schedule on-site inspections as described below.
  - ii. **Construction Inspections:** The WVDO will complete, at a minimum, two on-site inspections during the construction phase of the project. These inspections will be used to verify that work is consistent with the project agreement, is being completed according to schedule, to verify the amount of work completed is consistent with the reimbursement request, and other reasons so as to comply with all NPS and LWCF regulations.

- iii. Final inspections: The Grantee shall inform the WVDO that the project is complete and request a final inspection within 30 days of the project expiration date. The inspection will include, but not limited to, the following items; project completeness as stated in the Project Agreement, handicap accessibility, required signs, and 6(f)(3) boundary verification. The final inspection must be successfully completed prior to the final disbursement of funds by the WVDO.
- d) Post Completion Inspections: In order to determine whether properties acquired or developed with LWCF grant funds are being retained and used for outdoor recreation purposes, in accordance with the Project Agreement and other applicable program requirements, the NPS requires the WVDO to complete a Post Completion Inspection within five years after final billing and at least once every five years thereafter. The inspection will include, but not limited to, retention and use, appearance, maintenance, management, availability, required signs, and 6(f)(3) boundary verification. LWCF assisted properties shall not be converted to other than public outdoor recreation use but shall be maintained in public outdoor recreation in perpetuity as stated in the LWCF Grants Manual. Conversions of property must be approved by the Secretary of the United State Department of Interior in accordance with the LWCF Grants Manual.

**10. Personnel.**

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

**11. Fiscal Management.**

The Grantee will establish a separate account for the proper recording of project costs in accordance with generally accepted cost accounting principles and procedures so as to reflect all receipts and allowable expenditures in connection with the said recreation project and the purpose thereof. However, in the accounting system used it is understood that this system will meet the minimum requirements set forth in the LWCF Grants Manual. 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.

**12. Audit.**

The Grantee shall cause an audit of this program to be included in the annual audit of the Grantee performed by the Chief Inspector Division of the State of West Virginia Auditors Office or its designated representative. The audit shall be performed in conformance with the Office of Management and Budget (OMB) Circular No. A-133, "Audits of State and Local Governments."

**13. Employment Opportunity.**

With respect to employment in carrying out the program objectives, the Grantee agrees:

- a) That it will not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, national origin, or the physically handicapped;
- b) That it shall take affirmative action to ensure that all contractors employed during this project treat all their employees, without regard to race, color, age, religion, sex, national origin, or the physically handicapped; and that such affirmative action shall include, but not be limited to the following: employment, upgrading; demotions; transfers; recruitment, or recruitment of compensation; selection for training including apprenticeship, and participation in recreational and educational activities, in all solicitations or advertisements for employees placed by or on behalf of the Grantee, state that all qualified applicants will received consideration for employment without regard to race, color, age, religion, sex, national origin, or the physically handicapped, shall cause the provisions of this non-discrimination clause to be inserted in all subcontracts for any work covered by this notice of grant award so that such provisions will be binding upon each subcontractor and shall keep such records and submit such reports concerning the racial and ethnic origin of employees and applicants for employment as the WVDO may require; and
- c) The Grantee shall cause any contractor and/or any subcontractors it engages on this project to comply with Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et. Seq.), and implementing regulations Title 43, Part 17 Code of Federal Regulations (43 CFR 17), Presidential Executive Order 11246, as amended by Presidential Executive Order 11375, as well as the provision of the West Virginia Human Rights Act, as amended (Sections 5-11-1 of the Code of West Virginia).

**14. Competitive Bid Procedures.**

All procurement transactions, including professional services, regardless of whether negotiated or advertised and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition consistent with procedures identified in 43 CFR Part 12.1 - .52, and with applicable local and/or State law. Regardless of purchasing amount, competitive bids are encouraged when possible. The Grantee must follow their own procurement procedures if those procedures are more restrictive than those that are listed below.

a) Design Services:

The Grantee shall procure architect, engineer, or other professional design services in accordance with Chapter 5G of the West Virginia State Code and be in compliance with 43 CFR Part 12.1 - .52. The following web address will provide detailed information on the proper state procedures on selecting a design professional; [www.wvqbs.org](http://www.wvqbs.org).

b) Construction Services:

