# The City of Morgantown

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Office of the City Clerk


**AGENDA**
**MORGANTOWN CITY COUNCIL**
**REGULAR MEETING**
**AUGUST 5, 2014**
**7:00 p.m.**

1. **CALL TO ORDER**

2. **ROLL CALL**

3. **PLEDGE TO THE FLAG**

4. **APPROVAL OF MINUTES: Regular Meeting – July 15, 2014**

5. **CORRESPONDENCE:**

6. **PUBLIC HEARINGS:**

   A. **AN ORDINANCE AUTHORIZING A LEASE AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN, LESSOR, AND RSA FLIGHT TRAINING, LLC,LESSEE, IN WHICH OFFICE SPACE, SPECIFICALLY SUITES 235 AND 241, IS BEING LEASED AT THE MORGANTOWN MUNICIPAL AIRPORT FOR THE PURPOSE OF OPERATING A FLIGHT TRAINING CONCESSION.**

   B. **AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING A LEASE AGREEMENT BY AND BETWEEN IT, AS LESSOR, AND MERKOL, INC., AS LESSEE, REGARDING SPACE WITHIN THE MORGANTOWN MUNICIPAL AIRPORT TERMINAL BUILDING, WHICH WILL BE OPERATED AS A RESTAURANT.**

   C. **AN ORDINANCE AMENDING THE FY 2014-2015 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.**

7. **UNFINISHED BUSINESS:**

A. Consideration of **APPROVAL** of **(SECOND READING)** and **(ADOPTION)** of **AN ORDINANCE AUTHORIZING A LEASE AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN, LESSOR, AND RSA FLIGHT TRAINING, LLC,LESSEE, IN WHICH OFFICE SPACE, SPECIFICALLY SUITES 235 AND 241, IS BEING LEASED AT THE MORGANTOWN MUNICIPAL AIRPORT FOR THE PURPOSE OF OPERATING A FLIGHT TRAINING CONCESSION. (First Reading July 15, 2014)**

B. Consideration of **APPROVAL** of **(SECOND READING)** and **(ADOPTION)** of **AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING A LEASE AGREEMENT BY AND BETWEEN IT, AS LESSOR, AND MERKOL, INC., AS LESSEE, REGARDING SPACE WITHIN THE MORGANTOWN MUNICIPAL AIRPORT TERMINAL BUILDING, WHICH WILL BE OPERATED AS A RESTAURANT. (First Reading July 15, 2014)**

C. Consideration of **APPROVAL** of **(SECOND READING)** and **(ADOPTION)** of **AN ORDINANCE AMENDING THE FY 2014-2015 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 July 15, 2014)**

D. **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 THE FY 2014-2015 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE COAL SEVERANCE FUND.**

B. **Consideration** of **APPROVAL** of **FIRST READING** of **AN ORDINANCE AMENDING SECTION 505.09 OF ITS GENERAL OFFENSS CODE RELATING TO ANIMALS AND FOWL.**

C. **Consideration** of **APPROVAL** of **FIRST READING** of **AN ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN AND MONONGALIA COUNTY COMMISSION AS THE SAME APPLIES TO CERTAIN ANIMAL CONTROL SERVICES TO BE PROVIDED BY THE COUNTY TO THE CITY.**

D. **Consideration** of **APPROVAL** of **FIRST READING** of **AN ORDINANCE PROVIDING THE ZONING RECLASSIFICATION OF TWO PARCELS OF REAL ESTATE IN THE FIFTH WARD OF THE CITY OF MORGANTOWN FROM R-1A, SINGLE-FAMILY RESIDENTIAL DISTRICT TO R-2, SINGLE-AND TWO-FAMILY RESIDENTIAL DISTRICTBY AMENDING ARTICLE 1331 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.**

E. **Consideration** of **APPROVAL** of **FIRST READING** of **AN ORDINANCE AMENDING ARTICLE 1369.15 OF THE PLANNING AND ZONING CODE AS IT RELATES TO SIGN PERMITS.**

F. **Consideration** of **APPROVAL** of **FIRST READING** of **AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTIONS 921.01 AND 921.12 OF ITS STREETS, UTILITIES AND PUBLIC SERVICES CODE, AS THE SAME APPLIES TO DISCHARGE OF DETRIMENTAL WASTES INTO ANY SEWER AND RELATED DEFINITION OF TERMS.**

G. **Consideration** of **APPROVAL** of **FIRST READING** of **AN ORDINANCE VACATING, ABANDONING AND ANNULLING A 5' WIDE UNNAMED ALLEY RUNNING A DISTANCE OF APPROXIMATELY EIGHTY-ONE FEET LOCATED SOUTH OF FIRST STREET BETWEEN JONES AVENUE AND LORENTZ AVENUE IN THE FOURTH WARD OF THE CITY OF MORGANTOWN, MONONGALIA COUNTY, WEST VIRGINIA, NOT USED NOR USEFUL FOR STREET PURPOSES.**

H. **Consideration** of **APPROVAL** of **FIRST READING** of **AN ORDINANCE VACATING, ABANDONING AND ANNULLING A 16' RIGHT OF WAY ALONG A PORTION OF FIRST STREET RUNNING A DISTANCE OF APPROXIMATLEY EIGHTY-SIX FEET IN AN EASTERLY DIRECTION FROM ITS INTERSECTION WITH JONES AVENUE IN THE FOURTH WARD OF THE**

CITY OF MORGANTOWN, MONONGALIA COUNTY, WEST VIRGINIA, NOT USED NOR USEFUL FOR STREET PURPOSES.

I. Consideration of APPROVAL of FIRST READING of AN ORDINANCE BY THE CITY OF MORGANTOWN, AUTHORIZING THE RENEWAL OF A LEASE AGREEMENT BETWEEN IT, AS LESSOR, AND THE STATE OF WEST VIRGINIA, AS LESSEE, ON BEHALF OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION, REGARDING REALTY AT THE MORGANTOWN MUNICIPAL AIRPORT UTILIZED FOR PURPOSES OF AIR QUALITY SAMPLING.

J. Consideration of APPROVAL of FIRST READING and ADOPTION of A RESOLUTION TO OBTAIN $22,000 TO ASSIST OPERATION WELCOME HOME THROUGH THE GOVERNOR'S COMMUNITY PARTICIPATION GRANT PROGRAM.

K. Consideration of APPROVAL of FIRST READING and ADOPTION of A RESOLUTION TO OBTAIN $3,000 TO HELPRENOVATE THE METROPOLITAN THEATER THROUGH THE GOVERNOR'S COMMUNITY PARTICIPATION GRANT PROGRAM.

11. CITY MANAGER'S REPORT:

INFORMATION:

1. Free Flow Power Hydroelectric Power Plant changes to design

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 (304) 284-7439*

**REGULAR MEETING JULY 15, 2014:** The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers of City Hall on Tuesday, July 15, 2014 at 7:00 p.m.

**PRESENT:** City Manager Jeff Mikorski, City Attorney Steve Fanok, City Clerk Linda Little, Mayor Jenny Selin and Council Members: Bill Kawecki, Wes Nugent, Mike Fike, and Nancy Ganz. Absent: Ron Bane and Marti Shamberger.

The Meeting was called to order by Mayor Selin.

**APPROVAL OF MINUTES:** The minutes of the regular meeting of July 1, 2014, were approved as corrected.

**CORRESPONDENCE:** Mayor Selin requested that the CTA Cheerleaders do a short cheer before presenting them with a Proclamation. The Mayor then presented a Retirement Proclamation to Russell Lawson for his loyal commitment for working for the City of Morgantown for 35 years. The Mayor then noted a letter from David Raese, President of Greer Industries, as part of the record, as he expressed concerns and opposition of the Morgantown Truck Ordinance and the downtown business district heavy truck limitations, as advanced by Safe Streets Morgantown. **(EXHIBIT A ATTACHED)**

**PUBLIC HEARING – AN ORDINANACE PROVIDING FOR THE ANNEXATION OF 13.40 ACRES, MORE OR LESS, OF ADDITIONAL TERRITORY INTO THE CITY OF MORGANTOWN PURSUANT TO SECTION 8-6-4 OF THE WEST VIRGINIA CODE.**

Robert K. Griffith, 106 Forest Drive, stated that he was in support of the annexation and that his comments be part of the record. He stated that he has two items to discuss; one being that if the flooding is not fixed it will decrease the value of the neighborhood. He also noted annexing the neighborhood will have a direct benefit to the City of Morgantown and also the people living on the affected streets would pay something to maintain the roads which we so depend on. **(EXHIBIT B ATTACHED)**

Bill Hennessey, Executive Director of Mon General Hospital Foundation, stated that he is in opposition of the proposed annexation. He also stated that our building opened in 1978 and for more than 20 years the drainage system was more than adequate and now comes a proposal to charge the Morgantown Medical Arts Building over $204,000 for the life of the proposed project. He stated that we did not create the problem that allegedly did not occur until projects on Windsor and Popular were developed without additional proper drainage facilities being installed. He noted we should expect that those who created the problem should pay for the fix. And because of unfair burden placed upon our property, we rise in opposition of the annexation and the proposed allocation of charges.

Dr. Susan Morgan, 112 Forest Drive, thanked Council for the work they have done on this issue so far. She stated that we have a wonderful community and does not want to cause ill will onto neighbors however as a health care provider this problem needs to be remedied now by passing this annexation this evening. I'm requesting that my letter and PowerPoint presentation be part of the record. **(EXHIBIT C ATTACHED)**

Sherry Hood, 118 Morgan Drive, thanked Council for caring about their neighborhood. She stated that the children were playing in sewage water infested with feces as it floated by houses. She noted also that the wildlife has been affected by the sewage water. She stated to please consider the annexation as this would greatly help the quality of life for our neighbors.

**PUBLIC HEARING – AN ORDINANCE AMENDING SECTION 929.05 AND 929.06 OF THE CITY OF MORGANTOWN'S STREETS, UTILITIES AND PUBLIC SERVICES CODE BY SETTING FORTH THE RATES, FEES AND CHARGES FOR SERVICE TO CUSTOMERS OF THE MUNICIPAL SEPARATE STORMWATER SEWERAGE SYSTEM OF THE CITY OF MORGANTOWN.**

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

**PUBLIC HEARING – AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 386.08 OF ITS TRAFFIC CODE, AS THE SAME APPLIES TO PARKING FEES.**

George Papandreas, President of Main Street Morgantown, stated that he was disappointed that business owners did not have time to respond to the parking fee changes and requested City Council to either delay or table the Ordinance to do more research and engage stakeholders. He also stated that turnover, in his opinion, is factored by time not cost and also noted that the hike in parking fees will push people away from the downtown vicinity, and will most likely shop and eat elsewhere where parking is free.

Judy Spade, owner of Café Bachus, stated that she would like all correspondence to be entered into public record. She first read an email from Heather Gentile, Attorney at Jackson/Kelly. Heather stated in her email that she personally believes that approving the proposed Ordinance will not only hinder the existence and success of current businesses, but will discourage future expansion/growth. Judy Spade then went on to read the four points/questions to Council. She stated that she was concerned about the future of Morgantown and not to punish the downtown businesses and Mon County residents. **(EXHIBIT D ATTACHED)**

**PUBLIC HEARING – AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING AND EXPANDING THE BOUNDARIES OF THE WILES HILL DESIGNATED PARKING DISTRICT, AND ALSO AMENDING THE PERMIT REQUIREMENTS AND WORDING OF THE DISTRICT'S PERMIT PARKING SIGNAGE.**

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

**PUBLIC HEARING – AN ORDINANCE BY THE CITY OF MORGANTOWN REPEALING ARTICLE 170 OF ITS ADMINISTRATIVE CODE, AS THE SAME APPLIES TO THE GREATER MORGANTOWN METROPOLITAN AREA YOUTH COMMISSION.**

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

**PUBLIC HEARING – AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING ARTICLE 129 OF ITS ADMINISRATIVE CODE BY ADDING A NEW SECTION 129.16 PERTAINING TO THE CITY FINANCE DIRECTOR'S AUTHORITY TO REQUEST INFORMATION FROM THE WEST VIRGINIA STATE TAX DEPARTMENT.**

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

**PUBLIC HEARING – AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE STORMWATER PORTION OF THE COMBINED SYSTEM OF THE CITY OF MORGANTOWN AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $850,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2014 B; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; AND AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.**

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

**UNFINISHED BUSINESS:**

**AN ORDINANCE PROVIDING FOR THE ANNEXATION OF 13.40 ACRES:** The below entitled Ordinance was presented for second reading.

AN ORDINANACE PROVIDING FOR THE ANNEXATION OF 13.40 ACRES, MORE OR LESS, OF ADDITIONAL TERRITORY INTO THE CITY OF MORGANTOWN PURSUANT TO SECTION 8-6-4 OF THE WEST VIRGINIA CODE.

After explanation from the City Manager and the City Attorney, Motion by Ganz, second by Kawecki, to adopt the above entitled Ordinance. Motion carried 5-0.

**AN ORDINANCE AMENDING SECTION 929.05 AND 929.06 OF THE CITY OF MORGANTOWN'S STREETS, UTILITIES AND PUBLIC SERVICES CODE:** The below entitled Ordinance was presented for second reading.

AN ORDINANCE AMENDING SECTION 929.05 AND 929.06 OF THE CITY OF MORGANTOWN'S STREETS, UTILITIES AND PUBLIC SERVICES CODE BY SETTING FORTH THE RATES, FEES AND CHARGES FOR SERVICE TO CUSTOMERS OF THE MUNICIPAL SEPARATE STORMWATER SEWERAGE SYSTEM OF THE CITY OF MORGANTOWN.

After explanation from the City Manager, Council suspended the rules to have Tim Ball answer questions. Motion by Fike, second by Ganz, to adopt the above entitled Ordinance. Motion carried 5-0.

**AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 386.08 OF ITS TRAFFIC CODE:** The below entitled Ordinance was presented for second reading.

AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 386.08 OF ITS TRAFFIC CODE, AS THE SAME APPLIES TO PARKING FEES.

Motion by Kawecki, second by Ganz to table the Ordinance. Councilor Nugent interjected an amendment to the Ordinance with a suggestion of a strikethrough to sub section C. The City Attorney then suggested that all subsections A, B, and C should be a strikethrough because they are all linked together. Councilor Kawecki rescinded his motion to table and Councilor Nugent also rescinded the previous motion and accepted the City Attorney's suggestion as his motion.

The amendment was motioned by Nugent, second by Kawecki and then a question was called to vote on amendment 5-0. Question was called on the main motion vote carried 5-0 to adopt the above entitled Ordinance.

**AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING AND EXPANDING THE BOUNDARIES OF THE WILES HILL DESIGNATED PARKING DISTRICT:** The below entitled Ordinance was presented for second reading.

AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING AND EXPANDING THE BOUNDARIES OF THE WILES HILL DESIGNATED PARKING DISTRICT, AND ALSO AMENDING THE PERMIT REQUIREMENTS AND WORDING OF THE DISTRICT'S PERMIT PARKING SIGNAGE.

After discussion, motion by Nugent, second by Ganz to adopt the above entitled Ordinance. Motion carried 5-0.

**AN ORDINANCE BY THE CITY OF MORGANTOWN REPEALING ARTICLE 170 OF ITS ADMINISTRATIVE CODE:** The below entitled Ordinance was presented for second reading.

AN ORDINANCE BY THE CITY OF MORGANTOWN REPEALING ARTICLE 170 OF ITS ADMINISTRATIVE CODE, AS THE SAME APPLIES TO THE GREATER MORGANTOWN METROPOLITAN AREA YOUTH COMMISSION.

After explanation from City Manager, motion by Fike, second by Kawecki to adopt the above entitled Ordinance. Motion carried 5-0.

**AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING ARTICLE 129 OF ITS ADMINISRATIVE CODE:** The below entitled Ordinance was presented for second reading.

AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING ARTICLE 129 OF ITS ADMINISRATIVE CODE BY ADDING A NEW SECTION 129.16 PERTAINING TO THE CITY FINANCE DIRECTOR'S AUTHORITY TO REQUEST INFORMATION FROM THE WEST VIRGINIA STATE TAX DEPARTMENT.

After explanation from the City Manager, motion by Kawecki, second by Nugent to adopt the above entitled Ordinance. Motion carried 5-0.

**AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE STORMWATER PORTION OF THE COMBINED SYSTEM OF THE CITY OF MORGANTOWN AND THE FINANCING OF THE COST THEREOF:** The below entitled Ordinance was presented for third reading.

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE STORMWATER PORTION OF THE COMBINED SYSTEM OF THE CITY OF MORGANTOWN AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF MORGANTOWN NOT MORE THAN $850,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2014 B; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; AND AUTHORIZING THE SALE AND PROVIDING FOR THE

TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

After explanation by City Manager, motion by Fike, second by Ganz, to adopt the above entitled Ordinance. Motion carried 5-0.

**BOARDS AND COMMISSIONS:** The City Clerk updated Council on Personnel Board. She stated that there are two members that will be expiring soon and there have been no applicants for the fourth and seventh ward vacancies on the Urban Landscape Commission.

**PUBLIC PORTION:**

James Craig, 127 Fairway Court, presented two petitions for blue curb parking and requested that both documents be part of the record. **(EXHIBIT E AND F ATTACHED)**

Brian McAllister, 349 Cobun Avenue, stated that he is the spokesperson for Safe Streets Morgantown and presented the proposal to limit the movement of heavy trucks in the downtown business district, and would like to request copies of any reports given to the City in regards to the proposal so Safe Streets of Morgantown can respond to those reports in a timely manner.

Richard Dumas, 444 Overhill Street, stated that he travels the downtown district quite frequently and that the roads are in very poor condition with a lot of potholes and as you try to dodge the potholes you're almost running into large trucks that are exceeding 25 miles per hour. Mr. Dumas suggested that Greenbag Road be used as an alternate route because years ago they constructed it to be an alternate route for the large trucks coming from Greer Industries.

**SPECIAL COMMITTEE REPORTS:** Councilor Ganz reported on some of the recent accomplishments of the Urban Landscape Commission. She also noted that the BOPARC Board is working on a Master Plan and there will be a Kids Triathlon in August. Councilor Kawecki thanked BOPARC for the Family Fun Day for South Park Neighborhood.

**NEW BUSINESS:**

**AN ORDINANCE AUTHORIZING A LEASE AGREEMENT BETWEEN THE CITY OF MORGANTOWN AND RSA FLIGHT TRAINING, LLC:** The below entitled Ordinance was presented for first reading.

AN ORDINANCE AUTHORIZING A LEASE AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN, LESSOR, AND RSA FLIGHT TRAINING, LLC LESSEE, IN WHICH OFFICE SPACE, SPECIFICALLY SUITES 235 AND 241, IS BEING LEASED AT THE MORGANTOWN MUNICIPAL AIRPORT FOR THE PURPOSE OF OPERATING A FLIGHT TRAINING CONCESSION.

After discussion, Councilor Fike motioned to amend lease, second by Kawecki. Motion carried 5-0. Motion by Kawecki, second by Fike, to pass the above titled Ordinance to second reading. Motion carried 5-0.

**AN ORDINANCE AUTHORIZING A LEASE AGREEMENT BETWEEN THE CITY OF MORGANTOWN AND MERKOL, INC:** The below entitled Ordinance was presented for first reading.

AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING A LEASE AGREEMENT BY AND BETWEEN IT, AS LESSOR, AND MERKOL, INC., AS LESSEE, REGARDING SPACE WITHIN THE MORGANTOWN MUNICIPAL AIRPORT TERMINAL BUILDING, WHICH WILL BE OPERATED AS A RESTAURANT.

After discussion, Councilor Fike motioned to amend lease, second by Kawecki. Motion carried 5-0. Motion by Kawecki, second by Ganz, to pass the above titled Ordinance to second reading. Motion carried 5-0.

**AN ORDINANCE AMENDING THE FY 2014-2015 ANNUAL BUDGET OF THE CITY OF MORGANTOWN:** The below entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING THE FY 2014-2015 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND.

City Manager explained the various budget amendments to Council. There being no further questions from Council. Motion by Nugent, second by Kawecki, to pass the above titled Ordinance to second reading. Motion carried 5-0.

**A RESOLUTION AUTHORIZING JEFF MIKORSKI, CITY MANAGER, TO APPLY TO ALL APPLICATIONS AND AGREEMENTS FOR AN ONSITE MEDICAL CLINIC:** The below entitled Resolution was presented for first reading.

A RESOLUTION AUTHORIZING JEFF MIKORSKI, CITY MANAGER, TO APPLY TO AND EXECUTE ALL APPLICATIONS AND AGREEMENTS WITH AND FOR THE STATE OF WEST VIRGINA HEALTH CARE AUTHORITY FOR A CERTIFICATE OF NEED FOR AN ONSITE HEALTH CLINIC.

After discussion, City Manager explained the onsite clinic to Council and noted that he will update Council as we move forward with this program. Motion by Kawecki, second by Ganz, to adopt the above entitled Resolution. Motion carried 5-0.

**A RESOLUTION AUTHORIZING AND APPROVING CERTAIN PARAMETERS AS THE PRINCIPAL AMOUNT, DATES, MATURITY DATE, INTEREST RATES, INTEREST AND PRINCIPAL PAYMENT DATES AND OTHER TERMS OF THE COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2014 B:** The below entitled Resolution was presented for first reading.

A RESOLUTION AUTHORIZING AND APPROVING CERTAIN PARAMETERS AS THE PRINCIPAL AMOUNT, DATES, MATURITY DATE, INTEREST RATES, INTEREST AND PRINCIPAL PAYMENT DATES AND OTHER TERMS OF THE COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2014 B OF THE CITY OF MORGANTOWN; AUTHORIZING AND APPROVING THE SALE AND DELIVERY OF SUCH BONDS; AND MAKING OTHER PROVISIONS AS TO THE SERIES 2014 B BONDS, AUTHORIZING A TAX COMPLIANCE POLICY, A CERTIFICATE OF DETERMINATIONS AND OTHER INSTRUMENTS RELATING TO THE BONDS.

City Manager explained the Resolution to Council. There being no further questions from Council. Motion by Nugent, second by Ganz, to adopt the above entitled Resolution. Motion carried 5-0.

**A RESOLUTION OF THE MORGANTOWN CITY COUNCIL PROTESTING PROPOSED ELECTRIC RATE INCREASES:** The below entitled Resolution was presented for first reading.

A RESOLUTION OF THE MORGANTOWN CITY COUNCIL PROTESTING PROPOSED ELECTRIC RATE INCREASES.

After discussion, motion by Fike, second by Kawecki, to adopt the above entitled Resolution. Motion carried 5-0.

**CITY MANAGER'S REPORT:**

NEW BUSINESS:

1. Fair and Festival Permit for United Way:

City Manager informed Council that the United Way has pulled their permit for their event at the Market Place for this year. He reported that the United Way Mac. N Cheese Cook Off will be held on August 9th, 2014.

2. Annexation:

City Manager told Council that the annexation will be on the County Commission's Agenda on 7-16-14.

3. Blue Curb Parking Petitions in Sunnyside::

City Manager noted that he has already given Jim Craig's petitions to the Parking Authority for their review and consideration.

4. Safe Streets Morgantown:

City Manager reported to Council there is not an update as of yet to supply to Council. He noted a letter has gone to Commissioner Maddox with his response to the truck issue; this will also be followed with a meeting with the Commissioner.

**REPORT FROM CITY CLERK:** No report.

**REPORT FROM CITY ATTORNEY:** No report.

**REPORT FROM COUNCIL MEMBERS:**

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|---|---|
| Councilor Bane: | Absent |
| Councilor Kawecki: | No Report |
| Councilor Nugent: | Councilor Nugent announced that on July 16, 2014, there will be a Wiles Hill-Highland Park |

Neighborhood Association Meeting starting with a social at 6:30 p.m. followed by the meeting at 7:00 p.m. Councilor Nugent thanked the City staff for all the hard work they put forth towards the annexation of Oakview area. He also stated that it's unfortunate we cannot have a unanimous consent, but we have to face reality that what happens upstream does affect the City and that it's in our best interest to move forward with the annexation. Councilor Nugent also noted that he is very happy with the outcome and that MUB will be able to move forward with their projects.

Councilor Shamberger: Absent

Councilor Fike: Councilor Fike stated that he along with Councilor Shamberger participated in kickoff meeting with the newly formed Monongalia County Prevention Coalition last week. He stated that the turnout was full of service providers and entities that deal with underage drinking, and he found it interesting that Monongalia County was designated to be an area that had a high density of underage drinking, which came to no surprise to a lot of us although, the percentage of underage drinking has declined in recent years, but is still high. Councilor Fike noted that this entity was formed to provide programs and intervention in our area and welcomes the opportunity for the City to be involved and was impressed with the potential this group has. He stated that he is looking forward to Kid's Day this coming Saturday and encourages everyone to visit downtown to support and honor our younger generation. Councilor Fike also noted that he participated in the "Walk 100 Miles in 100 Days" challenge, received a T-shirt, and also noted that there were 21 participants. He stated that it was good to see the City participate in this challenge.

Councilor Ganz: Councilor Ganz stated that today is a good day to celebrate the success of Morgantown in regards to the progress of the annexation. She touched base on all the positive outcomes that the annexation will provide in that area and for the City. She noted that she is really sorry for whatever disagreements that might have taken place and hopes that we can all work together to

heal from those disagreements. Councilor Ganz stated that we have to look at the health and safety of our residents and appreciates that we have done so. She thanked all the people in the affected area that put an effort into getting this matter resolved. She noted that she hopes that we can implore the outskirts of the City to adopt an adequate planning process and infrastructure development so this does not happen again. Councilor Ganz thanked Tim Ball and everyone involved with the annexation process.

Mayor Selin:

Mayor Selin started out with a question to the City Manager asking him if there was a more detailed plan of the in-stream option to provide Council from Free Flow Power. The City Manager responded with a no but has since then put in a request for a more detailed plan. The City Manager stated that they are still in the process of pulling all the details together and should be providing it to us by the end of the month. Mayor Selin stated that she just wants to make sure that we put in a formal request for a more detailed plan before any other steps are taken. Mayor Selin requested to the City Manager as information becomes available to please provide City Council with the information as he receives it. She also requested to the City Manager that she would like the trash service provider that was here a few months ago to be invited back for an update on how trash service is going as well as feedback from landlords. She also requested that she would like an update from the Division of Highways as well. Councilor Nugent requested consensus from all Council members for these entities to supply the City with updates on recent concerns and all Council members agreed. Mayor Selin made the following announcements; the Jim Dunn Memorial Scholarship Twilight Miler will be held Friday the 18th starting at the Wharf; the Farmers' Market will be held on Saturday the 19th starting at 8:30 a.m.; M. T. Pockets will be hosting "Gathering Movement" Thursday, July 24th, 25th, at 8:00 p.m. and the 26th at 2:00 p.m. and 8:00 p.m.; The Greater Morgantown Convention and Visitors Bureau located at 201 High Street will be celebrating Don Knott's 90th birthday on July 21st; July 18th opening of the

MAC players production, RED, show dates are July 18th, 19th, 25th and 26th at 8:00 p.m. and the 20th will be at 2:00 p.m.; Public Theatre will host South Pacific July 16th-20th and Hank Williams-Lost Highway July 23rd-27th. Mayor Selin stated that she appreciates everyone's patience this evening.

**ADJOURNMENT:** There being no further items of business or discussion, the meeting adjourned by unanimous consent at 9:25 p.m.

City Clerk

Mayor

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

Exhibit A

GREER
INDUSTRIES, INC.

P.O. Box 1900 • Morgantown, WV 26507-1900 • (304) 296-1751 • FAX (304) 594-3467
The Greer Mansion • 598 Canyon Road
www.greerindustries.com

RECEIVED 7-15-14

July 10, 2014

Mayor - Jennifer Selin, Deputy Mayor - Marti Shamberger,
Ron Bane, Bill Kawecki, Wes Nugent,
Mike Fike, and Nancy Ganz
Morgantown City Council
389 Spruce Street
Morgantown, WV 26505

Dear Council Members:

I am writing to express my concerns about the proposed Morgantown Traffic Code Ordinance, the Downtown Business District Heavy Truck Limitations, as advanced by "Safe Streets Morgantown," which bans virtually all commercial vehicles from traveling through the B-4 district of the City of Morgantown except for government vehicles or trucks making deliveries within the district. I strenuously oppose such an ordinance and request that you vote against this ordinance if it is offered.

This ordinance has been proposed with no evidence of any true incidents, accidents, or data documenting any safety, health, noise, or environmental issues. Moreover, to my knowledge, there has been no analysis or assessment of the costs to our company, the City of Morgantown, or to others associated with such an ordinance. If passed, the ban would prohibit virtually all heavy trucks, except government trucks and trucks delivering within the City of Morgantown, from taking direct routes through the city, and instead cause most truckers to be redirected along circuitous routes. These alternate routes, sometimes requiring interstate travel, will burden our company, truckers, and related industries with significant additional costs, expenses, time, and inconvenience. Nonetheless, this ordinance is being proposed by its supporters without taking into consideration the fact that our company has relied on the use of these routes for approximately fifty (50) years and has paid taxes for their support and maintenance. In addition, we have invested substantial capital based on the use of these routes in order to make our company the successful company it is today.

