



Office of the City Clerk

The City of Morgantown

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**AGENDA
MORGANTOWN CITY COUNCIL
REGULAR MEETING
March 19, 2013
7:00 p.m.**

1. CALL TO ORDER
2. ROLL CALL BY CITY CLERK
3. PLEDGE TO THE FLAG
4. APPROVAL OF MINUTES: Regular Meeting – March 5, 2013
5. CORRESPONDENCE:
 - A. Special Presentation by Main Street Morgantown
6. PUBLIC HEARING:
 - A. AN ORDINANCE AMENDING SECTIONS 523.01, 523.03 AND 523.99 OF THE CITY OF MORGANTOWN GENERAL OFFENSES CODE, LITTER ARTICLE, AS THEY PERTAIN TO DEFINITIONS, THE PLACEMENT OF RECEPTACLES, AND PENALTIES.
 - B. AN ORDINANCE VACATING, ABANDONING AND ANNULLING A 15' WIDE RIGHT-OF-WAY KNOWN AS ALLEY D, EXTENDING AND RUNNING A DISTANCE OF APPROXIMATELY FOUR HUNDRED AND NINETY THREE FEET FROM HOUSTON DRIVE TO THIRD STREET, IN THE FOURTH WARD OF THE CITY OF MORGANTOWN, MONONGALIA COUNTY, WEST VIRGINIA, NOT USED NOR USEFUL FOR STREET PURPOSES.
 - C. 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.

- D. AN ORDINANCE ADOPTING THE ANNUAL BUDGET OF THE CITY OF MORGANTOWN FOR THE FISCAL YEAR 2013-2014.

7. UNFINISHED BUSINESS:

- A. Consideration of APPROVAL of SECOND READING (ADOPTION) of AN ORDINANCE AMENDING SECTIONS 523.01, 523.03 AND 523.99 OF THE CITY OF MORGANTOWN GENERAL OFFENSES CODE, LITTER ARTICLE, AS THEY PERTAIN TO DEFINITIONS, THE PLACEMENT OF RECEPTACLES, AND PENALTIES. (First Reading March 5, 2013)

- B. Consideration of APPROVAL of SECOND READING (ADOPTION) of AN ORDINANCE VACATING, ABANDONING AND ANNULLING A 15' WIDE RIGHT-OF-WAY KNOWN AS ALLEY D, EXTENDING AND RUNNING A DISTANCE OF APPROXIMATELY FOUR HUNDRED AND NINETY THREE FEET FROM HOUSTON DRIVE TO THIRD STREET, IN THE FOURTH WARD OF THE CITY OF MORGANTOWN, MONONGALIA COUNTY, WEST VIRGINIA, NOT USED NOR USEFUL FOR STREET PURPOSES. (First Reading March 5, 2013)

- C. Consideration of APPROVAL of SECOND READING (ADOPTION) 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. (First Reading March 5, 2013)

- D. Consideration of APPROVAL of SECOND READING (ADOPTION) of AN ORDINANCE ADOPTING THE ANNUAL BUDGET OF THE CITY OF MORGANTOWN FOR THE FISCAL YEAR 2013-2014. (First Reading March 5, 2013)

- E. BOARDS AND COMMISSIONS

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

9. SPECIAL COMMITTEE REPORTS

10. NEW BUSINESS:

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

- B. Consideration of APPROVAL of FIRST READING of AN ORDINANCE AMENDING A FEBRUARY 22, 2012, REAL ESTATE PURCHASE AGREEMENT BETWEEN THE CITY OF MORGANTOWN AND THE MONONGALIA COUNTY DEVELOPMENT AUTHORITY (MCDA) AS THE SAME APPLIES TO THE CITY OF MORGANTOWN TRANSFERRING 95.7 ACRES AT THE MORGANTOWN MUNICIPAL AIRPORT TO THE MCDA, AND THE MCDA TRANSFERRING 13 ACRES, MORE OF LESS, LOCATED ALONG HARTMAN RUN ROAD, TO THE CITY OF MORGANTOWN.

11. CITY MANAGER'S REPORT:

INFORMATION:

- 1. Woodburn Property

12. REPORT FROM CITY CLERK

13. REPORT FROM CITY ATTORNEY

14. REPORT FROM COUNCIL MEMBERS

15. ADJOURNMENT

If you need an accommodation contact us at 284-7439

REGULAR MEETING, MARCH 5, 2013: The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers of City Hall on Tuesday, March 5, 2013 at 7:00 P.M.

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

APPROVAL OF MINUTES: The minutes of the Regular Meeting of February 19th, 2013, were approved as printed.

CORRESPONDENCE: Mayor Manilla presented a Retirement proclamation to Eric Smith for his 33 years of service to the City with the Morgantown Fleet Maintenance Department.

PUBLIC HEARING – AN ORDINANCE PROVIDING FOR THE ELIMINATION OF THE “ISOD, INTERSTATE SIGN OVERLAY DISTRICT” FROM THE OFFICIAL ZONING MAP OF THE CITY OF MORGANTOWN SO THAT THE BOUNDARIES OF SAME MAY BE DEFINED AND DESIGNATED BY DESCRIPTION IN ARTICLE 1359 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH HEREIN.

There being no appearances, Mayor Manilla declared the Public Hearing closed.

PUBLIC HEARING – AN ORDINANCE AMENDING ARTICLE 1329.02 “DEFINITIONS” OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS IT PERTAINS TO “BILLBOARD SIGN” AND “POLE SIGN”.

There being no appearances, Mayor Manilla declared the Public Hearing closed.

PUBLIC HEARING – AN ORDINANCE AMENDING ARTICLE 1359 “ISOD, INTERSTATE SIGN OVERLAY DISTRICT” OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE.

There being no appearances, Mayor Manilla declared the Public Hearing closed.

PUBLIC HEARING – AN ORDINANCE AMENDING TABLE 1369.06.01 “PERMITTED SIGNS” OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS IT PERTAINS TO BILLBOARD SIGNS.

There being no appearances, Mayor Manilla declared the Public Hearing closed.

PUBLIC HEARING – AN ORDINANCE AMENDING TABLE 1369.09.01 “FREESTANDING SIGN HEIGHT LIMITS” OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS IT PERTAINS TO BILLBOARD SIGNS.

There being no appearances, Mayor Manilla declared the Public Hearing closed.

PUBLIC HEARING – AN ORDINANCE AMENDING ARTICLE 1369.10 “PROHIBITED SIGNS AND DEVICES” OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS IT PERTAINS TO BILLBOARD SIGNS.

There being no appearances, Mayor Manilla declared the Public Hearing closed.