- i. Projects up to \$5,000: A minimum of three verbal bids are required, when possible, and must be present in the file and available to the WVDO if requested.
- ii. Project from \$5,000.01 to \$25,000: A minimum of three written bids are required, when possible, and must be present in the file and available to the WVDO if requested.
- iii. Projects over \$25,000: The Grantee shall solicit sealed bids for all construction-related contracts or supplies related to this project which have an estimated value of over twenty-five thousand dollars (\$25,000). Any attempts by the Grantee to segregate the project into sections having an estimated value of less than \$25,000 may be cause for termination of any agreement under the provisions of Section 22 of this document. Note that the Grantee must follow their approved procurement code if that code is more stringent. These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions of, Chapter 59, Article 3 of the West Virginia State Code. 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. The Grantee shall have available upon request for review by the WVDO or its designated representative bid documents and other evidence of compliance with these procedures. The resolution of bid and contract disputes is the sole responsibility of the Grantee.

15. Bonding and Insurance.

Except as otherwise required by law, a grant that requires the contracting or subcontracting for construction of facility improvements shall provide for the Grantee to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the contract or subcontract exceeds \$100,000. If the contracts or subcontracts exceed \$100,000 the minimum bonding and insurance requirements shall follow State Purchasing Guidelines which are as follows:

- a) Bid Guarantee: 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 within the time specified.

- b) Performance Bond: 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 a contract to secure fulfillment of all the contractors' obligations under such contract.
- c) Payment Bond: 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 as required by law of all persons supplying labor or materials in the execution of the work provided for in the contract.

**16. Project Wage Rates.**

No contract involving construction, reconstruction, demolition, improvement, enlargement, painting, decoration, alteration, and/or repair work which involves the employment of an "outside" contractor and/or sub-contractor shall be awarded through funds provided under this agreement which does not comply with the West Virginia Act on Wages on Construction of Public Improvements (Chapter 21, Article 5A of the West Virginia Code). 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.

Further, the Grantee shall include these wage rates as determined, to be included on all bidding documents and invoices, and attention should be specifically noted to these facts within the body of the advertisement for bids. The Grantee shall also have available upon request for review by the WVDO or its designated representative, bid documents and other evidence of compliance including copies of contractors' payrolls.

**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 Section 504 of the Rehabilitation Act of 1973. This Act requires that no qualified person shall on the basis of handicap, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance. The Americans with Disabilities Act of 1990 (P.L. 100-336) simply references and reinforces these requirements for Federally-assisted programs. 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 regulations as to actual construction procedures, as well as maintenance and operation of such facilities upon completion. Further Post-Completion Responsibilities that must be followed are included in the LWCF grants manual, Chapter 675.9.

**19. Interest of Member of WVDO and Others.**

No officer, member or employee of the WVDO 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 their personal interest or the interest of any corporation, partnership, or an association in which they are 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, or Delegate to 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. 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.

**22. Termination of Contract for Cause.**

If the Grantee shall fail to fulfill in a necessary and proper manner its obligations under this Contract, or if the Grantee shall violate any of the covenants, agreements, or stipulations of this Contract, the WVDO shall 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 (15) 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 WVDO for damages sustained by the WVDO by virtue of any breach of the Contract by the Grantee. The WVDO may withhold any payments to the Grantee until such time as the exact amount of damages due to the WVDO from the Grantee is determined.

**23. Termination for Convenience of WVDO.**

The WVDO 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 WVDO as provided therein, the Grantee shall be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total service of the Grantee covered by this Contract, less payments of compensation previously made.

**24. Termination by the Grantee.**

The Grantee may unilaterally rescind this agreement at any time prior to 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 WVDO makes any expenditures or incurs any obligation with respect to the project.

**25. Resolution of Disputes.**

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

**26. 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 Council by adoption and passage of a resolution, motion, or similar official action.

***IN WITNESS WHERE OF, THE WEST VIRGINIA DEVELOPMENT OFFICE AND THE GRANTEE HAVE EXECUTED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.***

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

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**J. Keith Burdette, Executive Director**

**City of Morgantown**

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**Jim Manilla, Mayor**

**Federal Employer Identification Number**

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**F.E.I.N**

UNITED STATES DEPARTMENT OF THE INTERIOR  
NATIONAL PARK SERVICE  
LAND AND WATER CONSERVATION FUND  
PROJECT AGREEMENT

(OMB No. 1024-0033, August 31, 2010)

State: West Virginia Project Number: 54-00484

Project Title: Mayfield Park Acquisition

Project Period: Date of Approval to December 31, 2014

Proposal Scope (Description of Project):

The city of Morgantown, West Virginia, will acquire 2.055 acres of parkland known as Mayfield Park, located on the Southwest corner of Mineral Street and Denver Avenue, up to the limits of the grant award.