We believe this issue to be an important one with broad ramifications throughout the coal, limestone, oil and gas, trucking, and other industries. The passage of this ordinance has the potential to cost millions of dollars to local industries and adversely affect hundreds of mining, natural gas and trucking jobs, as well as other jobs related to these industries. The routes proposed would require more trucks to be used and more fuel to be consumed, which would increase costs to everyone. You should know that the products being hauled in these trucks are being delivered to markets outside the Morgantown area and are in competition with multi-national companies. Accordingly, Greer Limestone Company may not be able to compete with mine operators on the Ohio and other rivers that do not have trucks as part of their cost structure. If Greer Limestone Company is unable to compete, mining, trucking and other jobs will be lost.

We understand that historically the West Virginia Department of Transportation Division of Highways has taken the position that a similar ordinance was overbroad, that the City of Morgantown is without jurisdiction to pass such an ordinance, that the traffic study conducted by Morgantown's Metropolitan Planning Organization is insufficient to support such an ordinance, and that the ordinance is preempted by federal law. However, certain proponents on City Council, despite DOH's disapproval, continue to seek passage of this ordinance without investigating the potential adverse consequences to our businesses.

The implications of allowing this ordinance to pass are profound and extend beyond the borders of Morgantown and include the entire State of West Virginia. I am proud to be a West Virginian, and I care deeply about the future of our state and the job security of our families. Any attempt to pass an ordinance that would jeopardize our company's ability to compete and to provide jobs to its employees and to truckers and others would be very detrimental to our community. I feel confident that when you consider the negative impact of the proposed Downtown Business District Heavy Truck Limitations, you will vote against this overreaching proposal.

Sincerely,

John R. Raese
President/CEO
Greer Industries, Inc.

Exhibit B

July 15, 2014

Morgantown City Council
389 Spruce Street
Morgantown, WV 26505

Concerning: Oakview Subdivision Partial Annexation

Members of the Council,

Before beginning, I would like to request that these comments be entered into the public record.

My name is Robert K. Griffith and I live at 106 Forest Drive, one of the streets being considered for annexation into the City of Morgantown. I am once again speaking in support of this annexation proposal. I don't want anyone to think that by remaining silent I had changed my mind. I'll be brief and only speak to two issues, the potential decrease in property values and the value to the city.

We know the sewage issue will be fixed regardless of annexation, but the flooding issue will not. Again, it is plainly wrong that this flooding only affects a few houses. It directly affects properties on Poplar Woods via erosion of their property. And if the flooding is not fixed, it will adversely affect the value of the properties directly affected, and dropping property values will affect the entire neighborhood, including those property owners opposed to annexation. I suppose it could be argued that my property value is of no concern to the City of Morgantown if I'm not part of Morgantown.

But I believe there will be direct benefit to the City of Morgantown. Everyone who lives on Oakview, Morgan, Forest Drive, Poplar, or Poplar Woods must drive on city streets to go to work, to buy food, go shopping, or do anything besides sit in their house . We depend on the City to maitain, and plow, Anderson Street and Eastern Avenue. Yet none of us pays a nickel to maintain these streets so vital to our lives. With the proposed annexation, at least the people living on the affected streets would pay something to maintain the roads on which we so depend.

Therefore I again urge the Morgantown City Council to approve the annexation as previously presented.

Sincerely,

Robert K. Griffith

Robert K. Griffith
106 Forest Drive
Morgantown, WV

Exhibit C

Morgantown City Council Meeting Tuesday, July 15, 2014

**Mayor Selin, Honorable Council Members, and City Manager Mr. Mikorski:**

My name is Dr. Susan Morgan and I want to thank you for the efficient manner in which you have acted, in concert with the Morgantown Utility Board, and the Monongalia County Commission regarding the need for (1) a 48-inch storm water culvert pipe and (2) stream bed stabilization in the gully located between the Windsor Estates and Poplar Woods Subdivisions. These two items are essential to remedy the public health and safety hazard the currently exists.

This process began three years ago in August 2011, when a group of concerned residents came together to seek a solution to the public health and safety hazard in our residential area. We put information into the hands of every governmental agency that we thought might have jurisdiction over this problem. It seems that at every turn we were told that annexation was the means to a long-term solution to this problem. We heard this from a Delegate representing our District; from the Public Service Commission of West Virginia, the Morgantown Utility Board, among others. With regard to annexation, concerned residents have jumped thru every hoop put before us. We have signed a petition, not once, but twice – affirming and reaffirming that a majority of the residents in the area want to be annexed into the City of Morgantown.

We have heard talk of legal opinions, going to court, etc. **The bottom line is: This public health and safety hazard has been recognized by BOTH the Monongalia County Health Department and the Monongalia County Commission. Fixing this problem cannot wait any longer; the clock has run out. If not via annexation, then HOW is this community going to remedy this public health and safety hazard that is not of our own making? As one Council Member suggested, not fixing this problem will cost the Morgantown area much more in the long-term than fixing it.**

In closing, this is a wonderful community; the last thing I would want to do would be to cause any ill will among my neighbors. However, as a health care provider who has spent a good amount of my career in public health, I feel strongly that the time for this problem to be remedied is NOW – by whatever means necessary.

Respectfully,

Susan K. Morgan

Susan K. Morgan, DDS, MAGD
Past President of the WV Public Health Association

Storm water runoff impacts more than just "four homes." Not correcting this problem, allows a public health & safety hazard to continue. As one Council Member alluded to: not fixing this is going to cost the Morgantown area much more in the long run than fixing it.



Looking upstream on a sunny day – note the erosion taking place in the gully. This area could be a show case – a beautiful walking trail with stream bed stabilization.

One of many above ground lateral sewer lines in the gully upstream of the area that experiences flash flooding. Note the trees that have also been uprooted by erosion.

The need for streambed stabilization is obvious. As Mr. Ball indicated when he spoke before City Council, usable privately owned property is being lost.

This is the condition of a lateral sewer pipe located on one side of the gully. This pipe has separated on two occasions. Please note the erosion and need for streambed stabilization.

One of many large uprooted trees in the gully.

## Main terracotta sewer line exposed & unsupported in the streambed due to erosion.

## The 24" culvert opening is not visible in this photo due to silt filling the gully.

MUB currently dredges the silt (as seen in the prior slide) in an effort to prevent flash floods.

Flooding on a downstream homeowners association's street located beyond the so-called "four homes" that are impacted.

A home, downstream of the so called "four homes," impacted by overland flows of uncontrolled storm water runoff.

07/07/14 Storm Water Runoff - It Impacts More than Just Four Homes 11

This water is heading toward the Morningside & Greenbriar Village Subdivisions. Before the water receded, people could not get to or from their vehicles because of the current. This is downstream of the so called, "four homes" being impacted.

07/07/14 Storm Water Runoff - It Impacts More than Just Four Homes 12

People driving down Forest Drive when an overland flow occurs may not live in the so-called "four homes" impacted by overland flows.

As Mayor Selin alluded to when posing a question to Mr. Ball at a City Council meeting: Without stream bed stabilization, the installation of a larger storm water culvert, and the support of MUB to maintain the watershed; won't sewer pipes become re-exposed eventually? In other words, how long will the regulations on the next two slides be maintained if streambed stabilization, and the installation of a larger storm water culvert pipe are not done?

## Sewer Regulations

- CSR § 64-47-1 (2003), et seq., applies to any person involved in the construction or operation of sewer systems.
- Section 64-47-4.2.h requires a minimum earth cover of three (3) feet to protect sewers from surface loadings and to prevent freezing.
- Section 64-47-4.2.q requires sewers crossing under a stream to have a minimum separation of three (3) feet between the stream bed and the top of the sewer pipe.

## MUB's Sewer Regulation

- MUB's Sewer Regulation 921.05(d) states: "Adequate soil cover to protect the service line from crushing or frost actions is required."

The day after this photo a lateral sewer line was found separated with the raw sewage spilling into the gully . None of these children lived in the "four homes" that were impacted.

Sewer line separation that was found after children were seen playing in the water.

## As additional development continues upstream without immediate intervention; how can the downstream communities survive?

Why are overland flows of storm water runoff, in and of themselves, a public health and safety hazard?

The public health and safety hazard associated with overland flows of storm water runoff is related to pathogens introduced into the gully upstream of the 24-inch storm water culvert pipe that is now overwhelmed with storm water runoff with increasing frequency as upstream development continues.

# What potentially harmful pollutants enter into the overland flows?

- The feces of warm blooded animal will introduce potentially harmful bacteria and disease causing organisms into the water traveling down the gully.
- Runoff from roofs, roads, and parking lots into the gully can contain significant concentrations of copper, zinc, and lead, which can have toxic effects in humans.
- Sediment, pesticides, fertilizers, petroleum products such as oil and grease, salt used on roads and sidewalks, acid mine drainage can all enter the gully and be harmful to humans.



# 24" Culvert Can No Longer Handle the Amount of Water Coming Down the Gully Photo Taken 06/26/13

# Dead Deer on the Bank of the Gully
# Photo Taken 01/02/12

# Live Animal Feces get into the Water in the Gully Thereby Contaminating Overland Flows
# Photo Taken 01/02/12

## Another Dead Deer Near the Bank of the Gully Photo Taken 07/03/12

Concerned residents requested that the Monongalia County Health Department test the water in the gully.

What bacteria, parasites, etc. were washed from the dear into the overland flows?

# Separated Lateral Sewer Pipe Photo Taken 08/12/11

7/15/2014 Overland Flows of Storm Water Runoff Are a Public Health and Safety Hazard 9

7/15/2014 Overland Flows of Storm Water Runoff Are a Public Health and Safety Hazard 10

## Driver Wisely Stops to Consider the Risk of Driving Thru the Swift Current of Water and Debris Photo Taken 05/18/13

## Children Playing in an Overland Flow Photo Taken 05/18/13

## On a Hike Up the Gully the Next Day, Concerned Residents Found Raw Sewage Discharging Directly into Gully Photo Taken 05/19/13

## Human Excrement Discharged Directly into the Gully Photo Taken 05/19/13

## Terracotta Sewer Main Exposed & Unsupported in the Gully Due to Erosion.

## Arrow Points to an Exposed Lateral Sewer Line; Foreground Shows Many Trees that Have Fallen; What Happens if a Tree Falls on an Exposed Sewer Line?

## One of Many Trees with Roots Exposed
## Photo Taken 04/29/12

## Stagnant Water Causes Concern for West Nile Virus and Now the Chikungunya Virus
## Photo Taken 07/14/13

## Summary

- The Monongalia County Health Department (MCHD) and MUB were first made aware of exposed, above ground main and lateral sewer lines and concern for erosion on 08/07/11.
- Now the communities downstream are experiencing overland flows with increasing frequency; these overland flows contain contaminated waters thereby causing public health and safety concerns.
- Without an increase in the size of the storm water culvert to 48-inches, overland flows will persist and likely get worse, creating and even greater public health and safety hazard for downstream residents.

## Conclusion

- Concerned residents have been told that annexation is the only means to a long-term solution to continued overland flows of storm water runoff.
- If annexation, for some reason, does not go forward, the public health and safety of the residents of the Windsor Estates, Poplar Woods, Oakview, Greenbriar Village and Morningside Subdivisions will continue to be in jeopardy.
- How will Monongalia County, the Morgantown Utility Board, and the City of Morgantown make this area safe for these residents? The residents cannot be expected to just sit back and watch their largest investment and their health deteriorate.

Exhibit D

**Zimbra** **llittle@cityofmorgantown.org**

**Proposed Ordinance to increase parking meter rates**

**From :** Heather Gentile <HGentile@jacksonkelly.com> Tue, Jul 15, 2014 04:20 PM
**Subject :** Proposed Ordinance to increase parking meter rates
**To :** citycouncil@cityofmorgantown.org

Dear City Council Members: I am writing this email to object to the proposed Ordinance to increase parking meter rates downtown. Whether reality or perception, many Mon County residents and visitors believe there is a parking problem downtown (not enough, not convenient, too costly, etc.). Increasing the proposed parking fee rates will just further encourage these residents to go elsewhere for their shopping, dining and entertainment needs (where they can park for free). Many downtown businesses are suffering now as it is. I would expect that Council members would want to support and assist these downtown businesses to thrive and succeed. I personally believe that approving this proposed Ordinance will not only hinder the existence and success of current businesses, but will discourage future expansion/growth.

I thank you for the opportunity to be heard and ask that you please reconsider (the first reading/approval) and decline the proposed Ordinance.

**Heather Gentile**
**2098 Oak Street**
**Morgantown, WV**

Exhibit D

1. What data supports the conclusion that employees of downtown businesses are using up the High St. parking spaces? How was this conclusion reached?

2. What sort of study have you done and what data supports the conclusion that increasing the fee to $1/hour will discourage the employees from using the meters?

3. What sort of study have you done to gauge the business effect of raising the fee to $1/hour? Will this hurt business?

4. Please describe all of the less restrictive alternatives which have been considered (i.e. have you considered a communication campaign to elicit help from downtown business owners regarding their employees?)

Exhibit E

Morgantown City Council

389 Spruce Street

Morgantown, WV 26505

May 30th, 2014

Dear City Council Members;

We the following property owners owning approximately 90% of the properties located along Beverly Avenue from Third Street to Sixth Street, do here-by respectfully request you authorize and instruct the Morgantown Parking Authority to create a new blue curb parking permit district within this described area. We have not as yet had contact with the owners of the remaining 10%, but have absolutely no reason to believe they would oppose this request.

Our tenants on this street must compete each school day for street parking with those who drive into campus from the large housing complexes located outside of the city. None of which pay either property taxes or B and O taxes to the City as we do. Time is of the essence due to the pending completion of University Place at Third Street and University Avenue on or about August 15th 2014. This new facility described as housing over 900 students, plus commercial businesses and their respective service staffs will absolutely overtax all available street parking in our neighborhood. We believe our request is therefore fully justified. To promote efficiency, reduce administrative expense and to assure only those tenants who require on-street parking receive the permits, we believe they should be issued only to property owners upon requirements established by the Parking Authority.

Although Beverly Avenue will be most affected, we also believe additional consideration should be given to all streets within the area bounded by Campus Drive and Eight Street and by Beechurst and Jones Avenues.

With less than 58 work days remaining prior to the opening, we ask that all regulatory action, painting, signing and permit issuance be completed by August 10th.

Respectfully,

| | | | |
|---|---|---|---|
| James E. Craig II | Terry Kisner By: Victoria E. Kisner | Ming-Jeng Hwang | Sharon Straton |

Cc: Morgantown City Manager

Exhibit F
7/7/14

**City Of Morgantown Petition**

We the following property owners owning a majority of the properties in the Sunnyside neighborhood of Morgantown, do here-by respectfully request you authorize and instruct the Morgantown Parking Authority to create a Blue Curb Parking Permit District within this area.

Currently our tenants must compete each school/work day for street parking with those who drive into town from large housing complexes located outside of the city. None of them pay either property taxes or B and O taxes to the City as we do. Time is of the essence due to the pending completion of University Place at Third Street and University Avenue on or about August 15th 2014. This new facility described as housing over 900 students, plus commercial businesses and their respective service staffs will absolutely grossly over burden all street parking in our already parking stressed neighborhood. To promote efficiency, reduce administrative expense and to assure only those tenants who require on-street parking receive permits, we believe they should be issued only to property owners upon requirements to be established by the Morgantown Parking Authority.

| Property Owner Signature | Printed Name | One property Address |
|---|---|---|
| | James Craig | 411 Beverly Ave. |
| | Robert Lenhart | 304 Fourth St. |
| | Kelly Rental David L Kelly | 316 Grant Ave. |
| | Don Corwin | 267 Grant Ave |
| | Andrew Smith | 240 McClane |
| | Andy McDonald - Benftree - 332 | |
| | Steven E. Diler Kempdeni Properties | 700 McLane |
| | Don E Corwin | 241 Grant Ave |

Office of the City Manager

# The City of Morgantown

City Manager
Jeff Mikorski, ICMA-CM
389 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505
(304) 284-7405 FAX: (304) 284-7430
www.morgantownwv.gov

## City Manager's Report for City Council August 5, 2014

**Information**

1. **Free Flow Power Hydroelectric Power Plant changes to design**

   Attached you will see the Free Flow Power's new design for a hydroelectric power plant near the Morgantown Dam. As discussed in a stakeholders meeting on June 10, 2014, with Free Flow Power representative Tom Feldman, where they shared a conceptual design for an in-stream power plant, the company has submitted the redesigned Morgantown project proposal to FERC for public review.

Jeff Mikorski ICMA-CM,
Morgantown City Manager

FREE FLOW POWER

239 Causeway Street, Suite 300
Boston, Massachusetts 02114

Thomas M. Feldman
Vice President of Project Development

T 978.252.7361
F 617.367.3372
tfeldman@free-flow-power.com

www.free-flow-power.com

July 25, 2014

Kimberly Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N. E.
Mailcode PJ – 12.1
Washington, DC 20426

**Re: Updated Project Designs for Two Monongahela River Hydroelectric Projects:**
**Morgantown Lock & Dam Hydroelectric Project, FERC Project No. 13762**
**Point Marion Lock & Dam Hydroelectric Project, FERC Project No. 13771**

Dear Secretary Bose:

Free Flow Power Corporation (FFP), on behalf of its subsidiary limited liability companies, is pleased to submit updated project designs (Project Updates) for the two above-captioned hydroelectric Projects (the Projects) proposed to be located at existing dams owned by the U.S. Army Corps of Engineers on the Monongahela River in Pennsylvania and West Virginia. FFP is submitting these Project Updates in order to make them available for public and agency review through the eLibrary under each Project's FERC docket. Concurrent with this filing, FFP is distributing by FedEx shipment or USPS mail a copy of the Project Update materials to each entity identified on the enclosed Official Service Lists and Stakeholder Distribution List and to the property owners of record of all parcels within or adjacent to each proposed Project boundary.

Two attachments are contained herein. Their titles and security designations are as follows:

- Attachment 1: Updated Exhibit G (Public) – Project Maps (original maps were submitted in Volume I of the Final License Application (FLA) FFP filed on February 27, 2014).
- Attachment 2: Updated Exhibit F (CEII) and – General Design Drawings (original drawings were submitted in Volume III of the FLA FFP filed on February 27, 2014).

- Attachment 3: Updated Preliminary Supporting Design Report (CEII): Original Preliminary Supporting Design Report was submitted Volume III of the FLA FFP filed on February 27, 2014).

FFP is providing these Project Updates now in a good-faith effort to minimize the controversial issues associated with these projects and to ensure that the applicant is doing everything possible to facilitate productive engagement of all stakeholders at FERC's upcoming scoping meetings.

The remainder of this letter describes the consultation with key stakeholders and the process that led to the Project Updates.

**Morgantown Lock & Dam Hydroelectric Project FERC Project No. 13762**
***On March 4, 2011***, the Federal Energy Regulatory Commission (FERC) issued a preliminary permit to FFP subsidiary FFP Missouri 15, LLC for the Morgantown Lock & Dam Hydroelectric Project.

***On November 15, 2011***, FFP submitted a Pre-Application Document (PAD) and Notice of Intent (NOI) to use the Traditional Licensing Process for the Morgantown Project. The PAD included, on page 23, an aerial map with the proposed project features. Appendix 1 of the PAD contains FFP's outreach log, which show contacts made with Stakeholders while preparing the PAD, copies of substantive email correspondence, and a survey sent to Stakeholders. Entities with whom FFP consulted prior to submitting the PAD included, but are not limited to: USACE Pittsburgh District, US Fish and Wildlife Service (USFWS), West Virginia Division of Natural Resources (WVDNR), West Virginia Department of Environmental Protection (WVDEP), West Virginia State Historic Preservation Office (WVSHPO), and Mon River Trails Conservancy.

***On February 23, 2012*** FFP conducted Joint Agency Meetings at the Hilton Garden Inn in Morgantown, WV. FFP notified stakeholders and the general public of the meeting (via certified mail and notification by publication in the Dominion Post newspaper). At this meeting, FFP discussed the FERC licensing process, provided project design and engineering plans and solicited study requests and feedback on the conceptual designs.

***On July 12, 2012*** FFP submitted a Planned Studies Document (PSD) and distributed this PSD to resource agencies and stakeholders in order to provide: (1) a summary of comments and study requests and FFP's response to each (see: Appendix A of the PSD) and (2) plans for the studies to be conducted prior to this Project's License Application submittal, including the rationale for each planned study and the methods and scope of each study.

***On March 7, 2013*** FFP submitted a Revised PSD and distributed it to resource agencies and stakeholders. The Revised PSD incorporated the only comments FFP received on the PSD, which were provided by the USACE Pittsburgh District.

***On October 23, 2013*** FFP submitted a Draft License Application (DLA) for the Morgantown Project and distributed this DLA to resource agencies stakeholders and landowners adjacent to the Project Boundary. FFP requested written comments be provided by January 21, 2014.

***February 27, 2014*** FFP filed Final License Applications (FLAs) for the Projects. In addition to being contacted by several groups of stakeholders expressing their support for its hydroelectric development projects, in early 2014, FFP received comments from the City of Morgantown, WV, the National Parks Service (NPS), the Mon River Trails Conservancy, the Upper Mon River Association, and WVDNR, who expressed concerns about the Morgantown Project. These included, but were not limited to, concerns about the project's proposed re-routing of the Rail Trail, and the associated effects on the preservation of the corridor for future rail use. FFP worked with Jeff Mikorski, the City Manager for the City of Morgantown, to schedule an in-person meeting in Morgantown, at which all the aforementioned stakeholders could voice their concerns directly to FFP.

***On April 22, 2014*** FFP held a meeting in Morgantown, WV with the following group of stakeholders to discuss its proposed Morgantown Project: Jeff Mikorski (City Manager of Morgantown), Jenny Selin, (Mayor of Morgantown), Steve Selin (West Virginia University), Ella Belling (Director of the Monongalia Rail Trail Conservancy), Frank Jernejcic (WVDNR), Kerry Bledsoe (WVDNR), David Wellman (WVDNR), Kevin Mendik (National Parks Service), Peggy Pings (National Park Service), Wallace Venable (Upper Mon. River Association), Lindsay Baxter (Pennsylvania Environmental Council) and Victoria Evans. At this meeting, FFP heard several previously unarticulated concerns about the Morgantown Project relating mostly to the proposed re-routing of the Rail Trail.

***On June 10, 2014*** FFP again held a meeting in Morgantown WV with the same stakeholders to present a revised project design that was more compatible with the recreational interests in the vicinity of the project. This was accomplished by proposing to locate the powerhouse "in-stream", therefore avoiding the necessity to re-route the Rail Trail. The design presented at that June 10 meeting is reflected in the Updates provided in this submission.

**Point Marion Lock & Dam Hydroelectric Project FERC Project No. 13771**

***On April 13, 2011***, the Federal Energy Regulatory Commission (FERC) issued a preliminary permit to FFP subsidiary Solia 8, LLC for the Point Marion Lock & Dam Hydroelectric Project.

***On November 15, 2011***, FFP submitted a Pre-Application Document (PAD) and Notice of Intent (NOI) to use the Traditional Licensing Process for the Point Marion Project. The PAD included, on page 23, an aerial map with the proposed project features. Appendix II of the PAD contained FFP's outreach log, which show contacts made with Stakeholders while preparing the PAD, copies of substantive email correspondence, and a survey sent to Stakeholders. Entities with whom FFP consulted prior to submitting the PAD included, but are not limited to: USACE Pittsburgh District, US Fish and Wildlife Service (USFWS), Pennsylvania Fish & Game Commission, Pennsylvania Department of Environmental Protection (PADEP), Pennsylvania Historic and Museum Commission, and Mon River Trails Conservancy.

***On February 23, 2012*** FFP conducted Joint Agency Meetings at the Hampton Inn in Belle Vernon, PA. FFP notified stakeholders and the general public of the meeting (via certified mail and notification by publication in the Greene County Messenger, The Herald Standard, The Observer-Reporter, and The Tribune-Review newspapers). At this meeting, FFP discussed the FERC licensing process,

provided project design and engineering plans and solicited study requests and feedback on the conceptual designs.

***On July 12, 2012*** FFP submitted a Planned Studies Document (PSD) and distributed this PSD to resource agencies and stakeholders in order to provide: (1) a summary of comments and study requests and FFP's response to each (see: Appendix A of the PSD) and (2) plans for the studies to be conducted prior to this Project's License Application submittal, including the rationale for each planned study and the methods and scope of each study.

***On March 7, 2013*** FFP submitted a Revised PSD and distributed it to resource agencies and stakeholders. The Revised PSD incorporated the only comments FFP received on the PSD, which were provided by the USACE Pittsburgh District.

***On October 23, 2013*** FFP submitted a Draft License Application (DLA) for the Point Marion Project and distributed this DLA to resource agencies stakeholders and landowners adjacent to the Project Boundary. FFP requested written comments be provided by January 21, 2014.

***February 27, 2014*** FFP filed Final License Applications (FLAs) for the Projects. In addition to being contacted by several groups of stakeholders expressing their support for its hydroelectric development projects, in early 2014, FFP received comments from the Point Marion Borough Council, Point Marion Rotary Club, the Friendship Hill Association, the National Parks Service, and the Mon River Trails Conservancy, who expressed concerns about the Point Marion Project. These included, but were not limited to, concerns about the project's proposed utilization of an undeveloped gravel trail corridor for a permanent access road. The Borough of Point Marion had received a grant to develop this corridor into a recreational trail to be called "the Sheepskin Trail". FFP worked with the Point Marion Borough Council to schedule an in-person meeting in Point Marion, PA, at which all the aforementioned stakeholders could voice their concerns directly to FFP.

***On April 22, 2014*** FFP held a meeting in Point Marion, PA with the following group of stakeholders to discuss its proposed Point Marion Project: Donna Holdorf (National Road Heritage Corridor/ Fayette County Sheepskin Trail), Victoria Evans (Point Marion Borough Council and Recreation Commission Chair), Art Strimmel (Point Marion Borough Manager), Carl Ables (Point Marion Borough Mayor), Peggy Pings (National Parks Service), Kevin Mendik (National Parks Service), Ella Belling (Director of the Mon River Trail Conservancy), Lisa and Dave Jordan (Property Owners), Lindsay Baxter (Pennsylvania Environmental Council), and Patrick Kelly (Point Marion Borough Council member)

***On June 10, 2014*** FFP again held a meeting in Point Marion, PA with the same stakeholders present to advance the discussion of project compatibility with recreational interests. The design resulting from the ideas presented at the June 10 meeting is reflected in the Updates provided in this submission.

**Impact of Updates on Existing Study Work for Morgantown Project**

Included in Appendix C of Volume II of the FLA were the results of all study work completed for the Morgantown Project. Following is a review of the extent to which the Updates necessitate revised study work:

| Study | Revisions Planned | Rationale |
|---|---|---|
| Water Quality Study | None | Locating the powerhouse in-stream will not change the results of the water quality model in the proposed condition. |
| Hydraulics Study | Site-specific 2D hydraulic modeling planned | Locating the powerhouse In-stream makes the Morgantown Project a likely candidate for 2D hydraulic modeling that FERC requested FFP conduct at an agreed-upon site in the upper Monongahela River.[1] |
| Aquatic Habitat Study | Site-specific aquatic habitat modeling planned | Locating the powerhouse In-stream makes the Morgantown Project a likely candidate for additional aquatic habitat modeling that FERC requested FFP conduct at an agreed-upon site in the upper Monongahela River.[2] |
| Mussel Survey Report | None | The Project Update does not change the parameters of the Mussel Survey Report. |
| Fish Entrainment Study | None | The Project Update does not change the parameters of the Fish Entrainment Study. |
| Terrestrial Habitat and RTE Species Survey | None | Area surveyed for this study extends beyond the footprint of the area impacted by the Project Update. |
| Wetland Report | None | Area surveyed for this study extends beyond the footprint of the area impacted by the Project Update. |
| Recreational Resources Management Plan | Site-specific RRMP planned | Unrelated to the Project Update, FERC requested that FFP conduct additional site-specific recreational survey activities.[3] |
| Sediment Quality survey | None | Area surveyed for this study extends beyond the footprint of the area impacted by the Project Update. |

[1] See FERC's "Response to Additional Study Requests" filed on 6/12/14 for docket P-17353, in which FERC responds to WVDNR's request for additional 2D hydraulic modeling by stating, in part: "We note that the three upstream Monongahela River projects (Opekiska, Morgantown, and Point Marion) would have the same hydraulic capacity and operate under nearly identical flow regimes. Therefore, we find that additional hydraulic and aquatic habitat modeling for at least one of the upstream Monongahela River sites is needed in order to characterize the effects of operating the Opekiska Project as well as the Morgantown and Point Marion projects. We have requested that FFP consult with West Virginia DNR and the Corps to identify a representative location to conduct hydraulic and habitat modeling to meet our information needs."