UNFINISHED BUSINESS:

AN ORDINANCE ELIMINATING THE INTERSTATE SIGN OVERLAY DISTRICT FROM THE OFFICIAL ZONING MAP: The below entitled Ordinance was presented for second reading:

AN ORDINANCE PROVIDING FOR THE ELIMINATION OF THE "ISOD, INTERSTATE SIGN OVERLAY DISTRICT" FROM THE OFFICIAL ZONING MAP OF THE CITY OF MORGANTOWN SO THAT THE BOUNDARIES OF SAME MAY BE DEFINED AND DESIGNATED BY DESCRIPTION IN ARTICLE 1359 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH HEREIN.

After the explanation from the City Manager, motion by Bane second by Nugent to adopt the above entitled Ordinance. Motion carried 7-0.

AN ORDINANCE AMENDING ARTICLE 1329.02 "DEFINITIONS": The below entitled Ordinance was presented for second reading:

AN ORDINANCE AMENDING ARTICLE 1329.02 "DEFINITIONS" OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS IT PERTAINS TO "BILLBOARD SIGN" AND "POLE SIGN".

Motion by Nugent second by Herbst to adopt the above entitled Ordinance. Motion carried 7-0.

AN ORDINANCE AMENDING ARTICLE 1359, INTERSTATE SIGN OVERLAY DISTRICT: The below entitled Ordinance was presented for second reading:

AN ORDINANCE AMENDING ARTICLE 1359 "ISOD, INTERSTATE SIGN OVERLAY DISTRICT" OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE.

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

AN ORDINANCE AMENDING TABLE 1369.06.01, "PERMITTED SIGNS": The below entitled Ordinance was presented for second reading:

AN ORDINANCE AMENDING TABLE 1369.06.01 "PERMITTED SIGNS" OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS IT PERTAINS TO BILLBOARD SIGNS.

Motion by Nugent second by Bane to adopt the above entitled Ordinance. Motion carried 7-0.

AN ORDINANCE AMENDING TABLE 1369.09.01, "FREESTANDING SIGNS HEIGHT LIMITS": The below entitled Ordinance was presented for second reading:

AN ORDINANCE AMENDING TABLE 1369.09.01 "FREESTANDING SIGN HEIGHT LIMITS" OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS IT PERTAINS TO BILLBOARD SIGNS.

Motion by Bane second by Selin to adopt the above entitled Ordinance. Motion carried 7-0.

AN ORDINANCE AMENDING ARTICLE 1369.10 "PROHIBITED SIGNS AND DEVICES":

The below entitled Ordinance was presented for second reading:

AN ORDINANCE AMENDING ARTICLE 1369.10 "PROHIBITED SIGNS AND DEVICES" OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS IT PERTAINS TO BILLBOARD SIGNS.

Motion by Bane second by Selin to adopt the above entitled Ordinance. Motion carried 7-0.

PUBLIC PORTION:

Mark Furfari, 1435 Roosevelt Street, spoke in favor of acquisition of the Woodburn School property.

Guy Panrell, South Hills Drive, spoke against the acquisition of the Woodburn School property, stating it is not prudent to make the purchase when there are other financial priorities for the City. He urged Council to seek private funding for the project.

Linda Haggerty, 310 Allison Street, spoke in favor of acquisition of the Woodburn School property, as a great public resource for the community.

Raynard Glymph, Owner, Ray's Morgantown Tacos, stated that the City should support late night vendors and work with them to encourage small businesses to succeed.

Co-Owner, Ray's Morgantown Tacos, stated that the vendors are in a congested situation on the streets of downtown and gave Council numerous suggestions for the betterment of the food vendor situation, including a separate fee and a cordoned off area for vendors only.

Denis Manning, Co-owner of the Pita-Pit, spoke against late night street vendors and feels that it is an impediment to established businesses. Additionally, he reported that the taco vendor does business in a handicapped space on the street, and feels this should not be allowed.

Mike Shuman, 705 Wiley Street, reported that there were many food vendors in the downtown area and suggested a limit on how many vendors can be present. He also suggested a special permit for the vendors and that they get permission from property owners before setting up outside of established businesses.

Jay Hebb, 344 Hite Street, contested the allegations that the Taco vendor parks in a handicapped space. He urged the City and street vendors to sit down together in order to make the late night food vending workable for all.

Mr. Hiker, Woodburn Resident, spoke in favor of the acquisition of the Woodburn School, urging Council to take advantage of the opportunity.

Aaron Sutch, South Park Resident, spoke in favor of acquisition of the Woodburn School property as an asset to the community.

Bill Kaweck, 324 Cobun Ave, spoke in favor of acquisition of the Woodburn School property, stating it is a great opportunity to make Morgantown a better place.

Joseph Scotty, spoke in favor of acquisition of the Woodburn School property as betterment to the community.

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

SPECIAL COMMITTEE REPORTS: The Traffic Commission requested that the City Manager allow a feasibility study be done , which would require the State turn over control of some of parts of Rt.7 to the City. Council requested the matter be looked into further at a future Committee of the Whole meeting.

Chris Haddox gave a report from recent Woodburn Reuse Committee Public Forums; After discussion with Council Members, Council voted by acclamation, directing the City Manager to write a letter of intent to the Monongalia County Board of Education about the possibility of the Woodburn property acquisition.

NEW BUSINESS:

AN ORDINANCE AMENDING THE GENERAL OFFENSES CODE, LITTER ARTICLE:
The below entitled Ordinance was presented for first reading:

AN ORDINANCE AMENDING SECTIONS 523.01, 523.03 AND 523.99 OF THE CITY OF MORGANTOWN GENERAL OFFENSES CODE, LITTER ARTICLE, AS THEY PERTAIN TO DEFINITIONS, THE PLACEMENT OF RECEPTACLES, AND PENALTIES.

After City Manager's explanation, motion by Bane second by Byrne to pass the above entitled Ordinance to second reading. Motion carried 7-0.

AN ORDINANCE ANNULLING ALLEY D IN THE FOURTH WARD: The below entitled Ordinance was presented for first reading:

AN ORDINANCE VACATING, ABANDONING AND ANNULLING A 15' WIDE RIGHT-OF-WAY KNOWN AS ALLEY D, EXTENDING AND RUNNING A DISTANCE OF APPROXIMATELY FOUR HUNDRED AND NINETY THREE FEET FROM HOUSTON DRIVE TO THIRD STREET, IN THE FOURTH WARD OF THE CITY OF MORGANTOWN, MONONGALIA COUNTY, WEST VIRGINIA, NOT USED NOR USEFUL FOR STREET PURPOSES.

