



Office of the City Clerk

The City of Morgantown

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AGENDA
MORGANTOWN CITY COUNCIL
SPECIAL MEETING
City Hall - Council Chambers
June 21, 2016
6:00 p.m.

1. **CALL TO ORDER**
2. **ROLL CALL BY CITY CLERK**
3. **NEW BUSINESS:**
 - A. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE AUTHORIZING THE SALE OF COAL NEAR THE MORGANTOWN MUNICIPAL AIRPORT TO THE MONONGALIA COUNTY DEVELOPMENT AUTHORITY.**
4. **EXECUTIVE SESSION:** Pursuant to WV State Code Section 6-9A-4(b) (2) (9) In Order to Discuss Real Estate matters.
5. **ADJOURNMENT**

If you need an accommodation contact us at 284-7439

AN ORDINANCE AUTHORIZING THE SALE OF COAL NEAR THE MORGANTOWN MUNICIPAL AIRPORT TO THE MONONGALIA COUNTY DEVELOPMENT AUTHORITY

WHEREAS, the City is authorized by West Virginia Code section 8-12-18 to convey property to another public body upon terms agreed upon by the entities; and

WHEREAS, the City and the Monongalia County Development Authority (“MCDA”) have negotiated an agreement whereby coal will be sold to MCDA for a fee that ensures the City receives adequate compensation for these resources, and which promotes the public purposes of the City and MCDA;

NOW, THEREFORE, the City of Morgantown hereby ordains:

That the City Manager is hereby authorized, subject to the approval of the Federal Aviation Administration, to execute, on behalf of the City of Morgantown, the agreement attached to, and made a part of, this ordinance, together with any other documents necessary to accomplish the transfer of the property as provided in the agreement.

This Ordinance shall be effective from the date of its adoption.

First Reading:

Adopted:

Mayor

Filed:

Recorded:

City Clerk

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement ("Agreement") entered in to this ____ day of _____, 2016 by and between the Monongalia County Development Authority, Morgantown, Monongalia County West Virginia ("MCDA") a public corporation and the City of Morgantown, Monongalia County, West Virginia ("City") a municipal corporation.

HISTORY AND BACKGROUND

The MCDA is the owner of a certain 95 acre tract or parcel of real estate being developed as the I 68 Commerce Park ("Park") located in the City adjacent to the Morgantown Municipal Airport ("Airport"). The City is the owner of the Pittsburgh vein or seam of coal underlying Park including the remanence of previously mined Coal reserves. The previously mined Coal reserves consist of certain pillars, blocks, and stumps (as commonly referred to in the mining industry) and carbon refuse from the mining operations (commonly referred to as gob in the mining industry) hereinafter the stumps, pillars and gob are collectively referred to as "Coal".

The City has undertaken a runway extension project and in conjunction with that project will be required to obtain significant quantities of fill material to be used in the extension project. The MCDA has undertaken the development of the Park and as part of that development is required to address the current development issues presented by the Coal.

In a cooperative effort between the City and the MCDA, the removal of the overburden and the Coal will be done in conjunction with the removal of the overburden for use in the runway extension project. The initial stages of both projects have begun and as a result of certain excavation there currently exists a stockpile estimated to be approximately 2,500 tons of Coal that need to be removed from the site.

While both the Park and the Runway extension projects are moving forward the timing of the excavation of the overburden for the runway necessitates that the stockpiled Coal be removed. The MCDA as part of the development of the Park is willing to undertake the purchase and disposal of the stockpiled Coal and to pay the City all net proceeds received from the disposal of the Coal in an effort to continue with the development of the Park.

WHEREFORE, The City and the MCDA enter into this Agreement for the purpose of removal of the stockpiled Coal and to minimally clean up the site prior to the continued development of the Park and the Runway Extension.

ARTICLE ONE DEFINITIONS

1.1 "Agreement" shall mean this Intergovernmental Agreement including all schedules, exhibits, attachments and modifications.

1.2 "Airport" Shall mean the Morgantown Municipal Airport.

1.3 "Applicable costs" shall be all cost as defined in Section 3.1 of this Agreement.

1.4 "City" shall mean the City of Morgantown, Morgantown, Monongalia County West Virginia.

1.5 "Coal" shall mean only the Coal, gob and carbon refuse stockpiled on the I 68 Commerce Park Property and shall not include any Coal, gob or carbon refuse still in place.

1.6 "MCDA" shall mean the Monongalia County Development Authority, Morgantown, Monongalia County West Virginia.

1.7 "Net Proceeds" shall be defined as the price of the Coal less all applicable costs and severance taxes and fees.

1.8 "Operator" shall mean anyone contracted by the MCDA to assist in the loading, hauling or removal of the Coal.

1.9 "Park" shall mean the 95 acre site adjacent to the Airport owned by the MCDA and called the I 68 Commerce Park.

1.10 "Price of the Coal" shall be defined as the gross price per ton received for the Coal.