[2] Id.

[3] See FERC's "Response to Additional Study Requests" filed on 6/12/14 for docket P-17362, in which FERC responds to the City of Morgantown's request for additional recreational survey work by stating, in part: "Therefore, we have requested that FFP consult with stakeholders, including the City, to gather existing information on recreational use and describe potential impacts of project construction and operation. If existing information is not available, wholly or in part, FFP would need to design a survey in consultation with stakeholders to collect the information."

| Study | Revisions Planned | Rationale |
|---|---|---|
| Cultural Resources Survey | None | Area surveyed for this study extends beyond the footprint of the area impacted by the Project Update. |

**Impact of Updates on Existing Study Work for Point Marion Project**

Included in Appendix C of Volume II of the FLA were the results of all study work completed for the Point Marion Project. Following is a review of the extent to which the Updates necessitate revised study work:

| Study | Revisions Planned | Rationale |
|---|---|---|
| Water Quality Study | None | Revised access road and project boundary have no effect on water quality study. |
| Hydraulics Study | None | Revised access road and project boundary have no effect on Hydraulics study. |
| Aquatic Habitat Study | None | Revised access road and project boundary have no effect on Aquatic Habitat Study. |
| Mussel Survey Report | None | Revised access road and project boundary have no effect on Mussel Survey Report. |
| Fish Entrainment Study | None | Revised access road and project boundary have no effect on the Fish Entrainment Study. |
| Terrestrial Habitat and RTE Species Survey | None | Area surveyed for this study extends beyond the footprint of the area impacted by the revised access road and project boundary. |
| Wetland Report | None | Area surveyed for this study extends beyond the footprint of the area impacted by the revised access road and project boundary. |
| Recreational Resources Management Plan | Site-specific RRMP planned | Unrelated to the Project Update, FERC requested that FFP conduct additional site-specific recreational survey activities.[4] |
| Sediment Quality survey | None | Revised access road and project boundary have no effect on Sediment Quality Survey. |
| Cultural Resources Survey | None | Area surveyed for this study extends beyond the footprint of the area impacted by the revised access road and project boundary. |

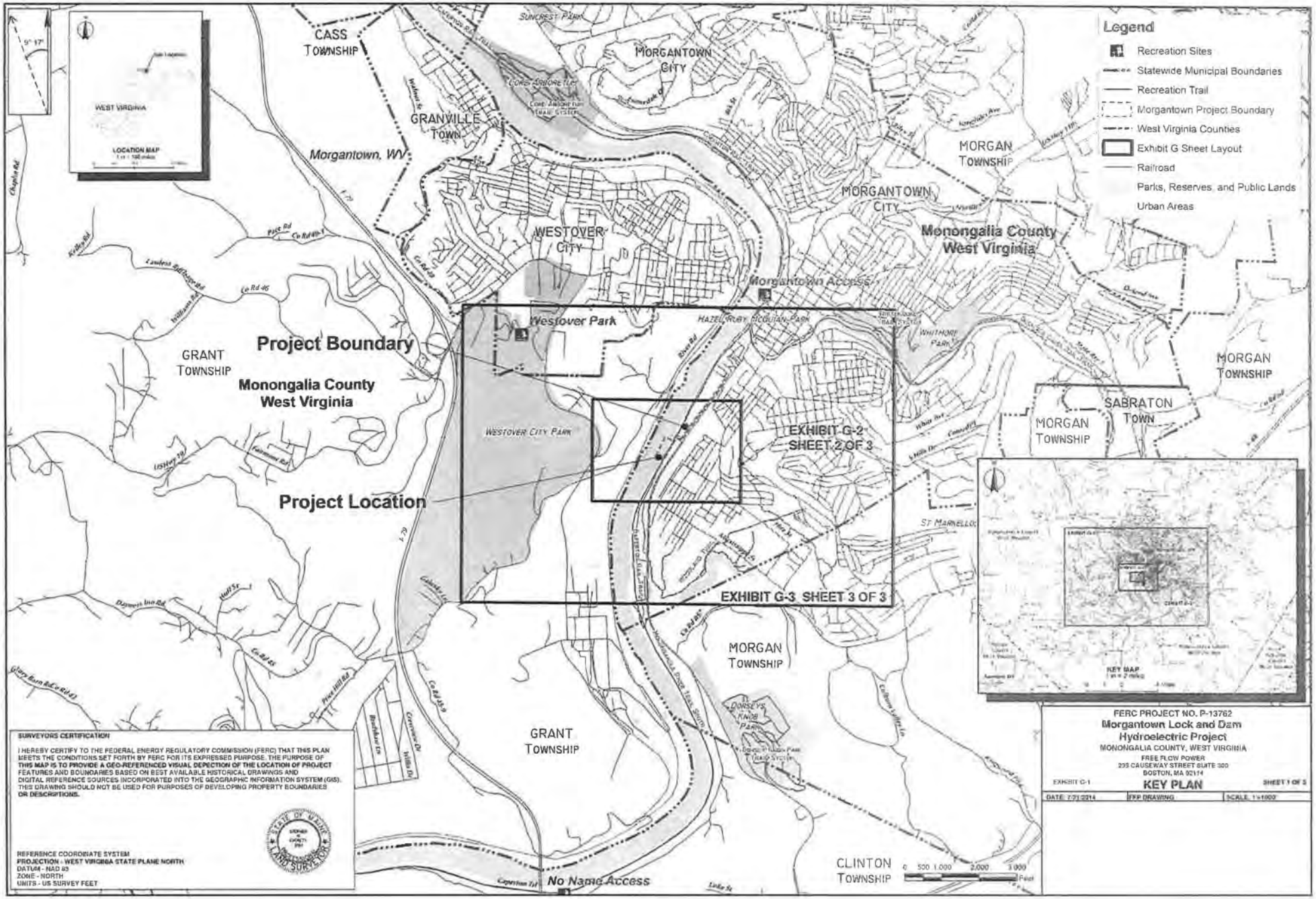
[4] See FERC's "Deficiency of License Application and Request for Additional Information" AIR number 22 filed on 6/12/14 for docket P-17771, in which FERC requests that FFP conduct additional recreational survey work.

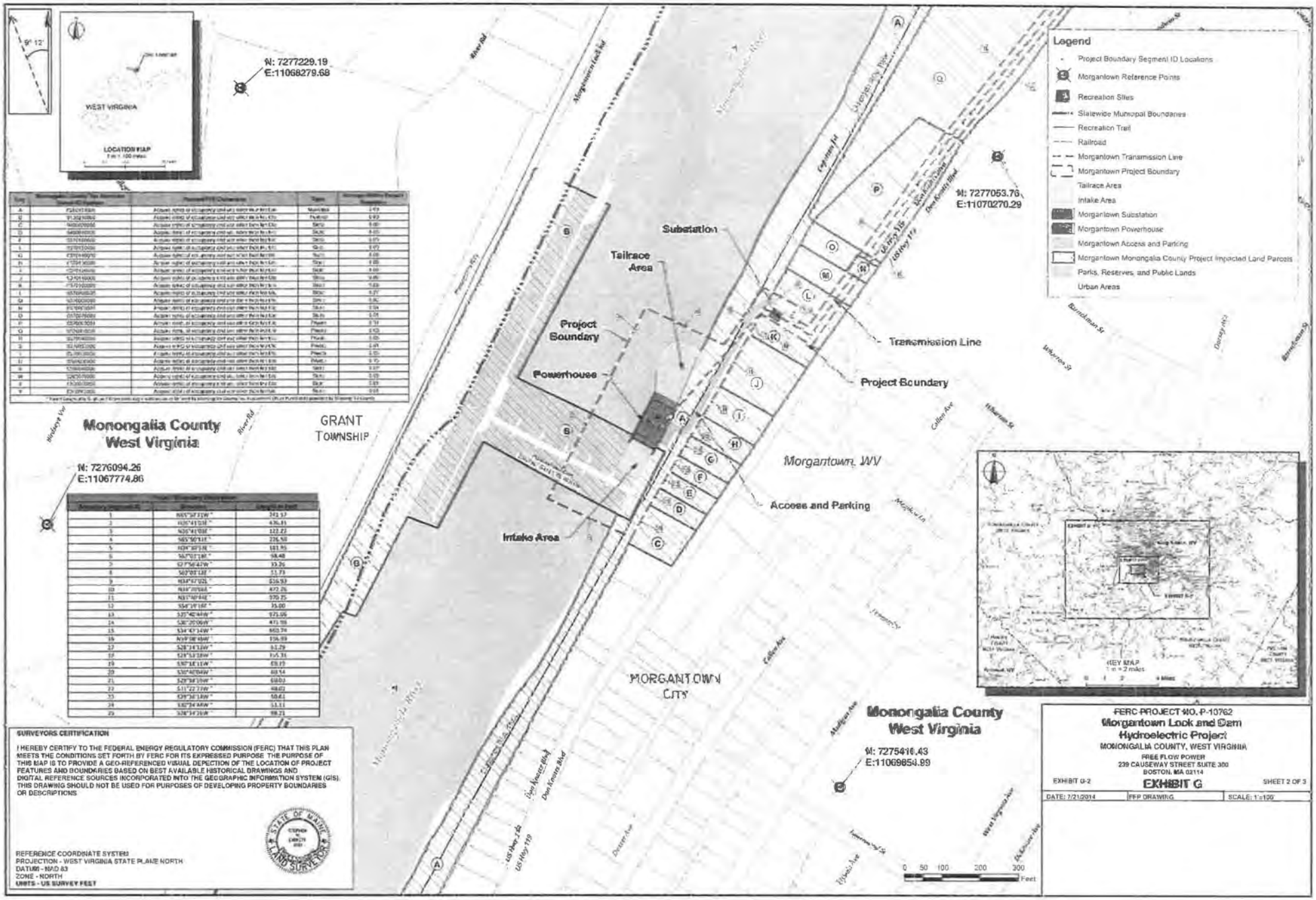
If you have any questions regarding this filing, please do not hesitate to contact me at 978-252-7361.

Sincerely,

Thomas M. Feldman

Thomas M. Feldman


Legend
Recreation Sites
Statewide Municipal Boundaries
Recreation Trail
Morgantown Project Boundary
West Virginia Counties
Exhibit G Sheet Layout
Railroad
Parks, Reserves, and Public Lands
Urban Areas
CASS TOWNSHIP
MORGANTOWN CITY
GRANVILLE TOWN
Morgantown, WV
WESTOVER CITY
MORGAN TOWNSHIP
Monongalia County West Virginia
Morgantown Access
Westover Park
Project Boundary
GRANT TOWNSHIP
Monongalia County West Virginia
WESTOVER CITY PARK
EXHIBIT G-2 SHEET 2 OF 3
SABRATON TOWN
Project Location
EXHIBIT G-3 SHEET 3 OF 3
GRANT TOWNSHIP
CLINTON TOWNSHIP
No Name Access
WEST VIRGINIA
LOCATION MAP
KEY MAP
SURVEYORS CERTIFICATION
I HEREBY CERTIFY TO THE FEDERAL ENERGY REGULATORY COMMISSION (FERC) THAT THIS PLAN MEETS THE CONDITIONS SET FORTH BY FERC FOR ITS EXPRESSED PURPOSE. THE PURPOSE OF THIS MAP IS TO PROVIDE A GEO-REFERENCED VISUAL DEPICTION OF THE LOCATION OF PROJECT FEATURES AND BOUNDARIES BASED ON BEST AVAILABLE HISTORICAL DRAWINGS AND DIGITAL REFERENCE SOURCES INCORPORATED INTO THE GEOGRAPHIC INFORMATION SYSTEM (GIS). THIS DRAWING SHOULD NOT BE USED FOR PURPOSES OF DEVELOPING PROPERTY BOUNDARIES OR DESCRIPTIONS.
REFERENCE COORDINATE SYSTEM
PROJECTION - WEST VIRGINIA STATE PLANE NORTH
DATUM - NAD 83
ZONE - NORTH
UNITS - US SURVEY FEET
FERC PROJECT NO. P-13762
Morgantown Lock and Dam Hydroelectric Project
MONONGALIA COUNTY, WEST VIRGINIA
FREE FLOW POWER
235 CAUSEWAY STREET SUITE 300
BOSTON, MA 02114
EXHIBIT G-1
KEY PLAN
SHEET 1 OF 3
DATE: 7/31/2014
FFP DRAWING
SCALE: 1:1000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WEST VIRGINIA
LOCATION MAP
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Legend
Project Boundary Segment ID Locations
Morgantown Reference Points
Recreation Sites
Statewide Municipal Boundaries
Recreation Trail
Railroad
Morgantown Transmission Line
Morgantown Project Boundary
Tailrace Area
Intake Area
Morgantown Substation
Morgantown Powerhouse
Morgantown Access and Parking
Morgantown Monongalia County Project Impacted Land Parcels
Parks, Reserves, and Public Lands
Urban Areas
Substation
Tailrace Area
Project Boundary
Powerhouse
Transmission Line
Project Boundary
Morgantown, WV
Access and Parking
Intake Area
Monongalia County
West Virginia
GRANT
TOWNSHIP
N: 7276094.26
E:11067774.86
MORGANTOWN
CITY
Monongalia County
West Virginia
N: 7275416.43
E:11069854.99
KEY MAP
1 in = 2 miles
0 50 100 200 300
Feet
SURVEYORS CERTIFICATION
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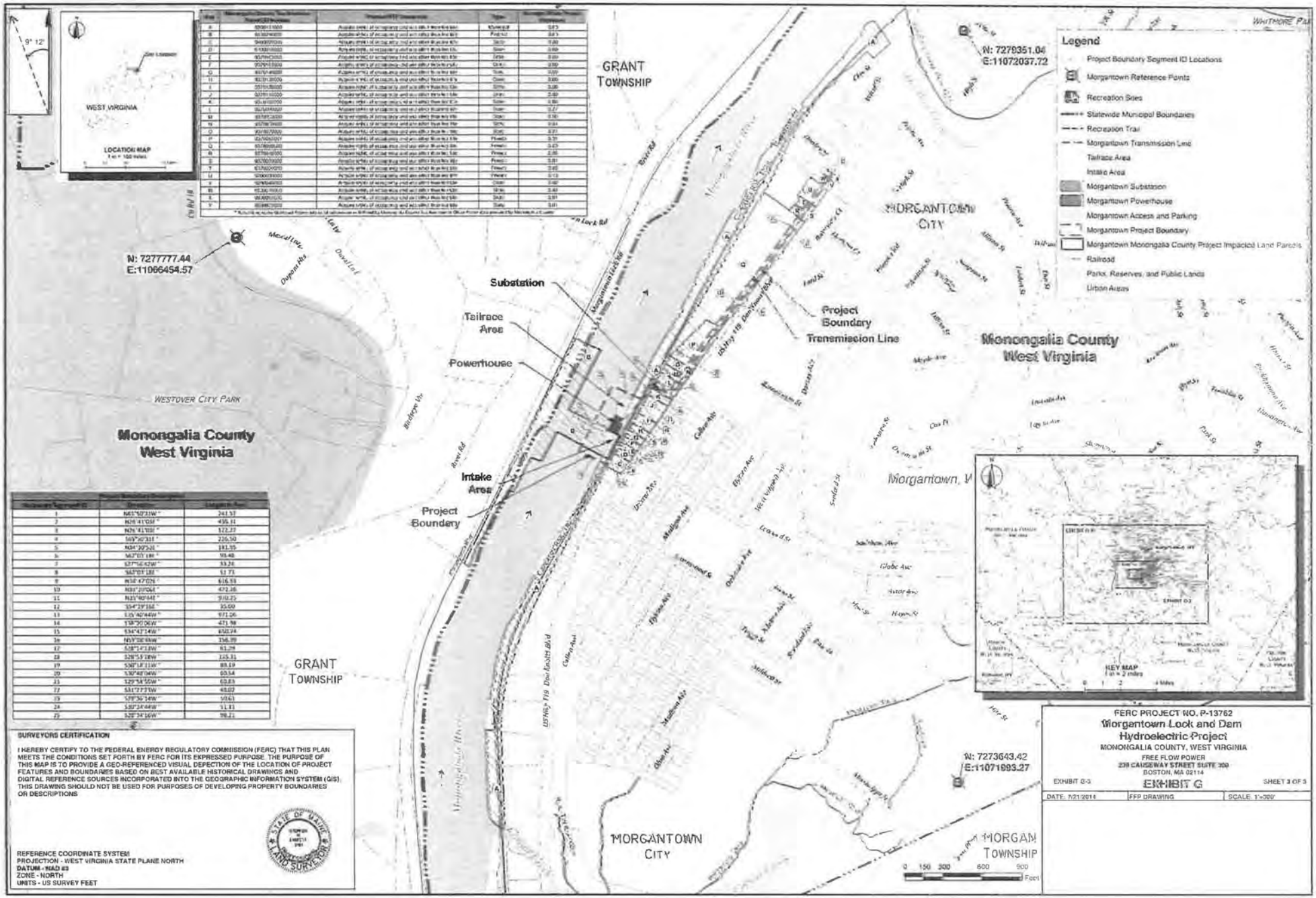
PROJECTION - WEST VIRGINIA STATE PLANE NORTH
DATUM - NAD 83
ZONE - NORTH
UNITS - US SURVEY FEET
FERC PROJECT NO. P-10762
Morgantown Lock and Dam
Hydroelectric Project
MONONGALIA COUNTY, WEST VIRGINIA
FREE FLOW POWER
239 CAUSEWAY STREET SUITE 300
BOSTON, MA 02114
EXHIBIT G-2
EXHIBIT G
SHEET 2 OF 3
DATE: 7/21/2014
FFP DRAWING
SCALE: 1:100


GRANT TOWNSHIP
MORGANTOWN CITY
Monongalia County
West Virginia
WESTOVER CITY PARK
Substation
Tailrace Area
Powerhouse
Intake Area
Project Boundary
Project Boundary
Transmission Line
N: 7277777.44
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N: 7279351.04
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N: 7273643.42
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MORGAN TOWNSHIP
WEST VIRGINIA
LOCATION MAP
Legend
Project Boundary Segment ID Locations
Morgantown Reference Points
Recreation Sites
Statewide Municipal Boundaries
Recreation Trail
Morgantown Transmission Line
Tailrace Area
Intake Area
Morgantown Substation
Morgantown Powerhouse
Morgantown Access and Parking
Morgantown Project Boundary
Morgantown Monongalia County Project Impacted Land Parcels
Railroad
Parks, Reserves, and Public Lands
Urban Areas
KEY MAP
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DATUM - NAD 83
ZONE - NORTH
UNITS - US SURVEY FEET
FERC PROJECT NO. P-13762
Morgantown Lock and Dam
Hydroelectric Project
MONONGALIA COUNTY, WEST VIRGINIA
FREE FLOW POWER
239 CAUSEWAY STREET SUITE 300
BOSTON, MA 02114
EXHIBIT G
EXHIBIT G-3
SHEET 3 OF 3
DATE: 7/21/2014
FFP DRAWING
SCALE: 1"=300'
0 150 300 600 900 Feet

## BOARDS AND COMMISSIONS - TERMS EXPIRED AND CURRENT VACANCIES

**PERSONNEL BOARD:**

**Dianne Rogers and Sarah Stevenson's term expire on 8/11/2014. Both wish to continue to serve.** Charter Section 4.05; Residents and qualified voters to serve at large.

**URBAN LANDSCAPE:**

**Nicole Panaccione, Fourth Ward and Jerry Steketee, Seventh Ward are resigning terms expired on 7/1/2014. Advertising for applicants. Deadline 8-1-14. There were no applications. Can Council check in their wards for candidates.** Nominated by CM, one from each wd, 13 members with staggered terms and I Councilor.

***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, that they will not interview; 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.***
**7/25/14**

**AN ORDINANCE AUTHORIZING A LEASE AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN, LESSOR, AND RSA FLIGHT TRAINING, LESSEE, IN WHICH OFFICE SPACE, SPECIFICALLY SUITEs 235 AND 241, IS BEING LEASED AT THE MORGANTOWN MUNICIPAL AIRPORT FOR THE PURPOSE OF OPERATING A FLIGHT TRAINING CONCESSION.**

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

This Ordinance shall be effective upon date of adoption.

FIRST READING: _____

MAYOR

ADOPTED:

FILED: _____

CITY CLERK

RECORDED

# BASIC LAND AND FLIGHT TRAINING CONCESSION AGREEMENT

**THIS AGREEMENT** made and entered into this _____, by and between the City of Morgantown, a municipal corporation (hereinafter called **"City"**), and RSA FLIGHT TRAINING (hereinafter called **"Lessee"**).

**WITNESSETH:**

**WHEREAS**, the City owns, controls, and operates the Morgantown Municipal Airport (hereinafter called "Airport"); and

**WHEREAS**, the City encourages growth and development of aviation activities at the Airport, which activities include flight training for businesses and individuals from Morgantown and the surrounding area; and

**WHEREAS**, the Lessee is desirous of providing flight training services to businesses and individuals from Morgantown and the surrounding area.

**NOW THEREFORE**, for and in consideration of the mutual covenants and agreements herein contained to be kept and performed, and intending to be legally bound hereby, the parties hereto covenant and agree as follows:

## Article I. DEFINITIONS

Section 1.01 The following words and phrases, wherever used in the Agreement shall for the purpose of this Agreement, have the following meanings:

(a) "Advanced Flight Training" shall mean any ground or in-flight training received in preparation for obtaining a FAA Pilot Certificate or Rating other than Private Pilot. These Certificates or Ratings include, but are not limited to, Commercial Pilot, Air Transport Pilot, Flight Instructor and/or Instrument Rating

(b) "Aircraft Operating Area" shall mean the area that contains the runways, taxiways, aircraft parking aprons/ramps, hold areas, and any other area used or intended to be used for surface maneuvering of aircraft, and any areas inside the perimeter fence which are adjacent to surface maneuvering areas. This may also be referred to as "airside."

(c) "Airport" refers to the Morgantown Municipal Airport.

(d) "Airport Customer" shall be any person who utilizes the Airport for the purpose of receiving instruction in aircraft flight operations.

(e) "Basic Flight Training" shall mean any ground or in-flight training, to include required solo flight time, received in preparation for obtaining a FAA Private Pilot Certificate.

(f) "Certificate" shall mean a certificate issued by the FAA to allow a business to operate aircraft or provide an aeronautical service.

(g) "FAA" means the Federal Aviation Administration of the Unites States, or any federal agencies succeeding to its jurisdiction.

(h) "Leased Premises" shall mean an office located in the Terminal Building of the Airport located at 82 Hart Field Road, Suites 235 and 241, Morgantown, WV 26505. This space is to be used solely by the Lessee for the conduct of the Lessee's business.

(i) "Person" shall mean an individual, corporation, government or governmental subdivision, partnership, association, or any other legal entity, or any representative thereof.

(j) "Property" shall include anything of material value that is real, personal, tangible, or intangible.

(k) "Rules and Regulations" shall mean those lawful and reasonable rules and regulations which are promulgated by the City for the orderly use of the Airport by both airlines and other operators and users of the Airport as the same may be amended, modified, or supplemented from time to time. It may also mean rules and regulations promulgated by the FAA or other Governmental entity governing conduct on airports in general and/or the Morgantown Municipal Airport specifically.

## Article II. PREMISES

Section 2.01 The City hereby leases to the Lessee an office located in the Terminal Building of the Airport located at 82 Hart Field Road, Suites 235 and 241, Morgantown, WV 26505, consisting of two spaces – Suite 241 measuring approximately two hundred and forty (240) square feet and Suite 235 measuring approximately two hundred (200) square feet – more specifically identified in Exhibit A attached hereto. This space is to be used solely by the Lessee for the conduct of the Lessee's business.

## Article III. GRANT OF CONCESSION

Section 3.01 The City hereby grants to the Lessee subject to the terms and conditions hereinafter contained the right to conduct and operate a Flight Training Concession at the Airport. This shall not be construed to be an exclusive concession, and it is stipulated, agreed, and understood that the City may grant concessions to other parties for operation of Flight Training services. It is further understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958 as amended.

Section 3.02 The City hereby agrees to allow the Lessee to use the Leased Premises as defined above for the purpose of operating a Flight Training operation.

Section 3.03 Lessee shall have the right to the non-exclusive use, in common with others, of the Airport parking areas, appurtenances and improvements; the right of ingress to and egress from the Leased Premises, which shall extend to Lessee's employees, guests and customers; and the right in common with other tenants of the Airport to use common areas of the Airport, including but not limited to the Airport Operating Area, roadways and other conveniences for the conduct of Lessee's business.

Section 3.04 Lessee is not authorized to offer other Aeronautical Services under this Agreement without prior written consent of the City and amendment of this Agreement by the Morgantown City Council.

## Article IV. TERM OF AGREEMENT

Section 4.01 The Term of this agreement shall be for a period of two (2) years commencing on August 1, 2014 and ending on July 31, 2016 unless terminated at an earlier date for any reason as set forth herein.

## Article V. FEES

Section 5.01 In consideration for the rights and privileges granted by this Agreement, Lessee agrees to pay the City an annual rental payment of eight thousand five hundred twenty six dollars ($8,526.00) at the rate of seven hundred ten dollars and fifty cents ($710.50) per month. Payment will be made in advance, on or before the first business day of each month during the terms hereto and any extension thereof.

Section 5.02 Rental payments shall increase as of the first day of each calendar year (January 1) during the entire term, by the same percentage increase (if any) in the Consumer Price Index (revised) for Urban Wage Earners and Clerical Workers in Pittsburgh, PA, as published by the Bureau of Labor Statistics of the US Department of Labor (CPI) during the prior calendar year, but no more than three percent (3%). Rents shall be fixed between annual adjustments. Each calendar year's recalculated rent shall be the basis for the adjustment for the next calendar year rent. The rent shall be recalculated as soon as the CPI is published. The increase shall be effective as of January 1 of each year. In no event shall adjustment be a negative amount. If the rental rate increases, Lessee shall, within thirty (30) days of receipt of notice from City, pay to City any additional rent caused by the increase in CPI, divided by twelve (12), multiplied by the number of rental payments made by Lessee since the effective date of rental adjustment.

Section 5.03 It is agreed that a finance charge of one and one-half percent (1.5%) per month shall be added to any balance unpaid within thirty (30) days after that balance is due.

Section 5.04 All sums due hereunder shall be made payable to the City of Morgantown. All such sums, statements, and reports shall be delivered to the Airport Director, Morgantown Municipal Airport, 100 Hart Field Road, Morgantown, WV 26505.

## Article VI. INSTALLATION OF IMPROVEMENTS

Section 6.01 The Lessee shall, without cost to the City, make improvements and provide and install all trade fixtures as are necessary for the customary operation of its Flight Training business.

Section 6.02 The Lessee shall have the right, at its sole expense, to install and maintain signs advertising its business. Any signs must have prior written approval of the Airport Director, as the City's Representative, both as to size and location.

Section 6.03 Lessee shall not suffer or permit any mechanic or other liens to be levied or filed against the City. All improvements, equipment, fixtures, and interior décor constructed by the Lessee, its agents, or contractors, shall conform in all respects to all applicable statutes, ordinances, building codes, and Rules and Regulations. Lessee shall be responsible for applying for and obtaining any permits required to complete improvements. Any approval given by the City shall not constitute a representation or warranty as to conformity; responsibility therefore shall at all times remain with the Lessee.

Section 6.04 All structural improvements and alterations shall, upon termination of this Agreement, become property of the Airport. All non-structural improvements and property of the Lessee must be removed upon termination of this Agreement.

Section 6.05 The Lessee may place such furnishings, property, and equipment into the Leased Premises as is necessary for the conduct of its business. Lessee shall have the right to remove

same upon termination of this Agreement, providing the premises are repaired to the satisfaction of the City or restored to their original condition after such removal.

Section 6.06 The Lessee shall not remove or demolish, in whole or in part, any improvements within the Leased Premises without the express prior written consent of the City, which consent may be conditioned upon the obligation of the Lessee to replace the same by an improvement specified in the consent. However, City shall not withhold consent unreasonably and shall not impose unreasonable conditions upon its consent.

## Article VII. MAINTENANCE OF PREMISES

Section 7.01 The City agrees to provide maintenance and custodial services in the public areas of the Terminal. Lessee is responsible for all custodial services within the Leased Premises.

Section 7.02 The City agrees to maintain, at its expense, the basic infrastructure of the Terminal to include the basic structure, heating/air conditioning systems, plumbing systems, and electrical systems provided however, such maintenance necessitated by the negligence or willful destruction of Lessee, its employees or agents, shall be at the expense of the Lessee.

Section 7.03 The City, Airport Director, or its duly appointed representative shall have the right to enter Lessee's Leased Premises to:

(a) Inspect the Leased Premises at reasonable intervals during the Lessee's regular business hours, or at any time in case of an emergency, to determine if Lessee is in compliance with the terms and conditions of the Agreement. The City may, at its discretion, require the Lessee to effect any required maintenance or repairs at Lessee's own cost; and

(b) Perform any and all things which the Lessee is obligated to, and has failed to do, after providing the Lessee with ten (10) days written notice to act, including maintenance, repairs, and replacements to Lessee's Leased Premises. The cost of all labor, materials, and overhead charges required for the performance of such work will be paid by Lessee to the City within ten (10) days following receipt of invoice for said charges by Lessee.