Motion by Bane second by Byrne to pass the above entitled Ordinance to second reading. Motion carried 7-0.

AN ORDINANCE AMENDING THE FY12-13 ANNUAL BUDGET: The below entitled Ordinance was presented for first reading:

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.

Motion by Bane second by Nugent to pass the above entitled Ordinance to second reading. Motion carried 7-0.

AN ORDINANCE ADOPTING THE FY13-14 ANNUAL BUDGET: The below entitled Ordinance was presented for first reading:

AN ORDINANCE ADOPTING THE ANNUAL BUDGET OF THE CITY OF MORGANTOWN FOR THE FISCAL YEAR 2013-2014.

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

A RESOLUTION AUTHORIZING CERTAIN FINANCIAL AGENTS OF THE CITY OF MORGANTOWN FOR THE TRANSACTING OF FUNDS: The above entitled Resolution was presented for approval.

Motion by Bane second by Nugent to approve the above entitled Resolution. Motion carried 7-0.

Then by acclamation of Council the rules were suspended to allow a brief comment from Randy Jones, WVU SGA Liaison:

Randy Jones introduced to Council Ray Campione the newly elected President of the WVU Student Government Association. Mr. Campione thanked Council and stated he is looking forward to working together in the future.

CITY MANAGERS REPORT:

NEW BUSINESS:

1. Fiscal Year 2012 Annual Report of Police and Fire Pension Funds

After explanation from the Manager and discussion, motion by Byrne second by Bane to approve the Police and Fire Pension Fund 2012 Report. Motion carried 7-0.

2. West Run Watershed Passive Treatment Installation for Airport Property

After explanation from the Manager, motion by Byrne second by Nugent to approve the installation of the Watershed Treatment. Motion carried 7-0.

3. Fiscal Year 2012-2013 Capital Escrow Budget Revision

After explanation from the Manager, motion by Bane second by Byrne to approve the Capital Escrow Budget Revision. Motion carried 7-0.

INFORMATION:

1. State Auditor's Office Purchase Card (P-Card)

Mr. Mikorski explained the process for use of the P-Cards and would make further updates when more information is available.

2. Amusement Tax Amnesty Program

Mr. Mikorski explained the amnesty program to Council and will report back in six months with the results.

REPORT FROM CITY CLERK: No Report.

REPORT FROM CITY ATTORNEY: No Report.

REPORT FROM COUNCIL MEMBERS :(Roll Reverse)

Councilor Herbst: Councilor Herbst thanked the public for their input on the Woodburn reuse project and appreciates the hard work being put into the property. She hoped that private funding can be secured for acquisition of the school.

Councilor Byrne: Councilor Byrne expressed gratitude that Council will take steps towards the commitment of purchasing the school. He urged that vendors and business owners in the downtown area compromise for the benefit of all businesses in the area.

Councilor Shamberger: Councilor Shamberger thanked the food vendors who spoke in the Public Portion, and thanked Council for agreeing to move forward in the decision making process with Woodburn School. She then suggested that Main Street Morgantown become involved with mediating between businesses and vendors. She announced she attended a women's basketball game, and reminded citizens to visit the city's website to sign up for the Urban Deer Hunt.

Councilor Selin: Councilor Selin asked the City Manager to invite local Girl Scouts to an upcoming Council meeting; the troop is working on their Safety Badge. She announced the upcoming Evansdale Neighborhood Association meeting, and thanked everyone who spoke on behalf of the Woodburn property. She then presented Councilor Shamberger with a signed WVU Women's basketball.

Councilor Nugent: Councilor Nugent commented that our Police Department is doing a fine job in the downtown area with safety and it is a non-issue. He also reminded and invited everyone to the upcoming ITGA seminars in Council Chambers on March 3rd, and March 13th from 12-1pm.

Councilor Bane: Councilor Bane expressed concerns for the Election, because individuals have been making statements insinuating that there is lawlessness downtown and that Morgantown Police Officers do not do their jobs. He stated that he has full faith in the City Manager and commended him for doing an excellent job, and recently bringing in additional grant funds for the City.

Mayor Manilla: Mayor Manilla announced the upcoming Town and Gown Advisory Board meeting; he noted Ron Justice and Terry Cutright will also be involved in the endeavors. The initial meeting will nail down important details and organize the group in order to move forward with goals and objectives. He noted that Main Street

Morgantown has asked the City for money on two occasions in the past to help implement their strategic downtown plan, and the City has not been able to accommodate them. He also mentioned that the statistics for incidents downtown have improved since Chief Preston came into office. He stated that it is a serious problem when we cannot fund these and other crucial programs.

ADJOURNMENT: There being no further items of business or discussion, the meeting adjourned by unanimous consent at 9:10 p.m.

City Clerk

Mayor

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



Office of the City Manager

The City of Morgantown

Interim City Manager
Jeff Mikorski, ICMA-CM
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City Manager's Report for City Council March 19, 2013

New Business:

None

Information Items:

1. Woodburn Property

Based on City Council's direction at the March 5, 2013 Council meeting, a letter was presented to Superintendent Frank Devono acknowledging that the City of Morgantown is interested in purchasing the Woodburn Elementary School property. The next step will be for the City and the Board of Education to create an inter-governmental agreement for the purchase to be acted upon by both the City of Morgantown and the Board of Education. With the positive momentum of the design charrettes, it is a good time to consider creating a new development task force to advise the City on improvements to the property. I would like to present the charge and procedures of the Task Force at the upcoming Committee of the Whole.

Jeff Mikorski, Interim City Manager

BOARDS AND COMMISSIONS - TERMS EXPIRED AND CURRENT VACANCIES

SISTER CITIES COMMISSION:

THERE IS A VACANCY ON THE SISTER CITY COMMISSION. PAM HODGE HAS RESIGNED. City Clerk has advertised for applicants. Deadline is April 6, 2013. Council will vote on applicants at the April 16, 2013 Regular Meeting.

***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.*

**BZA and Planning Commission term expirations are advertised in October and interviews must be completed by December per State Law.*

3/12/13

AN ORDINANCE AMENDING SECTIONS 523.01, 523.03, and 523.99 OF THE CITY OF MORGANTOWN GENERAL OFFENSES CODE, LITTER ARTICLE, AS THEY PERTAIN TO DEFINITIONS, THE PLACEMENT OF RECEPTACLES, AND PENALTIES.

The City of Morgantown hereby ordains that Sections 523.01, 523.03, and 523.99 of its General Offenses Code, Litter Article, are amended as follows (deleted matter struck through; new matter underlined):

ARTICLE 523

Litter

523.01 DEFINITIONS.

For the purpose of this article, the following terms, phrases, words and their derivatives shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number.

