



Office of the City Clerk

The City of Morgantown

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AGENDA
MORGANTOWN CITY COUNCIL
REGULAR MEETING
July 17, 2012
7:00 p.m.

1. **CALL TO ORDER**
2. **ROLL CALL BY CITY CLERK**
3. **PLEDGE TO THE FLAG**
4. **APPROVAL OF MINUTES:** Special Meeting July 3, 2012
Regular Meeting July 3, 2012
5. **CORRESPONDENCE:**
 - A. Update Regarding 2012 Urban Deer Archery Hunt
6. **PUBLIC HEARING:**
 - A. **PUBLIC HEARING of AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTIONS 153.01, 153.02, 153.04, 153.05, 153.07, AND 153.08 OF ITS ADMINISTRATIVE CODE, AS THE SAME APPLIES TO THE CITY OF MORGANTOWN HUMAN RIGHTS COMMISSION.**
7. **UNFINISHED BUSINESS:**
 - A. Consideration of **APPROVAL of SECOND READING (ADOPTION) of AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTIONS 153.01, 153.02, 153.04, 153.05, 153.07, AND 153.08 OF ITS ADMINISTRATIVE CODE, AS THE SAME APPLIES TO THE CITY OF MORGANTOWN HUMAN RIGHTS COMMISSION. (First Reading: July 3, 2012)**
 - B. **BOARDS AND COMMISSIONS**

8. SPECIAL COMMITTEE REPORTS

9. NEW BUSINESS:

- A. Consideration of APPROVAL of FIRST READING of AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY AGREEMENT BETWEEN THE CITY OF MORGANTOWN, GRANTOR, AND THE WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS, GRANTEE, AS THE SAME APPLIES TO GRANEE'S INSTALLATION OF POWER AND LIGHT POLES NEAR THE INTERSECTION OF 1ST STREET AND HALL STREET WEST OF BEECHURST AVENUE.**
- B. Consideration of APPROVAL of FIRST READING of AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING IT AS "LESSOR" TO ENTER INTO AN AIRLINE LEASE AGREEMENT WITH SILVER AIRWAYS, CORP., AS "LESSEE", AS THE SAME APPLIES TO SILVER AIRWAYS, CORP.'S OPERATION AT THE MORGANTOWN MUNICIPAL AIRPORT.**
- C. Consideration of APPROVAL of FIRST READING of AN ORDINANCE AMENDING THE FY 2012-2013 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE COAL SEVERANCE FUND.**
- D. Consideration of APPROVAL of FIRST READING of AN ORDINANCE AMENDING THE FY 2012-2013 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND.**
- E. Consideration of APPROVAL of A RESOLUTION TO FILE AN OFFICER'S CERTIFICATE AND REDEMPTION NOTICE IN ORDER TO CLOSE THE TAX INCREMENT REVENUE BONDS FOR PARKING GARAGE PROJECT NO. 1 SERIES 2006 A.**

10. PUBLIC PORTION WHICH SHALL BE SUBJECT TO RULES ESTABLISHED BY COUNCIL AND ADOPTED BY RESOLUTION

11. **CITY MANAGER'S REPORT:**

INFORMATION:

1. Mountainline Transit Route Service Commitments

NEW BUSINESS:

1. Capital Escrow Budget Adjustment Recommendation
2. Bid Results for Laboratory Services

12. **REPORT FROM CITY CLERK**

13. **REPORT FROM CITY ATTORNEY**

14. **REPORT FROM COUNCIL MEMBERS**

15. **EXECUTIVE SESSION:** Pursuant to WV State Code Section 6-9A-4(b)(9) to consider matters involving or affecting the purchase, sale or lease of property, advance construction planning, the investment of public funds or other matters involving commercial competition, which if made public, might adversely affect the financial or other interest of the City of Morgantown.

16. **ADJOURNMENT**

If you need an accommodation contact us at 284-7439

SPECIAL MEETING JULY 3, 2012:

The special meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Tuesday, July 3, 2012 at 6:45 p.m.

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

The meeting was called to order by Mayor Manilla.

UNFINISHED BUSINESS:

INTERVIEW FOR BOPARC – TO FILL ONE VACANCY:

Candidate Nancy Ganz was interviewed and asked questions by City Council. Mayor Manilla informed Ms. Ganz that Council will make a decision during the Regular Session under Boards and Commissions on whom they have selected.

EXECUTIVE SESSION:

Pursuant to West Virginia State Code section 6-9A-4(2)a Council moved by unanimous consent to enter into executive session in order to discuss matters pertaining to the appointment of a public officer, with Council Members present. Time 6:55 p.m.

ADJOURNMENT:

There being no further business, Council adjourned 6:58 p.m.

City Clerk

Mayor

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

REGULAR MEETING JULY 3, 2012:

The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Tuesday, July 3, 2012 at 7:00 P.M.

PRESENT: City Manager Terrence Moore, Deputy City Manager Jeff Mikorski, City Clerk Linda Little, City Attorney Steve Fanok, Mayor Jim Manilla and Council Members: Ron Bane, Wes Nugent, Jenny Selin, Marti Shamberger, Linda Herbst and Bill Byrne.

ELECTION OF MAYOR AND DEPUTY MAYOR: City Clerk Linda Little opened the floor for nominations for Mayor for the 2012-2013 term:

Nomination by Councilor Herbst, seconded by Councilor Nugent to re-elect Councilor Manilla as Mayor. Following, another nomination was made by Councilor Shamberger, seconded by Councilor Byrne to elect Councilor Selin as Mayor.

The roll was called on the first nomination for Councilor Manilla as Mayor. By a vote of 4-3, Councilor Jim Manilla was re-elected as Mayor for 2012-2013. Councilors Selin, Shamberger, and Byrne voted NO. (No vote was taken on the second nomination for Mayor since the first nomination passed unanimously).

City Clerk Linda Little then opened the floor for nominations for Deputy Mayor for the 2012-2013 term:

Nomination by Councilor Bane, seconded by Councilor Herbst to elect Councilor Nugent as Deputy Mayor. Following, another nomination was made by Councilor Selin, seconded by Councilor Byrne to elect Councilor Shamberger as Deputy Mayor.

The roll call was taken on the first nomination for Councilor Nugent as Deputy Mayor. By a vote of 4-3, Councilor Wes Nugent was elected Deputy Mayor for 2012-2013. Councilors Selin, Shamberger and Byrne voted NO. (No vote was taken on the second nomination for Deputy Mayor since the first nomination passed unanimously).

City Clerk Linda Little administered the Oaths of Office to Mayor Jim Manilla and Deputy Mayor Wes Nugent for the 2012-2013 term.

The meeting was then called to order by the Mayor.

APPROVAL OF MINUTES: The minutes of the Special & Regular Meetings of June 19, 2012 were approved as printed.

CORRESPONDENCE:

Ron Bane, 1st Ward City Councilor, submitted a memo as part of the record, to thank the City Manager, City Clerk and Executive Secretary Carol Allen for meeting with him on June 20, 2012. He stated that in that meeting it was nice to hear from Terrence, Linda, and Carol that City Councilors were not acting in a harassing manner to the City Manager nor to the Administrative Staff. (Memo attached as Exhibit A)

Mike Wolfe, Interim Director, MECCA 911, was present to give City Council a brief update regarding the aftermath of this past weekend's severe storm events.

Max Thuer, Intern from Mannheim Germany, introduced himself and informed Council he would be interning for the City until July 31st, 2012.

Mayor Manilla presented a proclamation to honor and congratulate WVU College of Physical Activity and Sports and Sciences and the National Youth Sports Program on celebrating 25 years of service to the community.

Mayor Manilla then presented a proclamation to Gary Murdock, Vice President of Planning and Marketing for WVU, honoring WVU Healthcare for their contributions of over \$350,000 to the City of Morgantown, BOPARC and the Citizens of Morgantown.

Councilor Byrne then offered condolences to Andrea Soccorsi and family, over the passing of her mother, who was a founding member of the Jerome Park neighborhood association.

The rules were suspended to allow a presentation by, and discussion with Roy Nutter, chairman of the Traffic Commission. He reported on the results of the truck traffic survey and conveyed the biggest concerns of the community. Following his presentation, further discussion and questions were entertained.

PUBLIC HEARING -AN ORDINANCE AUTHORIZING THE REFUNDING OF THE ISSUER'S OUTSTANDING PARKING REVENUE BONDS, SERIES 2002 AND FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, AND PAYING COSTS OF ISSUANCE AND RELATED COSTS, THROUGH THE ISSUANCE OF PARKING SYSTEM REFUNDING REVENUE BONDS, SERIES 2012, OF THE ISSUER IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$5,500,000; PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TAX CERTIFICATE, AN OFFICIAL STATEMENT, A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT, AND OTHER DOCUMENTS IN CONNECTION THEREWITH; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ENACTING OTHER PROVISIONS WITH RESPECT THERETO.

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

PUBLIC HEARING – 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.

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

PUBLIC HEARING – 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.

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

PUBLIC HEARING – 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.

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

PUBLIC HEARING – 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.

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

PUBLIC HEARING – 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.

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

PUBLIC HEARING – 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.

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

PUBLIC HEARING – 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.

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

PUBLIC HEARING – AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING A NEW SOLID WASTE MANAGEMENT CONTRACT WITH ALLIED WASTE SERVICES OF NORTH AMERICA, LLC DBA REPUBLIC SERVICES OF WEST VIRGINIA, THAT WILL TAKE EFFECT ON OCTOBER 1, 2012.

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

UNFINISHED BUSINESS:

AN ORDINANCE AUTHORIZING THE REFUNDING OF THE MORGANTOWN PARKING REVENUE BONDS: The below entitled Ordinance was presented for third reading:

AN ORDINANCE AUTHORIZING THE REFUNDING OF THE ISSUER’S OUTSTANDING PARKING REVENUE BONDS, SERIES 2002 AND FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, AND PAYING COSTS OF ISSUANCE AND RELATED COSTS, THROUGH THE ISSUANCE OF PARKING SYSTEM REFUNDING REVENUE BONDS, SERIES 2012, OF THE ISSUER IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$5,500,000; PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TAX CERTIFICATE, AN OFFICIAL STATEMENT, A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT, AND OTHER DOCUMENTS IN CONNECTION THEREWITH; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ENACTING OTHER PROVISIONS WITH RESPECT THERETO.

Motion by Byrne second by Herbst, to adopt the above entitled ordinance. Motion carried 7-0.

AN ORDINANCE AMENDING ARTICLE 1329.02 “DEFINITIONS” OF THE PLANNING AND ZONING CODE AS IT PERTAINS TO EXTRACTIVE INDUSTRY: The below entitled Ordinance was presented for second reading:

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.

Motion by Shamberger second by Selin, to adopt the above entitled ordinance. Motion carried 7-0.