## Article VIII. UTILITIES

Section 8.01 The City shall pay for all electric current, water, and natural gas that enters the Leased Premises via presently installed underground utility lines and pipes, to the Terminal, and operated by local Utility Companies. The Lessee shall be expected to exercise all practical economy in the use of such utilities and failure to do so will constitute unsatisfactory operations. The City shall have the right to insist upon and institute practices which it deems necessary, which the Lessee shall be expected to implement, to ensure no misuse or abuse of this privilege.

Section 8.02 Should the Lessee require any additional utility service other than that provided for above (such as telephone or internet lines), the Lessee agrees to bear all costs associated with installation and use of such service.

## Article IX. PERFORMANCE AND SERVICE STANDARDS

Section 9.01 The Lessee hereby covenants and agrees that it will furnish prompt and efficient service adequate to meet all reasonable demands for Flight Training operations at a fair, reasonable and non-discriminatory basis, and to charge fair, reasonable and non-discriminatory prices for each unit or sale of service on a basis substantially similar to that charged by it for similar airports of comparable size within the same general area. The Lessee may make reasonable discounts, rebates and other similar types of price reductions to purchasers on a non-discriminatory basis.

Section 9.02 Lessee shall hold a Flight School Certificate issued by the FAA under 14 CFR Part 61 or 141 and it shall be in force for the entire term of this lease. A copy of the Certificate shall be forwarded to the Airport Director within ten (10) business days after execution of this Lease. In the event the Certificate is revoked by FAA, the Airport Director must be notified within five (5) business days. Failure to hold and maintain this Certificate will be grounds for termination of this lease.

Section 9.03 The Aircraft provided by Lessee shall be certified and licensed by the FAA for the types of flights conducted. At least two (2) FAA licensed and certified Aircraft will be provided – one (1) capable of providing Basic Flight Training and one (1) capable of providing Advanced Flight Training. At least one (1) will be a dual equipped, single engine, land, fixed wing Aircraft fully certified as airworthy by the FAA. These Aircraft will be based and housed at the Airport. Lessee is also authorized to conduct training in multi-engine aircraft and rotorcraft as long as the basic Aircraft is provided. Aircraft will be maintained in accordance with all applicable FAA Rules and Regulations at Lessee's sole expense, in good operating order, free from mechanical defects, current in all required inspections, and in clean, neat, and attractive condition, inside and out. Aircraft used for Flight Training will be owned or be under lease to Lessee.

Section 9.04 Lessee will provide, at a minimum, one (1) FAA Licensed Flight Instructor properly certified to give both ground and in-flight instruction in single-engine, land, fixed wing Aircraft for both Basic and Advanced Flight Training.

Section 9.05 The Lessee shall provide all necessary publications and training aids necessary to facilitate the Basic and/or Advanced Flight Training process. These may include, but are not limited to, appropriate Federal Regulations, Airman's Information Manual, navigation charts, and equipment/charts for determining Aircraft performance.

Section 9.06 The Lessee shall provide a quiet, comfortable space, free of significant interruptions for use by the Flight Instructor and student in the course of conducting ground instruction, pre-flight briefings, post flight briefings, and self study.

Section 9.07 Lessee is authorized to perform such maintenance activities as necessary to meet the requirements of its Certificate in a hangar provided under separate lease.

Section 9.08 Lessee shall be authorized to use the Fixed Base Operator waiting areas for its students and instructors. However, amenities in the waiting area are for passengers and transient aircrews only and not for use by lessee, its employees, instructors, or students.

Section 9.09 Lessee's employees shall be clean, neat in appearance, courteous and polite. The Lessee shall not employ any Person or Persons in or about the Leased Premises who shall conduct themselves in a loud, boisterous or otherwise improper manner. Upon notification by the Airport Director to the Lessee in writing that any Person employed by the Lessee is, in the Airport Director's opinion, disorderly or otherwise unsatisfactory under this paragraph, the Lessee shall conduct a full investigation and correct the problem immediately.

Section 9.10 The City is responsible for the safety and security of the Airport premises. Access is controlled by keys and key cards. Lessee and its employees will be granted access as necessary to conduct Lessee's business. Keys and key cards are issued to individual Persons and each Person issued a key or key card is solely authorized to use same. Keys and key cards are not to be loaned or used to allow unauthorized Persons access to the Airport Aircraft Operating Area. The City reserves the right to cancel and/or revoke access for any Person deemed a safety or security risk as necessary. In the event a Person's access is terminated for any reason, all keys

and key cards must be returned to the Airport Director within five (5) business days. Keys or key cards that are lost and require replacement or are not returned when requested will result in a payment of fifty dollars ($50.00) per key or key card by Lessee to the Airport.

Section 9.11 The Lessee shall abide by and be subject to all Rules and Regulations which are now, or may from time to time be promulgated by the City concerning management, operation or use of Airport facilities, or the safety of those using the same, and it shall abide by and be subject to all Rules and Regulations which are now, or may from time to time be promulgated by the FAA. The Lessee further agrees to maintain, use, and operate the Leased Premises in compliance with any and all present and future laws, ordinances, Rules and Regulations relating to public health, safety or welfare adopted by Federal, State, local or other governmental bodies or agencies, departments or officers thereof, and obtain all permits, at its sole expense, which may be necessary for the operation of its Concession.

Section 9.12 The Lessee covenants and agrees it will meet all expenses in connection with the use of its Leased Premises and be responsible for any taxes, permit fees, usage fees, license fees, or assessments lawfully levied or assessed by any taxing authority against the business owned and operated by the Lessee, the Leased Premises, concession receipts, or as a result of the Lessee's use and occupancy of Airport premises or its operation at the Airport.

Section 9.13 The Lessee does hereby covenant and agree that:

(a) No person on the grounds of race, color, creed, age, sex, sexual orientation, religion, national origin, or handicap shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said service or facilities.

(b) In the construction of any improvements on the Leased Premises and the furnishing or services thereon, no person on the grounds of race, color, creed, age, sex, sexual orientation, religion, national origin, or handicap shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination.

(c) The Lessee shall use the Leased Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

(d) In accordance with the policy of the US Department of Transportation that Minority Business Enterprises, as defined in 49 CFR Part 23, shall have the maximum opportunity to participate in the performance of contracts such as covered by this agreement, the Lessee hereby assures no Person shall be excluded from the participation in, be denied the benefits of, or otherwise be discriminated against in connection with the award of any contract covered by 49 CFR Part 23 on the grounds of race, color, national origin, sex, or handicap. The Lessee hereby assures it will include the foregoing clauses in all subcontracts and will cause subcontractors similarly to include these clauses in further subcontracts.

In the event of breach if any of the above nondiscrimination covenants, the City shall have the right to terminate this agreement. The City, State of West Virginia, or the United States, or any combination of the foregoing Government entities, shall have the right to enforce the provisions of this Article.

Section 9.14 The Lessee agrees that the City, its duly authorized representatives or agents may, at any reasonable time, enter into the Leased Premises for the purposes of making any inspection deemed necessary in order to determine whether Federal, State, County, or City Rules and Regulations and/or the covenants of this Agreement are being complied with, and to do any and all things which the City is obligated to do as set for the herein, or which may be deemed necessary for the general conduct and safe operation of the Airport.

## Article X. ASSIGNMENT OR SUBLEASE

Section 10.01 The Lessee shall not have the right to assign or transfer the Agreement or any rights hereunder without the prior written consent of the City and amendment of this Agreement by the Morgantown City Council.

Section 10.02 The Lessee shall not sublet any part of the Leased Premises without prior written consent of the City and amendment of this Agreement by the Morgantown City Council.

## Article XI. INSURANCE AND LIMITATION OF LIABILITY

Section 11.01 The Lessee covenants and agrees to secure and maintain during the term of this Agreement, the following insurance coverage. A Certificate of Insurance or copies of the individual policies shall be forwarded to the Airport Director within ten (10) business days after execution of this Lease. Such policies shall contain a provision requiring at least thirty (30) days notice of cancellation which notice shall be given in writing to the Airport Director. In the event these policies are revoked or cancelled, the Airport Director must be notified within five (5) business days. Failure to hold and maintain this insurance will be grounds for termination of this lease.

(a) Comprehensive General Public Liability Insurance covering Lessee's operations at the Airport and its serving of Airport Customers with a combined single limit coverage of One Million Dollars ($1,000,000), naming the City as an additional insured.

(b) Passenger/Aircraft Liability Insurance for Training and Rental Aircraft in the minimum amount of One Million Dollars ($1,000,000) per passenger and Two Million Dollars ($2,000,000) per occurrence.

Section 11.02 The Lessee agrees to indemnify and hold the City, its agents, officers, representatives, and employees forever harmless from and against any and all claims, damages, judgments, attorneys fees, compensation, demands, or liability for injuries to Persons or Property caused by, arising from or in connection with the use or occupancy by the Lessee, its agents and employees of the Leased Premises or arising from, out of, or in connection with the Lessee's operations at the Airport or arising directly or indirectly out of any acts of the Lessee, its agents, servants, guests, or business invites, or by any reason of any act or omission of any such Person; provided, however the Lessee shall not be liable for any injury, damage or loss occasioned by the negligence of the City, its agents or employees. The Lessee shall give to the City prompt and timely notice of any claim or suit filed which in any way, directly or indirectly, contingently or otherwise, affects or might affect the City. Except for losses due to the negligent acts or omissions of the City, its agents or employees, the Lessee further covenants and agrees it will not hold the City, its agents of employees, responsible for any loss or damage occasioned by fire, theft, rain, flood, windstorm, hail, vandalism, or from any other cause whatsoever, whether said cause be direct, indirect, or merely a contributing factor in producing the loss or damage to any Property of the Lessee that may be located or stored on the Leased Premises or any other location at the Airport, and the Lessee agrees that storage of all Property on the Leased

Premises or elsewhere at the Airport shall be at the Lessee's risk. The Lessee shall be responsible for all damage to Persons or Property caused by carelessness, negligence, or neglect on the part of Lessee, its agents or employees. The City shall not be liable for any loss/damage suffered by the Lessee arising out of the interruption or cessation of the business conducted by the Lessee under this Agreement.

## Article XII. TERMINATION

Section 12.01 It is mutually understood and agreed that either party may terminate this Agreement, for any reason, with sixty (60) days prior written notice to the other party. It is further understood and agreed in the event the Airport were to cease operating as an air transportation facility, this Agreement would automatically terminate. It is further understood and agreed in the event the United States government or any of its agencies would assume control over the Airport in time of war or National Emergency, then this Agreement would automatically abate during such period. The City agrees to give the Lessee prior notice as is feasible upon the occurrence of such an event.

Section 12.02 Upon the happening of any one of the following events, Lessee shall be deemed to be in default of this Agreement. If Lessee is declared in default, The City may terminate this Agreement by giving the Lessee advance written notice, to be served as hereinafter provided:

(a) Failure by the Lessee to pay fees and charges specified in this Agreement or if any part thereof is in arrears and unpaid, provided the City shall first give the Lessee written notice to remedy such failure, and if Lessee does not correct such failure within ten (10) days from receipt of such notice;

(b) The making by the Lessee of a general assignment for the benefit of creditors;

(c) The filing by the Lessee of a voluntary petition in bankruptcy, or the institution of proceedings in bankruptcy against the Lessee and the adjudication of the Lessee as a bankrupt pursuant to such proceedings;

(d) The taking over of the Lessee or its assets by a court of competent jurisdiction;

(e) The death (if an individual) or dissolution of the Lessee or the divestiture of the Lessee's estate herein by other operation of law;

(f) The failure of the Lessee to comply with and meet all the laws or Rules and Regulations issued by the City, the FAA, or other governmental agency having jurisdiction;

(g) The failure of the Lessee to keep and perform any of the covenants or agreements herein contained on the Part of the Lessee to be kept and performed, provided the City shall first give the Lessee written notice to remedy such failure, and if Lessee does not correct such failure within ten (10) days from receipt of such notice.

Section 12.03 The City retains the right to recover from the Lessee all minimum monthly payments due up to the time of such termination and all damages for breach of this Agreement. In the event of default by the Lessee of any of the terms of this Agreement, the Lessee shall pay to the City any costs and expenses, including reasonable attorneys fees, incurred by the City to enforce its rights under this agreement or to recover damage for Lessee's breach.

Section 12.04 No waiver of default by the City of any of the terms, covenants, or conditions hereof to be performed, kept, and observed by the Lessee shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants, and conditions herein contained to be

performed, kept, and observed by the Lessee. The acceptance of payment by the City for any periods after default of any one of the terms, covenants, and conditions herein contained to be performed, kept, and observed by the Lessee shall not be deemed a waiver of any right on the part of the City to terminate this Agreement due to failure by the Lessee to so perform, keep, or observe any of the terms or conditions of this Agreement.

Section 12.05 Should the Leased Premises be totally or partially destroyed by fire or other casualty, either party, at its option, may terminate this Agreement by giving the other party written notice of the termination within fifteen (15) days after such destruction. In the event of termination, any payments made in advance by the Lessee shall be prorated on a daily basis and the portion attributable to the period subsequent to the destruction shall be refunded. Should the parties elect not to terminate the Agreement following total or partial destruction, the Lessee shall restore the Leased Premises to a condition similar to that immediately prior to the destruction, at its sole expense. Any such restoration of the Leased Premises shall begin as soon as reasonably possible.

## Article XIII. MISCELLANEOUS

Section 13.01 The terms, covenants, and conditions made and entered into by the Agreement by the parties hereto are declared binding on their respective heirs, executors, administrators, successors, and assigns.

Section 13.02 Should any part of this Agreement be deemed invalid, only that part shall be disregarded. All other parts of the Agreement shall remain in effect.

Section 13.03 Any notice or other communication to the City or the Lessee pursuant hereto shall be deemed validly given, served, or delivered upon deposit in the United States Mail, certified and with proper postage and certification fee prepaid, address as follows:

To City: City of Morgantown
Airport Director
100 Hart Field Road
Morgantown, WV 26505

To Lessee: RSA Flight Training
82 Hart Field Road, Suite 241
Morgantown, WV 26505

Or such other addresses as the addressee may designate by written notice to the other party, delivered in accordance with the provisions of this paragraph.

Section 13.04 This Agreement is subject to and subordinate to the provision of any agreement made between the City and the United States Government relative to the operations, maintenance, and expansion of the Airport, the execution of which has been or may be made as a condition precedent to the transfer of Federal rights or property to the City for Airport use, or the expenditure of Federal funds for the improvement or development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, the Airport and Airways Improvement Act of 1982, the Airport and Airway Development Act of 1970, the Airport and Air Safety and Capacity Act of 1987, the Airport Safety and Capacity Expansion Act of 1990, and the Aviation Noise and Capacity Act of 1990 as they have been amended from time to time.

In the event the FAA or its successors requires modification or changes to this Agreement as a condition precedent to the granting of funds to the improvement or expansion of the Airport,

the Lessee agrees to consent to such amendments, modifications, revisions, supplements, or deletions, of any of the terms, conditions, or requirements of the Agreement as may be reasonably required to obtain such funds.

Section 13.05 The City agrees it shall not, during the term of this Agreement, grant to any other individual, firm, or corporation an on-site Flight Training Concession under terms or conditions more favorable that those in this Agreement in respect to fees, time for payment, insurance, privileges, and performance and service standards.

Section 13.06 The parties do hereby covenant and warrant this Agreement contains the entire Agreement between the City and the Lessee for the purposes set forth in the preamble hereinabove; that there are no claims, promises, representations, or conditions not herein contained, either oral or written, which shall or may be charged or enforced or enforceable unless reduced to writing and signed by both of the parties hereto.

Section 13.07 This Agreement shall be governed by the laws of West Virginia.

**IN WITNESS WHEREOF**, the parties hereunto have caused this Agreement to be executed by their proper officers the day and years above written.

**CITY OF MORGANTOWN**

By: _____
City Manager

ATTEST:

_____
City Clerk

RSA FLIGHT TRAINING

By: _____
Joe H. Weiss
Manager/Member

ATTEST:

_____

AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING A LEASE AGREEMENT BY AND BETWEEN IT, AS LESSOR, AND MERKOL, INC., AS LESSEE, REGARDING SPACE WITHIN THE MORGANTOWN MUNICIPAL AIRPORT TERMINAL BUILDING, WHICH WILL BE OPERATED AS A RESTAURANT.

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

FIRST READING:

_____
MAYOR

ADOPTED:

FILED:

_____
CITY CLERK

RECORDED:

# RESTAURANT LEASE AGREEMENT

## CITY OF MORGANTOWN
## MORGANTOWN MUNICIPAL AIRPORT
## MORGANTOWN, WEST VIRGINIA

THIS AGREEMENT, made this _____ day of _____, 2014, by and between THE CITY OF MORGANTOWN, 389 SPRUCE STREET, MORGANTOWN, WEST VIRGINIA, 26505, a municipal corporation, hereinafter referred to as the "CITY", and MERKOL, INC., a West Virginia corporation, hereinafter referred to as the "LESSEE".

WHEREAS, the "CITY", owns, controls, and operates an airport known as the MORGANTOWN MUNICIPAL AIRPORT, hereinafter referred to as "AIRPORT", located in the City of Morgantown, Monongalia County, West Virginia; and

WHEREAS, the "LESSEE" has submitted a proposal to the "CITY", which the Morgantown City Manager, on behalf of the "CITY", after careful evaluation, desires to accept, thereby granting to the "LESSEE", the right, privilege, and obligation to operate the aforesaid restaurant, as described and limited by the terms and conditions contained herein.

NOW THEREFORE, the "CITY", and the "LESSEE", hereby mutually agree, each for itself, and for its successors and assigns, that the Airport Restaurant Lease Agreement conditions are as follows:

## ARTICLE I

## DEFINITIONS

1.1 "Agreement shall mean the contract, including any and all attachments, between the "CITY", and "LESSEE", for the right, privilege and obligation to use such Airport property as defined herein for the conduct of an Airport Restaurant within said property under the terms and conditions expressly set forth herein.

1.2 "Airport" shall mean the tract of land, with all the improvements thereon and to be erected thereon, designated as the "Morgantown Municipal Airport".

1.3 "Airport Terminal" and "Terminal" shall mean the airline terminal building at the Airport.

1.4 "Assigned Area" shall mean the area or areas at the Airport designated by this

Agreement and the Exhibits thereto as the place or places where the business of "LESSEE", may be conducted as designated by the "CITY".

1.5 "Airport Manager" shall mean the Airport Manager of the Morgantown Municipal Airport, who is designated by the City of Morgantown to act with respect to all matters contained within this agreement.

1.6 "Annual Rental Payment" is the amount of money due the Airport annually from "LESSEE", in consideration of the area or areas at the Airport designated by this Agreement. Payment will be made on a monthly basis according to the terms of this Agreement.

1.7 "Minority" as defined by the Federal Aviation Administration is either: Female, Black, Hispanic, Asian (Chinese, Japanese, Pacific Islander), Filipino and American Indian or Alaskan Native. A "Disadvantaged Business Enterprise" is a business, whether it is a company or a corporation, of which at least 51 percent of the interest is owned and controlled by one or more minority group members.

ARTICLE II

2.1 The Assigned Area, as shown on Exhibit "A", located at the center of the Airport Terminal, shall consist of approximately two thousand nine hundred fifty eight (2,958) square feet of improved space on the main floor (runway level) of the Airport Terminal containing, at the time of execution of this Agreement, a dining area, counter serving area, cashier area, and kitchen, and approximately one thousand two hundred and seven one (1,271) square feet of unimproved space on the lower floor (main road level) of the Airport Terminal containing, at the time of this Agreement, a storage area, trash room, and rest room.

ARTICLE III

3.1 This Agreement shall be effective and binding upon execution. The original term of this Agreement shall be for a two (2) year period beginning August 1, 2014, and ending on July 31, 2016, unless sooner terminated pursuant to this Agreement. "LESSEE" shall have four (4) optional two (2) year terms thereafter. This Agreement shall be automatically renewed for each of the foregoing optional two (2) year terms unless within ninety (90) days prior to the new term written notice is sent by "LESSEE" to "LESSOR" by certified mail advising "LESSOR" that the lease will not be renewed, provided "LESSEE" is not in default of any terms and conditions contained within this Agreement.

At the conclusion of all two (2) year extension periods, the parties may agree to extend this lease for a total period not to exceed ten (10) years. Any such agreement to extend shall be in writing, be executed by the parties, and shall address the specific time period of extension and the rental payments to be paid by LESSEE. All remaining terms and conditions within this lease agreement shall be carried over and

be in effect during any agreed upon extension. The City Manager shall have sole discretion as to whether he/she wishes to approve said extension aagreement and execute the same on behalf of the City of Morgantown.

3.2 It is the mutual intent of the parties that this Agreement remains in effect for the full Term, subject to each party's right on breach.

## ARTICLE IV

## USES AND PRIVILEGES

4.1 The "LESSEE" has the right, privilege, and obligation to operate and manage the Airport Restaurant in the Assigned Area for the sale of food, alcoholic beverage, catering in the Airport Terminal. The rights above shall be exclusive as to the "LESSEE" only within the Assigned Area during the term, either original or extended, of this Agreement. The right to provide catering services at the Airport shall be non-exclusive. While not a part of the area being leased to "LESSEE" by this Agreement, "CITY" agrees to allow "LESSEE" to use the meeting room adjacent to the restaurant facilities, subject to the following conditions:

a. That "LESSEE" must obtain permission from the Airport Manager in advance of each instance that "LESSEE" wishes to use said meeting room;

b. That the "CITY" has the right to deny "LESSEE" use of said meeting room if it conflicts with the City's scheduled usage of said meeting room;

c. That the "CITY" agrees to not convert the meeting room into any other type of room as long as this lease is in effect.

4.2 Nothing herein shall be construed to prevent the "CITY" from permitting any hotel or motel to establish food and beverage facilities on Airport property in conjunction with its right to operate such hotel or motel; nor shall this Agreement prohibit or limit the right of the "CITY" to authorize the installation of vending machines for the sale of food, beverage, snack or tobacco items within the Airport Terminal, as the "CITY", in its sole discretion, may deem appropriate.

4.3 "LESSEE" shall have reasonable rights of ingress and egress from the Airport Terminal to its Assigned Area during the hours of 6:00 a.m. until 11:00 p.m. daily. Such rights of ingress or egress shall apply to the "LESSEE'S" employees, guests, Patrons, invitees, and suppliers. "LESSEE" shall be totally responsible for its Assigned Area, locks, and keys, as well as securing the facility when closed.

4.4 "LESSEE" agrees not to use, or suffer or permit any person to use the Assigned

Areas or any part thereof, for any illegal purposes, or for any purpose in violation of any Federal or State laws, rules, orders, regulations or ordinances of the "CITY" now in effect or hereafter enacted or adopted and in the event of any violation, or in case the "CITY", or its representatives, or any representatives of the Department of Health shall deem any conduct on the part of the "LESSEE" its agents or employees, to be objectionable or improper the "CITY" shall have the right and power and is hereby authorized by the "LESSEE" to at once declare the Agreement terminated without previous notice to the "LESSEE".

## ARTICLE V

## OPERATIONAL STANDARDS

5.1 The "CITY", by and through its City Manager and Airport Manager, shall have the right to determine the "LESSEE'S" compliance with all operational conditions and requirements. "LESSEE'S" failure or refusal to comply with these Operational Standards shall be deemed a default in its performance hereunder and may be grounds for termination of this Agreement.

5.2 The Airport Restaurant in the Assigned Area, shall be operated, ready to serve its guests and patrons, between the hours of 11:00 a.m. until 7:00 p.m., Monday through Saturday and shall be closed on Sundays. The "LESSEE" shall have the option to operate beyond 7:00 p.m.

5.3 The "LESSEE" shall operate the Airport Restaurant every day of the Agreement unless a holiday schedule or permission is granted in writing by the Airport Manager to close it as a result of some contingency beyond the control of the "CITY" or the "LESSEE" which shall make it necessary to close the restaurant for any portion of the period of this Agreement.

5.4 All items served by the "LESSEE" shall be first quality, shall conform to all applicable regulations and laws, and shall be purchased from reliable sources.

5.5 "LESSEE" shall serve, at a minimum, separate and dedicated combination lunch and dinner menu. "LESSEE" shall serve adequate portions and charge reasonable and justifiable prices which are comparable to those maintained at other similar first class establishments in the Morgantown, West Virginia, area, while at the same time maximizing revenues.

5.6 "LESSEE" shall make all reasonable efforts to maintain, develop and increase business conducted by it in the Airport Terminal.

5.7 "LESSEE" agrees to operate the Restaurant in a highly efficient and attractive manner and to conduct the operation in such a manner as to win public esteem.

5.8 All operation shall be supervised at all times by an active, qualified, competent manager or a qualified subordinate in the manager's absence. The manager or qualified subordinate shall be available at the Assigned Area(s) during all business hours.

5.9 "LESSEE" shall employ and maintain, at its expense, a sufficient number of employees, help and labor as may be necessary to provide, at all times, effective and efficient service required or authorized in this Agreement. "LESSEE" shall ensure and control the professional conduct, demeanor and appearance of its employees and representatives, who shall be properly trained by the "LESSEE" and shall possess such food handling certificates and qualifications as may be required by law in carrying out the responsibilities of this Agreement.

5.10 All personnel employed by the "LESSEE" shall be neat, clean and courteous at all times. Employees shall wear appropriate uniforms and name tags while on duty. No loud, boisterous or otherwise improper actions or language shall be permitted while on or about the Airport.

5.11 "LESSEE" shall comply with all health codes and laws applicable to the sale of food, non-alcoholic and alcoholic beverages. "LESSEE" shall cooperate with all local health and fire officials, and comply with all applicable codes, rules and regulations.

5.12 "LESSEE" shall accept no less than two (2) major credit cards for purchases. No additional charges shall be levied against the customer using such credit card(s), nor shall discounts be permitted for customers paying cash.

5.13 "LESSEE" shall remove and dispose of all garbage, waste and debris from the Assigned Areas and the grounds surrounding the Airport Restaurant and keep the Assigned Areas occupied under this Agreement in a clean and sanitary condition and in conformity with all laws and rules and regulations pertaining to sanitation and public health. A commercial trash dumpster shall be provided for all Airport tenants and each tenant, including "LESSEE", shall be responsible for its own disposal of garbage therein.

## ARTICLE VI

## RENTS, FEES, AND ACCOUNTABILITY

6.1 Annual Rent Payment - In consideration of the rights, privileges, and obligations granted by this Agreement, 'LESSEE" agrees to pay to the "CITY", for the two (2) year period beginning on August 1, 2014, and ending July 31, 2016, of the original term of this Agreement, a rental payment of $1,200.00 monthly or $14,400.00 annually.

6.2 Annual Rental Payment – (1st Additional Two (2) Year Period). In consideration

of the rights, privileges, and obligations granted by this Agreement, "LESSEE" agrees to pay to the "CITY" during the first additional two (2) year period, beginning August 1, 2016, and ending July 31, 2018, of this Agreement, a rental payment of $1,300.00 monthly or $15,600.00 annually.

6.3 Annual Rental Payment – (2nd Additional Two (2) Year Period). In consideration of the rights, privileges, and obligations granted by this Agreement, "LESSEE" agrees to pay to the "CITY" during the second two (2) year period, beginning August 1, 2018, and ending July 31, 2020, of this Agreement, a rental payment of $1,400.00 monthly or $16,800.00 annually.

6.4 Annual Rental Payment – (3rd Additional Two Year (2) Year Period). In consideration of the rights, privileges, and obligations granted by this Agreement, "LESSEE" agrees to pay the "CITY" during the third two (2) year period, beginning August 1, 2020, and ending July 31, 2022, of this Agreement, a rental payment of $1,500.00 or $18,000.00 annually.

6.5 Annual Rental Payment – (4th Additional Two (2) Year Period). In consideration of the rights, privileges, and obligations granted by this Agreement, "LESSEE" agrees to pay the "CITY" during the fourth two (2) year period, beginning August 1, 2022, and ending July 31, 2024, of this Agreement, a rental payment of $1,600.00 Monthly or $19,200.00 annually.

6.6 Payments: All payments due the "CITY" from "LESSEE" shall be on a check, no cash shall be accepted, made payable to the following:

Morgantown Municipal Airport

6.7 Place of Payment: All payments due the "CITY" from "LESSEE" shall be delivered to the following:

City of Morgantown
Airport Manager's Office
Morgantown Municipal Airport
100 Hart Field Road
Morgantown, West Virginia, 26505

6.8 Delinquency Charge: A delinquency charge of five percent (5%) per month shall be added to payments required by Paragraphs 7.1 through 7.10, above, which are rendered more than five (5) days delinquent.