The following are hereby incorporated into this agreement:

Total Project Cost \$ 200,000.00  
LWCF Amount \$ 100,000.00  
(Fund amount not to exceed 50% of total)

- 1. General Provisions
- 2. LWCF State Assistance Program Manual
- 3. Project Application and Attachments
- 4. OMB Circular A-102
- 5. 43 CFR Part 12
- 6. 36 CFR Part 59

The United States of America, represented by the Director, National Park Service, United States Department of the Interior, and the State named above (hereinafter referred to as the State), mutually agree to perform this agreement in accordance with the Land and Water Conservation Fund Act of 1965, 78 Stat. 897 (1964), the provisions and conditions of the Land and Water Conservation Fund State Assistance Program Manual, and with the terms, promises, conditions, plans, specifications, estimates, procedures, project proposals, maps, assurances, and certificates attached hereto or retained by the State and hereby made a part hereof.

The United States hereby promises, in consideration of the promises made by the State herein, to obligate to the State the amount of money referred to above, and to tender to the State that portion of the obligation which is required to pay the United States' share of the costs of the above project, based upon the above percentage of assistance. The State hereby promises, in consideration of the promises made by the United States herein, to execute the project described above in accordance with the terms of this agreement.

The following special project terms and conditions were added to this agreement before it was signed by the parties hereto:

In witness whereof, the parties hereto have executed this agreement as of the date entered below.

THE UNITED STATES OF AMERICA

By: *Jan E. Sokolowski*  
\_\_\_\_\_  
(Signature)  
OUTDOOR RECREATION PLANNER

National Park Service  
Department of the Interior

Date: APR 0 4 2012  
\_\_\_\_\_  
(entered by NPS)

STATE

*[Signature]*  
\_\_\_\_\_  
West Virginia  
(State)

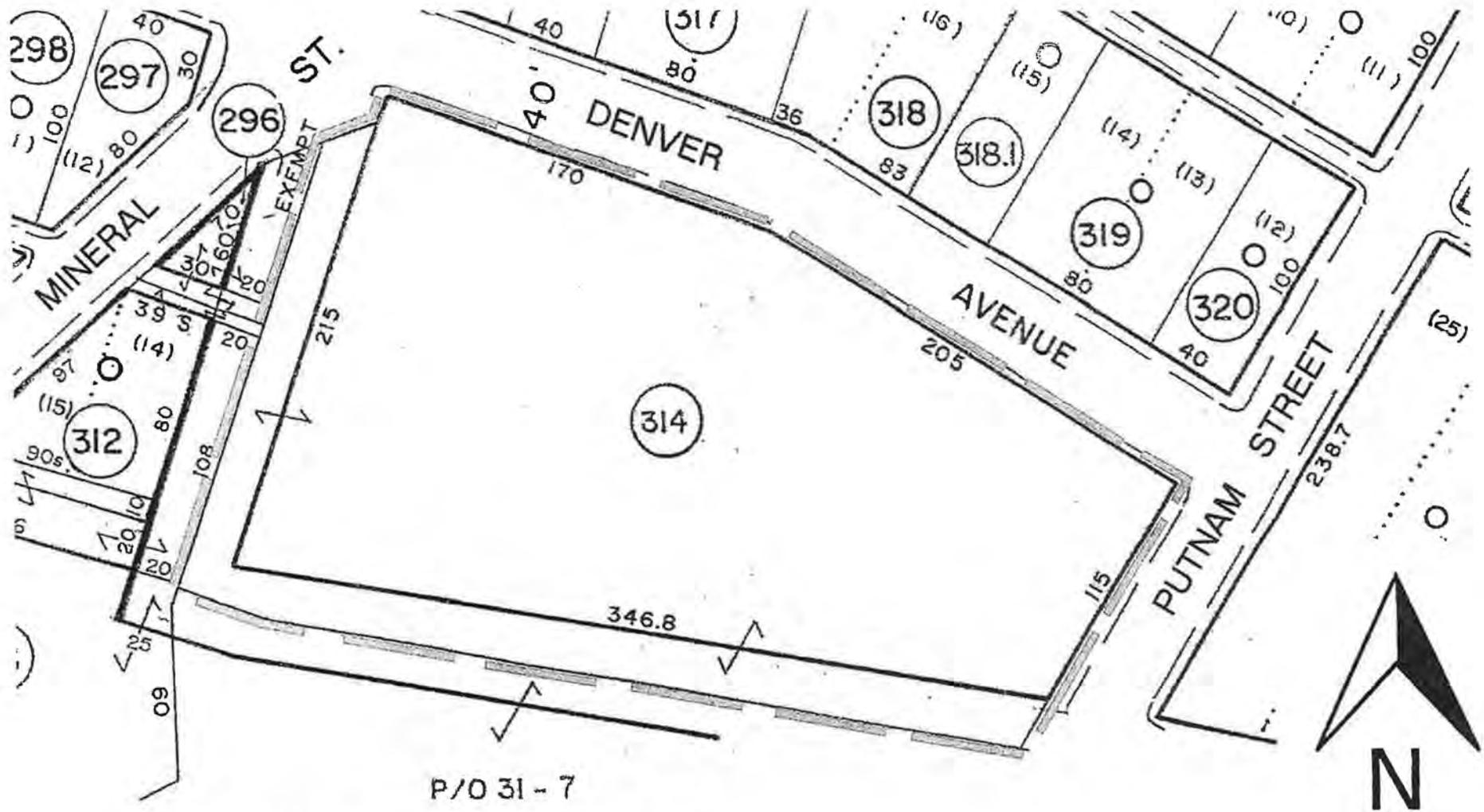
*[Signature]*  
\_\_\_\_\_  
(Signature)