AN ORDINANCE AMENDING TABLE 1331.05.01 “PERMITTED LAND USES” OF THE PLANNING AND ZONING CODE AS IT PERTAINS TO EXTRACTIVE INDUSTRY: The below entitled Ordinance was presented for second reading:

PUBLIC HEARING – 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.

Motion by Herbst second by Selin, to adopt the above entitled ordinance. Motion carried 7-0.

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: The below entitled Ordinance was presented for second reading:

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.

Motion by Byrne second by Shamberger, to adopt the above entitled ordinance. Motion carried 7-0.

AN ORDINANCE AMENDING ARTICLE 1355 “I-1, INDUSTRIAL DISTRICT” OF THE PLANNING AND ZONING CODE AS IT PERTAINS TO EXTRACTIVE INDUSTRY: The below entitled Ordinance was presented for second reading:

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.

Motion by Byrne second by Shamberger, to adopt the above entitled ordinance. Motion carried 7-0.

AN ORDINANCE AMENDING TABLE 1365.04.01 “MINIMUM OFF-STREET PARKING REQUIREMENTS” OF THE PLANNING AND ZONING CODE AS IT PERTAINS TO EXTRACTIVE INDUSTRY: The below entitled Ordinance was presented for second reading:

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.

Motion by Byrne, second by Selin, to adopt the above entitled ordinance. Motion carried 7-0.

AN ORDINANCE AMENDING ARTICLE 1385 "SITE PLAN REVIEW" OF THE PLANNING AND ZONING CODE AS IT PERTAINS TO EXTRACTIVE INDUSTRY: The below entitled Ordinance was presented for second reading:

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.

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

AN ORDINANCE REPEALING ARTICLE 721, WELL DRILLING: The below entitled Ordinance was presented for second reading:

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.

Motion by Nugent second by Byrne, to adopt the above entitled Ordinance. After discussion, motion carried 7-0.

AN ORDINANCE AUTHORIZING A NEW SOLID WASTE CONTRACT WITH ALLIED WASTE: The below entitled Ordinance was presented for second reading:

AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING A NEW SOLID WASTE MANAGEMENT CONTRACT WITH ALLIED WASTE MANAGEMENT CONTRACT WITH ALLIED WASTE SERVICES OF NORTH AMERICA, LLC DBA REPUBLIC SERVICES OF WEST VIRGINIA, THAT WILL TAKE EFFECT ON OCTOBER 1, 2012.

Motion by Byrne second by Herbst, to adopt the above entitled ordinance. Councilor Nugent proposed several amendments to the above mentioned contract, including "weekly pickup of solid waste and recyclables" in several places, removing language, and adding language with regard to billing and payment. Councilor Byrne also requested amendments to language specific to residential and commercial units. Councilor Byrne then seconded the amendments made by Councilor Nugent. Motion to approve amendments made by Councilor Nugent carried 7-0.

After continued discussion on the amendments proposed by Councilor Byrne, it was seconded by Councilor Shamberger. Councilor Byrne then moved to add a new paragraph referencing a local operations manager. Councilor Selin then seconded the motion for the additional paragraph. Discussion continued about the amendment of an additional paragraph proposed by councilor Byrne.

The rules were then suspended to allow commentary from Allied Waste representative Jeff Harvey. Mr. Moore recommended that a paragraph adding staff and office space for local representation compromises the nature of the contract as agreed upon by all parties. It was agreed that the idea has merit and was suggested that the contract at hand would not be the proper place to add stipulations which may compromise the service goal deadlines. Following discussion, Councilor Byrne withdrew his amendment to add the above referenced paragraph. Discussion continued with regard to customer service.

The question was called on Councilor Byrne's amendments, as first proposed above. Motion to approve said amendments carried 7-0. The question was then called on the main motion, approving of the contract with Allied Waste as amended. Motion carried 7-0.

BOARDS AND COMMISSIONS: By acclamation, Nancy Ganz was appointed to fill the vacant seat on BOPARC. Also by acclamation, Kitty Lozier, Mark Wise and Councilor Selin were re-appointed to the Urban Landscape Commission.

SPECIAL COMMITTEE REPORTS: No Reports.

NEW BUSINESS:

AN ORDINANCE AMENDING SECTIONS WHICH APPLIES TO THE HUMAN RIGHTS COMMISSION: The below entitled Ordinance was presented for first reading:

AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTIONS 153.01, 153.02, 153.04, 153.05, 153.07, AND 153.08 OF ITS ADMINISTRATIVE CODE, AS THE SAME APPLIES TO THE CITY OF MORGANTOWN HUMAN RIGHTS COMMISSION.

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

AN ORDINANCE AUTHORIZING A LEASE AGREEMENT WITH SILVER AIRWAY'S CORP., AT THE MUNICIPAL AIRPORT: The below entitled Ordinance was presented for first reading:

AN ORDINANCE AUTHORIZING IT AS "LESSOR" TO ENTER INTO AN AIRLINE LEASE AGREEMENT WITH SILVER AIRWAYS, CORP., AS LESSEE" AS THE SAME APPLIES TO SILVER AIRWAYS, CORP'S OPERATION AT THE MORGANTOWN MUNICIPAL AIRPORT.

Mr. Moore addressed Council with regard to modifications to the above lease agreement. He asked that the matter be brought before Council for first reading consideration July 17th, and second reading/adoption at a Special Meeting of Council on July 31st prior to the Committee of the Whole. By consensus of Council, the matter will be considered as prescribed above by the Manager.

A RESOLUTION THAT THE CITY OF MORGANTOWN SUPPORTS COLLABORATIVE EFFORTS TO PROVIDE COMPREHENSIVE HEALTHCARE SERVICES FOR THE BENEFIT OF MORGANTOWN'S GROWING COMMUNITY: The above entitled Resolution was presented for approval.

Motion by Herbst second by Nugent, to approve above entitled Resolution. After discussion, motion carried 4-3. Councilors Selin, Shamberger and Byrne voted NO.

PUBLIC PORTION: There being no appearances, Mayor Manilla declared the public portion closed.

CITY MANAGER'S REPORT: No report.

REPORT FROM CITY CLERK: City Clerk wished everyone Happy 4th and thanked Kenny Holloway for keeping Council Chamber cool for the meeting this evening.

REPORT FROM CITY ATTORNEY: No Report.

REPORT FROM COUNCIL MEMBERS: (Roll Reversal)

- Councilor Herbst: Councilor Herbst thanked City Employees and Personnel for their efforts during storm recovery in the area. She then wished everyone a safe 4th of July.
- Councilor Byrne: Councilor Byrne thanked the Traffic Commission for their work on the truck traffic survey, as well as those who worked to respond to storm damage. He congratulated the Mayor on his re-election, and gave his best wishes for another productive year on Council.
- Councilor Shamberger: Councilor Shamberger thanked first responders during a recent fire in Woodburn, and for storm recovery efforts. She reminded everyone of the upcoming Independence Day festivities and Family Day events. She also congratulated the Mayor and Deputy Mayor.
- Councilor Selin: Councilor Selin reported on the success of the Renaissance Morgantown Photographic Exhibit despite the storm interference. She also commented on the Greenmont neighborhood association picnic as well as the Safe and Secure Communities award presented to the City of Morgantown by Allstate Insurance Co. She then recognized Nancy Ganz for her re-appointment to BOPARC. Lastly she announced the concert series in Krepps Park.
- Councilor Nugent: Councilor Nugent seconded congratulations to Former Mayor Scafella for his efforts on the Renaissance Morgantown Photographic Exhibit and announced its upcoming showings. He announced the upcoming Downtown Economic Restructuring Committee meeting as well as Wiles Hill-Highland Park neighborhood events and invited all to attend. He also added to the events during the concert series at Krepps Park and thanked Council for his election as Deputy Mayor.
- Councilor Bane: Councilor Bane noted several items he wishes Council and the City to work on and be mindful of during the upcoming year, including: effects to the City Employee's insurance plans with respect to the new insurance laws; updates with regard B&O tax revenues; the prospect of an updated capitol budgeting system; a possible increase to the paving budget; efforts to solidify the partnership with the Mon. County Commission; strengthening of the Town & Gown bond with WVU; and lastly a suggestion to move towards a "Morgantown-Up", where revitalization efforts can be shared with all neighborhoods, and not just the Sunnyside area.
- Mayor Manilla: Mayor Manilla thanked his colleagues for their support as Mayor and thanked the City workers, Police and Fire for their storm recovery efforts. Mr. Moore added that FEMA reimbursement funds may become available in connection to the recent severe storms. Mayor Manilla noted that there may be a water leak at the Met Theatre. Councilor Shamberger interjected that the issue was turned over to the Deputy Manager to address. Mr. Moore confirmed that the

problem is directly connected to the recent storm and will be assessed and fixed by City crews.

Mayor Manilla mentioned that he attended the Greenmont picnic. He also noted that there are many immediate concerns for Morgantown including trash, traffic, infrastructure, the airport, economic development, and the arrival of the Big 12- where cleanliness of the City and celebratory fires need to be well controlled. He commended Fire Chief Caravaso for his efforts in this area. Mayor Manilla mentioned the press release announcing the reinstatement of the 'downtown beat' Officer who will make foot patrols downtown. He also mentioned the upcoming sidewalk cleaning efforts and announced several forthcoming events such as Celebration of America Parade, and Poetry at the M.A.C.

EXECUTIVE SESSION: Motion by Nugent, carried by acclamation to move Council into executive session, pursuant to West Virginia State Code section 6-9A-4(b)(2)(a) in order to discuss personnel matters with Council Members and City Manager present. Session commenced at 8:50 p.m.

ADJOURNMENT: There being no further items of business or discussion, the meeting adjourned by unanimous consent at 9:45 p.m.

City Clerk

Mayor

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July 3, 2012

Dear Morgantown City Council,

I am submitting a formal thank you to the City Manager, Terrance Moore, City Clerk, Linda Little and Executive Secretary Carol Allen for meeting with me on June 20, 2012. During that meeting Terrance, Linda and Carol were asked "Has any City Councilor ever harassed the City Manager or administrative staff?" They all answered "No, they had not witnessed or had been harassed by any City Councilor". It was nice to hear that I and my fellow City Councilors were not acting in a harassing manner to the City Manager and administrative staff. Again I thank Terrance, Linda and Carol for taking time to meet with me, it meant a lot to me.

Respectfully Submitted for the record,

A handwritten signature in blue ink that reads "Ron Bane". The signature is written in a cursive, flowing style.