- (a) "Aircraft" means any contrivance now known or hereafter invented, used or designated for navigation or for flight in the air.
- (b) "Authorized private receptacle/container" means a litter, solid waste, or recyclable materials storage and curbside or edge of pavement collection receptacle/container as required and authorized in Article 1139 of the Health and Sanitation Code.
- (c) "City" means the City of Morgantown, West Virginia.
- (d) "Commercial handbill" means any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper, booklet or any other printed or otherwise reproduced original or copies of any matter of literature:
 - (1) Which advertises for sale any merchandise, product or thing; or
 - (2) Which directs attention to any business or mercantile or commercial establishment, or other activity, for the purpose of either directly or indirectly promoting the interest thereof by sales; or
 - (3) Which directs attention to or advertises any meeting, theatrical performance, exhibition or event of any kind, for which an admission fee is charged for the purpose of private gain or profit; but the terms of this clause shall not apply where an admission fee is charged or a collection is taken up for the purpose of defraying the expenses incident to such meeting, theatrical performance, exhibition or event of any kind, when either of the same is held, given or takes place in connection with the dissemination of information which is not restricted under the ordinary rules of decency, good morals, public peace, safety and good order; provided, that nothing contained in this clause shall be deemed to

- authorize the holding, giving or taking place of any meeting, theatrical performance, exhibition or event of any kind, without a license, where such license is or may be required by any law of this State, or under any ordinance of this City; or
- (4) Which, while containing reading matter other than advertising matter, is predominantly and essentially an advertisement and is distributed or circulated for advertising purposes, or for the private benefit and gain of any person so engaged as advertiser or distributor.
- (e) "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.
- (f) "Litter" means garbage, refuse and rubbish as defined herein and all other waste material which, if thrown or deposited as herein prohibited, tends to create a danger to public health, safety and welfare.
- (g) "Newspaper" means any newspaper of general circulation as defined by general law, any newspaper duly entered with the Post Office Department of the United States, in accordance with Federal statute or regulation, and any newspaper filed and recorded with any recording officer as provided by general law; and in addition thereto, means any periodical or current magazine regularly published with not less than four issues per year, and sold to the public.
- (h) "Noncommercial handbill" means any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, newspaper, magazine, paper, booklet or any other printed or otherwise reproduced original or copies of any matter of literature not included in the definitions of a commercial handbill or newspaper.
- (i) "Park" means a park, reservation, playground, beach, recreation center or any other public area in the City, owned or used by the City and devoted to active or passive recreation.
- (j) "Person" means any person, firm, partnership, association, corporation, company or organization of any kind.
- (k) "Private premises" means any dwelling, house, building or other structure, designed or used either wholly or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, grounds, walk, driveway, porch, steps, vestibule or mailbox belonging or appurtenant to such dwelling, house, building or other structure.
- (l) "Public place" means any and all streets, sidewalks, boulevards, alleys or other public ways and any and all public parks, squares, spaces, grounds and buildings.
- (m) "Recyclable materials" means bi-metal beverage cans, aluminum beverage cans, glass bottles, steel cans, newspaper, corrugated cardboard and plastics, and other materials as may be defined as recyclable materials under the West Virginia Code, or applicable local, state and federal laws and regulations and under Code 1-7 of the Society of Plastics Industries.

- ~~(m)~~(n) "Refuse" means all putrescible and nonputrescible solid wastes, except body wastes, including garbage, rubbish, ashes, street cleaning, dead animals, abandoned automobiles and solid market and industrial wastes.
- ~~(n)~~(o) "Rubbish" means nonputrescible solid wastes consisting of both combustible wastes, such as paper, wrappings, cigarettes, cardboard, tin cans, yard clippings, leaves, wood, glass, bedding, crockery and similar materials.
- (p) "Solid waste" means those items included within the definition of the solid waste as now or hereafter set forth in West Virginia Code 22-15-2(31) and in Article 1139 of the Codified Ordinances of the City.
- ~~(o)~~(q) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, including devices used exclusively upon stationary rails or tracks.
- ~~(p)~~(r) "Open lot" means a lot upon which no building, structure or other improvement has been constructed.
- ~~(q)~~(s) "Vacant lot" means a lot upon which there is an uninhabited, unoccupied or unused building, structure or other improvement.

523.02 LITTER IN PUBLIC PLACES.

No person shall throw or deposit litter in or upon any street, sidewalk or other public place within the City except in public receptacles, in authorized private receptacles for collection or in official City dumps.

523.03 PLACEMENT IN RECEPTACLES TO PREVENT SCATTERING.

Persons placing litter, solid waste, or recyclable materials and storing same for collection in public receptacles or authorized private receptacles/containers shall do so in such a manner as to prevent it from being carried or deposited by the elements or passersby upon any street, sidewalk or other public place or upon private property.

- (a) Lids shall be kept on authorized private receptacles/containers at all times.
- (b) Unless otherwise exempt as provided in Article 1139 of the Codified Ordinances of the City, authorized private receptacles/containers may be placed at their curbside or edge of pavement collection site no earlier than 6:00 PM on the day before the scheduled day of collection and all empty authorized private receptacles/containers shall be removed by 9:00 PM on the day of collection.
- (c) Authorized private receptacles/containers may not be stored in front yards or on front porches of residences on a regular basis, where said receptacles/containers can be viewed by the general public, unless a special waiver has been issued to a residence, in writing, by the City Manager as provided in Article 1139 of the Codified Ordinances of the City.

523.04 SWEEPING LITTER INTO GUTTERS PROHIBITED.

No person shall sweep into or deposit in any gutter, street or other public place within the City the accumulation of litter from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying property shall keep the sidewalk in front of their premises free of litter.

523.05 MERCHANTS' DUTY TO KEEP SIDEWALKS FREE OF LITTER.

No person owning or occupying a place of business shall sweep into or deposit in any gutter, street or other public place within the City the accumulation of litter from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying places of business within the City shall keep the sidewalk in front of their business premises free of litter.

523.06 LITTER THROWN BY PERSONS IN VEHICLES.

No person, while a driver or passenger in a vehicle, shall throw or deposit litter upon any street or other public place within the City, or upon private property.

523.07 TRUCK LOADS CAUSING LITTER.

No person shall drive or move any truck or other vehicle within the City unless such vehicle is so constructed or loaded as to prevent any load, contents or litter from being blown or deposited upon any street, alley or other public place. Nor shall any person drive or move any vehicle or truck within the City, the wheels or tires of which carry onto or deposit in any street, alley or other public place, mud, dirt, sticky substances, litter or foreign matter of any kind.