Mary Jo Thompson  
\_\_\_\_\_  
(Name)

SLO  
\_\_\_\_\_  
(Title)

Estimated Burden Statement: The public reporting burden for this collection of information is estimated to average 3 hours per response including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding this burden estimate or any aspect of this form should be sent to the National Park Service, State and Local Assistance Programs Division, 1849 C Street NW, Washington, DC 20240.

Paperwork Reduction Act Statement: This form is necessary to provide data input into an NPS project database which provides timely data on projects funded over the life of the program. Such data is used to monitor project progress and to analyze program trends. A Federal Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Any comments on the burden estimate or other aspects of this collection of information may be addressed to the National Park Service, State and Local Assistance Programs Division, 1849 C Street NW, Washington, DC 20240.



Section 6(f) Project Area Boundary Map

**MAYFIELD PARK - 2.055 a.**

City of Morgantown, Sponsor

Approx. Scale: 1-1/2" = 100' 01/27/2012

Reference: Parcel 314, Map 24, District 1,  
Morgantown Corporation Tax Map, Monon-  
galia Co. Assessor's Office, Morgantown WV.

I hereby certify that the boundry map shown is accurately shows the area of park land protected under the provisions of Section 6(f)(3) of the L&WCF Act.

2/6/12 *Jeanna Bailes*  
Date Signature  
Jeanna Bailes, ASLO

**LAND AND WATER CONSERVATION FUND  
PROJECT AGREEMENT GENERAL PROVISIONS**

**Part I - Definitions**

- A. The term "NPS" or "Service" as used herein means the National Park Service, United States Department of the Interior.
- B. The term "Director" as used herein means the Director of the National Park Service, or any representative lawfully delegated the authority to act for such Director.
- C. The term "Manual" as used herein means the Land and Water Conservation Fund State Assistance Program Manual.
- D. The term "project" as used herein means a Land and Water Conservation Fund grant which is subject to the project agreement and/or its subsequent amendments.
- E. The term "State" as used herein means the State or Territory which is a party to the project agreement, and, where applicable, the political subdivision or public agency to which funds are to be transferred pursuant to this agreement. Wherever a term, condition, obligation, or requirement refers to the State, such term, condition, obligation, or requirement shall also apply to the recipient political subdivision or public agency, except where it is clear from the nature of the term, condition, obligation, or requirement that it is to apply solely to the State. For purposes of these provisions, the terms "State," "grantee," and "recipient" are deemed synonymous.
- F. The term "Secretary" as used herein means the Secretary of the Interior, or any representative lawfully delegated the authority to act for such Secretary.

**Part II - Continuing Assurances**

The parties to the project agreement specifically recognize that the Land and Water Conservation Fund project creates an obligation to maintain the property described in the project agreement and supporting application documentation consistent with the Land and Water Conservation Fund Act and the following requirements.