## ARTICLE VII

7.1 All fixed improvements, equipment and interior design and décor installed by the "LESSEE", its agents, or contractors, including the plans and specifications, shall

conform to all applicable Federal, State and local statutes, ordinances, building codes, the Americans with Disabilities Act, and Morgantown Municipal Airport rules and regulations. Prior to commencing such work, the "LESSEE" shall first obtain approval from the Airport Manager. The approval given by the "CITY" shall not constitute a representation or warranty as to such conformity; responsibility for compliance at all times shall remain in "LESSEE".

7.2 All improvements, additions and alterations made to the Assigned Areas by the "LESSEE", shall be and remain the property of the "LESSEE" until the expiration of the term, either original or extended, of this Agreement or upon termination of this Agreement (whether by mutual rescission, cancellation, forfeiture, or otherwise), whichever first occurs, at which time the said improvements, less furniture and readily removable equipment owned by "LESSEE", shall become the property of the "CITY".

7.3 The "LESSEE" shall not remove or demolish, in whole or in part, any improvements upon the assigned Areas without the written consent of the "CITY". Consent may be conditional upon the obligation of "LESSEE" to replace the same with a specified improvement. The "CITY" shall not withhold consent unreasonably.

7.4 The "LESSEE" may, at its own expense, install and operate necessary and appropriate identification signs on the Airport for the purpose of advertising the Airport Restaurant, subject to the approval of the "CITY" as to the number, size, height, location, color and general type and design.

## ARTICLE VIII

## MAINTENANCE AND REPAIRS

8.1 The "LESSEE" agrees to provide at its own expense such maintenance, custodial, and cleaning services and supplies as may be necessary or required in the operation and maintenance of its Assigned Areas; including, but not limited to, proper maintenance of all grease traps and ventilation fans and hoods.

8.2 The "LESSEE" agrees to maintain and make necessary repairs to the interior of all of its Assigned Areas and any equipment which might be furnished by the "CITY". " LESSEE" shall also maintain without limitation, the interior windows, doors and entrances, storefronts, signs, floor coverings, interior walls and ceiling, the surfaces of interior columns exclusive of structural deficiencies, any columns erected by the "LESSEE" and any lighting tubes or bulbs within the Assigned Areas. "LESSEE" agrees to keep and maintain in good and safe condition its electrical equipment and the plumbing fixtures located at or within its Assigned Areas.

8.3 The "CITY" agrees to make, at its expense, all structural repairs to the building and repair or replacement of ceiling tiles provided, however, that if repairs or

replacement are necessitated by the negligence of the "LESSEE", its agents, or employees, or by willful destruction, said structural repairs or replacements shall be at the expense of the "LESSEE".

8.4 All repairs done by the "LESSEE" or on its behalf shall be of first class quality in both materials and workmanship. All repairs shall be made in conformity with the rules and regulations prescribed from time to time by Federal, State and/or local authorities having jurisdiction over the work in the "LESSEE'S" Assigned Areas.

8.5 Representatives of the "CITY" shall have the right to enter the "LESSEE'S" Assigned Areas to:

a. Inspect the Assigned Areas at reasonable intervals during the "LESSEE'S" regular business hours or at any time in case of emergency, to determine whether the "LESSEE" has complied with and is complying with the terms and conditions of the Agreement. The "CITY", Airport Manager, may, at its/her discretion, require the "LESSEE" to effect repairs at the "LESSEE'S" own cost; and

b. Perform any and all things which "LESSEE" is obligated to and have failed to do after providing "LESSEE" fifteen (15) days written notice to act, including maintenance, repairs and replacements to "LESSEE" Assigned Areas. The cost of all labor, materials, and overhead charges required for performance of such work will be paid by the "LESSEE" to the "CITY" within ten (10) days following receipt of invoice for said charges by "LESSEE".

## ARTICLE IX

## UTILITIES

9.1 The "CITY" shall pay for all electric current, water, and natural gas which enters the Assigned Area via presently installed underground utility lines and pipes, to the Terminal Building, and operated by local utility companies. The "LESSEE" shall be expected to exercise all practical economy in utilizing such utilities, and failure to do so will constitute unsatisfactory operations. The "CITY" shall have the right to insist upon and institute practices, which it deems necessary, which the "LESSEE" shall be expected to implement to insure misuse of abuse of this privilege.

## ARTICLE X

## LIABILITY, INDEMNIFY AND INSURANCE

10.1 Each party hereto shall give to the other prompt and timely written notice of any claim made or suit instituted coming to its knowledge which in any way directly or indirectly, contingency or otherwise, affects or might affect the other party, and

each shall have the right to participate in the defense of the same to the extent of its own interest.

10.2 It is expressly understood and agreed by and between the parties hereto that the "LESSEE" is and shall be responsible to all parties for all of its acts or omissions, and the "CITY" shall in no way be responsible therefor. The "LESSEE", and its officers, directors, employees, and agents, shall not be construed to be employees or agents of the "CITY". It is further agreed that in its use and enjoyment of the Airport or premises and facilities herein referred to, the "LESSEE" will indemnify and save harmless the "CITY", and its members, officers, and City Council, employees and agents from any and all claims, liabilities, causes or actions or losses, (including the cost of defense) that may result in liability to the "CITY" from any actions or omissions on the part of the "LESSEE", and/or its employees, authorized agents or representatives, and shall always hold the "CITY", and its members, officers, City Council, employees and agents harmless from same. The "LESSEE" shall save harmless the "CITY", and its members, officers, City Council, employees and agents from all liabilities, claims, judgments, costs, and expenses, including all costs to defense, which may in any manner arise against the "CITY", and its members, officers, City Council, employees and agents in consequence of the granting of this Agreement, which results from the negligence of the "LESSEE", its agents, customers, servants, or employees.

10.3 During the term, either original or extended, of this Agreement, the "LESSEE" shall effect and maintain, with a company satisfactory to the "CITY":

a. Public Liability and Property Damage Insurance including, if deemed necessary by the "CITY", Automobile Liability Insurance - covering claims for damages for bodily injury, including accidental death, and for claims for property damage which may rise from operations under this Agreement, whether such operations are by "LESSEE" or its duly authorized agents, representatives or employees. The "LESSEE'S" public liability insurance shall include coverage for the sale of alcoholic beverages, and shall be in a minimum amount of one million dollars ($1,000,000.00) for each occurrence and five hundred thousand dollars ($500,000.00) for property damage covering the acts of the "LESSEE", its agents and employees. "LESSEE" agrees to deliver copies of any and all policies of insurance and certificates of said insurance required by this Agreement to the Airport Manager upon the execution of this Agreement. Additionally, the "CITY" shall be notified in writing by the insurer and "LESSEE" at least thirty (30) days prior to the cancellation of any public liability insurance required under the terms and conditions of this Agreement. "LESSEE" agrees to insure that "CITY" and its officers, agents, and employees are held harmless against any and all claims arising out of "LESSEE'S" services at the Airport.
b. Worker's Compensation and Employer's Liability Insurance – "LESSEE" shall provide such coverage for its operations under this Agreement in the

amounts and form required by the Worker's Compensation Act and insurance laws of the State of West Virginia.

10.4 "LESSEE" shall not use or permit the storage of any illumination oils, lamps, turpentine, benzene, naptha, and other similar substances, or explosive of any kind, or any substance or thing prohibited in the standard policies of fire insurance in the State of West Virginia, or by the West Virginia State Fire Code.

10.5 It is understood that smoking is prohibited within the Airport facility and that there are designated smoking areas on the north and south ends outside of the building.

10.6 During the term, either original or extended, of this Agreement, the "CITY", at its sole discretion, shall have the right to adjust the minimum amounts of all liability insurance coverage required hereunder.

## ARTICLE XI

## ASSIGNMENT, SUBLEASING, AND CHANGE OF OWNERSHIP

11.1 The "LESSEE" shall not assign, delegate, sublease or transfer this Agreement or any other right, privilege, or license conferred by this Agreement, or any duty or obligation slated herein, either in whole or in part, or sublet or in any manner encumber the Assigned Areas or any portion thereof, except as otherwise provided in this Agreement, without obtaining in advance the written consent of the "CITY", which may be withheld at the sole discretion of the "CITY".

11.2 The "LESSEE" must obtain the consent of the "CITY" to keep the Agreement in effect prior to any transfer or merger of ownership between the "LESSEE" and any other legal entity. Transfer shall include the transfer of corporate stock from one party to another, but shall not include transfers of stock among shareholders of record as of the date of execution of this lease agreement.

## ARTICLE XII

## COMPLIANCE

12.1 The "LESSEE", its officers, agents, servants, employees, contractors, licensees, and any other person over which the "LESSEE" has the right to control shall comply with all present and future laws, ordinances, orders, directives, rules and regulations of the Federal, State, County, and "CITY" governments which may be applicable to its operations at the Airport.

12.2 "LESSEE" shall pay on or before its respective due dates, to the appropriate collecting authority, all Federal, State, and local taxes and fees, which are now or may hereafter be levied upon the Assigned Areas, or upon "LESSEE" or upon

the business conducted on the Assigned Areas, or upon any of the "LESSEE" property used in connection therewith; and shall have and maintain in current status all Federal, State, and local licenses and permits required in the operation of the business conducted by the "LESSEE".

12.3 "LESSEE" agrees to pay, or guarantee payment of all lawful fines and penalties as may be assessed by the "CITY" or against the "CITY" for violations of Federal, State, and local laws, ordinances, ruling or regulations, or Airport rules and regulations caused by "LESSEE'S" acts or omissions or those of its employees or agents.

12.4 "LESSEE", its employees and agents shall at all times comply with rules and regulations for the Morgantown Municipal Airport (and its Manager) as may be adopted from time to time by the "CITY". In the event that there is a conflict between the provisions of this Agreement and such rules and regulations, this Agreement shall govern unless otherwise directed by the "CITY".

## ARTICLE XIII

## CANCELLATION BY "LESSEE"

13.1 In addition to all other remedies available to the "LESSEE" this Agreement shall be subject to cancellation by the "LESSEE" by giving a thirty (30) day written notice to the "CITY", should any one or more of the following occur, provided however, that none of the compensation and fees which are to be paid by "LESSEE" herein will be refunded to "LESSEE":

a. The abandonment or the permanent removal of all certificated passenger airline service from the Airport for longer than six (6) months.
b. The assumption by the United States Government, or any additional agency thereof, of the operation, control or uses of the Airport, or any substantial part or parts thereof in such manner as to substantially restrict "LESSEE" from operating thereon for a period of at least six (6) months.
c. The complete destruction of all of a substantial portion of the Assigned Areas from a cause other than the negligence or omission to act of "LESSEE", its subcontractors, agents or employees, and the failure of the "CITY" to repair or reconstruct said premises within six (6) months after such destruction.
d. The breach by the "CITY" in the performance of any covenant or any Agreement required to be performed by the "CITY" and the failure of the "CITY" to commence to remedy such breach for a period of thirty (30) days after receipt of notice of such breach by "CITY" from "LESSEE".
e. The issuance by any court of competent jurisdiction of any injunction preventing or restraining the use of the Airport in such a manner as to substantially restrict the "LESSEE" from conducting its restaurant business not caused by the act or omission of the "LESSEE" and the remaining in force of such injunction for at least ninety (90) days.

## ARTICLE XIV

## CANCELLATION BY "CITY"

14.1 In addition to all other remedies provided herein or at law, "CITY" may cancel this Agreement by giving a thirty (30) day written notice to the "LESSEE" should any one or more of the following events occur:

a. "LESSEE" fails to make any payments required hereunder when due to the "CITY" or within ten (10) days after receipt of written notice from the "CITY" of non-payment.
b. "LESSEE" permits to continue, for a period of three (3) days after receipt of written notice from the Airport Manager, the unsafe or unsanitary conditions or practices in or about the Assigned Areas; provided however, if the unsafe or unsanitary condition is such as to require replacement, repair, or construction, "LESSEE" shall have a reasonable time in which to correct said condition, but must begin action on the matter immediately upon receipt of said notice.
c. The interest of "LESSEE" under this Agreement is transferred, passes to or devolves upon, by operation of law or otherwise, any other person, firm or corporation without the prior written consent of the "CITY", as per sections 11.1 and 11.2 herein.
d. "LESSEE" becomes, without written approval of the "CITY" a successor or merger corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution, as per sections 11.1 and 11.2 herein.
e. "LESSEE" shall neglect or fail to perform and observe any other promise, covenant or condition set forth in this Agreement within ten (10) days after receipt of written notice of breach from the "CITY" or the Airport Manager, except where fulfillment of such obligation requires activity over a period of time and "LESSEE" has commenced to perform whatever may be required within ten (10) days after receipt of such notice and continues such performance without interruption except for causes beyond its control.
f. The levy of any attachment or execution, or the appointment of any receiver, or the execution of any other process of any court of competent jurisdiction which is not vacated, dismissed or set aside within a period of ninety (90) days and which does, or as a direct consequence of such process will, interfere with "LESSEE'S" use of the Assigned Areas or with its operations under this Agreement.
g. "LESSEE" becomes insolvent, or takes the benefit of any present or future insolvency statute, or make an assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the arrangement for their reorganization, or the readjustment of the indebtedness under the Federal bankruptcy laws or under any other law or statute of the United States, or under any State laws, or consents to the appointment of a receiver, trustee or liquidator of all or

substantially all of the property or its property located within the Assigned Area.

h. A petition under any part of the Federal bankruptcy laws, or an action under any present or future insolvency law or statute is filed against "LESSEE" and is not dismissed within ninety (90) days.
i. By or pursuant to, or under authority of, any legislative act, resolution or rule, order or decree of any court, governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator takes possession or control or all or substantially all of the property of "LESSEE", and such possession or control continues in effect for a period of ninety (90) days.
j. Any lien is filed against the Assigned Area (s) because of any act or omission of "LESSEE" and such lien is not removed, enjoined or a bond for satisfaction of such lien is not posted within thirty (30) days.
k. "LESSEE" abandons, deserts, vacates or discontinues its operation of the business herein authorized for a period of five (5) days without prior written consent of the "CITY".

14.2 Acceptance by the "CITY" of any rental payments specified herein, after a breach of any of the terms of this Agreement shall not be deemed a waiver of any right on the part of the "CITY" to cancel this Agreement on account of such breach, unless said breach is fully and completely corrected and cured to the satisfaction of the "CITY" prior to said cancellation, or of the "CITY'S" right to cancel this Agreement because of any subsequent breach of a similar or different nature.

14.3 The "CITY" may reenter the Assigned Areas and may remove all persons and property from same upon the date or reentry specified in the "CITY'S" written notice to "LESSEE". Such date of reentry shall not be less than thirty (30) days from the date of said notice. Upon any removal of "LESSEE'S" property by "CITY" hereunder, said property may be stored at a public warehouse or elsewhere at "LESSEE'S " sole cost and expense.

## ARTICLE XV

## GENERAL PROVISIONS

15.1 Nondiscrimination

a. The "LESSEE", as a part of the consideration hereof, does hereby covenant and agree:

1. That no person, on the grounds of race, color, religion, creed, political ideas, sex, sexual orientation, age, or handicap shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities;
2. That in the construction of any improvements and the furnishing of services, no person, on the grounds of race, color, religion, creed, political

ideas, sex, sexual orientation, age, or handicap, shall be excluded from participation in, denied benefits of, or be otherwise subject to discrimination in the use of said facilities;

3. That the "LESSEE" shall use the Assigned Areas in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
4. That the "CITY" has provided handicapped accessible ingress and egress to the leased area and "LESSEE" shall not close or otherwise cause said access way to be nonfunctional without first providing an alternative means of access which has been approved in writing by the Airport Manager.

b. The "LESSEE" shall furnish its accommodations and/or services on a fair, equal, and nondiscriminatory basis to all users thereof, and it shall charge fair, reasonable, and nondiscriminatory prices for each unit of services; however, the "LESSEE" may be allowed to make reasonable discounts to other similar type of price reductions to purchasers on a nondiscriminatory basis.
c. "LESSEE" acknowledges that the provisions of 49 CFR, Part 23, Disadvantaged Business Enterprise (DBE) and 14 CFR, Part 152, Affirmative Action Employment Program, are applicable to the activities of "LESSEE" under the terms of this Agreement, and unless exempted by said regulations, hereby agrees to comply with all requirements of the Department, the Federal Aviation Administration, and the U.S. Department of Transportation, in reference thereto. These requirements may include, but not be limited to, the compliance with MBE, DBE, and/or Employment Affirmative Action participation goals, the keeping of certain records of good faith compliance efforts, which would be subject to review by the various agencies, the submission of various reports, and including, if directed by the Department, the contracting of specified percentage of goods and services contracts to Minority Business Enterprises.
d. Noncompliance by "LESSEE" with the requirements of section 16.1 of this Agreement shall constitute a material breach thereof. In the event of such noncompliance, the "CITY" shall have the right to cancel this Agreement after all actions required by the United States Government have been exhausted.

15.2 Federal Aviation Act, Section 300: Nothing herein contained shall be deemed to grant the "LESSEE" any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act for the conduct of any aeronautical activity on the Airport, except that, subject to the terms and conditions hereof, the "LESSEE" shall have the right to process the Assigned Area under the provisions of this Agreement.

15.3 Subordination to Agreements With The United States Government: This

Agreement is subject and subordinate to the provisions of any agreement heretofore or hereafter made between the "CITY" and the United States Government, relative to the operations and maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to the "CITY" for Airport purposes, or the expenditure of federal funds for the improvement or development of the Airport, in accordance with the provisions of the Federal Aviation Act of 1958, as amended from time to time. The "CITY" covenants that to the best of its knowledge and belief it has no existing agreements with the United States Government in conflict with the express provisions of this Agreement.

15.4 Waiver of Damages: The "LESSEE" hereby expressly waives any and all claims for compensation for any and all loss or damages sustained by reason or any defect, deficiency or impairment of the electrical apparatus, water supply equipment, equipment or wires used in the Assigned Areas, herein mentioned, or by reason of any loss or impairment of light, current or water supply which may occur from time to time for any cause, or for loss or damage sustained by the "LESSEE" resulting from fire, water, windstorm, tornado, civil commotion, or riots and the "LESSEE" hereby expressly waives all right, claims and demands and forever releases the "CITY", its officers, employees and agents, from any and all demands, claims, actions, and causes of action arising from any such cause.

15.5 Nonwaiver of Rights: Failure of the "CITY" to insist upon strict performance of any provision or condition of this Agreement, or to exercise any right herein, shall not operate or be construed to be a waiver of such condition or right in any other instance.

15.6 Notices: Notices required herein may be given by registered or certified mail by Depositing the same in the United State mail in the continental United States, postage prepaid. Any such notice so mailed shall be presumed to have been received by the addresses seventy-two (72) hours after deposit of same in the mail. Notices in writing may also be delivered by personal service of said notice to the agents for each party at the addresses listed below. Either party shall have the right, by giving notice to the other, to change the address at which its notices are to be received. Until such change is made, notices to the "CITY" shall be delivered as follows:

City of Morgantown
Airport Manager's Office
Morgantown Municipal Airport
Morgantown, WV 26505

Notices to "LESSEE" shall be deemed sufficient if in writing and mailed to, registered or certified, postage prepaid, addressed to "LESSEE" at:

Elias Hishmeh
82 Hart Field Road
Suite 255
Morgantown, WV 26505

15.7 Right to Develop Airport: It is further covenanted and agreed that the "CITY" reserves the right to further develop or improve the Airport, including the Terminal and all landing areas as it may see fit, regardless of the desires or views of the "LESSEE" and without interference or hindrance. The "CITY" shall have the right to construct or install over, in, under or through the Assigned Areas new lines, pipes, mains, wires, conduit and equipment.

15.8 Relationship of Parties: Nothing contained herein shall be deemed or construed by the parties hereto, or any third party, as creating the relationship of principal and agent, partners, joint venture, or any other similar such relationship, between the CITY OF MORGANTOWN and "LESSEE". The parties shall understand and agree that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto creates a relationship other than the relationship of the "CITY" and "LESSEE". This agreement is not intended to and shall not be construed to vest in the "LESSEE" any title, tenure or any property rights in the real estate, fixtures or personal property belonging to the "CITY" now located, or which may hereafter be located, in or around the Assigned Areas.

15.9 Right to Amend: In the event that the Federal Aviation Administration or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport or otherwise, the "LESSEE" agrees to consent to such amendments, modifications, revisions, supplements, or decisions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required.

15.10 Termination: Upon the termination or cancellation of this Agreement for any cause the "LESSEE" shall vacate the Assigned Area and shall not remove any of the "LESSEE'S" supplies, property or equipment from the Assigned Areas until all license fees, Business and Occupation taxes, and other sums due the "CITY" have been paid.

## ARTICLE XVI

## ENTIRE AGREEMENT

16.1 The parties hereto understand and agree that this instrument, including the items specifically incorporated by reference into it consistent with the terms of this document, and its attached Exhibits contain the entire Agreement between the parties. The parties further understand and agree that neither party nor its agents have made representations or promises with respect to this Agreement

except as expressly set forth herein; and that no claim or liability shall arise for any representations or promises not expressly stated in this Agreement, any other writing or parole agreement with the other party being expressly waived.

THE CITY OF MORGANTOWN
a municipal corporation,
"CITY"

By: _____
Jeff Mikorski, City Manager

Witness: _____

MERKOL, INC. A West Virginia corporation, "LESSEE"
"MERKOL, INC."

By: _____

Its: _____

Witness: _____

**AN ORDINANCE AMENDING THE FY 2014-2015 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 2014-2015 Annual Budget of the General Fund of the City of Morgantown is amended as shown in the revised budget (Revision 01) attached hereto and made a part of this ordinance.

First Reading:

_____

Adopted: Mayor

Filed:

_____

Recorded: City Clerk

LGSD BR (Ver. 2014)
84

Ora Ash, Deputy State Auditor
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
FY: 2014-2015
Fund: General
Rev. No. 1
Pg. of No. 1 of 1

City of Morgantown
GOVERNMENT ENTITY

389 Spruce Street
STREET OR PO BOX

Morgantown — CITY
26505 — ZIP CODE

**Municipality**
Government Type

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

## REVENUES: (net each acct.)

| ACCOUNT NUMBER | ACCOUNT DESCRIPTION | PREVIOUSLY APPROVED AMOUNT | (INCREASE) | (DECREASE) | REVISED AMOUNT |
|---|---|---|---|---|---|
| 299 | Unassigned Fund Balance | 360,000 | 160,000 | | 520,000 |
| 305 | Business and Occupation Tax | 13,130,000 | | 100,000 | 13,030,000 |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |

NET INCREASE/(DECREASE) Revenues (ALL PAGES) 60,000

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

## EXPENDITURES: (net each account category)

(WV CODE 7-1-9)

| ACCOUNT NUMBER | ACCOUNT DESCRIPTION | PREVIOUSLY APPROVED AMOUNT | (INCREASE) | (DECREASE) | REVISED AMOUNT |
|---|---|---|---|---|---|
| 699 | Contingencies* | 266,662 | | 18,500 | 248,162 |
| 700 | Police Department | 6,630,520 | 17,500 | | 6,648,020 |
| 444 | Contributions / Transfers to Other Funds | 1,753,806 | 26,000 | | 1,779,806 |
| 750 | Streets and Highways | 2,410,416 | 35,000 | | 2,445,416 |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |

**NET INCREASE/(DECREASE) Expenditures** 60,000

**APPROVED BY THE STATE AUDITOR**

**BY:**
**Deputy State Auditor, Local Government Services Division** **Date**

AUTHORIZED SIGNATURE OF ENTITY

APPROVAL DATE

# *City of Morgantown*

## *Finance Department*

***389 Spruce Street***
***Morgantown, WV 26505***
***Phone (304) 284-7407/Fax 7418***
***jsabatelli@cityofmorgantown.org***


# MEMO

**DATE:** July 9, 2014

**TO:** Jeff Mikorski, ICMA-CM, City Manager

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

**RE:** General Fund Budget Revision 1 – Updated 7/28/14

---

Included herewith you will find the proposed ordinance and "Request for Revision to Approved Budget" for the FY2015 General Fund Budget. An explanation of the proposed changes follows:

The adjustments to revenue reflect an increase from the projected and approved carryover from the previous fiscal year (FY14) to the current projected carryover based on actual figures, coupled with a small conservative decrease in Business & Occupation Taxes based on the results of the recently completed fiscal year.

The adjustments to expenditures include an increase in contributions to the Community Development Fund to cover administrative costs not covered by the Community Development Block Grant. Also included is an increase to the Police Department telephone expense which will more accurately reflect costs realized over previous fiscal years. A slightly more detailed breakdown of individual lines affected in each department is included as supplementary information.

Updated 7/28/14: Upon subsequent review of the City's Budget, additional funds are required to purchase salt for the coming winter and therefore this has been included in the budget revision. City Council must first approve the minor amendment which increases the Street Department Snow Removal line by $35,000 and results in a net decrease to contingencies of $18,500 as noted in the revised detail.

City of Morgantown
General Fund
Budget Revision #1 - Updated 7-28-14
Fiscal Year 2015

Non-wage items requiring adjustment:

| | Current | New | Revision |
|---|---|---|---|
| Dept 700 Police Department | | | |
| Telephone | 22,500.00 | 40,000.00 | 17,500.00 |
| | | | |
| Dept 750 Street Department | | | |
| Salt - Snow Removal | 85,000.00 | 120,000.00 | 35,000.00 |
| | | | |
| Dept 70 Operating Transfers | | | |
| CDBG Fund Support | 23,806.00 | 49,806.00 | 26,000.00 |
| | | | |
| Total nonwage | 23,806.00 | 49,806.00 | 78,500.00 |
| | | | |
| Total Increase overall | | | 78,500.00 |
| | | | |
| Totals by Department | | | |
| Dept 700 Police Department | | | 17,500.00 |
| Dept 750 Street Department | | | 35,000.00 |
| Dept 70 Operating Transfers | | | 26,000.00 |
| Contingencies | | | (18,500.00) |
| | | | 60,000.00 |

Revenue Adjustment

| | Current | New | Revision |
|---|---|---|---|
| Prior Year Carryover | 360,000.00 | 520,000.00 | 160,000.00 |
| B&O Taxes | 10,900,000.00 | 10,800,000.00 | (100,000.00) |
| | 11,260,000.00 | 11,320,000.00 | 60,000.00 |

**AN ORDINANCE AMENDING THE FY 2014-2015 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE COAL SEVERANCE FUND.**

The City of Morgantown hereby ordains:

That the FY 2014-2015 Annual Budget of the Coal Severance Fund of the City of Morgantown is amended as shown in the revised budget (Revision 01) attached hereto and made a part of this ordinance.

First Reading:

Adopted: _____ Mayor

Filed:

Recorded: _____ City Clerk

LGSD BR (Ver. 2014)
88

Ora Ash, Deputy State Auditor
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
FY: 2014-2015
Fund: Coal Sev.
Rev. No. 1
Pg. of No. 1 of 1

City of Morgantown
GOVERNMENT ENTITY

389 Spruce Street
STREET OR PO BOX

Morgantown — CITY
26505 — ZIP CODE

Municipality
Government Type

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

## REVENUES: (net each acct.)

| ACCOUNT NUMBER | ACCOUNT DESCRIPTION | PREVIOUSLY APPROVED AMOUNT | (INCREASE) | (DECREASE) | REVISED AMOUNT |
|---|---|---|---|---|---|
| 298 | Assigned Fund Balance | 14,714 | 8,419 | | 23,133 |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |

NET INCREASE/(DECREASE) Revenues (ALL PAGES) 8,419

**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 |
|---|---|---|---|---|---|
| 699 | Contingencies* | 4,914 | 8,419 | | 13,333 |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |

NET INCREASE/(DECREASE) Expenditures 8,419

APPROVED BY THE STATE AUDITOR

BY:

Deputy State Auditor, Local Government Services Division Date

AUTHORIZED SIGNATURE OF ENTITY

APPROVAL DATE

# *City of Morgantown*

***Finance Department***

***389 Spruce Street***
***Morgantown, WV 26505***
***Phone (304) 284-7407/Fax 7418***
***jsabatelli@cityofmorgantown.org***


# MEMO

**DATE:** July 11, 2014

**TO:** Jeff Mikorski, City Manager

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

**RE:** Coal Severance Budget Revision 1

---

Included herewith you will find the proposed ordinance and "Request for Revision to Approved Budget" for the FY2015 Coal Severance Budget. An explanation of the proposed changes follows:

The Unencumbered Fund Balance is adjusted to reflect the actual carryover at June 30, 2014.

The increase in unencumbered Fund Balance results in an equivalent increase in Contingencies due to higher than budgeted Coal Severance Tax revenues and interest income.

To: Jeff Mikorski
Steve Fanok
Dana Johnson
From: Brent O. Burton
Re: Amendment of Rabies Vaccination Ordinance
Date: 7/25/2014

Recently there have been citations issued to persons for failing to properly vaccinate dogs for rabies that have been brought through Municipal Court. It was recently recognized that there has been an amendment to the State statute that has not been incorporated into the City Ordinance. Dana Johnson pointed out that the City Ordinance requires vaccination every two years and the State statute requires vaccination every three years. Attached is a proposed amendment to Municipal Code Section 505.09 that would make the City Ordinance consistent with the state statute. It is recommended that the City make this amendment. If there are any questions or comments, please contact me.