1st Ward City Councilor
Ron Bane

City of Morgantown

Finance Department

389 Spruce Street

Morgantown, WV 26505

Phone 304-284-7407/Fax 304-284-7418

jsabatelli@cityofmorgantown.org

MEMO

DATE: July 13, 2012

TO: Terrence Moore, ICMA-CM
City Manager

FROM: JR Sabatelli, CPA 
Finance Director

RE: Capital Escrow Carry-Over Budget Revision

The items below are the proposed budget adjustments for the Capital Escrow Fund for the fiscal year ending June 30, 2013. The adjustments to revenue reflect the reduction proposed reduction in contributions from the General Fund as proposed and will be presented to council for first reading on the July 17, 2012 meeting. The prior year carryover is also being reduced, the reason for which includes the net effect of changes in the completion of various projects as well as a reduced contribution to the Capital Escrow Fund during FY12 due to B&O Construction funds not meeting their anticipated goals, despite the reductions in this estimate throughout the year.

It is recommended that, due to the patchwork already completed and as per your confirmation with Director of Public Works and Engineering Terry Hough, that the City Hall Roof be defunded. The reduction in Paving 2011 is due to the completion of that year's paving program and does not affect the current 2012 paving that has already started or the projected 2013 paving. The High Pressure Washer is now being rented and is therefore an operational activity paid for by the General Fund, and since no equipment will be purchased, this commitment may also be reduced. It is also recommended to reduce the contribution to the OPEB Fund as part of this adjustment. \$200,000 was budgeted and paid during FY12 from the Capital Escrow Fund, in addition, \$500,000 was contributed from the Life and Health Fund during the month of June, giving a balance of approximately \$700,025 (with interest) in this restricted fund (once money goes in, it can not come out for any other purpose than what it was restricted for). Due to the funding mechanism and the restricted use of these funds, coupled with the current balance and reduction in future liabilities by previous plan changes, it is recommended that the this contribution to the OPEB Fund be reduced. Finally, as per your direction, a contribution to the Transit Authority has been added as an additional allocation.

Budget Line	Current Budget	Proposed Revised Budget	Net Change
Revenues:			
Prior Year Carryover	\$3,828,032	\$3,559,762	\$ (268,270)
General Fund 2013 Transfer	\$1,893,858	\$1,513,858	\$ (380,000)
			\$ (648,270)
Expenses:			
City Hall Roof	\$ 200,000	\$ -	\$ (200,000)
Paving 2011	\$ 62,447	\$ -	\$ (62,447)
High Pressure Washer	\$ 25,000	\$ -	\$ (25,000)
OPEB Fund Contribution	\$ 300,000	\$ -	\$ (300,000)
Contingency	\$ 284,076	\$ 190,753	\$ (93,323)
Transit Authority Contribution	\$ -	\$ 32,500	\$ 32,500
			\$ (648,270)
Net Revision			\$ -

Memo

City of Morgantown Department of Public Works and Engineering

To: Terrence Moore, City Manager
From: Terry Hough, Director of Public Works and Engineering
Subject: Bid Call 2012-05
Laboratory Services for Landfill
Date: July 3, 2012

Bids were opened on Tuesday, June 19, 2012 at 3:00 p.m. for Laboratory Services for the Landfill. The bids are as follows:

VENDOR	COST
Reliance Laboratories	\$ 9,914.00

After reviewing the bids, Reliance Laboratories meets all the requirements. I recommend that the laboratory services be awarded to Reliance Laboratories for \$9,914.00. It should be noted that this is the first increase proposed in the cost for services since 2002 at \$9,822.00

If you have any questions regarding this matter, please contact me.

BOARDS AND COMMISSIONS - TERMS EXPIRED AND CURRENT VACANCIES

MUSEUM COMMISSION:

Jack Thompson's and Jim Snider's term expired on 6-30-12. Contacted Pam Ball to see if they wish to continue to serve. Once confirmed, council can vote on that appointment. Residents to serve at large, 5 year residency required.

URBAN LANDSCAPE COMMISSION:

Also Seeking 1 qualified applicant to fill unexpired 2 year term of position of Urban Forester and Chamber of Commerce. Nominated by CM, from each ward, 13 members with staggered terms, 1 councilmember, and non-ward members must represent specific category.

***POLICE & FIRE CIVIL SERVICE COMMISSIONS: NEW PRESIDENTS APPOINTED IN JANUARY.**

****Information for Boards and Commissions vacancies are placed in the Dominion Post, are advertised on the City's Government Station Channel 15, and are posted at the Library and also information is on the City's Web Page.***

****Council decided on 3-21-06 by unanimous consent that if there is only one candidate for Boards & Commissions, the City Clerk will check with Council before scheduling a Special Meeting.***

7/10/2012

AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTIONS 153.01, 153.02, 153.04, 153.05, 153.07, AND 153.08 OF ITS ADMINISTRATIVE CODE, AS THE SAME APPLIES TO THE CITY OF MORGANTOWN HUMAN RIGHTS COMMISSION.

The City of Morgantown hereby ordains that Sections 153.01, 153.02, 153.04, 153.05, 153.07, and 153.08 of its Administrative Code are amended as follows: (new matter underlined, deleted matter struck through):

153.01 DECLARATION OF POLICY.

In order to build an inclusive community, the City will dedicate deliberate and continuous attention to the human relations and human rights of its residents and visitors.

It is the public policy of the City to provide all of its residents equal opportunity for participation in local governance, employment, equal access to places of public accommodations and equal opportunity in the sale, purchase, lease, rental and financing of housing accommodations or real property. Equal opportunity in the areas of employment, public accommodations, housing accommodations or real property is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, age, blindness or handicap.

The denial of these rights to properly qualified persons by reason of race, religion, color, national origin, ancestry, sex, age, blindness, handicap or familial status is contrary to the principles of freedom and quality of opportunity and is destructive to a free and democratic society.

This City policy is based on the recognition and vision that the diversity found in our city brings forth richness in our community, a greater understanding of our world, a multitude of talent to benefit collective needs, and an opportunity for enhanced living and learning for all. Inherent in this policy is a commitment to encourage and endeavor to bring about equal opportunity, mutual understanding and respect for persons of all ages, abilities, ancestry, blindness, color, disability or handicap, ethnicities, familial status, national origins, sex, sexual orientations, races, religion and other backgrounds or orientations.

153.02 DEFINITIONS.

When used in this article:

- (a) "Person" means one or more individuals, partnerships, associations, organizations, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers and other organized groups of persons;

- (b) "Commission" means the Human Rights Commission of the City.
- (c) "Inclusive City" and "Inclusive Community" as used in this ordinance, shall mean the same thing, e.g., a city that helps people thrive by: supporting hospitality; welcoming diversity; promoting civility; promoting safe, affordable dwellings; enabling participation in community, services, and local government; supporting fairness in access to opportunities and services; reducing violence; supporting social justice; encouraging awareness and understanding of opportunities/limitations; making residents aware of the West Virginia Human Rights Commission; and working for a more sustainable community for present and future citizens.
- (e) (d) "Discriminate" or "discrimination" means to exclude from, or fail or refuse to extend to, a person equal opportunities in employment, public accommodations, housing, or other real property transactions because of race, religion, color, national origin, ancestry, sex, age, blindness, disability, sexual orientation or familial status. Discriminate includes to separate or segregate based on any of these characteristics;
- (d) (e) "Race, religion, color, national origin, ancestry, sex, age, blindness, handicap or disability, and familial status" are defined herein to be equivalent to the definitions in the West Virginia Human Rights Act, Code 5-11-3;
- (e) (f) "Sexual orientation" means having a preference for heterosexuality, homosexuality, being transgendered, or bisexuality, having a history of such preference or being identified with such preference.
- (g) "National League of Cities" means the National League of Cities and its various institutes and programs which relate to diversity in municipal populations throughout the United States and to efforts to support development of more equitable and sustainable communities.
- (h) "Neighborhood Coordinating Council" means the inter-neighborhood entity established by the City in 2005 to facilitate information exchange between the City administration and neighborhoods and among neighborhood organizations within the City.
- (i) "Sister City Program" means a national intercultural exchange program established in 1956 to promote global cooperation and intercultural understanding at the municipal level; stimulate connections, competitiveness and collaboration as well as development in a global market; and support citizen diplomacy on the part of individuals of all ages. The City of Morgantown has established a Sister Cities Commission to support its Sister City relationships established since 1978.

- (j) "Martin Luther King Day" celebrations means special observances related to the national holiday to celebrate respect for individuals of all backgrounds and origin.
- (k) "Teen Court" program means the Teen Court Program established by resolution August 2007.
- (l) "Youth Commission" means the Youth Commission of the City established by ordinance.

153.03 CITY HUMAN RIGHTS COMMISSION ESTABLISHED.

There is hereby established in the City a Human Rights Commission.

153.04 COMPOSITION AND MEMBERSHIP.

The Human Rights Commission shall consist of ~~eleven~~ seven members to be appointed by the ~~Mayor with the approval of City Council.~~ The ~~nine~~ members, ~~who are not West Virginia University students,~~ shall be residents of and in the City. ~~And shall serve for terms of three years. Of those nine non-West Virginia University student members, one member shall be a member in good standing on the City Board of Realtors; one shall be a member in good standing in a labor union; one shall be a member in good standing in the area of Chamber of Commerce; one shall be a member in good standing in the County Teachers Association; and one shall be a member in good standing in the County Ministerial Association. In addition to the foregoing nine members there shall be two West Virginia University students on the Commission who shall each serve one year terms.~~ The Commission may appoint, with the approval of City Council, ex-officio members who shall have the privilege of participation without the right to vote.

~~The members of the Commission in office of the Human Relations Commission on the date this section takes effect shall, unless sooner removed, continue to serve but shall be known as Human Rights commissioners until their respective terms expire and until their successors have been appointed and have qualified. All respective terms shall commence on October 8. Upon the expiration of the terms specified herein, all subsequent appointments shall be for a term of three years each. All vacancies shall be filled, as provided for herein, for the unexpired term thereof.~~

Commissioners shall serve for two-year terms beginning with the first meeting after the beginning of the municipal fiscal year. Four of the first seven members shall be appointed to serve terms of two years, while three shall be appointed to serve terms of one year. Thereafter, terms of office for all commissioners will be staggered with two-year terms. Members may be reappointed to subsequent two-year terms.

153.05 OFFICERS.

~~The membership of the Human Rights Commission shall select a chairperson, vice-chairperson, secretary and treasurer.~~

Officers: The officers of the Human Rights Commission shall be a Chairperson, Vice Chairperson, and Secretary. The Chairperson shall serve as the liaison to the City administration.

Appropriation of Funds: City Council may appropriate any funds that it deems necessary to carry out any of the proposals set forth by the Human Rights Commission. The Commission, with the approval of Council, may apply for State and Federal financial aid in grants or other forms of financial assistance through the City Administration to assist in carrying out any approved plans or projects.

Fiscal Responsibilities: The Human Rights Commission shall not have the authority to maintain any independent banking or other financial account. Any such account, if requested, shall be maintained by the City Manager.

153.06 MEETINGS, BYLAWS, AND RULES.

The Human Rights Commission shall meet as often as is deemed necessary by its members, upon call of the chairman. The Commission shall adopt its own bylaws and rules, subject only to the action of Council.