523.08 LITTER IN PARKS.

No person shall throw or deposit litter in any park within the City except in public receptacles and in such a manner that the litter shall be prevented from being carried or deposited by the elements upon any part of the park or upon any street or other public place. Where public receptacles are not provided, all such litter shall be carried away from the park by the person responsible for its presence and properly disposed of elsewhere as provided herein.

523.09 LITTER IN LAKES AND FOUNTAINS.

No person shall throw or deposit litter in any fountain, pond, lake, stream, bay or any other body of water in a park or elsewhere within the City.

523.10 THROWING OR DISTRIBUTING COMMERCIAL HANDBILLS IN PUBLIC PLACES.

No person shall throw or deposit any commercial or noncommercial handbill in or upon any sidewalk, street or other public place within the City. Nor shall any person hand out or distribute or sell any commercial handbill in any public place. Provided, however, that it shall not be unlawful on any sidewalk, street or other public place within the City for any person to hand out or distribute, without charge to the receiver thereof, any noncommercial handbill to any person willing to accept it.

523.11 PLACING HANDBILLS ON VEHICLES.

No person shall throw or deposit any commercial or noncommercial handbill in or upon any vehicle. Provided, however, that it shall not be unlawful in any public place for a person to hand out or distribute without charge to the receiver thereof, a noncommercial handbill to any occupant of a vehicle who is willing to accept it.

523.12 DEPOSITING HANDBILLS ON UNINHABITED OR VACANT PREMISES.

No person shall throw or deposit any commercial or noncommercial handbill in or upon any private premises which are temporarily or continuously uninhabited or vacant.

523.13 PROHIBITING DISTRIBUTION OF HANDBILLS WHERE PROPERLY POSTED.

No person shall throw, deposit or distribute any commercial or noncommercial handbill upon any private premises, if requested by anyone thereon not to do so, or if there is placed on such premises in a conspicuous position near the entrance there thereof, a sign bearing the words: "No Trespassing", "No Peddlers or Agents", "No Advertisement" or any similar notice, indicating in any matter that the occupants of such premises do not desire to be molested or have their right of privacy disturbed or to have any such handbills left upon such premises.

523.14 DISTRIBUTING HANDBILLS AT INHABITED PRIVATE PREMISES.

- (a) No person shall throw, deposit or distribute any commercial or noncommercial handbills in or upon private premises which are inhabited, except by handing or transmitting any such handbill directly to the owner, occupant or other person then present in or upon such private premises. Provided, however, that in case of inhabited private premises which are not posted as provided in this article, such person, unless requested by anyone upon such premises not to do so, may place or deposit any such handbill in or upon such inhabited private premises, if such handbill is so placed or deposited as to secure or prevent such handbill from being blown or drifted about such premises or sidewalks, streets or other public places and except that mailboxes may not be so used when so prohibited by Federal postal law or regulations.
- (b) The provisions of this section shall not apply to the distribution of mail by the United States, nor to newspapers, as defined herein, except that newspapers shall be placed on private property in such a manner as to prevent their being carried or deposited by the elements upon any street, sidewalk or other public place or upon private property.

523.15 DROPPING LITTER FROM AIRCRAFT.

No person in an aircraft shall throw out, drop or deposit within the City any litter, handbill or any other object.

523.16 POSTING NOTICES PROHIBITED.

No person shall post or affix any notice, poster or other paper or device, calculated to attract the attention of the public, to any lamp post, public utility pole or shade tree, or upon any public structure or building, except as may be authorized or required by law.

523.17 LITTER ON OCCUPIED PRIVATE PROPERTY.

No person shall throw or deposit litter on any occupied private property within the City, whether owned by such person or not, except that the owner or person in control of private property may maintain authorized private receptacles for collection in such a manner that litter will be prevented from being carried or deposited by the elements upon any street, sidewalk or other public place or upon any private property.

523.18 OCCUPANT TO MAINTAIN PREMISES FREE OF LITTER.

The occupant or person in control of any private property shall at all times maintain the premises free of litter. Provided, however, that this section shall not prohibit the storage of litter in authorized private receptacles for collection.

523.19 LITTER ON VACANT LOTS.

No person shall throw or deposit litter on any open or vacant private property within the City whether owned by such person or not.

523.20 CLEARING OF LITTER FROM OPEN PRIVATE PROPERTY BY CITY.

- (a) Notice to Remove. The City Manager is hereby authorized to notify the owner of any open or vacant private property within the City or the agent of such owner to properly dispose of litter located on such owner's property. Such notice shall be served in accordance with the laws of this State concerning the service of process in civil actions.
- (b) Action Upon Noncompliance. Upon the failure, neglect or refusal of any owner so notified to properly dispose of such litter within ten days after the date of service of such notice, the City Manager may cause the same to be removed by employees of the City, or otherwise as he may decide or direct, and the City Manager shall report the cost of such removing to the City Clerk who shall forthwith mail by certified mail a statement of the cost of removal to the owner of such property. At the same time the Clerk shall also inform the property owner that a lien will be filed against the owner's property unless such statement of cost is paid in full within ten days from the date of statement. Should the owner fail to make payment within the time specified above, the City Clerk is authorized to file a notice of lien against the owner's property and which such notice of lien shall briefly describe the property affected and shall include a statement of costs, a clerical fee not to exceed fifty dollars (\$50.00) and a fee for the search of the records to ascertain the owner of such property not to exceed fifty dollars (\$50.00) and recordation of such lien. A copy of such notice of lien shall also be sent to the owner of such property by certified mail. Upon recordation of such notice of lien in the Trust Deed Book in the office of the Clerk of the County Court of Monongalia County, West Virginia, such notice of lien shall constitute a valid lien from the date of its recordation.

523.21 SPECIAL LITTER PREVENTION OFFICERS.

In addition to those municipal employees already authorized by law to enforce this article, the Municipality shall also utilize Special Litter Prevention Officers who are authorized to enforce the provisions of this article.

The specific municipal employees who are authorized to perform the duties of Special Litter Prevention Officers shall include the Chief Code Official of the City's Building Inspection Department, Code Enforcement Officers within the Building Inspections Department, Rental Housing Inspectors within the Building Inspections Department, and Morgantown Parking Authority Parking Meter Attendants.

The Special Litter Prevention Officers are authorized to issue Article 523 citations, and issue summons and sign complaints as a result of Article 523 violations, and shall display at all times either a badge or other sign of authority, issued by the Municipality, evidencing their authority to enforce Article 523.