Brent O. Burton

Brent O. Burton

BOB
Attachment

**AN ORDINANCE AMENDING SECTION 505.09 OF ITS GENERAL OFFENSES CODE RELATING TO ANIMALS AND FOWL.**

The City of Morgantown hereby ordains that Section 505.09 of its General Offenses Code is amended as follows (new matter underlined, deleted matter struck through):

505.09 RABIES CONTROL.

(a) *Vaccination Required.* Whoever owns, keeps, obtains or possesses ~~harbors~~ a dog or cat within the City shall have the dog or cat properly vaccinated against rabies with a vaccine capable of producing immunity for three years, boostered one year after initial vaccination and every third year thereafter ~~, once every two years have such dog or cat properly vaccinated or immunized against rabies~~ as provided by West Virginia Code 19-20A-1 to 19-20A-8, as amended, or hereafter amended. Dogs and cats need not be vaccinated before the age of three months, but must be vaccinated by the age of six months. Dogs and cats over six months of age entering the City must have been vaccinated for rabies as set forth in this section prior to entry. ~~; provided, however, that dogs need not be vaccinated before the age of five months and cats before the age of three months; and provided, further, that dogs or cats entering the City temporarily cannot be kept and maintained within the City for a period of more than thirty days unless properly vaccinated~~.

(b) *Record of Vaccination.* Whoever vaccinates or revaccinates a dog or cat against rabies shall keep a record of such vaccination or revaccination, and shall dispose of such record as provided in West Virginia Code 19-20A-3, as amended or hereafter amended.

(c) *Vaccination Tag.* Any dog vaccinated or revaccinated as required by this article shall have a tag indicating the year of vaccination and the number of the record of such vaccination on such tag, which tag shall be securely fastened to the collar worn by the dog.

(d) *Violations of Subsections (a),(b) or(c).* No person who owns, keeps or harbors a dog or cat within the City shall fail to have such dog or cat vaccinated or revaccinated against rabies; fail or refuse to keep the required report of such vaccination; fail or refuse to provide the required tag; or obstruct or interfere in any way with the enforcement of any provisions of subsection (a), (b), or (c).

(e) *Dogs, Cats, etc.: Rabies Observation.* Any person who owns or harbors any dog, cat or other domesticated animal, whether licensed or unlicensed, which bites any person, shall forthwith confine and quarantine the animal for a period of ten days for rabies observation. If any unvaccinated domesticated animal is bitten by a rabid animal, the owner shall confine the bitten animal for a period of six months. The animal shall be vaccinated or revaccinated after five months. If such animal is not so confined and quarantined, as required herein, the municipal Animal Control Officer may cause such animal to be placed in the custody and care of a licensed veterinarian for such purpose at the owner's expense. The penalty for any violation of this subsection shall be a fine of fifty dollars ($50.00) and/or incarceration for a period of not less than two nor more than three days.

This Ordinance shall become effective upon date of adoption.

FIRST READING:

ADOPTED:

FILED:

RECORDED:

_____
MAYOR

_____
CITY CLERK

**AN ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN AND MONONGALIA COUNTY COMMISSION AS THE SAME APPLIES TO CERTAIN ANIMAL CONTROL SERVICES TO BE PROVIDED BY THE COUNTY TO THE CITY.**

The City of Morgantown hereby ordains that it's City Manager is authorized to execute the attached Agreement by and on behalf of the City of Morgantown.

This ordinance shall be effective upon date of adoption.

FIRST READING:

ADOPTED:

FILED:

RECORDED:

_____
MAYOR

_____
CITY CLERK

# INTERGOVERNMENTAL AGREEMENT

This Agreement made and entered into this _____ day of _____, _____, by and between the City of Morgantown, hereinafter referred to as "CITY", and the Monongalia County Commission, hereinafter referred to as "COMMISSION", witnesseth:

Whereas, the CITY deems it necessary to provide the municipality with the services of an Animal Control Officer/Humane Officer who will be responsible for enforcing all CITY ordinances related to the regulation of animals;

Whereas, the COMMISSION has agreed to provide the foregoing Animal Control/Humane Officer services to the CITY subject to the terms and conditions hereinafter contained within this Agreement:

Now, therefore, the parties hereto agree as follows:

(1) The COMMISSION agrees to assume the responsibility for employing and supervising qualified individual(s) who will enforce the animal control ordinances of the CITY.

(2) The COMMISSION shall continue providing such Animal Control/Humane Officer services to the CITY effective with the date of this Agreement.

(3) That the individual(s) employed by the COMMISSION to perform the services contemplated herein shall not be employees of the CITY.

(4) That the individual(s) employed by the COMMISSION to perform the services contemplated herein shall be available seven days each week to respond to animal control/humane service needs of the CITY.

(5) That the COMMISSION employee(s) shall respond to calls for assistance regarding wild animals within the CITY in which a resident may be threatened by said animal, and if the employee is not capable of handling the situation, the employee will refer the property owner to the professional services of a private business that is qualified to handle the situation. Should the services of any such professional be necessary, the professional will contract for such service with the property owner at the owner's expense.

(6) That the COMMISSION'S employee(s) will respond to calls regarding small dead animals within the public right of ways within the CITY and on private property within the CITY and will dispose of any such carcass. The COMMISSION will pay for any costs that may be associated with the disposal of any such carcass.

(7) That the COMMISSION will provide a phone number to the CITY, at the time this Agreement is executed, which the CITY may call to request specific Animal Control/Humane Officer assistance pursuant to this Agreement.

(8) The COMMISSION shall provide the CITY with periodic reports, as requested by the CITY, summarizing Animal Control/Humane incidents within the municipality and responsive action taken by the COMMISSION'S employee(s).

(9) The COMMISSION'S employee(s) will issue citations for violations of the CITY'S animal control ordinances and will be available to testify, if necessary.

(10) That the COMMISSION shall be responsible for the actions of its employee(s) while they are performing services within the municipality pursuant to this Agreement.

(11) That the term of this Agreement shall be for twelve consecutive months beginning with the first day of July and ending June 30 of the following year. This agreement shall be in effect until June 30, 2015.

(12) As consideration for the Animal Control/Humane Officer services provided by the COMMISSION, CITY agrees to pay the COMMISSION $39,392.36 during this fiscal year in monthly installments of $3,282.70 (or in lump sum). During all subsequent years, the total amount based on the number of calls made during the prior fiscal year will be payable in monthly installments for each of the 12 months, payable by the 15th day of each month that the Agreement is in effect (or in lump sum). If this Agreement is terminated by either party hereto, per paragraph 13 below, the balance of the agreed upon amount due the COMMISSION will be paid in full by the CITY to satisfy the obligation based upon prior year calls. A 3% cost of living increase will be added to the cost per call each year.

(13) Either party hereto has the right to terminate this Agreement at any time by providing 30 days prior written notice of the same to the other party.

(14) At the conclusion of the twelve month term this Agreement will automatically be renewed for an additional twelve month period with the

new rate being determined based on the number of actual calls made by the CITY during the prior fiscal year.

(15) This document shall constitute the entire Agreement between the parties and any amendment or additions hereto shall be by written agreement of the parties, which shall be subject to approval by the governing bodies of both parties.

THE MONONGALIA COUNTY COMMISSION,

By: _____
Eldon A. Callen

It's: President, Pro Term_____

THE CITY OF MORGANTOWN,

By: _____

It's: _____

# INTERGOVERNMENTAL AGREEMENT

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Whereas, the COMMISSION has agreed to provide the foregoing Animal Control/Humane Officer services to the CITY subject to the terms and conditions hereinafter contained within this Agreement:

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(1) The COMMISSION agrees to assume the responsibility for employing and supervising qualified individual(s) who will enforce the animal control ordinances of the CITY.

(2) The COMMISSION shall continue providing such Animal Control/Humane Officer services to the CITY effective with the date of this Agreement.

(3) That the individual(s) employed by the COMMISSION to perform the services contemplated herein shall not be employees of the CITY.

(4) That the individual(s) employed by the COMMISSION to perform the services contemplated herein shall be available seven days each week to respond to animal control/humane service needs of the CITY.

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(14) At the conclusion of the twelve month term this Agreement will automatically be renewed for an additional twelve month period with the

new rate being determined based on the number of actual calls made by the CITY during the prior fiscal year.

(15) This document shall constitute the entire Agreement between the parties and any amendment or additions hereto shall be by written agreement of the parties, which shall be subject to approval by the governing bodies of both parties.

THE MONONGALIA COUNTY COMMISSION,

By: _____
Eldon A. Callen

It's: President, Pro Term

THE CITY OF MORGANTOWN,

By: _____

It's: _____

# MONONGALIA COUNTY COMMISSION

243 HIGH STREET, ROOM 202
COURTHOUSE
MORGANTOWN, WEST VIRGINIA 26505

L.W. "Bill" Bartolo, Commissioner
Eldon A. Callen, Commissioner
Tom Bloom, Commissioner

Telephone: 304 291-7257

July 15, 2014

Mr. Jeff Mikorski
Morgantown City Manager
389 Spruce Street
Morgantown, West Virginia 26505

Dear Mr. Mikorski:

Enclosed please find an Intergovernmental Agreement between the County Commission and the City of Morgantown for Animal Control/Humane Officer services within the corporate limits of Morgantown.

Please execute same and return both copies to be signed by the Commission. I will return one for your records. The agreement will become effective as of July 1, 2014.

The new amount of $39,392.36 is based on 269 calls responded to during fiscal year 2013-2014.

Should you have any questions, please do not hesitate contacting me.

We look forward to working with you and the City in this joint endeavor.

Thank you.

For the Commission,

Diane DeMedici

Diane F. DeMedici
County Administrator
Monongalia County Commission

Enclosures

**ORDINANCE NO._____**

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF TWO PARCELS OF REAL ESTATE IN THE FIFTH WARD OF THE CITY OF MORGANTOWN FROM R-1A, SINGLE-FAMILY RESIDENTIAL DISTRICT TO R-2, SINGLE- AND TWO-FAMILY RESIDENTIAL DISTRICT BY AMENDING ARTICLE 1331 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.

Property included in this consideration is identified in the Monongalia County Assessor's records as Parcels 613 and 614 of County Tax Map 20; Morgantown Corporation District.

THE CITY OF MORGANTOWN HEREBY ORDAINS:

1. That the zoning classification for Parcels 613 and 614 of County Tax Map 20 of the Monongalia County tax assessment as described herein and illustrated on the exhibit hereto attached and declared to be a part of this Ordinance to be read herewith as if the same was fully set forth herein is reclassified from R-1A, Single-Family Residential District to R-2, Single- and Two-Family Residential District.

2. That the Official Zoning Map be accordingly changed to show said zoning reclassification.

This Ordinance shall be effective from the date of adoption.

FIRST READING:

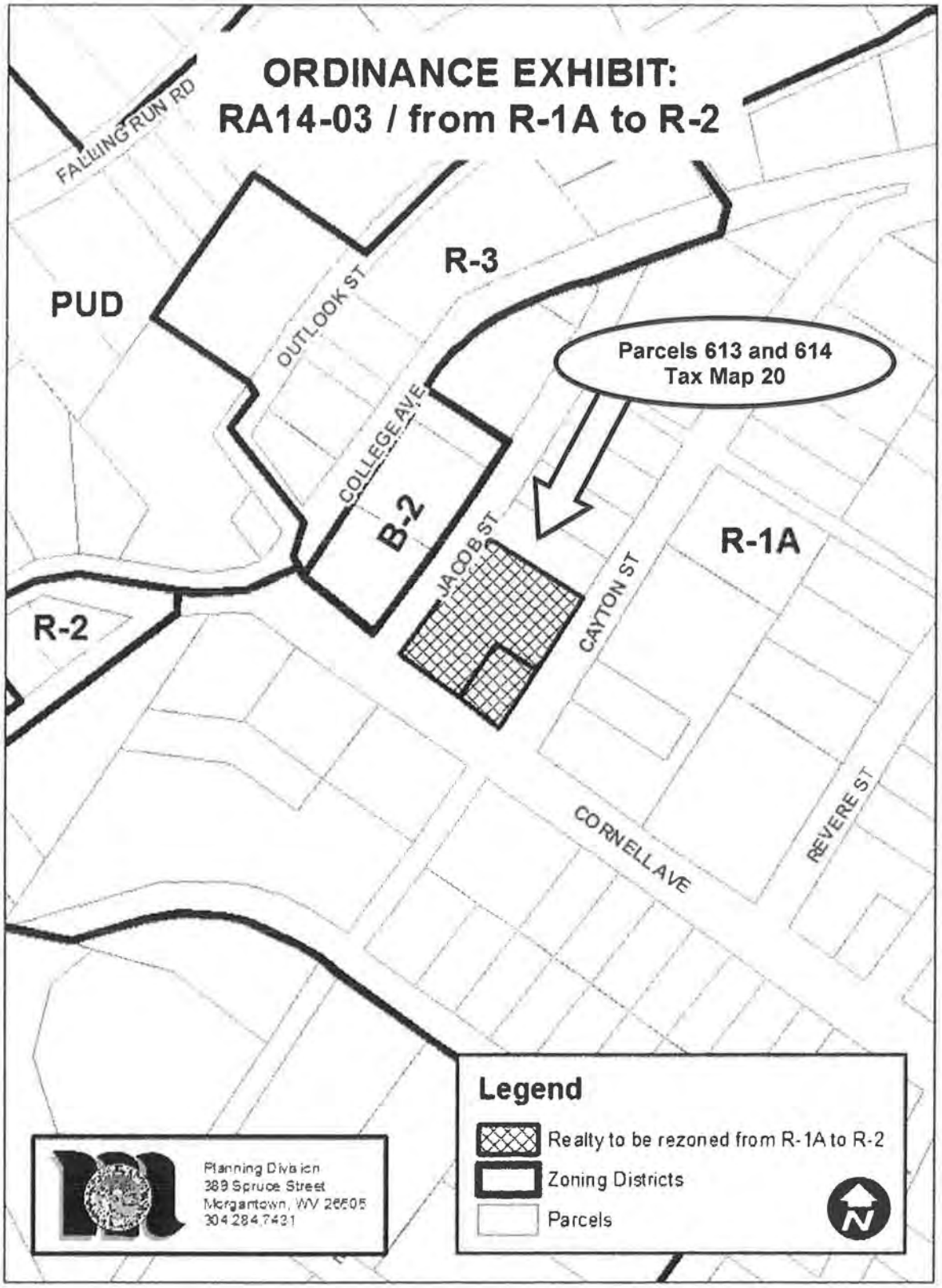
_____
Mayor

ADOPTED:

FILED:

_____
City Clerk

RECORDED:


ORDINANCE EXHIBIT:
RA14-03 / from R-1A to R-2
FALLING RUN RD
PUD
R-3
OUTLOOK ST
COLLEGE AVE
B-2
JACOB ST
CAYTON ST
R-1A
R-2
Parcels 613 and 614
Tax Map 20
CORNELL AVE
REVERE ST
Legend
Realty to be rezoned from R-1A to R-2
Zoning Districts
Parcels
N
Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

**ORDINANCE NO. _____**

**AN ORDINANCE AMENDING ARTICLE 1369.15 OF THE PLANNING AND ZONING CODE AS IT RELATES TO SIGN PERMITS.**

**The Morgantown City Council hereby ordains that Article 1369.15 "Sign Permits" of the City's Planning and Zoning Code is amended as follows (deleted matter struck through; new matter underlined):**

1369.15 SIGN PERMITS

(A) Permits Required for Sign. Sign permits are required prior to the erection of any sign, as provided in Table 1369.06.01. In addition to sign permits, building permits and floodplain permits may also be required prior to issuance of a sign permit.

(B) Application Requirements.

(1) An application for a sign permit may be filed only by the owner of the property on which the sign is to be erected, or by an agent, lessee, or contract purchaser specifically authorized by the owner to file such application. In addition, a Building Permit shall be required prior to the erection of any sign.

(2) An application for a sign permit shall be filed with the Planning Department on a form prescribed by the Department, along with the fee as prescribed by the City Council.

(3) The Planning Department shall determine whether the application is complete. If the Department determines that the application is not complete, then it shall notify the applicant of any deficiencies and shall take no further steps to process the application until the applicant remedies the deficiencies.

(C) Approval Procedure.

(1) For all signs in the B-4 districts requiring a permit and that are larger than 6 square feet, ~~approval from~~ consultation with the ~~Planning Commission~~ Downtown Design Review Committee shall be necessary. All smaller signs shall be approved following the procedure set forth below, in subsection (C)(2).

(2) Signs identified on Table 1369.06.01 as requiring a permit shall be erected, installed or created only in accordance with a duly issued and valid sign permit from the Planning Director. Such permit shall be issued only in accordance with the following requirements and procedures:

(a) An application for construction, creation or installation of a new sign or for modification of an existing sign shall be accompanied by detailed drawing to show the dimensions, design, structure, and location of each particular sign. One application and permit may include multiple signs on the same site.

(b) No permit shall be issued for any new sign on any parcel of land upon which is situated an illegal sign. Examples of illegal signs include those that were erected or modified without a sign permit, or those that were not removed from the premises upon cessation of the business or enterprise that the sign is related to.

(c) Within five working days of receiving an application for a sign permit, the Planning Director shall review it for completeness. If the Planning Director finds that it is complete, the application shall then be processed. If the Planning Director finds that it is incomplete, the Planning Director shall inform the applicant of the specific ways in which the application is deficient.

(i) Within 20 working days of submission of a complete application for a sign permit, the Planning Director shall either:

(ii) Issue the sign permit, if the sign conforms in every respect with the requirements of this Ordinance; or

(iii) Deny the sign permit if the sign fails in any respect to conform with the requirements of this Ordinance. In case of a rejection, the Planning Director shall specify the sections of this Ordinance with which the sign is inconsistent.

(D) Lapse of Sign Permit. A sign permit shall lapse automatically if the business license for the premises lapses, is revoked or not renewed. A sign permit shall also lapse if the business is discontinued for a period of 90 days or more.

(E) Permits for Temporary Signs. Temporary signs on private property shall be allowed only in accordance with the provisions of Section 1369.07 and only upon the issuance of a Temporary Sign Permit, which shall be subject to the following terms:

(1) A temporary sign permit shall allow the use of a temporary sign for a specified 30-day period.

(2) Only one temporary sign permit shall be issued to the same business license holder on the same site for the same business.

(F) Removal of Signs upon Discontinuation of Use. Whenever the use of a building or premises by a specified business or other establishment is discontinued by the owner or occupant for a period of 90 days, the sign permits for all signs pertaining to that business or establishment that were installed by the occupant or owner shall deemed to have lapsed, and the signs shall be removed, as well as all signs which do not conform to the standards of this Ordinance.

This ordinance shall be effective upon date of adoption.

FIRST READING:

_____
Mayor

ADOPTED:

FILED:

_____
City Clerk

RECORDED:

**AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTIONS 921.01 AND 921.12 OF ITS STREETS, UTILITIES AND PUBLIC SERVICES CODE, AS THE SAME APPLIES TO DISCHARGE OF DETRIMENTAL WASTES INTO ANY SEWER AND RELATED DEFINITION OF TERMS.**

The City of Morgantown hereby ordains that Sections 921.01 and 921.12 of its Streets, Utilities and Public Services Code are amended as follows (new matter underlined, deleted matter struck through):

**921.01 DEFINITIONS**

Unless the context specifically indicates otherwise, the meaning of terms used herein shall be as follows:

(a) ""Act" or "the Act" means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et seq.

(b) "Ambient upstream fluid temperature" means the existing temperature of a fluid under normal operating conditions as measured upstream from a suspected inflow/infiltration point.

(~~b~~c) "Board" means the duly constituted Utility Board of the City of Morgantown, West Virginia.

(~~c~~d) "BOD" or "biochemical oxygen demand" means the quantity of oxygen expressed in milligrams per liter, utilized in the biochemical oxidation of organic matter under standard laboratory procedures of five days at twenty degrees Centigrade expressed in terms of weight and concentration (milligrams per liter (mg/l)).

(~~d~~e) "Building drain" means that part of the lowest piping of a drainage system which receives the discharge from soil, waste or other drainage pipes inside the walls of the building and conveys it to the customer's service line and/or to the lateral sewer.

(~~e~~f) "City" means the City of Morgantown, West Virginia.

(~~f~~g) "Customer" means the party, whether owner or tenant, utilizing sewer service furnished by the City to a property.

(~~g~~h) "Customer service line" means the extension from the building drain of any structure to the lateral of a sanitary sewer controlled by the City.

(i) "Direct discharge" means a discharge into the sanitary sewer collection system from a discrete and indentifiable point or location.

(~~h~~j) "Garbage" means the animal and vegetable waste resulting from the handling, preparation, cooking and serving of foods.

(k) "Indirect discharge" means a discharge into the sanitary sewer collection system that is not a direct discharge.

(~~i~~l) "Improved property" means any property upon which there is erected a structure intended for continuous or periodic habitation, occupancy or use by human beings or animals and from which structure sanitary sewage and/or industrial wastes are or may be discharged.

(~~j~~m) "Industrial waste" means any solid, liquid or gaseous substance or form of energy rejected or escaping in the course of any industrial manufacturing, trade or business process or in the course of the development, recovery or processing of natural resources, as distinct from sanitary sewage.

(~~k~~n) "Lateral" means that part of the sewer system extending from a sewer located in the street, to the property line, or if no such lateral is provided, then "lateral" means that portion of, or place in, a sewer which is provided for connection of any customer service line.

(~~l~~o) "General Manager" means the person designated by the Board to supervise the operation of the publicly owned treatment works and who is charged with certain duties and responsibilities by this article, or his duly authorized representative.

(~~m~~p) "Natural outlet" means any outlet, including storm sewers and combined sewers, which overflows into a watercourse, pond, ditch, lake or other body of surface or ground water.

(~~n~~q) "Owner" means any person vested with ownership, legal or equitable, sole or partial, in any real property.

(~~o~~r) "Person" means any individual, firm, company, association, society, corporation, partnership or group.

(~~p~~s) "pH" means the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.

(~~q~~t) "Right of way" or "easement" means an acquired legal right for the specific use of land owned by others.

(~~r~~u) "Sanitary sewage" means normal water-carried household and toilet wastes from any improved property. The preferred term is "wastewater".

(~~s~~v) "Sanitary sewer" means a sewer controlled by the City that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions.

(~~t~~w) "Sewer" means any pipe or conduit that carries wastewater, domestic drainage, sanitary wastes or industrial wastes.

(~~u~~x) "Sewer system" means all wastewater facilities, owned by the City, for collecting, pumping, treating and disposing of sanitary sewage or industrial wastes.

(~~v~~y) "Significant industrial user" means any industrial user of the City's wastewater disposal system who:

(1) Has a discharge flow of 2,500 gallons or more per average workday, or

(2) Has a flow greater than five percent (5%) of the flow in the City's wastewater treatment system, or

(3) Has in his waste toxic pollutants as defined pursuant to Section 307 of the Act or State statutes and rules or

(4) Is found by this City, State Control Agency or the U.S. Environmental Protection Agency (EPA) to have significant impact, either singularly or in combination with other contributing industries, on the wastewater treatment system, the quality of sludge, the system's effluent quality or air emissions generated by the system.

(~~w~~z) "Single-family dwelling" means any room, group of rooms, house trailer or other enclosure occupied or intended for occupancy as separate living quarters by a family or other group of persons living together, or by persons living alone.

(~~x~~aa) "Slug" means any discharge of wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen minutes and is more than five times the average twenty-four hour concentration of flows during normal operation and adversely affects the collection system and/or performance of the wastewater treatment works.

(~~y~~bb) "Total suspended solids" means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids and which is removable by laboratory filters.

(~~z~~cc) "Wastewater facilities" means the structures, equipment and processes required to collect, carry and treat domestic and industrial wastes and to dispose of the effluent.

## 921.12 DETRIMENTAL WASTES.

(a) No person shall discharge or cause to be discharged any unpolluted waters such as stormwater, groundwater, roof runoff, subsurface drainage or cooling water to any sewer.

(b) No person shall discharge or cause to be discharged or infiltrated or conveyed in any form any of the following described waters or wastes to any public sewer:

(1) Any gasoline, benzene, naphtha, fuel oil, motor oil or other flammable or explosive liquid, solid or gas.

(2) Any water or waste with a BOD in excess of 300 milligrams per liter, except as provided for herein.

(3) Any water or waste containing suspended solids in excess of 300 milligrams per liter, except as provided for herein.

(4) Any water containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any waste treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the wastewater treatment plant effluent.

(5) Any water or waste having a pH lower than 6.5 or greater than 9.0 or having any other corrosive property capable of causing damage or hazard to structures, equipment or personnel of the wastewater works or the public sewers.

(6) Any solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation in the wastewater facilities such as, but not limited to, gravel, ashes, bones, red dog, sand, mud, coal, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails, and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.

(7) Any liquid or gas having a temperature higher than sixty degrees Centigrade (5 minute average) (140 degrees Fahrenheit), as measured at the tap or point of entry into the collection system.

(8) Any direct or indirect heat transfer into the sewer having a deleterious effect on the sewer, flows within the sewer, treatment and discharge of those flows and/or private service connections to the sewer, or raising the fluid temperature of the normally conveyed waste flow in excess of ten degrees Centigrade (18 degrees Fahrenheit) above the ambient fluid temperature of the upstream flow and over 50 degrees Centigrade (122 degrees Fahrenheit), as measured downstream and at the tap or point of entry into the collection system over a 5 minute period concurrently. Any direct or indirect heat transfer that raises the temperature of the wastewater flow (5 minute average) to over 65 degrees Centigrade (149 degrees Fahrenheit) is prohibited.

(c) The following described substances, materials, waters or wastes shall be limited in discharges to the sewer system, to concentrations or quantities which will not harm either the sewers, wastewater treatment process or equipment; will not have an adverse effect on the receiving stream; or will not otherwise endanger life, limb, public property or constitute a nuisance. The limitations or restrictions on materials or characteristics of waste or wastewater discharged to the sewer system which shall not be exceeded by any person without approval of the Manager are as follows:

(1) Wastewater having a temperature higher than sixty degrees Centigrade.

(2) Wastewater containing more than twenty-five milligrams per liter of petroleum oil, nonbiodegradable cutting oils, or products of mineral oil origin.

(3) Wastewater containing floatable oils, fat, or grease in excess of 500 milligrams per liter.

(4) Any garbage that has not been properly shredded with no particle greater than one-half inch in any dimension. Garbage grinders may be connected to sanitary sewers only from homes, hotels, institutions, restaurants, hospitals or similar places where garbage originates from the preparation of food in on-site kitchens for the purpose of consumption on the premises.

(5) Any water or waste containing iron, chromium, copper, zinc, mercury and similar objectionable or toxic substances to such degree that any such material received in the composite wastewater at the wastewater treatment works exceed the limits established by the Manager for such materials.

(6) Any water or waste containing color-producing or odor-producing substances exceeding limits which may be established by the Manager.

(7) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Manager in compliance with applicable State or Federal regulations.

(8) Quantities of flow, concentrations or both which constitute a "slug" as defined herein.

(9) Water or waste containing substances such as synthetic detergents which are not amenable to treatment or reduction by the wastewater treatment processes employed, or are amenable to treatment only to such degree that the wastewater treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

(d) No statement contained in this article shall be construed as preventing any special agreement or arrangement between the Board and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the Board for treatment.

(e) Upon identification of a suspected violation of this section, the Manager shall inform by writing all suspected contributors of the suspected violation, including the location and nature of the suspected violation. The Manager shall afford the responsible party/parties a reasonable time to investigate and cure the anomaly, which time to cure shall be the sole prerogative of the Manager. No violation shall be assessed within the assigned time to investigate and cure. If the condition remains following expiration of the time to cure, the Manager shall issue to the responsible party a written notice of violation and employ sanctions as he/she deems appropriate and as authorized by law.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

_____
MAYOR

ADOPTED:

FILED:

_____
CITY CLERK

RECORDED:

**AN ORDINANCE VACATING, ABANDONING AND ANNULLING A 5' WIDE UNNAMED ALLEY RUNNING A DISTANCE OF APPROXIMATELY EIGHTY-ONE FEET LOCATED SOUTH OF FIRST STREET BETWEEN JONES AVENUE AND LORENTZ AVENUE 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 5' wide unnamed alley running a distance of approximately eighty-one feet located south of First Street between Jones Avenue and Lorentz Avenue 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 except to reserve and retain sewer and utility rights-of-way and a pedestrian right-of-way, and it further appearing that it is in the interests of the City of Morgantown and of the public generally that said 5' unnamed alley running a distance of approximately eighty-one feet located south of First Street between Jones Avenue and Lorentz Avenue, 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 portion of Wharf Street have petitioned the Common Council to vacate, abandon and annul the portion of said 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 5' wide unnamed alley running a distance of approximately eighty-one feet located south of First Street between Jones Avenue and Lorentz Avenue, as shown on the exhibit hereto attached, reserving however, rights-of-way over the entire width thereof for storm, sanitary sewers and all other utilities, in the City of Morgantown, West Virginia, and a pedestrian walkway easement over a portion thereof as shown on the exhibit hereto attached, is hereby vacated, abandoned and annulled and from and after the date of 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 the 5' wide unnamed alley running a distance of approximately eighty-one feet located south of First Street

between Jones Avenue and Lorentz Avenue, 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 part of a portion of unnamed alley as shown on the exhibits hereto attached, 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 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.