153.07 COMMISSION STATUS AND OBJECTIVES.

The Commission shall encourage and endeavor to bring about mutual understanding and respect among all racial, religious and ethnic groups within the City; and shall strive to eliminate all discrimination in employment and places of public accommodations by virtue of race, religion, color, national origin, ancestry, sex, age, blindness, sexual orientation or disability, and shall strive to eliminate all discrimination in the sale, purchase, lease, rental or financing of housing and other real property by virtue of race, religion, color, national origin, ancestry, sex, age, blindness, sexual orientation or disability.

In addition, the purpose of the Commission shall be to:

- (a) Work to make Morgantown an inclusive city.
- (b) Collaborate with the National League of Cities, West Virginia University, Monongalia County Commission and other partners as appropriate to encourage leadership in helping attain inclusivity in the City and its larger community.
- (c) Assess needs and identify barriers towards becoming a more inclusive community. Establish goals and objectives for sustaining welcoming

- environments, enhancing global awareness, and promoting optimum opportunities for supporting safe housing and thriving people.
- (d) Support as well as plan, publicize, implement, and evaluate programs, services and activities which promote appreciation for all peoples and the personal worth of every individual.
- (e) Enlist the cooperation of civic, community, corporate, educational, ethnic, health care, labor, racial, religious, social justice or other identifiable groups of the City in programs and services devoted to the advancement of tolerance, communication and understanding, and equal protection of the laws of all groups and people.

153.08 POWERS; FUNCTIONS; SERVICES.

The Commission has the right and duty to communicate with City Council and to present to Council any issues that it has investigated pursuant to this Article.

The Commission is hereby authorized and empowered:

- (a) To cooperate and work with federal, state and local government officers, units, activities and agencies in the promotion and attainment of more harmonious understanding and greater equality of rights between and among all racial religious and ethnic groups in this City.
- (b) To enlist the cooperation of racial, religious and ethnic units, community and civic organizations, industrial and labor organizations and other identifiable groups of the City in programs and campaigns devoted to the advancement of tolerance, understanding and the equal protection of the laws of all groups and people.
- (c) To hold and conduct public hearings or meetings relating to any and all types of discrimination. These hearings shall be of a non-adjudicatory nature and shall not constitute investigations or adjudication of individual complaints regarding unlawful discrimination under the West Virginia Human Rights Act 5-11-1 et. seq.
- (d) To refer any individual or group complaint regarding alleged acts of unlawful discrimination to the West Virginia Human Rights Commission for investigation and adjudication.
- (e) To recommend to Council policies, procedures, practices and legislation in matter and questions affecting human rights. Study problems and needs related to inclusivity in the City and make specific recommendations to the City Manager and to the City Council and other partners as pertinent.
- (f) To prepare a written report on its work, functions and services for each year ending on June 30 and to deliver copies thereof to Council on or before December 1 next thereafter.
- (g) To do all other acts and deeds necessary and proper to carry out and accomplish effectively the objectives, functions and services contemplated by the provisions of this article, including the promulgation of rules and regulations implementing the powers and authority hereby vested in the Commission.

- (h) To create such advisory agencies within the City as in its judgment will aid in effectuating the purpose of this article; to study the problem of discrimination in all or specific fields or instances of discrimination because of race, religion, color, national origin, ancestry, sex, age, blindness or handicap; to foster, through community effort or otherwise, goodwill, cooperation and conciliation among the groups and elements of the population of the City and to make the recommendations to the Commission for the development of policies and procedures, and for programs of formal and informal education, which the Commission may recommend to the appropriate City agency. Such advisory agencies shall be composed of representative residents serving without pay. The Commission may itself make the studies and perform the acts authorized by this subsection. It may, by voluntary conferences with parties in interest, endeavor to eliminate discrimination in all stated fields and to foster goodwill and cooperation among all elements of the population of the City.
- (i) To accept contributions from any person to assist in the effectuation of the purposes of this section and to see and enlist the cooperation of private, charitable, religious, labor and civic and benevolent organizations for the purposes of this section.
- (j) To issue such publications and such results of investigation and research as in its judgement will tend to promote goodwill and minimize or eliminate discrimination; however, the identity of the parties involved shall not be disclosed.
- (k) Advise, consult with, and inform the City Manager on any matter pertaining to inclusivity in the City.
- (l) Support and develop program initiatives to promote residents' awareness and knowledge of both opportunities to increase inclusivity and current barriers which limit community inclusiveness and long-term sustainability.
- (m) Learn about best practices for addressing issues.
- (n) Create and implement an inclusive community plan for the City which increases public awareness of issues; promotes education and understanding, provides, enables, or enhances services; articulates planned collaboration; and promotes public participation.
- (o) Review City plans and policies which contain matters relating to inclusivity.
- (p) Use media and the Internet to frame and convey information about issues, public programs, and service opportunities.

153.09 COMPLAINTS; PROCEDURES.

The Commission shall inform any individual claiming to be aggrieved by an alleged unlawful discriminatory practice under West Virginia Human Rights Act 5-11-9 that the Commission does not have the power to accept formal complaints of illegal practices. Any individual claiming to be so aggrieved shall be referred to the West Virginia Human Rights Commission for investigation and adjudication of the complaint.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY AGREEMENT BETWEEN THE CITY OF MORGANTOWN, GRANTOR, AND THE WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS, GRANTEE, AS THE SAME APPLIES TO GRANTEE'S INSTALLATION OF POWER AND LIGHT POLES NEAR THE INTERSECTION OF 1ST STREET AND HALL STREET WEST OF BEECHURST AVENUE.

The City of Morgantown hereby ordains that its City Manager is authorized to execute the Right-of-Way Agreement, hereto attached, by and on behalf of the City of Morgantown.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

**RIGHT OF WAY AGREEMENT –
1ST STREET AND HALL STREET**

THIS RIGHT OF WAY AGREEMENT is made this 14th day of June, 2012, by and between the CITY OF MORGANTOWN, a municipal corporation, GRANTOR, and the WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS, on behalf of WEST VIRGINIA UNIVERSITY, a state agency, GRANTEE.

WITNESSETH: That for and in consideration of the payment of One Dollar (\$1.00), cash in hand paid, the receipt of which his hereby acknowledged the GRANTOR does now hereby grant unto the GRANTEE a right of way for the purpose of constructing, reconstructing, installing, and re-installing power and light poles in, on, and upon that certain tract or parcel, located near the intersection of 1st Street and Hall Street west of Beechurst Avenue, situate in the North Morgantown Subdivision, Blocks 1 and 6, located in the Fourth Ward of the City of Morgantown, Monongalia County, West Virginia and more particularly described as follows:

Beginning at a point located within the intersection of the right of way of 1st Street and Hall Street, said point being further identified as the south-western outside corner of the 10' right of way, said beginning point also being further referenced, N. 78 degrees 30 minutes 03 seconds W. 22.81' from a found 2" iron pipe monument identified as the north-western corner of Lot No. 10, Block 1, of the North Morgantown Subdivision, thence running with seven outside lines of the 10' right of way, N. 07 degrees 13 minutes 59 seconds E. 10.00' to a point, thence; S. 82 degrees 46 minutes 01 seconds E. 24.96' to a point, thence; N. 15 degrees 21 minutes 40 seconds W. 15.60' to a point located on the southern right of way line of 1st Street adjoining Lot No. 1, Block 6., thence running with that adjoining right of way line; N. 70 degrees 25 minutes 49 seconds E. 10.03' to a point, thence leaving the southern right of way line of 1st Street and Lot No. 1, Block 6 running inside of the 1st Street right of way; S. 15 degrees 21 minutes 40 seconds E. 25.07' to a point located on the northern right of way line of 1st Street, Lot No. 10, Block 1, thence running with that right of way line; S. 70 degrees 25 minutes 49 seconds W. 12.82' to a point, thence leaving the right of way line of 1st Street and running into the right of way line of Hall Street; N. 82 degrees 46 minutes 01 seconds W. 26.10' to the place of beginning containing a total of 519.17 square feet more or less of right of way as surveyed by Thrasher Engineering, Daniel L. Wheeler, Professional Surveyor during the month of June 2012.

This outside description of right of way area was written on June 27, 2012 by Daniel L. Wheeler, Professional Surveyor No. 530, Thrasher Engineering Company; and further depicted in Exhibit A, attached and incorporated herein.

For the consideration aforesaid, GRANTOR does now also hereby grant and convey unto GRANTEE, its successors and assigns, a temporary construction right of way of such width as is reasonable and necessary to carry out the construction or replacement of all or part of the above described electrical power and light poles.

GRANTEE agrees to provide to GRANTOR copies of as-built drawings showing the exact location of said electrical duct bank upon completion of construction.

GRANTEE covenants and agrees to replace, restore, and return at all times said roadway to its original and former condition, or as directed by the City Engineer, after each and every excavation for maintenance, repair, or replacement of the above described power and light poles. Prior to any such excavation, GRANTEE agrees to provide reasonable notice to GRANTOR and to be in compliance with all requirements of GRANTOR as to regulations, permits, or authorizations, if any. Furthermore, GRANTEE, at its expense, covenants and agrees to relocate upon request by GRANTOR the above described power and light poles.

This Agreement shall be binding upon the parties hereto, their successors or assigns.

DECLARATION OF CONSIDERATION

The undersigned hereby declare that the conveyance made in the document to which this declaration is appended is exempt from taxation under the provisions of Chapter 11, Article 22 of the Code of the State of West Virginia, for the reason that it is a conveyance made to an agency of the State of West Virginia.

IN WITNESS WHEREOF, the City of Morgantown, a municipal corporation, has caused its name to be hereunto subscribed by Terrence Moore, its City Manager, by authority duly given, and the West Virginia University Board of Governors, on behalf of West Virginia

University, a state agency, has caused its name to be hereunto subscribed by Narvel G. Weese, Jr., its Vice President for Administration and Finance, by authority duly given.

CITY OF MORGANTOWN

By: _____
Terrence Moore
City Manager

WEST VIRGINIA UNIVERSITY
BOARD OF GOVERNORS, ON BEHALF OF
WEST VIRGINIA UNIVERSITY,
JAMES P. CLEMENTS, PRESIDENT

By: _____
Narvel G. Weese Jr.
Vice President for Administration and Finance

STATE OF WEST VIRGINIA,

COUNTY OF MONONGALIA, to wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by Terrence Moore, City Manager of the City of Morgantown, acting for and on behalf of the City of Morgantown, a municipal corporation.

My commission expires: _____.

Notary Public in and for the
State of West Virginia

STATE OF WEST VIRGINIA,

COUNTY OF MONONGALIA, to wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by Narvel G. Weese, Jr., Vice President for Administration and Finance, acting for and on behalf of the West Virginia University Board of Governors, on behalf of West Virginia University, James P. Clements, President.