Prior to performing the duties of a Special Litter Prevention Officer, all such municipal employees shall be required to complete a Litter Enforcement Training Program, which shall be conducted by City Administration.

523.99 PENALTY.

Whoever violates any provision of this article shall be fined ~~not less than one hundred dollars (\$100.00)~~ a minimum of twenty-five dollars (\$25.00) but not more than five hundred dollars (\$500.00). Each day such violation is committed or permitted to continue shall constitute a separate offense.

This ordinance shall be effective upon date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk

AN ORDINANCE VACATING, ABANDONING AND ANNULLING A 15' WIDE RIGHT-OF-WAY KNOWN AS ALLEY D, EXTENDING AND RUNNING A DISTANCE OF APPROXIMATELY FOUR HUNDRED AND NINETY THREE FEET FROM HOUSTON DRIVE TO THIRD STREET, IN THE FOURTH WARD OF THE CITY OF MORGANTOWN, MONONGALIA COUNTY, WEST VIRGINIA, NOT USED NOR USEFUL FOR STREET PURPOSES.

WHEREAS, It appears to the Common Council of the City of Morgantown, West Virginia that a 15' wide right-of-way, known as Alley D running a distance of approximately four hundred and ninety-three feet from Houston Drive to Third Street in the Fourth Ward of the City of Morgantown, Monongalia County, West Virginia, and as laid down, designated and dedicated to public use as a street on a map or plat, as shown on the Exhibit hereto attached, is not useful for street purposes, is not needed for street purposes, nor for any other public uses and purposes and it further appearing that it is in the interests of the City of Morgantown and of the public generally that a 15' wide right-of-way known as Alley D running a distance of approximately four hundred and ninety three feet from Houston Drive to Third Street, be vacated, abandoned, and annulled as a public street within said City, and it further appearing that the property of no person, firm, or corporation will be injured or damaged thereby, and that the owners of property abutting on said Alley D have petitioned the Common Council to vacate, abandon and annul said portion of the street.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MORGANTOWN, WEST VIRGINIA, IN REGULAR SESSION ASSEMBLED AS FOLLOWS:

- Section 1. That for the reasons hereinbefore set forth that a 15' wide right-of-way known as Alley D running a distance of approximately four hundred and ninety three feet from Houston Drive to Third Street in the City of Morgantown, West Virginia, is hereby vacated, abandoned and annulled and from and after the date of the adoption of this ordinance the same shall cease to be a public way or public street within the City of Morgantown, and the easement of the City of Morgantown therein, thereon, and thereover for street purposes is hereby vacated, abandoned and annulled, and all right, titles and interests of the City of Morgantown therein as an easement for street purposes are hereby expressly released.
- Section 2. That as set forth in Section 1 of this ordinance the easement and right-of-way of the City of Morgantown for street purposes on and over a 15' wide right-of-way known as Alley D and running a distance of approximately four hundred and ninety-three feet from Houston Drive to Third Street, as shown on the Exhibit hereto attached, is hereby vacated, abandoned and annulled.
- Section 3. That upon the adoption of this ordinance the City Clerk of the City of Morgantown shall cause a duly certified copy thereof to be recorded in the

appropriate deed book in the office of the Clerk of the County Commission of Monongalia County, West Virginia, as evidence of the vacating, abandoning, and annulling of said four hundred and ninety three foot right-of-way for public uses and public purposes as a public street or public way within the City of Morgantown, and said Clerk shall also file with said certified copy of said ordinance an exhibit showing the location of said street so vacated, abandoned and annulled.

Section 4. Prior to adoption of this ordinance the adjacent land owners shall pay to the City Clerk the cost of this proceeding.

Section 5. This ordinance shall be effective from the date of its adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

STATE OF WEST VIRGINIA
MONONGALIA COUNTY, to wit:

I, _____, a Notary Public of said County, do hereby certify that
Linda L. Little and James Manilla, whose names are signed to the foregoing document,
bearing the _____ day of _____, 2013 have this day acknowledged
the same before me in my said County.

Given under my hand this _____ day of _____, 2013.

My Commission expires _____

Notary Public

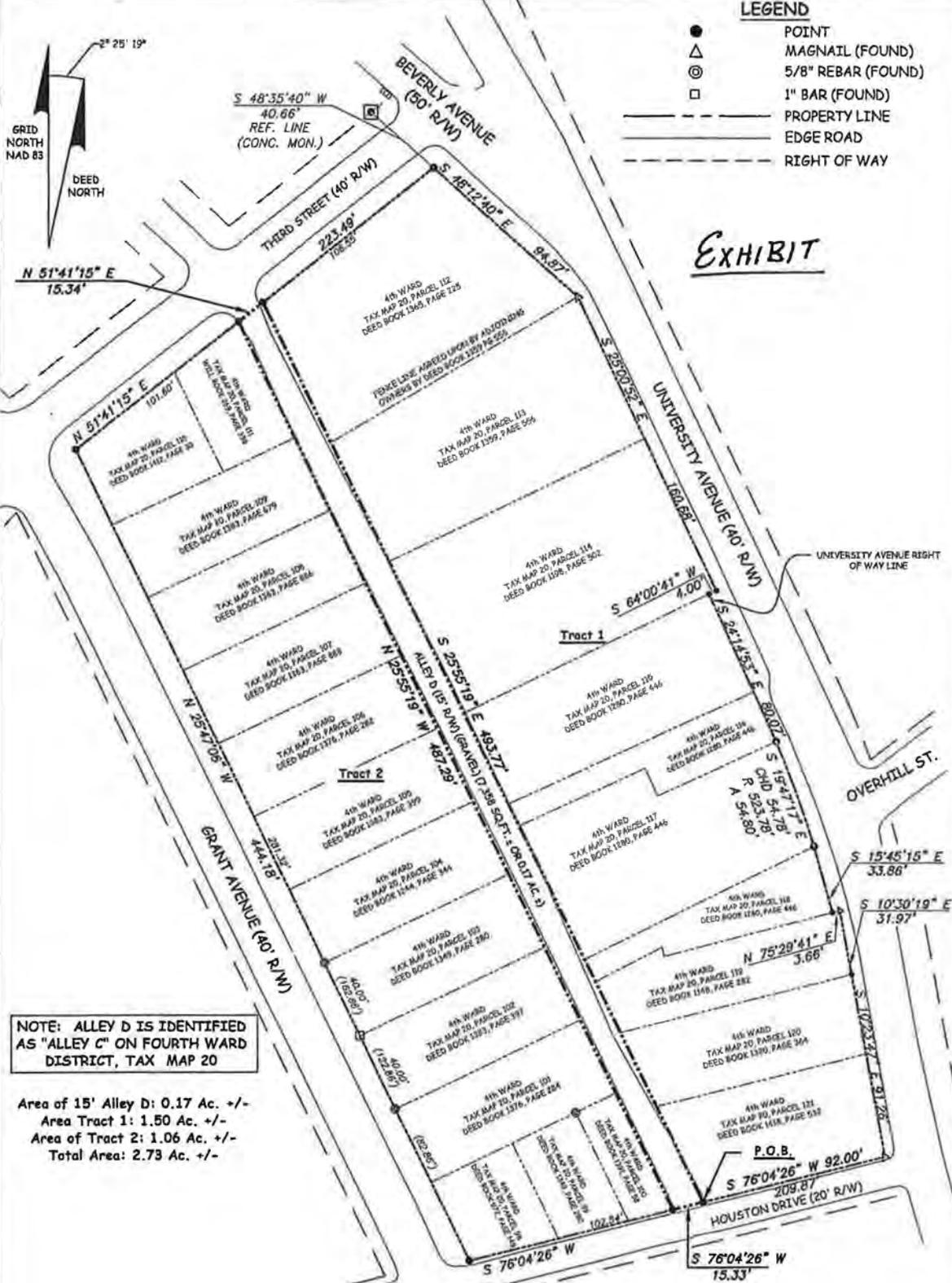
This document was prepared by:

Stephen R. Fanok, Esquire
389 Spruce Street
Morgantown, WV 26505
WV State Bar I.D. # 1158

LEGEND

- POINT
- △ MAGNAIL (FOUND)
- ⊙ 5/8" REBAR (FOUND)
- 1" BAR (FOUND)
- PROPERTY LINE
- - - EDGE ROAD
- - - RIGHT OF WAY

EXHIBIT



NOTE: ALLEY D IS IDENTIFIED AS "ALLEY C" ON FOURTH WARD DISTRICT, TAX MAP 20

Area of 15' Alley D: 0.17 Ac. +/-
 Area Tract 1: 1.50 Ac. +/-
 Area of Tract 2: 1.06 Ac. +/-
 Total Area: 2.73 Ac. +/-

Plat of Survey
 made for

Paradigm Development Group
 situate in the Fourth Ward District,
 Monongalia County, West Virginia
"Alley D Annulment"
 Tax Map 20 Parcel's 98-121
 Beechurst Addition Block #13 Lot's 1-11
 and 14-23 Plat in DB 444 at Page 204
 Scale: 1"=60' Date: 2/1/13

Job #: 12100039.MOR Drawn By: AJR Approved By: JBC

Patrick E. Gallagher
 PATRICK E. GALLAGHER - P.S.#1352



CTL Engineering of West Virginia, Inc.

733 Belmont Road Morgantown, WV 26501 Phone: 304/292-1135 Fax: 304/296-9302
 510 C Street S. Charleston, WV 25303 Phone: 304/746-1140 Fax: 304/746-1143

CIVIL & SITE PLANNING * SURVEYING & MAPPING * ENVIRONMENTAL * MINING * GEOTECHNICAL * TESTING & CONSTRUCTION OBSERVATION * LABORATORY *

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 03) 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
3
 REV. NO.
1 of 2
 PG. OF NO.

City of Morgantown
 GOVERNMENT ENTITY

389 Spruce Street
 STREET OR PO BOX

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

Morgantown 26505
 CITY ZIP CODE

Municipality
 Government Type

REVENUES: (net each acct.)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
299	Unassigned Fund Balance	120,000	100,180		220,180
305	Business and Occupation Tax	12,690,704	100,000		12,790,704
304	Excise Tax on Utilities	995,000	14,000		1,009,000
306	Wine & Liquor Tax	555,000		5,000	550,000
308	Hotel Occupancy Tax	735,000	85,000		820,000
397	Video Lottery	136,000		25,000	111,000
NET INCREASE/(DECREASE) Revenues (ALL PAGES)			200,180		

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
410	City Council	53,976	7,500		61,476
700	Police Department	6,423,937	45,000		6,468,937
706	Fire Department	4,295,609	25,363		4,320,972
699	Contingencies*	21,054		7,433	13,621
900	Parks & Recreation	1,263,203	21,250		1,284,453
901	Visitors Bureau	367,500	42,500		410,000
441	Other buildings	598,761	66,000		664,761
	#N/A				
NET INCREASE/(DECREASE) Expenditures			200,180		

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 #3
 Fiscal Year 2013

Wage related adjustments:

Department 706

Fire:

	Current	New	Revision
Overtime	110,000.00	135,000.00	25,000.00
Medicare	34,561.00	34,924.00	<u>363.00</u>
			25,363.00

Total wage related items 25,363.00

Non-wage items requiring adjustment:

	Current	New	Revision
Dept 410 City Council Contracted Services		7,500.00	7,500.00
Dept 700 Police Vehicle Maintenance	40,000.00	55,000.00	15,000.00
Vehicle Supplies	90,000.00	120,000.00	<u>30,000.00</u>
			45,000.00
Dept 50 Contributions Greater Morgantown CVB	367,500.00	410,000.00	42,500.00
Dept 70 Operating Transfers BOPARC-Hotel/Motel Contrib	183,750.00	205,000.00	21,250.00
Energy Efficiency Lease Pmt	76,009.00	142,009.00	66,000.00
Total nonwage	130,000.00	182,500.00	182,250.00

Total Increase overall 207,613.00

Totals by Department

Dept 410 City Council	7,500.00
Dept 700 Police	45,000.00
Dept 706 Fire	25,363.00
Dept 50 Contributions	42,500.00
Dept 70 Operating Transfers	87,250.00
Contingencies	<u>(7,433.00)</u>
	200,180.00

Revenue Adjustment

	Current	New	Revision
Prior Year Carryover	120,000.00	220,180.00	100,180.00
Electric Utility Tax	390,000.00	405,000.00	15,000.00
Gas Utility Tax	261,000.00	230,000.00	(31,000.00)
MUB Utility Tax	85,000.00	115,000.00	30,000.00
B&O Taxes	10,500,000.00	10,600,000.00	100,000.00
Liquor Taxes	599,000.00	550,000.00	(49,000.00)
Hotel/Motel Taxes	735,000.00	820,000.00	85,000.00
Video Lottery Tax	136,000.00	111,000.00	(25,000.00)
Building Permits	181,000.00	146,000.00	(35,000.00)
Police-Miscellaneous	111,000.00	101,000.00	(10,000.00)
Fire Dept Miscellaneous	1,000.00	21,000.00	20,000.00
	<u>13,119,000.00</u>	<u>13,319,180.00</u>	<u>200,180.00</u>

**AN ORDINANCE ADOPTING THE ANNUAL BUDGET OF THE CITY OF
MORGANTOWN FOR THE FISCAL YEAR 2013-2014**

The Common Council of the City of Morgantown, West Virginia hereby ordains:

SECTION I:

That the following budget be and the same is hereby adopted for the City of Morgantown for the FY 2013-2014.

