AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN IT AND THE MONONGALIA COUNTY DEVELOPMENT AUTHORITY WHICH PERTAINS TO THE FUNDING OF A MITIGATION PLAN PERTAINING TO THE CONSTRUCTION OF THE MORGANTOWN MUNICIPAL AIRPORT ACCESS ROAD; SAID FUNDING PLAN BEING REQUIRED BY THE UNITED STATES ARMY CORPS OF ENGINEERS.

The City of Morgantown hereby ordains that its City Manager is authorized to execute the attached Memorandum of Understanding, between the City and the Monongalia County Development Authority, 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:

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("Agreement") entered into this _____ day of July, 2013 by and between the Monongalia County Development Authority, Morgantown, Monongalia County, West Virginia ("MCDA"), a West Virginia Public Corporation, and the City of Morgantown, Morgantown, Monongalia County, West Virginia ("City"), a Municipal Corporation.

WHEREAS, the MCDA has applied to the United States Army Corps of Engineers (Corps) for a Department of the Army Clean Water Act Section 404 permit in connection with the construction of the Morgantown Municipal Airport Access Road; and

WHEREAS, the MCDA submitted, in conjunction with its permit application, a mitigation plan to compensate for unavoidable losses of waters of the United States. The mitigation plan will become a term and condition of MCDA's permit, and is attached hereto and fully incorporated herein (Mitigation Plan) as Exhibit A; and

WHEREAS, the City has agreed to fully implement and execute the Mitigation Plan for MCDA; and

WHEREAS, prior to making a permit decision, , the Corps has requested that MCDA and the City demonstrate that the City accepts the responsibility for the Mitigation Plan, including to the extent required, the maintenance, repair and/or replacement of the Mitigation Plan features, in whole or in part, including the replacement of the acid mine drainage treatment facility and

WHEREAS, the Corps has requested that the MCDA and/or the City demonstrate the financial capacity to fund the cost of maintaining the mitigation project at an average of $10,000 per year; and

WHEREAS, the City of Morgantown will annually place $10,000 in a Capital Reserve Fund, held and established by the City for this purpose; and

WHEREAS, the MCDA will advance the funding in the amount of $10,000 per year to the City to fund implementation and execution of the Mitigation Plan if, for any unforeseen reason, the City is unable to fund the requirements of the Mitigation Plan in a given year.
NOW, THEREFORE, the MCDA and City agree as follows:

(1) That the attached April 17, 2013 letter from the Morgantown City Manager to Jon T. Coleman, Regulatory Project Manager, United States Army Corps of Engineers, accurately reflects the commitment of both the City and the MCDA to the "mitigation project" at issue as set forth herein; and

(2) That should it be necessary for the MCDA to advance the City funding, as set forth in the aforementioned April 17, 2013 letter, the City will return the advanced money to the MCDA within the fiscal year of the City that the advance occurs; and

(3) This Agreement contains the entire understanding and agreement of the MCDA and City. To the extent that this Agreement and the April 17, 2013 letter from the Morgantown City Manager to Jon T. Coleman, Regulatory Project Manager, United States Army Corps of Engineers conflict, this Agreement controls; and

(4) The City and MCDA represent and warrant that by executing this Agreement, each has the requisite power and authority to enter into this Agreement, and that this Agreement has been duly authorized and approved by the City and MCDA;

(5) This Agreement may be modified upon the mutual agreement of the Parties. The Corps shall be notified within 30 days of any modification to the Agreement.

(5) This Agreement shall at all times be governed by the laws of the state of West Virginia.

MONONGALIA COUNTY DEVELOPMENT AUTHORITY	CITY OF MORGANTOWN
By: _____	By: _____
Its: _____President_____	Its: ___City Manager

The City of Morgantown

389 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505
(304) 284-7405 TDD (304) 284-7512

OFFICE OF CITY MANAGER

April 17, 2013

Jon T. Coleman, Regulatory Project Manager
United States Army Corp of Engineers
Pittsburgh District
1000 Liberty Avenue
Pittsburgh, PA 15222-4186

Re: Morgantown Municipal Airport Access Road

Dear Mr. Coleman:

This correspondence is being provided as a result of discussions and understandings between the City of Morgantown, Morgantown, West Virginia ("City"), the Monongalia County Development Authority, ("MCDA"), the United States Army Corp of Engineers ("ACOE") and the West Virginia Department of Environmental Protection ("WVDEP"). As part of the Morgantown Municipal Airport Access Road, the City has submitted a certain plan in connection with the 404 and the 401 permits for water quality certification and mitigation associated with acid mine drainage ("AMD") (collectively referred to in this correspondence as the "mitigation project").

Please accept this correspondence as confirmation by the City of Morgantown, of its understanding and acceptance of responsibility for the operation and maintenance of the mitigation project on an ongoing basis, including to the extent required, for the maintenance, repair and/or replacement of the project in whole or in part. This acceptance by the City of responsibility includes the replacement of the treatment facility should the acid mine drainage project fail.

The engineers for the project estimate that the ongoing annual cost of maintaining the project will be an average of approximately Ten Thousand Dollars ($10,000) per year, which will be placed in a Capital Reserve Fund held and established by the City for this purpose. The City will re-evaluate the Capital Reserve Fund for the project annually and will adjust the funds accordingly as necessary.

If necessary, the MCDA agrees to advance to the City the funding of the annual maintenance cost estimated to be Ten Thousand Dollars ($10,000) per year. The MCDA has represented to the City that it has the necessary approvals and authority to perform this agreement.

The City of Morgantown represents that by signing below that it has the authority to commit to the representations and responsibilities set forth herein.

If you have any questions or wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

Jeff Mikorski,
City Manager