My commission expires: _____.

Notary Public in and for the
State of West Virginia

This Instrument Prepared By:
Gary G. Furbee, II
Senior Associate General Counsel
West Virginia University
WV State Bar No. 9531

**AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING IT AS
“LESSOR” TO ENTER INTO AN AIRLINE LEASE AGREEMENT WITH SILVER
AIRWAYS, CORP., AS “LESSEE”, AS THE SAME APPLIES TO SILVER AIRWAYS,
CORP.’S OPERATION AT THE MORGANTOWN MUNICIPAL AIRPORT.**

The City of Morgantown hereby ordains that its City Manager is authorized to execute the attached lease agreement by and on behalf of the City of Morgantown.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

AIRLINE LEASE AGREEMENT

THIS INDENTURE OF LEASE, by and between the **CITY OF MORGANTOWN, WEST VIRGINIA** (hereinafter referred to as **“LESSOR”**) and **SILVER AIRWAYS, CORP.**, a corporation organized and existing under and by virtue of the laws of the State of Delaware, (hereinafter referred to as **“LESSEE”**).

WITNESSETH

WHEREAS, **“LESSOR”** is now operating on certain real property located in the County of Monongalia, State of West Virginia, known as Morgantown Municipal Airport (hereinafter sometimes referred to as the **“AIRPORT”**); and

WHEREAS, **“LESSEE”** is engaged in the business of transporting persons, property, and mail by air and **“LESSOR”** desires to lease and grant, and **“LESSEE”** desires to hire and obtain certain premises and facilities on said **“AIRPORT,”** together within certain rights, licenses and privileges thereon.

ARTICLE I - PREMISES

“LESSOR” does hereby demise and let unto **“LESSEE”** and **“LESSEE”** does hereby hire and take from **“LESSOR”** the following premises and facilities, rights, licenses and privileges on and in connection with property and improvements of **“LESSOR”** specified as said **“AIRPORT”** as more particularly hereinafter set fourth;

(A) **USE OF AIRPORT.** The use, in common with others authorized so to do, of said **“AIRPORT”** and appurtenances, together with all facilities, improvements, equipment and services which have been or may hereafter be provided at or in connection with said

“AIRPORT” from time to time including, without limiting the generality hereof, the landing field, runways, aprons, taxiways, sewerage and water facilities, flood lights, landing lights, control tower, signals, radio aids and all other conveniences for flying landings, and takeoffs of aircraft of **“LESSEE,”** which use, without limiting the generality hereof, shall include;

(1) The operation of the transportation system by aircraft for the carriage of persons, property and mail (hereinafter referred to as **“AIR TRANSPORTATION”**);

(2) The use of subcontractors or agents, hereinafter referred to as **“AGENTS”**, in the support of the operation of **“AIR TRANSPORTATION.”**

(3) The repairing, maintaining, conditioning, servicing, parking or storage of aircraft or other equipment of **“LESSEE”** or of any other scheduled air transport operation;

(4) The training at the **“AIRPORT”** of personnel in the employ of or to be employed by **“LESSEE”** or its **“AGENTS”** and the testing of aircraft and other equipment; it being understood that such training and testing shall be incident to the operations by **“LESSEE”** or its **“AGENTS”** of its air transportation system, and provided that in the event **“LESSEE”** institutes an active training program or establishes a training base at or on the **“AIRPORT,”** fees for such use shall be established by mutual agreement;

(5) The sale, disposal or exchange of **“LESSEES”** aircraft, engines, accessories, gasoline, oil, greases, lubricants and other equipment or other fuel or supplies; provided, that such right shall not be construed as authorizing the conduct of a separate business by **“LESSEE,”** but to permit **“LESSEE”** to perform such functions as are incident to its operation of an air transportation system, and specifically, but without limitation, to permit the use by the **“LESSEE”** in connection with its operation of an air transportation system; and provided the

“LESSEE” may not sell gasoline, fuel, greases, and other lubricants except to any subsidiary or affiliated company or except when the same are a particular grade desired by others and not otherwise available (except from other air transportation operations) at said **“AIRPORT,”** and any such sale of any subsidiary or affiliated company shall be subject to the Airport Director's approval;

(6) The landing, taking off, parking, loading and unloading of **“LESSEE’S”** aircraft or other equipment, and the right, subject to availability of space, to store aircraft in any hangar owned or operated by **“LESSOR”** at the same rates as are charged by **“LESSOR”** to other scheduled air carriers or others storing similar aircraft;

(7) The loading or unloading of persons, property or mail at said **“AIRPORT”** by such motor vehicles or other means of conveyance as may be necessary. In the event a motor vehicle carrier holds a certificate of convenience and necessity and its service is found to be unsatisfactory, **“LESSEE”** shall have the right to file a complaint with the **“LESSOR”** and the **“LESSEE”** shall, if investigation verifies the complaint, notify the Public Service Commission, for suitable action;

(8) The right to install and operate advertising signs on the leased airport premises, the location, type and design of such signs to be subject to the approval of the **“LESSOR”**;

(9) The right to install, maintain and operate such radio communication, meteorological and aerial navigation equipment and facilities in, on and about the premises therein leased at said **“AIRPORT”** as may be necessary or convenient in the opinion of the **“LESSEE”** for its operations, the general location of such facilities to be subject to the approval of the **“LESSOR”**;

(10) The conduct of any other business or operations reasonably necessary to the proper conduct and operation by “LESSEE” of any air transportation system for the carriage of persons, property and mail by aircraft in the domestic or foreign commerce, subject to the approval of the “LESSOR”;

(B) **EXCLUSIVE USE SPACE IN THE TERMINAL BUILDING:** The exclusive use of Areas 104 and 113 (see attachment 1 hereto), consisting of approximately 295 square feet of space, in the area designated as the North Terminal, for such uses as “LESSEE” may desire to make thereof in connection with or incidental to its operation of an air transportation system, such uses to include, without limiting the generality hereof, the sale of tickets, manifesting of passengers and cargo and the operation of a general traffic, operations, security, administrative, and communications office.

(C) **JOINT USE SPACE IN THE TERMINAL BUILDING:** The joint use, with others authorized to do so, of Areas 105 and 106 (see attachment 1 hereto) consisting of approximately 570 square feet of space, in the area designated as the North Terminal, for the “LESSEE’S” use in handling, storing and processing as required, mail, cargo, and passenger baggage.

(D) **PUBLIC SPACE IN THE TERMINAL BUILDING:** The use, by “LESSEE” its employees, passengers, guests, patrons and invites, in common with others, of all public space in said Terminal Building and all additional public space which may hereafter be made available in said Terminal Building or any other addition thereto; including without limiting the generality hereof, its lobby, waiting rooms, hallways, restrooms, and other public and passenger conveniences.

(E) **PARKING SPACES:** “LESSEE” and its employees free use in common with other airport tenant organizations that may be lessees of space and privileges at the “AIRPORT,” and their employees, of a vehicular parking lot.

(F) **SPACE FOR RADIO RECEIVING AND TRANSMITTING EQUIPMENT:** The full unrestricted and exclusive use of a certain tract of ground, the precise location to be agreed upon by the parties, for the erection, maintenance and operation of the poles, antennae and equipment necessary for the operation of the “LESSEE’S” remote control radio-receiving and transmitting equipment.

(G) **RIGHT OF ACCESS, INGRESS AND EGRESS:** The full and unrestricted access and ingress to and egress from the premises outlined in (A) and (E) above, for “LESSEE,” its employees, passengers, guests, patrons, invites, suppliers of materials and furnishers of service, its or their aircraft, equipment, vehicles, machinery and other property.

ARTICLE II - TERM

“LESSEE” shall have and hold said premises, facilities, rights, licenses, and privileges set forth herein for a term commencing August 1, 2012 and terminating July 31, 2014, with automatic annual renewals, unless sooner terminated as herein provided, and provided further that said lease shall be terminated in the event the “LESSEE’S” authorization to serve the Morgantown Municipal Airport should be suspended by action of the US Department of Transportation or the Federal Aviation Administration.

ARTICLE III - RENTAL AND FEES

“LESSEE” agrees to pay “LESSOR” for the use of the premises, facilities, rights, licenses, services and privileges granted hereunder, the following rentals, fees and charges (there

being no other rentals, fees or charges and no tolls payable by “LESSEE” unless otherwise specifically provided herein); all payable in monthly installments covering the preceding calendar month, and in the event the beginning or termination date with respect to any of the particular premises, facilities, rights licenses, services or privileges as hereinafter provided falls on any date other than the first day of a calendar month, the applicable rentals, fees and charges for that month shall be paid for said month prorated, according to the number of days during that month; and “LESSOR” shall, following the end of each month transmit to “LESSEE” a statement of the rentals, fees and charges incurred by “LESSEE” during said month as hereinafter provided, and the same shall be paid by “LESSEE” within thirty (30) days after receipt of such statement:

(A) **RENT WITH RESPECT TO EXCLUSIVE USE TERMINAL BUILDING SPACE:**

From August 1, 2012 through July 31, 2013, rental in the amount of \$3300.00 per year therefore shall be paid by “LESSEE” for such part of said Terminal Building as is used exclusively hereunder by the “LESSEE” (approximately 295 square feet). Said rental shall be paid in 12 equal monthly installments of \$275.00 each. Any exclusive use space occupied by the “LESSEE” in addition to that originally designated for its use herein shall be rented at a rate to be agreed upon by the parties hereto. The square footage rental fee shall be increased each year by a factor equal to the change in the Consumer Price Index (All Urban Consumers - (CPI-U) U.S. city average All items) from July of the previous year to June of the current year, not to exceed three percent (3%). “LESSOR” will advise “LESSEE” in writing by July 1 each year, of the new square footage rental fee.

(B) **RENT WITH RESPECT TO JOINT USE TERMINAL BUILDING SPACE:**

From August 1, 2012 through July 31, 2013, rental in the amount of \$6396.00 per year therefore shall be paid by “LESSEE” for such part of said Terminal Building as is used jointly with others authorized to do so (approximately 570 square feet). Said rental shall be paid in 12 monthly installments of \$533.00 each. Any joint use space occupied by the “LESSEE” in addition to that originally designated for its use herein shall be rented at a rate to be agreed upon by the parties hereto. The square footage rental fee shall be increased by a factor equal to the change in the Consumer Price Index (All Urban Consumers - (CPI-U) U.S. city average All items) from July of the previous year to June of the current year, not to exceed three percent (3%).. “LESSOR” will advise “LESSEE” in writing by July 1 each year of the new square footage rental fee.