General Fund Revenues

Balance as of July 1, 2013	\$ 120,000
Taxes	18,386,902
Licenses and Permits	334,500
Intergovernmental	340,781
Charges for Services	2,641,515
Interfund Charges	72,088
Fines and Forfeiture	620,000
Other Financial Sources	137,000
Miscellaneous	<u>416,799</u>
<u>Total General Fund Revenues</u>	\$ 23,069,585

Coal Severance Fund Revenues

Balance as of July 1, 2013	\$ 4,456
Coal Severance	132,000
Miscellaneous	<u>200</u>
<u>Total Coal Severance Fund Revenues</u>	\$ 136,656

TOTAL REVENUES - GENERAL & COAL SEVERANCE **\$ 23,206,241**

General Fund/Department Expenditures

Mayor and City Council	\$ 63,614
City Manager	509,519
Finance	752,727
City Clerk	159,000
Municipal Court	227,418
City Attorney	286,580
Engineering	459,473
Personnel	46,705
Code Enforcement	923,115
Planning and Zoning	211,895
Elections	-
Information Technology	190,463
City Hall & Buildings	526,934
Police	6,502,357
Fire	4,303,333
Animal Control	38,245
Street	2,334,240
Signs & Signals	595,293
Equipment Maintenance	758,791
Urban Landscape	126,170
Contributions	427,245
Operating Transfers Out	<u>3,626,468</u>
<u>Total General Fund Expenditures</u>	\$ 23,069,585

Coal Severance Fund Expenditures

Contributions to Other Funds	\$ 125,000
Contingencies	<u>11,656</u>
<u>Total Coal Severance Fund Expenditures</u>	\$ 136,656

TOTAL EXPENDITURES FOR
GENERAL & COAL SEVERANCE FUNDS

\$ 23,206,241

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

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

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

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

AMENDED INTERGOVERNMENTAL AGREEMENT

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

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

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

WHEREFORE, the Parties enter into this Amended Intergovernmental Agreement.

HISTORY AND BACKGROUND

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

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

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

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

ARTICLE ONE DEFINITIONS

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

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

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

ARTICLE TWO PROPERTY TRANSFER

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

ARTICLE THREE ACCESS ROAD COMMITTEE

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

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

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

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

ARTICLE FOUR INITIAL FUNDING

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

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

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

ARTICLE FIVE
ACCESS ROAD

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

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

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

ARTICLE SIX ACCOUNTING AND RECORD KEEPING

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

ARTICLE SEVEN
MISCELLANEOUS

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

MONONGALIA COUNTY
DEVELOPMENT AUTHORITY

CITY OF MORGANTOWN

By: Russell Lorince
Its: Vice President

By: Jeff Mikorski
Its: Interim City Manager

AN ORDINANCE AMENDING A FEBRUARY 22, 2012, REAL ESTATE PURCHASE AGREEMENT BETWEEN THE CITY OF MORGANTOWN AND THE MONONGALIA COUNTY DEVELOPMENT AUTHORITY (MCDA) AS THE SAME APPLIES TO THE CITY OF MORGANTOWN TRANSFERRING 95.7 ACRES AT THE MORGANTOWN MUNICIPAL AIRPORT TO THE MCDA, AND THE MCDA TRANSFERRING 13 ACRES, MORE OR LESS, LOCATED ALONG HARTMAN RUN ROAD, TO THE CITY OF MORGANTOWN.

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

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

AMENDED REAL ESTATE PURCHASE AGREEMENT

THIS AMENDED CONTRACT OF SALE ("Agreement") made and entered into this ____ day of April, 2013, (the "Effective Date") by and between CITY OF MORGANTOWN, Morgantown, West Virginia, a Municipal Corporation, party of the first part, ("City"); and the MONONGALIA COUNTY DEVELOPMENT AUTHORITY, a West Virginia Public Corporation, party of the second part, ("MCDA").

WHEREAS, the City and the MCDA entered into a Contract of Sale with an effective date of February 22, 2012; and

WHEREAS, it is necessary to amend provisions of the February 22, 2012 Contract of Sale.

WHEREFORE, the City and the MCDA agree as follows:

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

FOLLOWING TERMS AND CONDITIONS:

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

- (a) The Transfer of approximately 13 acres owned by the MCDA and located on Hartman Run Road in Morgantown, WV ("the Hartman Run Road Property") and more fully described in

Exhibit B, attached to this Agreement and having a fair market value of Seven Hundred Fifty Thousand Dollars (\$750,000.00)

- (b) The balance of the purchase price, Thirty Five Thousand Dollars (\$35,000.00) in cash at the time of closing.

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

(3) The sale of Property shall be consummated within sixty (60) days of the date the City obtains all necessary approvals, including but not limited to all approvals of the United States Federal Aviation Administration ("FAA") relating to the land release for the Business Park property being transferred herein. The Closing shall be held at a time, place and in a manner to be mutually agreed upon by the parties.

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

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

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

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

- (a) Correct the defects in the title and deduct or add, as the case may be, the costs and expenses of correcting those defects from the purchase price of the Property; and/or
- (b) Institute an action on behalf of the City or the MCDA as the case may be, in the Circuit Court of Monongalia County West Virginia to quiet title and remove the defects.

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

parties. MCDA and the City as the case may, be shall notify the other party in advance of any activities to be conducted on the respective properties.

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

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

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

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

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

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

- Federal Aviation Regulation (FAR) Part 77 (recodified as 14 Code of Federal Regulations (CFR) Part 77) surfaces must be adhered to relating to any building, structure, poles, trees, or other objects on the property. The City will retain a right of entry onto the property conveyed to cut, remove, or lower any

object, natural or otherwise, of height in excess of 14 CFR Part 77 surfaces relating to the airport. The public right shall include the right to require the marking or lighting as obstructions to air navigation, any and all objects that may, at any time, project or extend above said surfaces.

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

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

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

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

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

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

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

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

CITY OF MORGANTOWN:

By: _____
Its: _____

MONONGALIA COUNTY DEVELOPMENT
AUTHORITY

By: _____
Its: _____