This Ordinance shall be effective at the time that the easement agreement attached hereto and made a part hereof, is executed by Scott Properties, LLC, and is recorded in the Office of the Monongalia County Clerk.

FIRST READING:

_____
MAYOR

ADOPTED:

FILED:

_____
CITY CLERK

RECORDED:

EXHIBIT

May 29, 2014

**DESCRIPTION OF SURVEY**
**5-FOOT ALLEY**
**FOR**
**SCOTT PROPERTIES LLC**

All that certain 5-foot strip or parcel of real estate, situate, lying and being in Fourth Ward, City of Morgantown, Monongalia County, West Virginia, and more particularly described as follows:

**Beginning** at a point in the westerly line of a 5-foot Alley where in intersects with the southern line of First Street, a 16-foot street, standing as a corner to Scott Properties LLC (Deed Book 1251 /Page 156), said point bears N 80° 59' 38" E 88.38 feet from a point in the easterly line of Jones Avenue where it intersect with the southern line of said First Street; thence leaving said Scott Properties and with said First Street

**N 80° 59' 38" E 5.04** feet to a point in the easterly line of said Alley, standing as a corner to other lands of said Scott Properties (Deed Book 1276 /Page 532); thence leaving said First Street and with said Scott Properties and Alley

**S 15° 56' 03" E 80.50** feet to a point, standing in the line of other lands of said Scott Properties (Deed Book 1410 /Page 560) and at the terminus of said Alley; thence with said Scott Properties and terminus of Alley

**S 80° 01' 38" W 5.03** feet to a point in the westerly line of said Alley, standing as a corner to other lands of Scott Properties (Deed Book 1276 /Page 532); thence with said Scott Properties and Alley

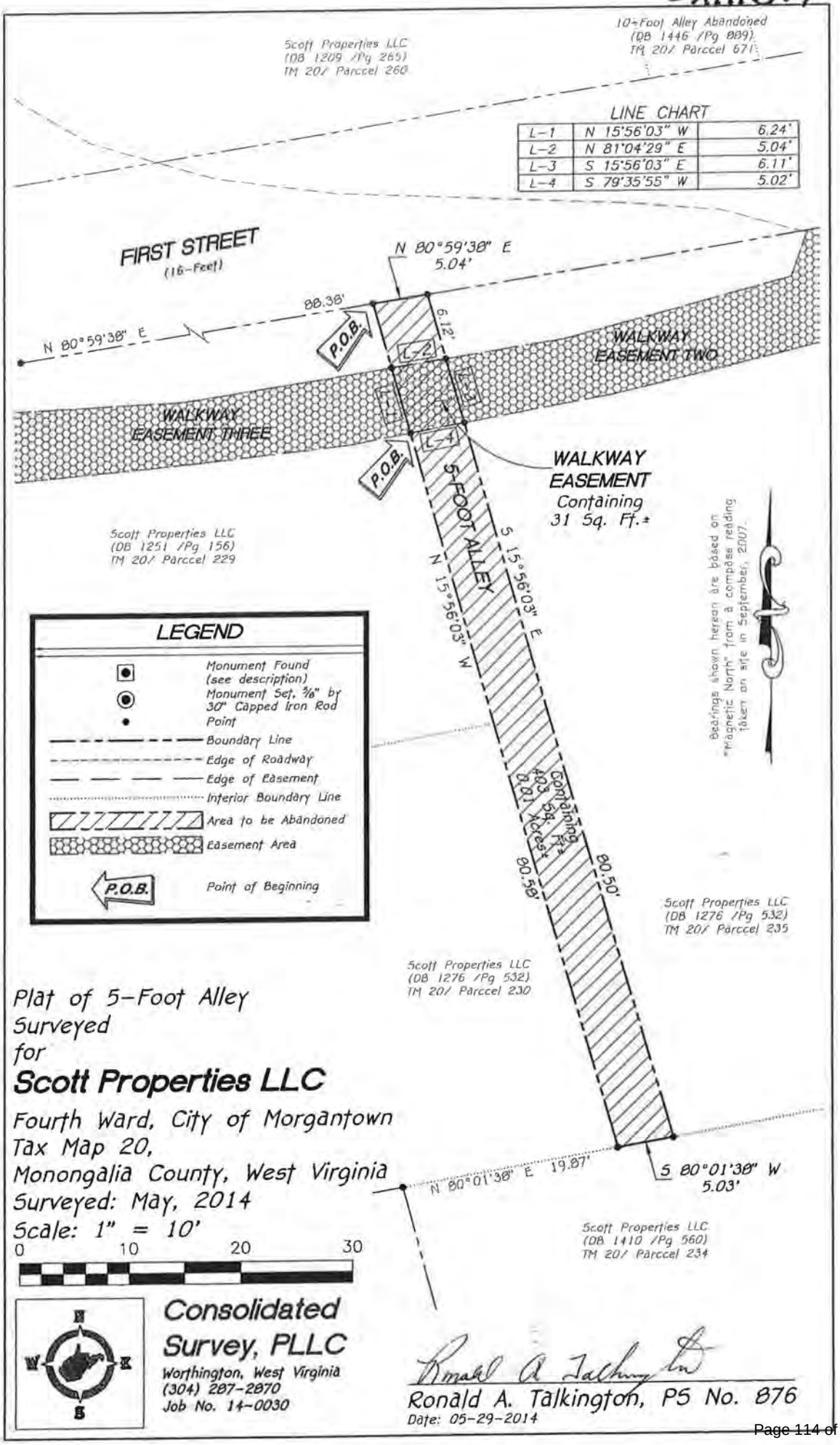
**N 15° 56' 03" W 80.58** feet to the place of beginning, **containing 403 square feet or 0.01 acres,** more or less, as surveyed in May, 2014 by Consolidated Survey, PLLC of Worthington, West Virginia and shown on a plat of 5-Foot Alley surveyed for Scott Properties LLC, dated the 29th day of May, 2014 attached hereto and made a part of this description. The meridian for all bearings in this description is based on "MAGNETIC NORTH" from a compass reading taken on site in September, 2007.

Consolidated Survey, PLLC

Ronald A. Talkington

Ronald A. Talkington, P.S. No. 876

EXHIBIT




LINE CHART

| | | |
|---|---|---|
| L-1 | N 15°56'03" W | 6.24' |
| L-2 | N 81°04'29" E | 5.04' |
| L-3 | S 15°56'03" E | 6.11' |
| L-4 | S 79°35'55" W | 5.02' |

LEGEND

- Monument Found (see description)
- Monument Set, 5/8" by 30" Capped Iron Rod
- Point
- Boundary Line
- Edge of Roadway
- Edge of Easement
- Interior Boundary Line
- Area to be Abandoned
- Easement Area
- P.O.B. Point of Beginning

Plat of 5-Foot Alley
Surveyed
for
**Scott Properties LLC**

Fourth Ward, City of Morgantown
Tax Map 20,
Monongalia County, West Virginia
Surveyed: May, 2014
Scale: 1" = 10'

**Consolidated Survey, PLLC**
Worthington, West Virginia
(304) 287-2870
Job No. 14-0030

Ronald A. Talkington, PS No. 876
Date: 05-29-2014

# RIGHT OF WAY OR EASEMENT AGREEMENT

THIS RIGHT OF WAY OR EASEMENT AGREEMENT, Made this the 20th day of June, 2014, by and between SCOTT PROPERTIES, LLC, a West Virginia limited liability company, party of the first part, GRANTOR, and THE CITY OF MORGANTOWN, WEST VIRGINIA, a municipal corporation, party of the second part, GRANTEE.

WITNESSETH: That for and in consideration of the sum of One Dollar ($1.00), cash in hand paid, and of other good and valuable considerations, the receipt of all of which is hereby acknowledged, the said GRANTOR does hereby GRANT and CONVEY, unto the said GRANTEE, a non-exclusive right of way or easement as more particularly bounded and described as follows:

## WALKWAY EASEMENT ONE

Beginning at a point in the western line of Lorentz Avenue, a 30-foot street, standing in the line of said Scott Properties, LLC (Deed Book 1333/ Page 248) and on the westerly edge of an existing walkway; thence with said Lorentz Avenue and Scott Properties, crossing the existing walkway, a curve to the left, having a radius of 160.00 feet; Beginning at a point in the western line of Lorentz Avenue, a 30-foot street, standing in the line of Scott Properties, LLC (Deed Book 1333/Page 248); thence with said Lorentz Avenue and Scott Properties, a curve to the left, having a radius of 160.00 feet; Southeasterly 4.56 feet along said curve through an angle of 1° 37' 56" to a point on the easterly edge of said walkway, said curve having a chord bearing a distance of S. 62° 27' 40" E. 4.56 feet; thence leaving said Lorentz Avenue and with lines through Scott Properties, along said existing walkway; S. 25° 58' 44" W. 5.56 feet to a point; thence, S. 24° 45' 40" W. 66.11 feet to a point; thence, S. 03° 43' 20" E. 3.29 feet to a point; thence, S. 05° 15' 54" E. 6.10 feet to a point; thence S. 10° 21' 54" E. 16.46 feet to a point; thence, S. 79° 38' 06" W. 4.50 feet to a point; thence, S. 30° 57' 17" W. 3.38 feet to a point; thence, S. 29° 56' 55" W. 16.25 feet to a point; thence, S. 27° 37' 28" W. 18.43 feet to a point in the northern line of First Street, a 16-foot street; thence with said First Street and Scott Properties, crossing said walkway; S. 80° 59' 38" W. 4.85 feet to a point on the western edge of said walkway, said point bears N. 80° 59' 38" E. 170.05 feet from a point in the eastern line of Jones Avenue where it intersects with the northern of said First Street; thence leaving said First Street and with lines through said Scott Properties, along said existing walkway; N. 27° 13' 10 " E. 21.89 feet to a point; thence, N. 30° 10' 08" E. 18.00 feet to a point; thence, N. 38° 27' 00" E. 5.04 feet to a point; thence, N. 09° 02' 26" W. 11.79 feet to a point; thence, N. 06° 18' 35" W. 6.23 feet to a point; thence, N. 03° 01' 11" W. 4.30 feet to a point; thence, N. 24° 38' 52" E. 67.21 feet to a point; thence, N. 25° 01' 34" E. 5.91 feet to the place of beginning, containing 603 square feet or 0.01 acres, more or less, as surveyed in May, 2014 by Consolidated Survey, PLLC of Worthington, West Virginia and shown as Walkway Easement One on plat of Easements Surveyed for Scott Properties, LLC, dated the 2nd day of June, 2014 and attached hereto and reference herein for all pertinent purposes. The meridian for all bearings in this description is based on "MAGNETIC NORTH" from a compass reading taken on site in September, 2007.

## WALKWAY EASEMENT TWO

Beginning at a point in the southern line of First Street, a 16-foot street, standing in the line of said Scott Properties, LLC (Deed Book 1333/Page 248); thence leaving said First Street and with lines through said Scott Properties (Deed Book 1333/ Page 248), (Deed Book 1333/Page 252), and (Deed Book 1276/Page 532); S. 09° 00' 22" E. 7.29 feet to a point on the southern edge of an existing walkway; thence continuing with lines through said Scott Properties, along said walkway; S. 77° 41' 47" W. 26.17 feet to a point; thence, S. 76° 33' 01" W. 38.87 feet to a point; thence, S. 79° 35' 55" W. 13.52 feet to a point in the eastern line of a 5-foot Alley, standing in the line of said Scott Properties; thence crossing said walkway and with said Alley and Scott Properties; N. 15° 56' 03" W. 6.11 feet to a point on the northern edge of said walkway; thence leaving said Alley and continuing with lines through said Scott Properties, along the northern line of said Walkway; N. 81° 04' 29" E. 10.97 feet to a point; thence, N. 75° 01' 57" E. 21.23

feet to a point; thence, N. 20° 10' 18" E. 4.45 feet to a point in the southern line of said First Street; thence crossing said walkway, with First Street and Scott Properties, N. 80° 59' 38" E. 44.88 feet to the place of beginning, containing 602 square feet or 0.01 acres, more or less, as surveyed in May, 2014 by Consolidated Survey, PLLC of Worthington, West Virginia and shown as Walkway Easement Two on plat of Easements Surveyed from Scott Properties, LLC, dated the 2nd day of June, 2014 and attached hereto and reference herein for all pertinent purposes. The meridian for all bearings in this description is based on "MAGNETIC NORTH" from a compass reading taken on site in September, 2007.

WALKWAY EASEMENT THREE

Beginning at a point in the eastern line of Jones Avenue, a 40-foot street, standing in the southern edge of an existing walkway and in the line of said Scott Properties, LLC (Deed Book 1251/ Page 156); thence with said Jones Avenue and Scot Properties, crossing said walkway. N. 14° 46' 52" W. 3.95 feet to a point on the northern edge of said walkway, said point bears S. 14° 46' 52" E. 2.43 feet from a point in the southern line of said First Street where it intersects the eastern line of said Jones Avenue; thence leaving said Jones Avenue and with lines through said Scott Properties, along existing walkway; N. 78° 37' 14" E. 10.91 feet to a point; thence, N. 79° 49' 50" E. 14.00 feet to a point; thence, N. 85° 41' 18" E. 17.45 feet to a point; thence, N. 87° 02' 26" E. 27.79 feet to a point; thence, N. 81° 04' 29" E. 18.95 feet to a point in the westerly line of a 5-foot Alley; thence with said Alley and Scott Properties, crossing said walkway; S. 15° 56' 03" E. 6.24 feet to a point on the southern edge of said walkway; thence leaving said Alley and with lines through said Scott Properties, along existing walkway; S. 79° 35' 55" W. 5.34 feet to a point; thence, S. 83° 40' 38" W. 14.19 feet to a point; thence, S. 84° 38' 59" W. 44.08 feet to a point; thence, N. 87° 34' 09" W. 15.33 feet to a point; thence, S. 78° 26' 51" W. 10.70 feet to the place of beginning, containing 530 square feet or 0.01 acres, more or less, as surveyed in May, 2014 by Consolidated Survey, PLLC of Worthington, West Virginia and shown as Walkway Easement Three on plat of Easements Surveyed for Scott Properties, LLC, dated the 2nd day of June, 2014 and attached hereto and reference herein for all pertinent purposes. The meridian for all bearings in this description is based on "MAGNETIC NORTH" from a compass reading taken on site in September, 2007.

The Grantor hereby agrees to be solely responsible for the maintenance, upkeep and repair of the aforedescribed rights-of-way or easements.

DECLARATION OF CONSIDERATION OR VALUE

In compliance with Article 22, Chapter 11 of the Code of West Virginia, the GRANTOR does hereby declare that the total consideration for the property interest transferred by the document to which the declaration is appended is less than $100.00.

**DECLARATION OF RESIDENCY**

**The Grantor claims exemption from the tax withholding requirements of the West Virginia Code Section 11-21-71b as the Grantor is a resident entity of the State of West Virginia.**

WITNESS the following signature and seal:

SCOTT PROPERTIES, LLC
a West Virginia limited liability company

_____
By: GREGORY METHENY, its Member

_____
By: HEIDI METHENY, its Member

STATE OF _____,

COUNTY OF _____, TO-WIT:

The undersigned, a Notary Public in and for the County and State aforesaid, does hereby CERTIFY that Scott Properties, LLC, a West Virginia limited liability company, by Gregory Metheny, its member, on and in behalf of said limited liability company, whose name is signed to the foregoing deed, has this day sworn to, affirmed, subscribed and acknowledged the same before me in said County, as its free act and deed.

Given under my hand this _____ day of _____, 2014.

My commission expires: _____.

_____
Notary Public
For the State of _____

STATE OF _____,

COUNTY OF _____, TO-WIT:

The undersigned, a Notary Public in and for the County and State aforesaid, does hereby CERTIFY that Scott Properties, LLC, a West Virginia limited liability company, by Heidi Metheny, its member, on and in behalf of said limited liability company, whose name is signed to the foregoing deed, has this day sworn to, affirmed, subscribed and acknowledged the same before me in said County, as its free act and deed.

Given under my hand this _____ day of _____, 2014.

My commission expires: _____.

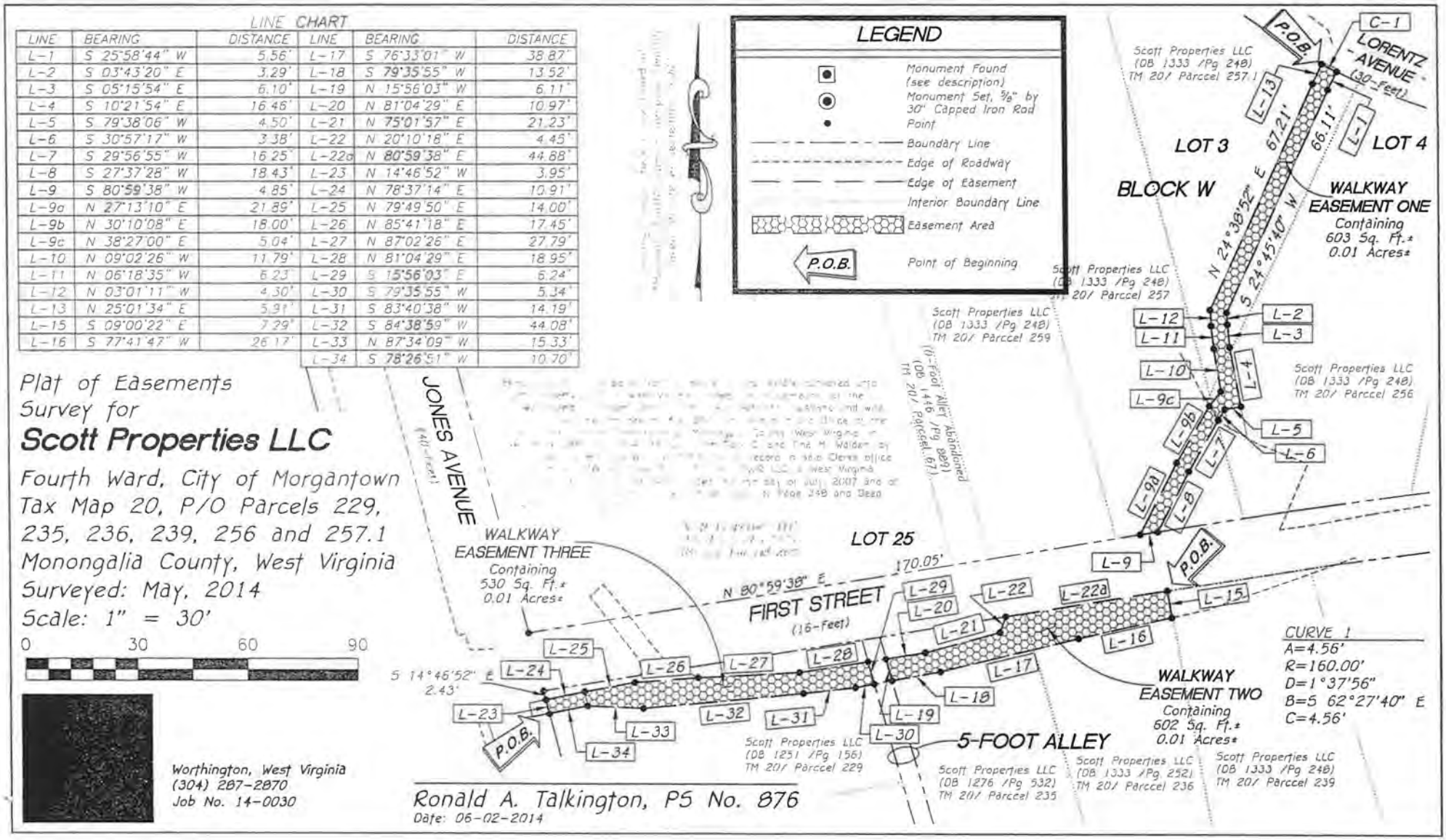
_____
Notary Public
For the State of _____

THIS INSTRUMENT WAS PREPARED WITHOUT THE BENEFIT OF A TITLE EXAMINATION, TITLE REPORT, TITLE CERTIFICATE, OR TITLE INSURANCE COMMITMENT AND NEITHER THE PREPARER NOR COMPTON & ASSOCIATES, PLLC BY THE PREPARATION OF THIS INSTRUMENT MAKE ANY EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, OR AFFIRMATIONS OF ANY KIND, NATURE, OR CHARACTER, INCLUDING, WITHOUT LIMITATION, WARRANTIES, REPRESENTATIONS, OR AFFIRMATIONS RELATING TO THE QUALITY OF TITLE, THE NATURE OF TITLE, POSSESSION, QUIET ENJOYMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, THE CONDITION OF THE PROPERTY, ACCESS TO THE PROPERTY, OR THE CAPACITY OF ANY OF THE GRANTORS TO GRANT OR CONVEY TITLE.

Prepared by:
Jeffery S. Compton
Compton & Associates, PLLC
1101 Mountainview Manor
Morgantown, WV 26501

LINE CHART

| LINE | BEARING | DISTANCE | LINE | BEARING | DISTANCE |
|---|---|---|---|---|---|
| L-1 | S 25°58'44" W | 5.56' | L-17 | S 76°33'01" W | 38.87' |
| L-2 | S 03°43'20" E | 3.29' | L-18 | S 79°35'55" W | 13.52' |
| L-3 | S 05°15'54" E | 6.10' | L-19 | N 15°56'03" W | 6.11' |
| L-4 | S 10°21'54" E | 16.46' | L-20 | N 81°04'29" E | 10.97' |
| L-5 | S 79°38'06" W | 4.50' | L-21 | N 75°01'57" E | 21.23' |
| L-6 | S 30°57'17" W | 3.38' | L-22 | N 20°10'18" E | 4.45' |
| L-7 | S 29°56'55" W | 16.25' | L-22a | N 80°59'38" E | 44.88' |
| L-8 | S 27°37'28" W | 18.43' | L-23 | N 14°46'52" W | 3.95' |
| L-9 | S 80°59'38" W | 4.85' | L-24 | N 78°37'14" E | 10.91' |
| L-9a | N 27°13'10" E | 21.89' | L-25 | N 79°49'50" E | 14.00' |
| L-9b | N 30°10'08" E | 18.00' | L-26 | N 85°41'18" E | 17.45' |
| L-9c | N 38°27'00" E | 5.04' | L-27 | N 87°02'26" E | 27.79' |
| L-10 | N 09°02'26" W | 11.79' | L-28 | N 81°04'29" E | 18.95' |
| L-11 | N 06°18'35" W | 6.23' | L-29 | S 15°56'03" E | 6.24' |
| L-12 | N 03°01'11" W | 4.30' | L-30 | S 79°35'55" W | 5.34' |
| L-13 | N 25°01'34" E | 5.91' | L-31 | S 83°40'38" W | 14.19' |
| L-15 | S 09°00'22" E | 7.29' | L-32 | S 84°38'59" W | 44.08' |
| L-16 | S 77°41'47" W | 26.17' | L-33 | N 87°34'09" W | 15.33' |
| | | | L-34 | S 78°26'51" W | 10.70' |




Plat of Easements
Survey for
**Scott Properties LLC**
Fourth Ward, City of Morgantown
Tax Map 20, P/O Parcels 229, 235, 236, 239, 256 and 257.1
Monongalia County, West Virginia
Surveyed: May, 2014
Scale: 1" = 30'

Worthington, West Virginia
(304) 287-2870
Job No. 14-0030

Ronald A. Talkington, PS No. 876
Date: 06-02-2014

**AN ORDINANCE VACATING, ABANDONING AND ANNULLING A 16' RIGHT OF WAY ALONG A PORTION OF FIRST STREET RUNNING A DISTANCE OF APPROXIMATELY EIGHTY-SIX FEET IN AN EASTERLY DIRECTION FROM ITS INTERSECTION WITH JONES AVENUE 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 portion of the 16' right-of-way of First Street running a distance of approximately eighty-six feet in an easterly direction from its intersection wtih Jones Avenue 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 except to reserve and retain sewer and utility rights-of-way, and it further appearing that it is in the interests of the City of Morgantown and of the public generally that said portion of the 16' right-of-way of First Street running a distance of approximately eighty six feet in an easterly direction from its intersection with Jones Avenue, 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 portion of First Street have petitioned the Common Council to vacate, abandon and annul the portion of said 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 reasons hereinbefore set forth that a portion of the right-of-way of First Street running a distance of approximately eighty-six feet from its intersection with Jones Avenue, as shown on the exhibit hereto attached, reserving however, rights-of-way over the entire width thereof for storm, sanitary sewers and all other utilities, 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 portions of the 16' right-of-way of First Street running a distance of approximately eighty-six feet in an easterly direction from its intersection with Jones Avenue, 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 part of a portion of Wharf Street as shown on the exhibits hereto attached, 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 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.

This Ordinance shall be at the time that the easement agreement attached hereto and made a part hereof, is executed by Scott Properties, LLC, and is recorded in the Office of the Monongalia County Clerk.