1.11 "Purchase Price" shall mean the Net Proceeds received by the MCDA for the Coal.

1.12 "Runway Extension" shall mean the proposed extension of the runway at the Airport.

1.13 "Severance Taxes" shall be defined as any and all federal, state and local taxes and fees levied on the removal of Coal.

ARTICLE TWO TRANSFER OF TITLE TO THE COAL

2.0 The City shall obtain any and all necessary approvals to allow for the sale of the Coal as defined in this Agreement to be sold to the MCDA. Upon obtaining all such approvals, the City shall as soon as possible thereafter execute this Agreement.

2.1 Upon execution of this Agreement by the City the MCDA shall execute this Agreement and immediately begin the process of removing and selling the Coal.

ARTICLE THREE SALE OF THE COAL AND PAYMENT OF THE APPLICABLE COSTS

3.0 Upon execution of this Agreement the MCDA shall endeavor to sell the Coal at a reasonable price to an established and reputable end user. A reasonable price is anticipated to be and defined by the Parties as a gross price of between \$12.00 and \$18.00 per ton, based upon the British Thermal Unit (BTU) value of the Coal sold.

3.1 The MCDA shall be responsible for the payment from the gross price of the Coal all applicable costs including but not limited to all costs associated with loading, trucking, mobilization and severance taxes.

3.2 MCDA shall pay for all mobilization by the operator and such mobilization costs shall be reasonable and shall not exceed in total \$0.70 per ton of Coal.

3.3 MCDA shall pay for all trucking cost for the delivery of the Coal from the Park to the purchaser and such trucking costs shall be reasonable and shall not exceed \$4.50 per ton of Coal shipped from the Park.

3.4 MCDA shall pay for all cost associated with the loading of the Coal on to trucks for shipment to the purchaser and such loading costs shall be reasonable and shall not exceed \$1.75 per ton of Coal loaded and shipped from the Park.

3.5 The MCDA shall be responsible for the payment of all federal, state and local severance taxes associated with the removal of the Coal for the Park.

ARTICLE FOUR

4.0 The Purchase Price paid by the MCDA to the City for the Coal shall be equal to the Gross sales price of the Coal less the applicable costs associated with the sale, loading, and trucking of the Coal.

4.1 The MCDA shall within three business days of receipt of the sales price for the Coal calculate the Net Proceeds from the sale of the Coal and remit the Net Proceeds to the City.

4.2 The MCDA shall provide all necessary documentation to the City with payment of the Net Proceeds including but not limited to the weight slips for the shipment of the Coal, all invoices for loading and trucking the Coal, and all severance taxes paid on the Coal, and the cost of mobilization.

4.3 It is anticipated by the MCDA that the time frame for completion of the transfer and removal of all of the Coal will be not more than a few days weather permitting. As such it is not anticipated that there will be more than one payment to the City by the MCDA. In the event that the transfer of the Coal does take more than fifteen days to complete, the MCDA shall then and in that event prepare an interim payment for the Coal shipped in the first fifteen days of the removal operation.

4.4 The MCDA shall be solely responsible for the accounting and recordkeeping regarding the removal of the Coal from the Park and shall provide the City with copies of any and all invoices, permits, documents etc. in regard to the removal of the Coal.

ARTICLE FIVE MISCELLANEOUS

5.0 The MCDA shall be responsible for the final cleanup of the site as the same relates to the removal of the Coal stockpile. MCDA shall not be responsible for any other site modifications, excavation not specifically set forth in this Agreement. All such cleanup costs shall be approved by the City in advance and shall be part of the applicable costs associated with the removal of the Coal.

5.1 The City understands and agrees that to the best of the City's knowledge and belief that the City is the owner of the Coal. Notwithstanding the foregoing, the City makes no warranty of title to the Coal.

5.2 This Agreement contains the entire understanding and agreement of the Parties regarding the sale and removal of the Coal for the Park. This Agreement may be amended from time to time by the Parties. Any amendment, modification, or change to any of the provisions of this Agreement shall be in writing and signed by all Parties to the Agreement.

5.3 The City and the MCDA represent and warrant that by executing this Agreement each has the requisite power and authority to enter into and preform this Agreement and that this Agreement has been duly authorized and approved by the City and the MCDA.

5.4 In the event any aspect of this Agreement shall be determined to be unenforceable of contrary to governing laws, rules, 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.

5.5 The City and the MCDA shall appoint a representative to act as the contact person for their respective organizations. This contact person may or may not be a member of the respective organization.

5.6 This Agreement shall at all times be governed by and enforced under the laws of the State of West Virginia. The Parties to this Agreement consent to the jurisdiction and venue of the Circuit Court of Monongalia County West Virginia as the exclusive venue for dispute resolution.

5.7 Time is of the essence in the performance of this Agreement.

MONONGALIA COUNTY
DEVELOPMENT AUTHORITY

CITY OF MORGANTOWN

By: David H. Yoder
Its: President

By: Jeff Mikorski
Its: City Manager