Further, it is the acknowledged intent of the parties hereto that recipients of assistance will use monies granted hereunder for the purposes of this program, and that assistance granted from the Fund will result in a net increase, commensurate at least with the Federal cost-share, in a participant's outdoor recreation.

It is intended by both parties hereto that assistance from the Fund will be added to, rather than replace or be substituted for, State and local outdoor recreation funds.

- A. The State agrees, as recipient of this assistance, that it will meet the following specific requirements and that it will further impose these requirements, and the terms of the project agreement, upon any political subdivision or public agency to which funds are transferred pursuant to the project agreement. The State also agrees that it shall be responsible for compliance with the terms of the project agreement by such a political subdivision or public agency and that failure by such political subdivision or public agency to so comply shall be deemed a failure by the State to comply with the terms of this agreement.
- B. The State agrees that the property described in the project agreement and the signed and dated project boundary map made part of that agreement is being acquired or developed with Land and Water Conservation Fund assistance, or is integral to such acquisition or development, and that, without the approval of the Secretary, it shall not be converted to other than public outdoor recreation use but shall be maintained in public outdoor recreation in perpetuity or for the term of the lease in the case of leased property. The Secretary shall approve such conversion only if it is found to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions deemed necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location pursuant to Title 36 Part 59.3 of the *Code of Federal Regulations*. This replacement land becomes subject to Section 6(f)(3) protection. The approval of a conversion shall be at the sole discretion of the Secretary, or his designee.

Prior to the completion of this project, the State and the Director may mutually alter the area described in the project agreement and the signed and dated project boundary map to provide the most satisfactory public outdoor recreation unit, except that acquired parcels are afforded Section 6(f)(3) protection as Fund reimbursement is provided.

In the event the NPS provides Land and Water Conservation Fund assistance for the acquisition and/or development of property with full knowledge that the project is subject to reversionary rights and outstanding interests, conversion of said property to other than public outdoor recreation uses as a result of such right or interest being exercised will occur. In receipt of this approval, the State agrees to notify the Service of the potential conversion as soon as possible and to seek approval of replacement property in accord with the conditions set forth in these provisions and program regulations. The provisions of this paragraph are also applicable to: leased properties acquired and/or developed with Fund assistance where such lease is terminated prior to its full term due to the existence of provisions in such lease known and agreed to by the Service; and properties subject to other outstanding rights and interests that may result in a conversion when known and agreed to by the Service.

- C. The State agrees that the benefit to be derived by the United States from the full compliance by the State with the terms of this agreement is the preservation, protection, and the net increase in the quality of public outdoor recreation facilities and resources which are available to the people of the State and of the United States, and such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by the United States by way of assistance under the terms of this agreement. The State agrees that payment by the State to the United States of an amount equal to the amount of assistance extended under this agreement by the United States would be inadequate compensation to the United States for any breach by the State of this agreement.

The State further agrees, therefore, that the appropriate remedy in the event of a breach by the State of this agreement shall be the specific performance of this agreement or the submission and approval of a conversion-of-use request as described in Section II.B above.

- D. The State agrees to comply with the policies and procedures set forth in Manual. Provisions of said Manual are incorporated into and made a part of the project agreement.
- E. The State agrees that the property and facilities described in the project agreement shall be operated and maintained as prescribed by Manual requirements and published post-completion compliance regulations (Title 36 Part 59 of the *Code of Federal Regulations*).
- F. The State agrees that a permanent record shall be kept in the participant's public property records and available for public inspection to the effect that the property described in the scope of the project agreement, and the signed and dated project boundary map made part of that agreement, has been acquired or developed with Land and Water Conservation Fund assistance and that it cannot be converted to other than public outdoor recreation use without the written approval of the Secretary of the Interior.
- G. Nondiscrimination
1. By signing the LWCF agreement, the State certifies that it will comply with all Federal laws relating to nondiscrimination as outlined in the Civil Rights Assurance appearing at Part III-I herein.
  2. The State shall not discriminate against any person on the basis of residence, except to the extent that reasonable differences in admission or other fees may be maintained on the basis of residence as set forth in the Manual.