(C) **FEE WITH RESPECT TO “LESSEE’S” SCHEDULED TRIP ARRIVALS
AT THE AIRPORT:**

“LESSEE” will furnish to the Airport Manager of the Morgantown Municipal Airport, on forms approved by him, no later than the fifteenth (15th) day of each month, a detailed and itemized record of all landings performed during the preceding month. Said record shall contain the following:

(1) A chronological listing of all landings performed, identified by flight number, date and type of aircraft. If no flight number is assigned, then the registration number of the aircraft shall be listed in lieu thereof.

(2) The certified maximum landing weight of each aircraft performing a landing.

(3) The number of the originating and terminating revenue passengers for the preceding month.

The “LESSOR” shall compute and bill the “LESSEE” once every month the amount due. Payment therefore, shall be made within thirty (30) days after receipt thereof by the carrier. The rate from August 1, 2012 through July 31, 2013 shall be Eighty Seven Cents (\$0.87) per 1,000 pounds of landing weight. Thereafter, the rate will increase Three cents (\$0.03) per 1,000 pounds of landing weight annually.

(D) SERVICES

“LESSOR” acknowledges “LESSEE’s” right to provide fueling, deicing, and other services with its own employees and/or agents. To cover the cost of “LESSOR’s” facilities for this servicing, “LESSEE” will pay “LESSOR” ten cents (\$0.10) per gallon of fuel and/or deicing fluid dispensed at “AIRPORT” as well as “AIRPORT’s” regular parking fees and other charges for overnight or other long term parking of aircraft. “LESSEE” will not provide fueling, deicing, and/or other services to any other entity than its own aircraft.

(E) ADVANCE FUNDING OF AIRPORT CHARGES

“LESSEE” will provide to “LESSOR” a Bond, Letter of Credit, or other instrument to be negotiated, equivalent to three months of Airport charges, to include Terminal Exclusive and Joint Use space, Landing Fees, and anticipate Fuel Usage, within 30 days of the date of this agreement. If “LESSEE” fails to pay any amount due, whether under this lease or other charges for Airport services, “LESSOR” reserves the right to take those funds from the above named instrument after those amounts have been due for ten (10) days. “LESSEE” shall then have ten (10) days to replenish said instrument.

The amount of the instrument will be renegotiated annually based on current rent value, current landing fees, and estimated average monthly fuel purchases.

ARTICLE IV – USE OF AGENTS AND/OR SUBCONTRACTORS

“LESSEE” is authorized to use subcontractors and/or “AGENTS” in place of “LESSEE’S” employed staff in any task normally done by such staff. Use of subcontractor or “AGENT” will be requested in writing at least 30 days prior to beginning use of “AGENT” or changing of “AGENT” and approved by the “AIRPORT” Director, such approval not to reasonably withheld. “LESSEE” is ultimately responsible for all actions of “AGENT” within the “AIRPORT.” “LESSEE” may have “AGENT” represent them to the “AIRPORT” Director for such activities as deemed necessary for the smooth conduct of “LESSEE’S” business and operations at the “AIRPORT.” “LESSEE” retains responsibility for payment of all charges, taxes, and other fees as may be required by this lease or other laws and policies. “LESSEE” shall require “AGENT” to obtain and keep in force insurances similar to those required of “LESSEE” in Article XVII of this agreement for the work that “AGENT” will perform. The “CITY” will be a named additional insured on all such insurance at no charge to the “CITY.” A copy of insurance certificate will be provided to the “AIRPORT” Director.

ARTICLE V - RIGHT TO LEASE PROPERTY

“LESSOR” represents that it has the right to lease said property specified herein as the “AIRPORT,” together with all the facilities, rights, licenses and privileges herein granted, and has full power and authority to enter into this lease in respect thereof.

ARTICLE VI - RESPONSIBILITIES OF LESSOR

“LESSOR” agrees during the term of the lease and any rental hereof to maintain and operate with adequate and sufficient personnel and to keep in good repair said **“AIRPORT”** and Terminal Building and the appurtenances, facilities and services now or hereafter and connected therewith, including, without limiting the generality of the foregoing, all appurtenances and facilities which the **“LESSOR”** has agreed hereunder to construct, furnish or supply and to keep said **“AIRPORT”** free from obstructions for the safe, convenient and proper use thereof by **“LESSEE,”** and to maintain and operate said **“AIRPORT”** in all respects in accordance with generally accepted practices of good airport management and Federal Aviation Administration rules, regulations, and requirements.

It is expressly understood that the **“LESSOR”** will keep the public space in the Terminal Building attractively furnished and will provide and supply adequate light, electricity and water for the public space and **“LESSEE’S”** exclusive space therein and heat, ventilation, and air conditioning sufficient to keep the same at all times at a comfortable temperature; janitors or other cleaners necessary to keep the **“AIRPORT”** and said spaces (excepting **“LESSEE’S”** exclusive and joint use space in the present Terminal Building) at all times clean, neat, orderly, sanitary and presentable; police and other guards reasonably necessary to protect the said **“AIRPORT”** and said building or buildings, their appurtenances, facilities and services and all persons and property rightfully thereon; all attendants necessary to facilitate the use of the **“AIRPORT”** and said building or buildings and their appurtenances, facilities and services as aforesaid by any titled hereunder to use the same.

ARTICLE VII - RULES AND REGULATIONS

“LESSOR” shall adopt and enforce reasonable rules and regulations which **“LESSEE”** agrees to observe and obey, with respect to the use of the **“AIRPORT,”** which shall provide for the safety of those using the same; provided, that such rules and regulations shall be consistent with safety and with rules, regulations and orders of the Federal Aviation Administration with respect to aircraft operations at the **“AIRPORT”**; and provided further, that such rules and regulations shall not be inconsistent with the provisions of this agreement or the procedures prescribed or approved from time to time by the Federal Aviation Administration with respect to the operation of **“LESSEE’S”** aircraft at the **“AIRPORT.”**

ARTICLE VIII - DAMAGE OR DESTRUCTION OF BUILDING

If any building of **“LESSOR”** in which **“LESSEE”** occupies space hereunder shall be partially damaged by fire or other casualty but not be rendered untenable, the same shall be repaired with due diligence by the **“LESSOR”** at its own cost and expense. If the damage shall be so extensive as to render the premises untenable and not capable of being repaired in thirty (30) days, the same shall be repaired with due diligence by the **“LESSOR”** at its own cost and expense; and the rent payable hereunder with respect to the **“LESSEE’S”** exclusive space shall be proportionately paid up to such time as the premises shall be in order; and in case said building is completely destroyed by fire or other casualty or so damaged that it will remain untenable for more than thirty (30) days, at the option of the **“LESSEE”** either;

(1) Said building shall be repaired or reconstructed with due diligence by the **“LESSOR”** at its own cost and expense and the rental payable hereunder with respect to **“LESSEE’S”** exclusive space in said building shall be proportionately paid up to the time of

such damage or destruction and shall thenceforth cease until such time as the premises shall be put in order or;

(2) Within sixty (60) days after the time of such damage or destruction and before the said premises shall be put in order, the “LESSEE” shall give the “LESSOR” notice of its intention to cancel this lease or to cancel such part of this lease as related to said building, in which case this lease, or such part of this lease as related only to said building, shall forthwith cease and terminate.

(3) If any building of the “LESSOR” in which “LESSEE” occupies space shall be partially or totally damaged by fire or other casualty, which damages attributable to and proven negligence of the “LESSEE,” then the “LESSEE,” at its own cost and expense, shall within a reasonable time put the premises in the same order as before the damage occurred.

ARTICLE IX - CANCELLATION BY LESSOR

In the event that “LESSEE” shall file a voluntary petition in bankruptcy or that proceedings in bankruptcy shall be instituted against it and “LESSEE” is thereafter adjudicated bankrupt pursuant to such proceedings, or that the court shall take jurisdiction of “LESSEE” and its assets pursuant to proceedings brought under the provisions of any Federal reorganization act, or that a receiver of “LESSEE’S” assets shall be appointed, or that “LESSEE” shall be divested of its estate herein by other operation of law, or that “LESSEE” shall fail to perform, keep and observe any of the terms, covenants or conditions herein contained on the part of “LESSEE” to be performed, kept or observed, the “LESSOR” may give written notice to correct such condition or cure such default, and if any such condition or default shall continue for fifteen (15) days after receipt of such notice by the “LESSEE,” the “LESSOR” may after the lapse of said

fifteen (15) day period and prior to the correction or curing of such condition or default, terminate this lease by a ten (10) day written notice; and the term hereby demised shall thereupon cease and expire at the end of such ten (10) days in the same manner and to the same effect as if it were the expiration of the original term.

The acceptance of rental by **“LESSOR”** for any period or periods after a default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by **“LESSEE,”** shall not be deemed a waiver of any right on the part of the **“LESSOR”** to cancel this lease for failure by **“LESSEE”** so to perform, keep or observe any of the terms, covenants or conditions hereof to be performed, kept and observed. No waiver of default by **“LESSOR”** of any of the terms, covenants or conditions hereof to be performed, kept and observed by **“LESSEE”** shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by **“LESSEE.”**

“LESSOR” reserves the right to terminate this Lease for any reason provided it provides **“LESSEE”** with 60 days prior written notice of the same.

ARTICLE X - CANCELLATION BY LESSEE

“LESSEE,” in addition to any right of cancellation or any other right herein given to **“LESSEE,”** may cancel this agreement, in whole or only insofar as it relates to any building, and terminate all or any of its obligations hereunder at any time, by thirty (30) days written notice, upon or after the happening or any one of the following events;

(1) The failure or refusal of the Federal Government agency with the proper authority to continue to grant **“LESSEE”** the right to operate into and from said **“AIRPORT”**

(2) The termination of **“LESSEE’S”** obligation or right (imposed by contract or otherwise) to the Federal Government for the carriage of United States Air Mail to, from or through the Morgantown Metropolitan area or its environs;

(3) The failure or refusal to designate, or the withdrawal of such designation by the Post Office Department, or any other competent governmental authority, of the Said **“AIRPORT”** as the terminal point for the Morgantown Metropolitan area or its environs, for the receiving and dispatching of the United States air mail;

(4) Issuance by any court of competent jurisdiction of any injunction in any way preventing or restraining the use of said **“AIRPORT”** or any part thereof for airport purposes, and the remaining in force of such injunction for a period of at least thirty (30) days;

(5) Any action of the Federal Aviation Administration refusing to permit **“LESSEE”** to operate into, from or through said **“AIRPORT,”** such aircraft as **“LESSEE”** may reasonably desire to operate thereon;

(6) The breach by **“LESSOR”** of any of the covenants or agreements herein contained and the failure of **“LESSOR”** to remedy such breach for a period of thirty (30) days after receipt of written notice of the existence of such breach;

(7) The inability of **“LESSEE”** to use said premises and facilities continuing for a longer period than thirty (30) days due to any law or any order, rule or regulation of any appropriate governmental authority having jurisdiction over the operations of **“LESSEE”** or due to war, earthquake, or other casualty;

(8) The assumption by the United States Government or any authorized agency thereof of the maintenance and operations of said **“AIRPORT”** and facilities or any substantial part or

parts thereof, the assumption of which limits restricts the **"LESSEE"** from operating its business on said **"AIRPORT."**;

(9) The erection of any obstacle on or in the vicinity of said **"AIRPORT"** which would occasion a modification of **"LESSEE'S"** air carrier operating certificate or similar authorization establishing minimum safety standards for the operation of **"LESSEE."**

No waiver of default by **"LESSEE"** of any of the terms, covenants or conditions hereof to be performed, kept and observed by **"LESSOR"** shall be construed to be or act as waiver by **"LESSEE"** of any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by **"LESSOR."**

"LESSEE" shall have the right to terminate this Lease for any reason provided it provides **"LESSOR"** with 60 days prior written notice of the same.