### **Part III - Project Assurances**

A. Applicable Federal Circulars

The State shall comply with applicable regulations, policies, guidelines and requirements as they relate to the application, acceptance and use of Federal funds for this federally assisted project, including:

- OMB Circular A-102, Uniform Administrative Requirements for Grants and Cooperative Agreements

with State and Local Governments;

- 43 CFR Part 12, Administrative and Audit Requirements and Cost Principles for Assistance Programs, Department of the Interior;

- A-87, Cost Principles for State, Local, and Indian Tribal Governments; and

- A-133, Audits of States, Local Governments, and Non-Profit Organizations.

B. Project Application

1. The Application for Federal Assistance bearing the same project number as the agreement and associated documents is by this reference made a part of the agreement.
2. The State possesses legal authority to apply for the grant, and to finance and construct the proposed facilities. A resolution, motion or similar action has been duly adopted or passed authorizing the filing of the application, including all understandings and assurances contained herein, and directing and authorizing the person identified as the official representative of the State to act in connection with the application and to provide such additional information as may be required.
3. The State has the capability to finance the non-Federal share of the costs for the project. Sufficient funds will be available to assure effective operation and maintenance of the facilities acquired or developed by the project.

C. Project Execution

1. The project period shall begin with the date of approval of the project agreement or the effective date of a waiver of retroactivity and shall terminate at the end of the stated or amended project period unless the project is completed or terminated sooner in which event the project shall end on the date of completion or termination.
2. The State shall transfer to the project sponsor identified in the Application for Federal Assistance or the Description and Notification Form all funds granted hereunder except those reimbursed to the State to cover eligible administrative expenses.
3. The State will cause work on the project to be commenced within a reasonable time after receipt of notification that funds have been approved and assure that the project will be prosecuted to completion with reasonable diligence.
4. The State will require the facility to be designed to comply with the Architectural Barriers Act of 1968 (Public Law 90-480) and DOI Section 504 Regulations (43 CFR Part 17). The State will be responsible for conducting inspections to insure compliance with these specifications by the contractor.
5. The State shall secure completion of the work in accordance with approved construction plans and specifications, and shall secure compliance with all applicable Federal, State, and local laws and regulations.
6. In the event the project covered by the project agreement, cannot be completed in accordance with the plans and specifications for the project; the State shall bring the project to a point of recreational usefulness agreed upon by the State and the Director or his designee.
7. The State will provide for and maintain competent and adequate architectural/engineering supervision and inspection at the construction site to insure that the completed work conforms with the approved plans and specifications; that it will furnish progress reports and such other information as the NPS may require.
8. The State will comply with the terms of Title II and Title III, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646), 94 Stat. 1894 (1970), and the applicable regulations and procedures implementing such Act for all real property acquisitions and where applicable shall assure that the Act has been complied with for property to be developed with assistance under the project agreement.

9. The State will comply with the provisions of: Executive Order 11988, relating to evaluation of flood hazards; Executive Order 11288, relating to the prevention, control, and abatement of water pollution, and Executive Order 11990 relating to the protection of wetlands.
10. The State will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires the purchase of flood insurance in communities where such insurance is available, as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes, for use in any area that has been identified as an area having special flood hazards by the Flood Insurance Administration of the Federal Emergency Management Agency. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.
11. The State will assist the NPS in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archaeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to effects (see CFR Part 800.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.
12. The State will comply with "Minority Business Enterprises" and "Women's Business Enterprises" pursuant to Executive Orders 11625 and 12138 as follows:
  - (1) Place minority and women business firms on bidder's mailing lists.
  - (2) Solicit these firms whenever they are potential sources of supplies, equipment, construction, or services.
  - (3) Where feasible, divide total requirements into smaller needs, and set delivery schedules that will encourage participation by these firms.
  - (4) The Department of the Interior is committed to the objectives of this policy and encourages all recipients of its grants and cooperative agreements to take affirmative steps to ensure such fairness.

The National Park Service Regional Offices will work closely with the States to ensure full compliance and that grant recipients take affirmative action in placing a fair share of purchases with minority business firms.

13. The State will comply with the intergovernmental review requirements of Executive Order 12372.

**D. Construction Contracted for by the State Shall Meet the Following Requirements:**

1. Contracts for construction shall comply with the provisions of 43 CFR Part 12 (Administrative and Audit Requirements and Cost Principles for Assistance Programs, Department of the Interior).
2. No grant or contract may be awarded by any grantee, subgrantee or contractor of any grantee or subgrantee to any party which has been debarred or suspended under Executive Order 12549. By signing the LWCF agreement, the State certifies that it will comply with debarment and suspension provisions appearing at Part III-J herein.

**E. Retention and Custodial Requirements for Records**

1. Financial records, supporting documents, statistical records, and all other records pertinent to this grant shall be retained in accordance with 43 CFR Part 12 for a period of three years; except the records shall be retained beyond the three-year period if audit findings have not been resolved.

2. The retention period starts from the date of the final expenditure report for the project.
3. State and local governments are authorized to substitute copies in lieu of original records.
4. The Secretary of the Interior and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the State and local governments and their subgrantees which are pertinent to a specific project for the purpose of making audit, examination, excerpts and transcripts.

F. Project Termination

1. The Director may temporarily suspend Federal assistance under the project pending corrective action by the State or pending a decision to terminate the grant by the Service.
2. The State may unilaterally terminate the project at any time prior to the first payment on the project. After the initial payment, the project may be terminated, modified, or amended by the State only by mutual agreement.
3. The Director may terminate the project in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of the grant. The Director will promptly notify the State in writing of the determination and the reasons for the termination, together with the effective date. Payments made to States or recoveries by the Service under projects terminated for cause shall be in accord with the legal rights and liabilities of the parties.
4. The Director or State may terminate grants in whole, or in part at any time before the date of completion, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The NPS may allow full credit to the State for the Federal share of the noncancelable obligations, properly incurred by the grantee prior to termination.
5. Termination either for cause or for convenience requires that the project in question be brought to a state of recreational usefulness agreed upon by the State and the Director or that all funds provided by the National Park Service be returned.

G. Lobbying with Appropriated Funds

The State must certify, for the award of grants exceeding \$100,000 in Federal assistance, that no Federally appropriated funds have been paid or will be paid, by or on behalf of the State, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding, extension, continuation, renewal, amendment, or modification of this grant. In compliance with Section 1352, title 31, U.S. Code, the State certifies, as follows:

*The undersigned certifies, to the best of his or her knowledge and belief, that:*

*(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.*

*(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement,*

the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## H. Provision of a Drug-Free Workplace

In compliance with the Drug-Free Workplace Act of 1988 (43 CFR Part 12, Subpart D), the State certifies, as follows:

*The grantee certifies that it will or continue to provide a drug-free workplace by:*

*(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;*

*(b) Establishing an ongoing drug-free awareness program to inform employees about:*

- (1) The dangers of drug abuse in the workplace;*
- (2) The grantee's policy of maintaining a drug-free workplace;*
- (3) Any available drug counseling, rehabilitation, and employee assistance programs; and*
- (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;*

*(c) Making it a requirement that each employee to be engaged in the performance of a grant be given a copy of the statement required by paragraph (a);*

*(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:*

- (1) Abide by the terms of the statement; and*
- (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;*

*(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;*

*(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted;*

- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or*
- (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;*

*(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).*

The State must include with its application for assistance a specification of the site(s) for the performance of work to be done in connection with the grant.

I. Civil Rights Assurance

*The State certifies that, as a condition to receiving any Federal assistance from the Department of the Interior, it will comply with all Federal laws relating to nondiscrimination. These laws include, but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1), which prohibits discrimination on the basis of race, color, or national origin; (b) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicap; (c) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et. seq.), which prohibits discrimination on the basis of age; and applicable regulatory requirements to the end that no person in the United States shall, on the grounds of race, color, national origin, handicap or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity conducted by the applicant. THE APPLICANT HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.*

*THIS ASSURANCE shall apply to all aspects of the applicant's operations including those parts that have not received or benefited from Federal financial assistance.*

*If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.*

*THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date.*

*The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United State shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, assignees, and subrecipients and the person whose signature appears on the grant agreement and who is authorized to sign on behalf of the Applicant.*

J. Debarment and Suspension

**Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions**

*(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:*

*(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;*

*(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission or embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property;*

*(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and*

*(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.*

*(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.*

The State further agrees that it will include the clause "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions" appearing below in any agreement entered into with lower tier participants in the implementation of this grant. Department of Interior Form 1954 (DI-1954) may be used for this purpose.

**Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions**

*(1) The prospective lower tier participant certifies, by submission of this application that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.*

*(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this application.*

**ASSURANCES - CONSTRUCTION PROGRAMS**

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0042), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction subagreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE  Jim Manilla, Mayor
APPLICANT ORGANIZATION  City of Morgantown	DATE SUBMITTED