ARTICLE XI - COVENANTS NOT TO GRANT MORE FAVORABLE TERMS

"LESSOR" covenants and agrees not to enter into any lease, contract or agreement with any other air transport operator with respect to the **"AIRPORT"** containing more favorable terms than this lease or to grant to any other air transport operator rights, privileges and concessions with respect to said **"AIRPORT"** which are not accorded to the **"LESSEE"** hereunder unless the same rights, privileges and concession are concurrently and automatically made available to the **"LESSEE."**

ARTICLE XII - SURRENDER OF POSSESSION

"LESSEE" agrees to yield and deliver to **"LESSOR"** possession of the premises leased herein at the termination of this lease, by expiration or otherwise, or of any renewal or extension hereof, in good condition in accordance with its express obligations hereunder only, except for

reasonable wear and tear, fire and other casualty, and “LESSEE” shall have the right at any time during said term any renewal or extension hereof, and for ninety (90) days after the termination hereof, or within such additional time as approved by the “LESSOR” to remove all fixtures and equipment and other property installed or placed by it at its expense in, on or about the premises herein leased. However, “LESSOR” shall not be precluded from exercising its legal rights regarding any valid lien which it may have placed against “LESSEE” for unpaid rents and fees.

ARTICLE XIII - ASSIGNMENT OF LEASE

“LESSEE” shall not at any time assign or sublet this lease or any part thereof without first obtaining the consent in writing of “LESSOR.” Said consent shall not be unreasonably withheld or delayed, provided that the foregoing shall not prevent the assignment of this lease to any corporation with which the “LESSEE” may merge or consolidate or which may succeed to the business or assets of the “LESSEE” or a substantial part thereof.

ARTICLE XIV - NOTICES

Notices to the “LESSOR” provided herein shall be sufficient if sent by registered mail, postage prepaid, addressed to the City Manager, 389 Spruce Street, City of Morgantown, Morgantown, West Virginia, 26505, and notices to the “LESSEE,” if sent by registered mail, postage prepaid, addressed to Silver Airways Corp., 1100 Lee Wagener Blvd. Suite 201, Fort Lauderdale, FL 33315 (954) 985-1500, , or to such other respective address as the parties may designate in writing from time to time.

ARTICLE XV - HEADINGS

The article and paragraph headings are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this lease.

ARTICLE XVI - INVALID PROVISIONS

It is further expressly understood and agreed by and between the parties hereto that in the event any covenant, condition or provision herein contained is held to be invalid by the court, as set forth in Article XXI, the validity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained; provided, however, that the invalidity of any such covenant, condition or provision does not materially prejudice either the “LESSOR” or the “LESSEE” in their respective rights and obligations contained in the valid covenants, conditions or provisions in this agreement. Nothing in this lease shall be construed to affect the allocation of Federal funds to the “LESSOR” for the improvements to the “AIRPORT.”

ARTICLE XVII - MISCELLANEOUS

PUBLIC LIABILITY - PRODUCTS LIABILITY INSURANCE

“LESSEE” shall indemnify and save harmless the “LESSOR” from any loss or damage and from damage or loss claims against the “LESSOR” during the terms hereof, as a result of any negligence of the “LESSEE,” its agent or employees, committed on or about the demised premises, and for such purposes shall carry adequate public liability, products liability and property damage insurance. Proof of said insurance shall be provided to the “LESSOR” upon written request.

ARTICLE XVIII - RIGHT TO INSPECT LESSEE'S PREMISES

The “LESSOR” shall have the right to inspect “LESSEE’S” premises to determine that such are being maintained in a neat and orderly manner and to require “LESSEE” to make any such change in maintenance or cleaning methods as the “LESSOR” may reasonably deem desirable.

ARTICLE XIX - OTHER CHARGES AND FEES

The “LESSOR” agrees that no charges, fees, or tolls other than herein expressly provided for shall be charged or collected by it from “LESSEE” or any other person, including, without limitation, suppliers of materials or furnishers of service for the privilege of transporting, loading, unloading, or handling persons, property or mail to, from, into or on said “AIRPORT” in connection with “LESSEE’S” business. “LESSEE” shall have the full right of purchasing, at said “AIRPORT,” its requirements of gasoline, fuel, lubricating oil, grease or any other materials or supplies from any person or company of its choice, and no charges, fees or tolls of any kind except as herein expressly set forth shall be charged by “LESSOR,” against “LESSEE” for the privilege of using, storing, withdrawing, handling, consuming or transporting the same to, from or on said “AIRPORT,” except that all storage operations shall be conducted upon premises leased exclusively by the “LESSEE.”

ARTICLE XX - QUIET ENJOYMENT

“LESSOR” agrees that, on payment of the rent and performance of the covenants and agreements on the part of the “LESSEE” to be performed hereunder, “LESSEE” shall peaceably have and enjoy the leased premises and all the rights and privileges of said “AIRPORT,” its appurtenances and facilities.

ARTICLE XXI - RENEGOTIATION

If, at any time during the term of this lease, the “**LESSEE**” shall change its operations at the Morgantown Municipal Airport in such a manner as to cause the “**LESSOR**” to incur substantial additional costs to meet all requirements imposed by any governmental agency, the parties hereto shall, at that time, negotiate the proportion of these costs to be borne by each of the parties to this lease.

ARTICLE XXII – APPLICABLE LAW

This lease agreement shall be deemed to have been made in and construed in accordance with the laws of the State of West Virginia. To that end, should there be a need for the litigation of any article or provision contained within this lease, it will be done in the Circuit Court of Monongalia County, West Virginia.

In the presence of:

THE CITY OF MORGANTOWN
WEST VIRGINIA

_____ AS
TO

BY: _____
Terrence Moore, City Manager

ATTEST:

_____ LESSORS

BY: _____
"LESSOR"

In the presence of:

SILVER AIRWAYS, CORP.

_____ AS
TO

BY: Darrell Richardson

ATTEST:

_____ LESSORS

BY: _____
"LESSEE"

STATE OF Florida

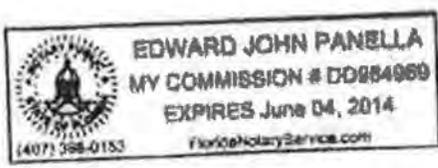
COUNTY OF Broward, To-Wit:

Before me the undersigned Notary Public in and for said county and state, the 12 day of July, 2012, personally appeared the above named

Darrell Richardson and acknowledged the

execution of the within and foregoing instrument to be free and voluntary act of said Colgan Air, Inc., for the uses and purposes therein set out and described.

My Commission Expires: June 04, 2014



Edward Panella
NOTARY PUBLIC

APPENDIX A

Appendix A – Terminal Plans – to be provided.

City of Morgantown

Finance Department

389 Spruce Street

Morgantown, WV 26505

Phone (304) 284-7407/Fax 7418

jsabatelli@cityofmorgantown.org

MEMO

DATE: July 6, 2012

TO: Terrence Moore, City Manager

FROM: J.R. Sabatelli, Finance Director 

RE: Coal Severance Budget Revision 1

Included herewith you will find the proposed ordinance and "Request for Revision to Approved Budget" for the FY2013 Coal Severance Budget. An explanation of the proposed changes follows:

The Unencumbered Fund Balance is adjusted to reflect the actual carryover at June 30, 2012.

The increase of \$30,000 in the Contributions/Transfers to Other Funds and increase of \$1,127 in the Contingencies are a result of the increase in Coal Severance Taxes received during the fiscal year ending June 30, 2012.

AN ORDINANCE AMENDING THE FY 2012-2013 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE COAL SEVERANCE FUND.

The City of Morgantown hereby ordains:

That the FY 2012-2013 Annual Budget of the Coal Severance Fund of the City of Morgantown is amended as shown in the revised budget (Revision 01) attached hereto and made a part of this ordinance.

First Reading:

Adopted:

Mayor

Filed:

Recorded:

City Clerk

Ora Ash, Director
 West Virginia State Auditor's Office
 200 West Main Street
 Clarksburg, WV 26301
 Phone: 627-2415 ext. 5114
 Fax: 627-2417

Person To Contact Regarding
 Budget Revision: J.R. Sabatelli
 Phone: 304-284-7407
 Fax: 304-284-7418

REQUEST FOR REVISION TO APPROVED BUDGET

Subject to approval of the state auditor, the governing body requests that the budget be revised prior to the expenditure or obligation of funds for which no appropriation or insufficient appropriation currently exists. (§ 11-8-26a)

City of Morgantown
 GOVERNMENT ENTITY
 389 Spruce Street
 STREET OR PO BOX
 Morgantown 26505
 CITY ZIP CODE

CONTROL NUMBER
2012-2013
 FY
Coal Severance
 FUND
1
 REV. NO.
1 of 1
 PG. OF NO.
Municipality
 Government Type

REVENUES: (net each acct.)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
298	Assigned Fund Balance	11,029	31,127		42,156
	#N/A				

NET INCREASE/(DECREASE) Revenues (ALL PAGES)

31,127

Explanation for Account # 378, Municipal Specific:
Explanation for Account # 369, Contributions from Other Funds:

EXPENDITURES: (net each account category)

(WV CODE 7-1-9)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
444	Contributions / Transfers to Other Funds	140,000	30,000		170,000
699	Contingencies*	3,329	1,127		4,456
	#N/A				

NET INCREASE/(DECREASE) Expenditures

31,127

APPROVED BY THE STATE AUDITOR

BY: _____ Date _____
 Director, Local Government Services Division

AUTHORIZED SIGNATURE
 OF ENTITY

APPROVAL
 DATE

City of Morgantown

Finance Department

389 Spruce Street

Morgantown, WV 26505

Phone (304) 284-7407/Fax 7418

jsabatelli@cityofmorgantown.org

MEMO

DATE: July 12, 2012

TO: Terrence Moore, ICMA-CM, City Manager

FROM: J.R. Sabatelli, CPA, Finance Director 

RE: General Fund Budget Revision 1

Included herewith you will find the proposed ordinance and "Request for Revision to Approved Budget" for the FY2013 General Fund Budget. An explanation of the proposed changes follows:

The adjustments to revenue reflect a decrease from the projected and approved carryover from the previous fiscal year (FY12) to the current projected carryover based on actual figures.

The adjustments to expenditures reflect the transfer of funds within the Department of Development Services due to internal restructurings and increases in Public Information and Travel and Training to meet ISO standard requirements. Additionally, the net savings associated with refinancing the public safety building complex, an increase in workers compensation insurance rates for the entire current fiscal year and a reduction in the contributions available to the Capital Escrow Fund. While most of the adjustments included in this recommended budget revision may be considered a wash, the decrease in the contribution to the Capital Escrow Fund is a direct result of the lack of available carryover to support normal operations. A slightly more detailed breakdown of individual lines affected in each department is included as supplementary information.

AN ORDINANCE AMENDING THE FY 2012-2013 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND.

The City of Morgantown hereby ordains:

That the FY 2012-2013 Annual Budget of the General Fund of the City of Morgantown is amended as shown in the revised budget (Revision 01) attached hereto and made a part of this ordinance.

First Reading:

Adopted:

Mayor

Filed:

Recorded:

City Clerk

Ora Ash, Director
 West Virginia State Auditor's Office
 200 West Main Street
 Clarksburg, WV 26301
 Phone: 627-2415 ext. 5114
 Fax: 627-2417

REQUEST FOR REVISION TO APPROVED BUDGET

Subject to approval of the state auditor, the governing body requests that the budget be revised prior to the expenditure or obligation of funds for which no appropriation or insufficient appropriation currently exists. (§ 11-8-26a)

CONTROL NUMBER

2012-2013

FY

General Fund

FUND

1

REV. NO.

1 of 1

PG. OF NO.

City of Morgantown
 GOVERNMENT ENTITY

389 Spruce Street
 STREET OR PO BOX

Municipality

Government Type

Person To Contact Regarding

Budget Revision: J.R. Sabatelli

Phone: 304-284-7407

Fax: 304-284-7418

Morgantown
 CITY

26505
 ZIP CODE

REVENUES: (net each acct.)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
299	Unassigned Fund Balance	500,000		380,000	120,000
	#N/A				

NET INCREASE/(DECREASE) Revenues (ALL PAGES)

-380,000

Explanation for Account # 378, Municipal Specific:

Explanation for Account # 369, Contributions from Other Funds:

EXPENDITURES: (net each account category)

(WV CODE 7-1-9)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
420	Engineering	454,399	3,049		457,448
436	Building Inspection	872,667	38,567		911,234
437	Planning & Zoning	275,308		41,570	233,738
444	Contributions / Transfers to Other Funds	1,893,858		380,000	1,513,858
699	Contingencies*	22,963		1,909	21,054
700	Police Department	6,405,144	18,793		6,423,937
706	Fire Department	4,275,518	20,091		4,295,609
750	Streets and Highways	2,306,177	19,190		2,325,367
441	Other buildings	654,972		56,211	598,761
	#N/A				
	#N/A				

NET INCREASE/(DECREASE) Expenditures

-380,000

APPROVED BY THE STATE AUDITOR

BY:

Director, Local Government Services Division

Date

AUTHORIZED SIGNATURE
 OF ENTITY

APPROVAL
 DATE

City of Morgantown
 General Fund
 Budget Revision #1
 Fiscal Year 2013

Wage related adjustments:

Department 420

Engineering:	Current	New	Revision
WC	6,156.00	9,205.00	3,049.00

Department 436

Code Enforcement:	Current	New	Revision
Wages	458,069.00	481,670.00	23,601.00
FICA	28,834.00	30,298.00	1,464.00
Med	6,744.00	7,086.00	342.00
WC	8,597.00	13,640.00	5,043.00
Retire	54,925.00	57,711.00	<u>2,786.00</u>
			33,236.00

Department 437

Planning:	Current	New	Revision
Wages	167,584.00	136,096.00	(31,488.00)
FICA	10,390.00	7,198.00	(3,192.00)
Med	2,430.00	1,684.00	(746.00)
WC	503.00	440.00	(63.00)
Retire	19,792.00	13,711.00	<u>(6,081.00)</u>
			(41,570.00)

Department 700

Police:	Current	New	Revision
WC	105,095.00	123,888.00	18,793.00

Department 706

Fire:	Current	New	Revision
WC	98,506.00	118,597.00	20,091.00

Department 750

Streets:	Current	New	Revision
WC	96,422.00	115,612.00	19,190.00

Total wage related items 52,789.00

Non-wage items requiring adjustment:

	Current	New	Revision
Dept 436 Code Enforcement			
Printing & Copying-Public Info	3,000.00	4,556.00	1,556.00
Travel and Training	14,450.00	18,225.00	3,775.00
Dept 70 Operating Transfers			
Contrib to Capital Escrow	1,893,858.00	1,513,858.00	(380,000.00)
Public Safety Bldg Lease Purch	250,244.00	194,033.00	(56,211.00)
Total nonwage	2,161,552.00	1,730,672.00	(430,880.00)
Total Increase overall			(378,091.00)
Totals by Department			
Dept 420 Engineering			3,049.00
Dept 436 Code Enforcment			38,567.00
Dept 437 Planning			(41,570.00)
Dept 700 Police			18,793.00
Dept 706 Fire			20,091.00
Dept 750 Street			19,190.00
Dept 70 Operating Transfers			(436,211.00)
Contingencies			(1,909.00)
			(380,000.00)

Revenue Adjustment

	Current	New	Revision
Prior Year Carryover	500,000.00	120,000.00	(380,000.00)
	-	-	-
	<u>500,000.00</u>	<u>120,000.00</u>	<u>(380,000.00)</u>

RESOLUTION

WHEREAS, On December 14, 2006, The City of Morgantown issued \$6,180,000 Series 2006A Tax Increment Revenue Bonds for the purpose of financing a portion of a new parking garage in the City of Morgantown Riverfront Development/Redevelopment Project District No. 2;

WHEREAS, the project has been fully completed as evidenced by the Certificate of Completion provided to the City of Morgantown by the resident project manager;

WHEREAS, a balance remains in the Project Fund after substantial completion and delivery of the Certificate of Completion;

WHEREAS, the City has been advised by its bond counsel to utilize the remaining balance in the Project Fund to redeem a portion of the bonds issued for this project;

WHEREAS, the redemption of these bonds will generate an interest savings to the City of Morgantown;

WHEREAS, the City desires to file the Officer's Certificate and Redemption Notice, attached hereto, in order to close the Project Fund and redeem the bonds as described and the attached notice.

NOW, THEREFORE, BE IT RESOLVED by the City Council City of Morgantown this _____ day of _____, 2012, authorizes its City Manager to execute and deliver the attached Officer's Certificate and Redemption Notice.

Mayor

City Clerk

OFFICER'S CERTIFICATE AND REDEMPTION NOTICE

\$6,180,000
City of Morgantown
Tax Increment Revenue Bonds
(Parking Garage Project No. 1)
Series 2006 A

WHEREAS, the City of Morgantown, a municipal corporation and political subdivision of the State of West Virginia (the "City") has issued the above caption bonds (the "Bonds") for the purpose of financing a portion of the costs of the design, acquisition, construction and equipping of a new parking garage, including all ramps, curbs, entrances and exits and other appurtenances, and certain streetscape and other infrastructure improvements (the "Project") in the City of Morgantown Riverfront Development/Redevelopment Project District No. 2 (the "TIF District"), funding a reserve fund for the Bonds and paying costs of issuance of the Bonds;

WHEREAS, pursuant to that certain Development Agreement, dated December 14, 2006, by and between the City and Platinum Properties Limited Liability Company, a West Virginia limited liability company (the "Owner"), Paradigm Architecture, as Resident Project Representative for the Project (the "Resident Project Representative") has provided a Certificate of Completion, dated June 19, 2012 (the "Certificate of Completion") to the Owner, the Issuer and The Bank of New York Mellon (the "Trustee"), which indicates that the Project is substantially complete;

WHEREAS, the Trustee has indicated that the sum of \$224,881.70 (as of July 6, 2012) remains on deposit in the Project Fund following the substantial completion of the Project as indicated in the Certificate of Completion;

WHEREAS, pursuant to Section 4.03 C of the Indenture of Trust, dated as of December 14, 2006, by and between the City and the Trustee (the "Indenture"), the City desires to file this Officer's Certificate with the Trustee indicating that the Project has been completed in order to facilitate the transfer of all funds remaining in the Project Fund to the Debt Service Fund for the Bonds and the closing of the Project Fund;

WHEREAS, pursuant to Section 4.06 B of the Indenture, the City desires to direct the Trustee as to the Bond maturities to be redeemed with the available monies transferred from the Project Fund to the Debt Service Fund; and

WHEREAS, the City also desires to provide the Notice of Redemption of the designated Bond maturities to be redeemed to the Trustee pursuant to Section 3.03 of the Indenture;

NOW, THEREFORE, the City of Morgantown hereby provides to the Trustee this Officer's Certificate and direction and notice of redemption of certain maturities of the Bonds as follows:

1. The City advises and directs, pursuant to Section 4.03C of the Indenture, that the Project which was to be financed with the proceeds of the Bonds has been completed as signified by the Certificate of Completion which has been filed by the Resident Project Representative with the City, the Owner and the Trustee. The City further requests that all funds currently on deposit in the Project Fund for the Bonds be transferred by the Trustee to the Debt Service Fund and that the Project Fund thereupon be closed.

2. The City advises and directs the Trustee and provides notice to the Trustee, pursuant to Section 4.06B, Section 3.01 C, Section 3.02 and Section 3.03 of the Indenture, to apply the maximum possible amount of the funds transferred from the Project Fund to the Debt Service Fund as provided in paragraph 1 above to the redemption of Bonds maturing on June 1, 2033, which are designated as Bond No. AR-8, issued in the original aggregate principal amount of \$2,395,000 with an interest rate of 5.00% (CUSIP 617558 AG6). As directed by Section 3.02 of the Indenture, the Trustee shall select or cause to be selected the particular portions of Bonds of such maturity to be redeemed by lot or in such other manner as the Trustee in its discretion may deem proper, provided that the portion of the Bond that shall remain outstanding upon such redemption shall be in a principal amount equal to an Authorized Denomination for such Bonds.

3. The redemption price of the portion of the June 1, 2033 maturity of the Bonds to be redeemed shall equal the principal amount thereof plus accrued interest thereon to the date set for redemption. The amount of the transferred Project Fund monies which remain on deposit in the Debt Service Fund following the payment of the redemption price of the Bonds so redeemed are directed to remain on deposit in the Debt Service Fund for subsequent application to the payment of debt service on the Bonds on the next succeeding Interest Payment Date therefore.

Dated this ____ day of July, 2012.

CITY OF MORGANTOWN

By: _____
Terrence Moore, its City Manager