FIRST READING:

_____
MAYOR

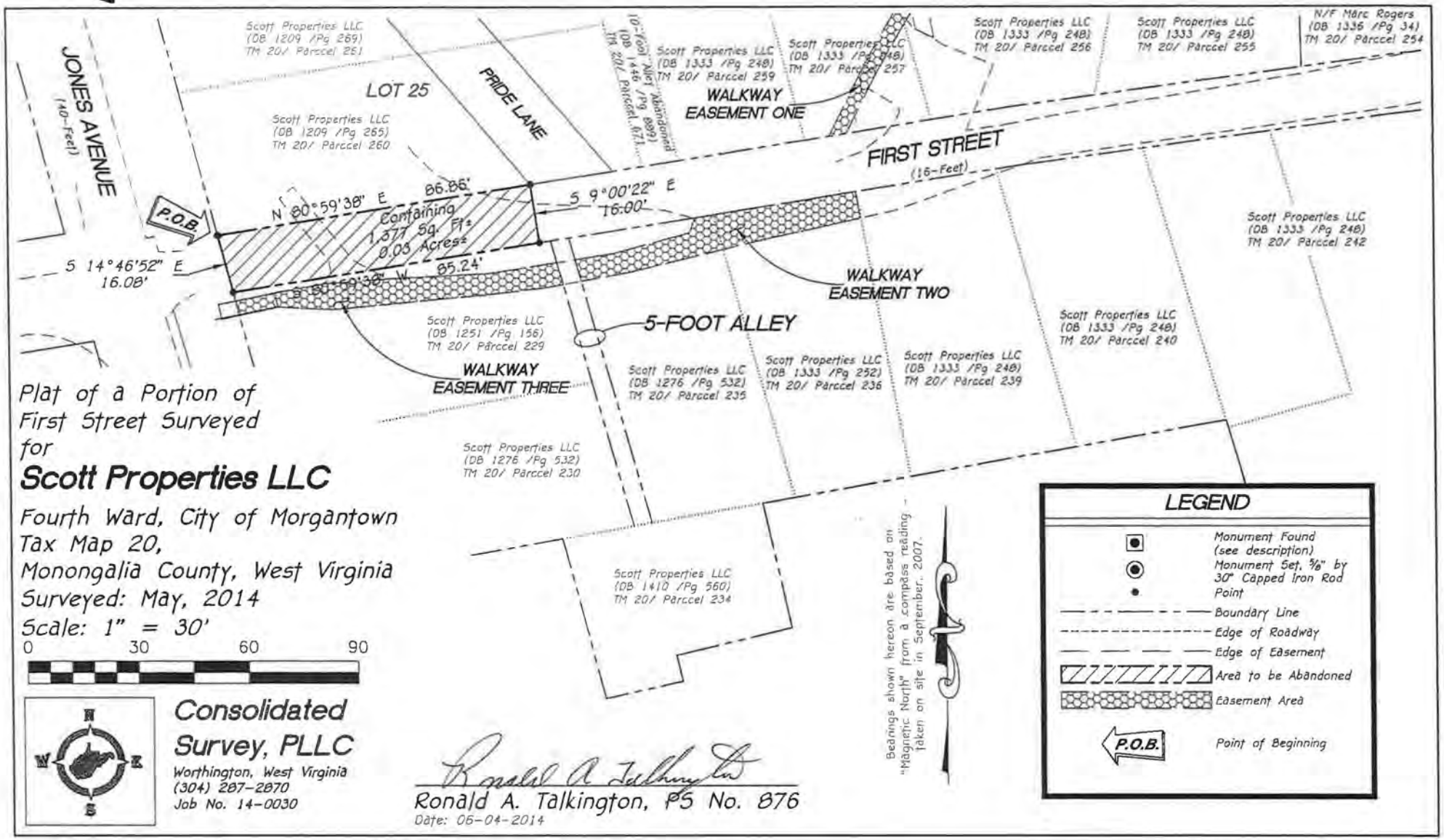
ADOPTED:

FILED:

_____
CITY CLERK

RECORDED:

EXHIBIT


Scott Properties LLC (DB 1209 /Pg 269) TM 20/ Parccel 261
JONES AVENUE (40-Feet)
LOT 25
PRIDE LANE
Scott Properties LLC (DB 1209 /Pg 265) TM 20/ Parccel 260
10-Foot Alley (DB 1446 /Pg 892) Abandoned TM 20/ Parccel 271
Scott Properties LLC (DB 1333 /Pg 248) TM 20/ Parccel 259
WALKWAY EASEMENT ONE
Scott Properties LLC (DB 1333 /Pg 248) TM 20/ Parccel 257
Scott Properties LLC (DB 1333 /Pg 248) TM 20/ Parccel 256
Scott Properties LLC (DB 1333 /Pg 248) TM 20/ Parccel 255
N/F Marc Rogers (DB 1336 /Pg 34) TM 20/ Parccel 254
FIRST STREET (16-Feet)
P.O.B.
N 80°59'38" E 86.86'
S 9°00'22" E 16.00'
Containing 1,377 Sq. Ft± 0.03 Acres±
S 14°46'52" E 16.08'
S 80°59'38" W 85.24'
WALKWAY EASEMENT TWO
Scott Properties LLC (DB 1333 /Pg 248) TM 20/ Parccel 242
5-FOOT ALLEY
Scott Properties LLC (DB 1251 /Pg 156) TM 20/ Parccel 229
WALKWAY EASEMENT THREE
Scott Properties LLC (DB 1333 /Pg 248) TM 20/ Parccel 240
Scott Properties LLC (DB 1276 /Pg 532) TM 20/ Parccel 235
Scott Properties LLC (DB 1333 /Pg 252) TM 20/ Parccel 236
Scott Properties LLC (DB 1333 /Pg 248) TM 20/ Parccel 239
Scott Properties LLC (DB 1276 /Pg 532) TM 20/ Parccel 230
Scott Properties LLC (DB 1410 /Pg 560) TM 20/ Parccel 234
Bearings shown hereon are based on "Magnetic North" from a compass reading taken on site in September, 2007.
LEGEND
Monument Found (see description)
Monument Set, 5/8" by 30" Capped Iron Rod
Point
Boundary Line
Edge of Roadway
Edge of Easement
Area to be Abandoned
Easement Area
P.O.B.
Point of Beginning
Plat of a Portion of First Street Surveyed for
Scott Properties LLC
Fourth Ward, City of Morgantown
Tax Map 20,
Monongalia County, West Virginia
Surveyed: May, 2014
Scale: 1" = 30'
0 30 60 90
N W E S
Consolidated Survey, PLLC
Worthington, West Virginia
(304) 287-2870
Job No. 14-0030
Ronald A. Talkington, PS No. 876
Date: 06-04-2014

EXHIBIT

June 04, 2014

**DESCRIPTION OF SURVEY**
**FOR**
**SCOTT PROPERTIES LLC**

All that certain 16-foot strip or parcel of real estate know as a portion of First Street, situate, lying and being in Fourth Ward, City of Morgantown, Monongalia County, West Virginia, and more particularly described as follows:

**Beginning** at a point in the eastern line of Jones Avenue, a 40-foot street where in intersects with the northern line of First Street, a 16-foot street, standing as a corner to Scott Properties LLC (Deed Book 1209 /Page 265); thence leaving said Jones Avenue and with lands of said Scott Properties and the northern line of First Street

**N 80° 59' 38" E 86.86** feet to a point, standing in the line of said Scott Properties (Deed Book 1333 /Page 248); thence leaving said Scott Properties and northern line of First Street and with a line crossing First Street

**S 09° 00' 22" E 16.00** feet to a point in the southern line of said First Street, standing in the line of Scott Properties LLC (Deed Book 1333 /Page 248); thence with lands of said Scott Properties and the southern line of First Street

**S 80° 59' 38" W 85.24** feet to a point in the eastern line of said Jones Avenue where it intersects with the southern line of First Street, standing as a corner to said Scott Properties; thence leaving said Scott Properties and with said Jones Avenue, crossing said First Street

**N 14° 46' 52" W 16.08** feet to the place of beginning, **containing 1,377 square feet or 0.03 acres,** more or less, as surveyed in May, 2014 by Consolidated Survey, PLLC of Worthington, West Virginia and shown on a plat of portion of First Street surveyed for Scott Properties LLC, dated the 4th day of June, 2014 attached hereto and made a part of this description. The meridian for all bearings in this description is based on "MAGNETIC NORTH" from a compass reading taken on site in September, 2007.

Consolidated Survey, PLLC

Ronald A. Talkington

Ronald A. Talkington, P.S. No. 876

RIGHT OF WAY OR EASEMENT AGREEMENT

THIS RIGHT OF WAY OR EASEMENT AGREEMENT, Made this the 20th day of June, 2014, by and between SCOTT PROPERTIES, LLC, a West Virginia limited liability company, party of the first part, GRANTOR, and THE CITY OF MORGANTOWN, WEST VIRGINIA, a municipal corporation, party of the second part, GRANTEE.

WITNESSETH: That for and in consideration of the sum of One Dollar ($1.00), cash in hand paid, and of other good and valuable considerations, the receipt of all of which is hereby acknowledged, the said GRANTOR does hereby GRANT and CONVEY, unto the said GRANTEE, a non-exclusive right of way or easement as more particularly bounded and described as follows:

WALKWAY EASEMENT ONE

Beginning at a point in the western line of Lorentz Avenue, a 30-foot street, standing in the line of said Scott Properties, LLC (Deed Book 1333/ Page 248) and on the westerly edge of an existing walkway; thence with said Lorentz Avenue and Scott Properties, crossing the existing walkway, a curve to the left, having a radius of 160.00 feet; Beginning at a point in the western line of Lorentz Avenue, a 30-foot street, standing in the line of Scott Properties, LLC (Deed Book 1333/Page 248); thence with said Lorentz Avenue and Scott Properties, a curve to the left, having a radius of 160.00 feet; Southeasterly 4.56 feet along said curve through an angle of 1° 37' 56" to a point on the easterly edge of said walkway, said curve having a chord bearing a distance of S. 62° 27' 40" E. 4.56 feet; thence leaving said Lorentz Avenue and with lines through Scott Properties, along said existing walkway; S. 25° 58' 44" W. 5.56 feet to a point; thence, S. 24° 45' 40" W. 66.11 feet to a point; thence, S. 03° 43' 20" E. 3.29 feet to a point; thence, S. 05° 15' 54" E. 6.10 feet to a point; thence S. 10° 21' 54" E. 16.46 feet to a point; thence, S. 79° 38' 06" W. 4.50 feet to a point; thence, S. 30° 57' 17" W. 3.38 feet to a point; thence, S. 29° 56' 55" W. 16.25 feet to a point; thence, S. 27° 37' 28" W. 18.43 feet to a point in the northern line of First Street, a 16-foot street; thence with said First Street and Scott Properties, crossing said walkway; S. 80° 59' 38" W. 4.85 feet to a point on the western edge of said walkway, said point bears N. 80° 59' 38" E. 170.05 feet from a point in the eastern line of Jones Avenue where it intersects with the northern of said First Street; thence leaving said First Street and with lines through said Scott Properties, along said existing walkway; N. 27° 13' 10 " E. 21.89 feet to a point; thence, N. 30° 10' 08" E. 18.00 feet to a point; thence, N. 38° 27' 00" E. 5.04 feet to a point; thence, N. 09° 02' 26" W. 11.79 feet to a point; thence, N. 06° 18' 35" W. 6.23 feet to a point; thence, N. 03° 01' 11" W. 4.30 feet to a point; thence, N. 24° 38' 52" E. 67.21 feet to a point; thence, N. 25° 01' 34" E. 5.91 feet to the place of beginning, containing 603 square feet or 0.01 acres, more or less, as surveyed in May, 2014 by Consolidated Survey, PLLC of Worthington, West Virginia and shown as Walkway Easement One on plat of Easements Surveyed for Scott Properties, LLC, dated the 2nd day of June, 2014 and attached hereto and reference herein for all pertinent purposes. The meridian for all bearings in this description is based on "MAGNETIC NORTH" from a compass reading taken on site in September, 2007.

WALKWAY EASEMENT TWO

Beginning at a point in the southern line of First Street, a 16-foot street, standing in the line of said Scott Properties, LLC (Deed Book 1333/Page 248); thence leaving said First Street and with lines through said Scott Properties (Deed Book 1333/ Page 248), (Deed Book 1333/Page 252), and (Deed Book 1276/Page 532); S. 09° 00' 22" E. 7.29 feet to a point on the southern edge of an existing walkway; thence continuing with lines through said Scott Properties, along said walkway; S. 77° 41' 47" W. 26.17 feet to a point; thence, S. 76° 33' 01" W. 38.87 feet to a point; thence, S. 79° 35' 55" W. 13.52 feet to a point in the eastern line of a 5-foot Alley, standing in the line of said Scott Properties; thence crossing said walkway and with said Alley and Scott Properties; N. 15° 56' 03" W. 6.11 feet to a point on the northern edge of said walkway; thence leaving said Alley and continuing with lines through said Scott Properties, along the northern line of said Walkway; N. 81° 04' 29" E. 10.97 feet to a point; thence, N. 75° 01' 57" E. 21.23

feet to a point; thence, N. 20° 10' 18" E. 4.45 feet to a point in the southern line of said First Street; thence crossing said walkway, with First Street and Scott Properties, N. 80° 59' 38" E. 44.88 feet to the place of beginning, containing 602 square feet or 0.01 acres, more or less, as surveyed in May, 2014 by Consolidated Survey, PLLC of Worthington, West Virginia and shown as Walkway Easement Two on plat of Easements Surveyed from Scott Properties, LLC, dated the 2nd day of June, 2014 and attached hereto and reference herein for all pertinent purposes. The meridian for all bearings in this description is based on "MAGNETIC NORTH" from a compass reading taken on site in September, 2007.

WALKWAY EASEMENT THREE

Beginning at a point in the eastern line of Jones Avenue, a 40-foot street, standing in the southern edge of an existing walkway and in the line of said Scott Properties, LLC (Deed Book 1251/ Page 156); thence with said Jones Avenue and Scot Properties, crossing said walkway, N. 14° 46' 52" W. 3.95 feet to a point on the northern edge of said walkway, said point bears S. 14° 46' 52" E. 2.43 feet from a point in the southern line of said First Street where it intersects the eastern line of said Jones Avenue; thence leaving said Jones Avenue and with lines through said Scott Properties, along existing walkway; N. 78° 37' 14" E. 10.91 feet to a point; thence, N. 79° 49' 50" E. 14.00 feet to a point; thence, N. 85° 41' 18" E. 17.45 feet to a point; thence, N. 87° 02' 26" E. 27.79 feet to a point; thence, N. 81° 04' 29" E. 18.95 feet to a point in the westerly line of a 5-foot Alley; thence with said Alley and Scott Properties, crossing said walkway; S. 15° 56' 03" E. 6.24 feet to a point on the southern edge of said walkway; thence leaving said Alley and with lines through said Scott Properties, along existing walkway; S. 79° 35' 55" W. 5.34 feet to a point; thence, S. 83° 40' 38" W. 14.19 feet to a point; thence, S. 84° 38' 59" W. 44.08 feet to a point; thence, N. 87° 34' 09" W. 15.33 feet to a point; thence, S. 78° 26' 51" W. 10.70 feet to the place of beginning, containing 530 square feet or 0.01 acres, more or less, as surveyed in May, 2014 by Consolidated Survey, PLLC of Worthington, West Virginia and shown as Walkway Easement Three on plat of Easements Surveyed for Scott Properties, LLC, dated the 2nd day of June, 2014 and attached hereto and reference herein for all pertinent purposes. The meridian for all bearings in this description is based on "MAGNETIC NORTH" from a compass reading taken on site in September, 2007.

The Grantor hereby agrees to be solely responsible for the maintenance, upkeep and repair of the aforedescribed rights-of-way or easements.

DECLARATION OF CONSIDERATION OR VALUE

In compliance with Article 22, Chapter 11 of the Code of West Virginia, the GRANTOR does hereby declare that the total consideration for the property interest transferred by the document to which the declaration is appended is less than $100.00.

**DECLARATION OF RESIDENCY**

**The Grantor claims exemption from the tax withholding requirements of the West Virginia Code Section 11-21-71b as the Grantor is a resident entity of the State of West Virginia.**

WITNESS the following signature and seal:

SCOTT PROPERTIES, LLC
a West Virginia limited liability company

_____
By: GREGORY METHENY, its Member

_____
By: HEIDI METHENY, its Member

STATE OF _____,

COUNTY OF _____, TO-WIT:

The undersigned, a Notary Public in and for the County and State aforesaid, does hereby CERTIFY that Scott Properties, LLC, a West Virginia limited liability company, by Gregory Metheny, its member, on and in behalf of said limited liability company, whose name is signed to the foregoing deed, has this day sworn to, affirmed, subscribed and acknowledged the same before me in said County, as its free act and deed.

Given under my hand this _____ day of _____, 2014.

My commission expires: _____.

_____
Notary Public
For the State of _____

STATE OF _____,

COUNTY OF _____, TO-WIT:

The undersigned, a Notary Public in and for the County and State aforesaid, does hereby CERTIFY that Scott Properties, LLC, a West Virginia limited liability company, by Heidi Metheny, its member, on and in behalf of said limited liability company, whose name is signed to the foregoing deed, has this day sworn to, affirmed, subscribed and acknowledged the same before me in said County, as its free act and deed.

Given under my hand this _____ day of _____, 2014.

My commission expires: _____.

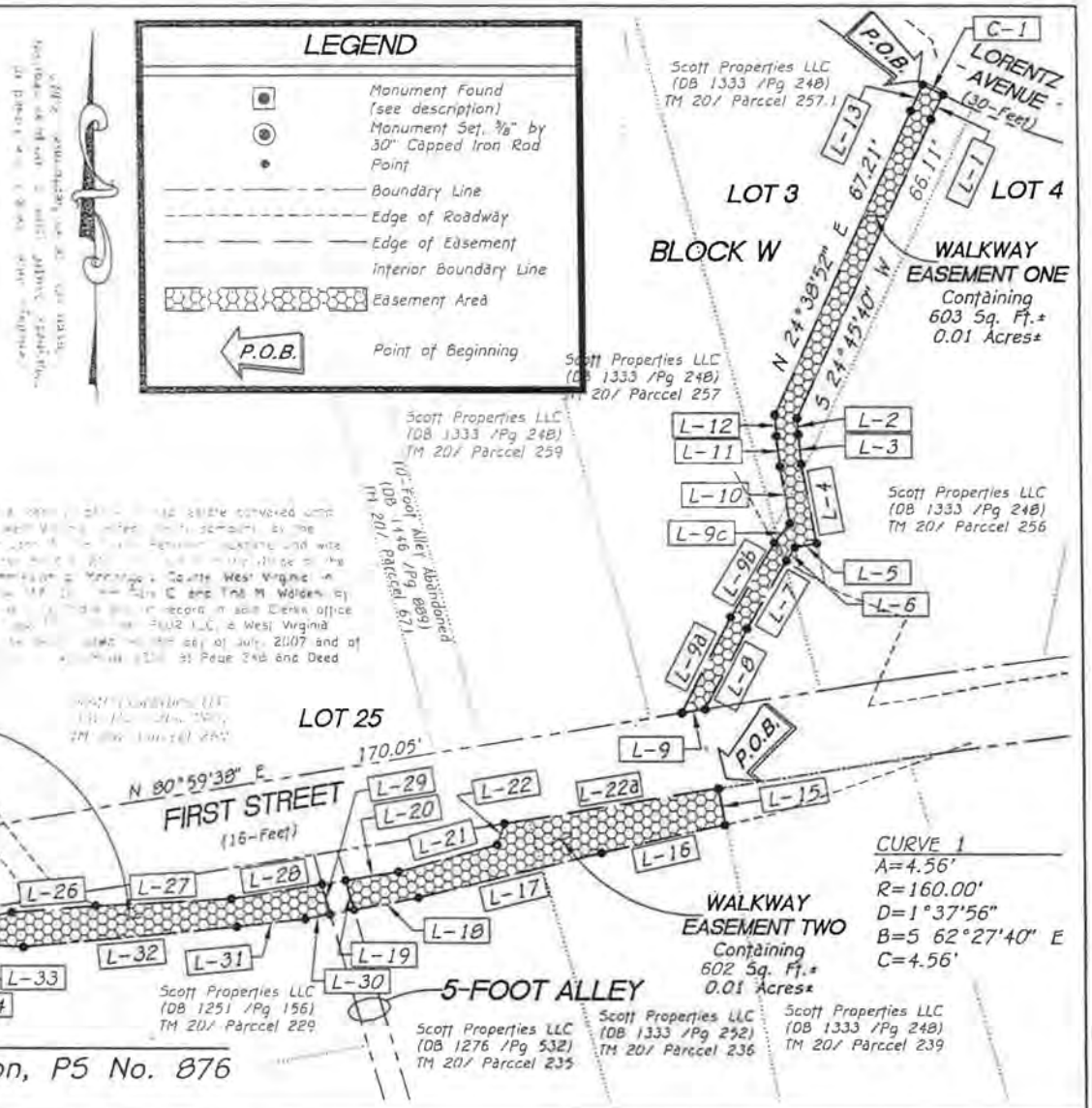
_____
Notary Public
For the State of _____

THIS INSTRUMENT WAS PREPARED WITHOUT THE BENEFIT OF A TITLE EXAMINATION, TITLE REPORT, TITLE CERTIFICATE, OR TITLE INSURANCE COMMITMENT AND NEITHER THE PREPARER NOR COMPTON & ASSOCIATES, PLLC BY THE PREPARATION OF THIS INSTRUMENT MAKE ANY EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, OR AFFIRMATIONS OF ANY KIND, NATURE, OR CHARACTER, INCLUDING, WITHOUT LIMITATION, WARRANTIES, REPRESENTATIONS, OR AFFIRMATIONS RELATING TO THE QUALITY OF TITLE, THE NATURE OF TITLE, POSSESSION, QUIET ENJOYMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, THE CONDITION OF THE PROPERTY, ACCESS TO THE PROPERTY, OR THE CAPACITY OF ANY OF THE GRANTORS TO GRANT OR CONVEY TITLE.

Prepared by:
Jeffery S. Compton
Compton & Associates, PLLC
1101 Mountainview Manor
Morgantown, WV 26501

LINE CHART

| LINE | BEARING | DISTANCE | LINE | BEARING | DISTANCE |
|---|---|---|---|---|---|
| L-1 | S 25°58'44" W | 5.56' | L-17 | S 76°33'01" W | 38.87' |
| L-2 | S 03°43'20" E | 3.29' | L-18 | S 79°35'55" W | 13.52' |
| L-3 | S 05°15'54" E | 6.10' | L-19 | N 15°56'03" W | 6.11' |
| L-4 | S 10°21'54" E | 16.46' | L-20 | N 81°04'29" E | 10.97' |
| L-5 | S 79°38'06" W | 4.50' | L-21 | N 75°01'57" E | 21.23' |
| L-6 | S 30°57'17" W | 3.38' | L-22 | N 20°10'18" E | 4.45' |
| L-7 | S 29°56'55" W | 16.25' | L-22a | N 80°59'38" E | 44.88' |
| L-8 | S 27°37'28" W | 18.43' | L-23 | N 14°46'52" W | 3.95' |
| L-9 | S 80°59'38" W | 4.85' | L-24 | N 78°37'14" E | 10.91' |
| L-9a | N 27°13'10" E | 21.89' | L-25 | N 79°49'50" E | 14.00' |
| L-9b | N 30°10'08" E | 18.00' | L-26 | N 85°41'18" E | 17.45' |
| L-9c | N 38°27'00" E | 5.04' | L-27 | N 87°02'26" E | 27.79' |
| L-10 | N 09°02'26" W | 11.79' | L-28 | N 81°04'29" E | 18.95' |
| L-11 | N 06°18'35" W | 6.23' | L-29 | S 15°56'03" E | 6.24' |
| L-12 | N 03°01'11" W | 4.30' | L-30 | S 79°35'55" W | 5.34' |
| L-13 | N 25°01'34" E | 5.91' | L-31 | S 83°40'38" W | 14.19' |
| L-15 | S 09°00'22" E | 7.29' | L-32 | S 84°38'59" W | 44.08' |
| L-16 | S 77°41'47" W | 26.17' | L-33 | N 87°34'09" W | 15.33' |
| | | | L-34 | S 78°26'51" W | 10.70' |




Plat of Easements
Survey for
**Scott Properties LLC**

Fourth Ward, City of Morgantown
Tax Map 20, P/O Parcels 229, 235, 236, 239, 256 and 257.1
Monongalia County, West Virginia
Surveyed: May, 2014
Scale: 1" = 30'

0 30 60 90

Worthington, West Virginia
(304) 287-2870
Job No. 14-0030

Ronald A. Talkington, PS No. 876
Date: 06-02-2014

**AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING THE RENEWAL OF A LEASE AGREEMENT BETWEEN IT, AS LESSOR, AND THE STATE OF WEST VIRGINIA, AS LESSEE, ON BEHALF OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION, REGARDING REALTY AT THE MORGANTOWN MUNICIPAL AIRPORT UTILIZED FOR PURPOSES OF AIR QUALITY SAMPLING.**

The City of Morgantown hereby ordains that its City Manager is authorized to execute the Lease Agreement Addendum II, hereto attached, by and on behalf of the City of Morgantown.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

_____
MAYOR

ADOPTED:

FILED:

_____
CITY CLERK

RECORDED:

## ADDENDUM II

**THIS ADDENDUM**, made **July 2, 2014,** is hereby made an integral part of Contract of Lease No. **DEP-127-809**, which Contract of Lease was made **September 3, 1999,** and amended via addenda thereto, by and between the **City of Morgantown**, as Lessor, and the STATE OF WEST VIRGINIA, by the Department of Administration, Real Estate Division, as Lessee, for and on behalf of the **DEPARTMENT OF ENVIRONEMENTAL PROTECTION**, as Tenant.

**WHEREAS**, the Lessor has leased unto the Lessee, for use by the Tenant, the following described Premises:

**a 15' x 20' area, for the purpose of erecting an Office of Air Quality Sampling Shelter, on the northwestern corner of the facility commonly known as Morgantown Airport at the junction of Routes 119 and 857 in the city of Morgantown, Monongalia County, West Virginia**

**WHEREAS**, both parties acknowledge that the Lessee has a new mailing address.

**WHEREAS**, both parties hereto agree to extend the term of said Contract of Lease for one additional five-year period beginning **September 1, 2014**, and ending at midnight on **August 31, 2019 at the current rate of $1 per year.**

**NOW, THEREFORE, THIS ADDENDUM WITNESSETH:**

It is agreed by and between the parties hereto that certain sections of the subject Contract of Lease are amended as follows:

(A) Page 1, Item 1, entitled "TERM AND NOTICES", shall be amended to read as follows:

The term of this Contract of Lease, subject to the provisions hereof, shall begin on **September 1, 2014,** and ending at midnight on **August 31, 2019**. The Contract of Lease shall be considered renewed for each ensuing fiscal year during the term of the Contract of Lease unless it is canceled by the Lessee before the end of the then current fiscal year.

Notices may be given by personal service upon the party(s) entitled to such notice, or by certified mail, duly stamped and directed to the last-known address of the party to be notified, and deposited in the post office. The proper mailing of such notice and not the receipt thereof shall constitute the giving of such notice by either party to the other. Notices shall be directed as follows:

| **To the Lessee** | **To the Lessor** |
|---|---|
| State of West Virginia<br>Department of Administration<br>Real Estate Division<br>900 Pennsylvania Avenue, Suite 500<br>Charleston, WV 25302 | City of Morgantown<br>389 Spruce Street<br>Morgantown, WV, 26505 |

(B) Other Term and Conditions

The subject Contract of Lease shall now be identified as **DEP-127-819** to reflect the new expiration date. All other terms and conditions shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have caused their names to be affixed to this Addendum.

**WITNESS:**

By_____

**CITY OF MORGANTOWN, LESSOR**

By_____
**Jeff Mikorski, City Manager**

**STATE OF WEST VIRGINIA, LESSEE**

By_____

By_____
**Constantino S. Amores Jr., Executive Director of the Department of Administration, Real Estate Division, for and on behalf of the Department of Environmental Protection**

**Acknowledged by Tenant:**
**Department of Environmental Protection**

By_____
**Tammy Thornton, Manager**

**Approved as to form this _____ day of _____, 2014. Patrick Morrisey, Attorney General**

**By** _____, _____

**ACCESS\Add\Rent\DEP-127-819 TB**

# *RESOLUTION*

*WHEREAS, the City of Morgantown submitted the necessary paperwork to obtain $22,000 to assist Operation Welcome Home through the Governor's Community Participation Grant Program, and the grant application has been approved for funding; and*

*WHEREAS, the grant (14LEDA0138) will allow the Operation Welcome Home to purchase a vehicle and other equipment to provide transitional employment to veterans ; and*

*WHEREAS, Morgantown City Council is of the opinion that this will be of great benefit to the residents of Morgantown, and therefore agrees to administer the grant contract.*

*NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown this 5th day of August, 2014, that the City agrees to the conditions of the contract and authorizes the Mayor to sign the West Virginia Development Office contract, and City Manager to administer the execution of the grant*

_____

*Mayor*

_____

*City Clerk*

# GOVERNOR'S COMMUNITY PARTICIPATION GRANT PROGRAM CONTRACT

## BETWEEN THE WEST VIRGINIA DEVELOPMENT OFFICE AND THE CITY OF MORGANTOWN

Project Number 14LEDA0138

**THIS AGREEMENT**, entered into this 1st day of July, 2013, by the West Virginia Department of Finance and Administration on behalf of the West Virginia Development Office hereinafter called the "WVDEVO" and the City of Morgantown and its authorized officers, agents, and representatives, hereinafter called the "Grantee."

**WITNESS THAT:**

**WHEREAS**, the WVDEVO has promised and agreed to assist the Grantee to perform such tasks described in the scope of services, which is to be partially financed by funds made available through the Governor's Community Participation Grant program.

**NOW, THEREFORE**, the parties do mutually agree as follows:

1. **Scope of Services.** The Grantee shall complete in a satisfactory manner as determined by the WVDEVO, and appropriate regulatory agencies, if required, all duties, tasks, and functions necessary to assist Operation Welcome Home with the purchase of a vehicle and other necessary equipment to provide transitional employment to veterans.

2. **Personnel and Employment.** The Grantee will secure at its own expense, personnel with the necessary qualifications and experience required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with WVDEVO.

   With respect to employment in carrying out the program objectives, the Grantee agrees that it will not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, national origin, or physical handicap.

3. **Time Performance.** The Grantee will commence its duties under this Contract on July 1, 2013, and such duties shall be undertaken and completed by June 30, 2015.

4. **Compensation and Fiscal Management.** In consideration of the services rendered by the Grantee, the WVDEVO agrees to pay the Grantee the sum of $22,000. This amount constitutes complete compensation for all services rendered.

   The Grantee shall provide local matching funds totaling up to ten percent of the total compensation for all services rendered.

   The Grantee shall be responsible for establishing and maintaining adequate procedures and internal financial controls governing the management and utilization of funds provided under this Contract, as well as funds provided as the Grantee's matching share.

5. **Amendments.** Any changes to the scope of services, completion date, compensation or any other terms or conditions of this agreement shall be incorporated in written amendments to the Contract. If necessary and/or required, any amendments to this Contract are subject to the reappropriation of funds and approval of the WVDEVO and/or the Governor of the State of West Virginia.

6. **Payments and Repayment.** In order to receive payments under the terms of this Agreement, the Grantee shall submit the following: (a) a Letter of Transmittal containing a progress report, and (b) a Request for Payment

Financial Report. The final ten percent shall be made available upon submission of certification of completion and acceptance of the project by the Grantee.

Furthermore, the Grantee shall refund to the State any expenditures determined to be made for an ineligible purpose for which State funds were received.

7. **Sub-Grantees and Reversion of Property.** The Grantee may administer funds on behalf of sub-grantees, provided that the sub-grantee is certified as a nonprofit organization by the United States Internal Revenue Service and the West Virginia Secretary of State's Office. Should the sub-grantee cease to exist, all commodities or supplies purchased with funds provided under the auspices of this Contract by or for the sub-grantee shall become the property of the Grantee.

8. **Competitive Bid Procedures.** Competitive bidding shall be pursued in all instances. The Grantee must follow the more stringent of either state or local purchasing regulations. The West Virginia Purchasing Division requirements, at a minimum, are as follows: Commodities and services expected to cost $2,500 or less require no bids, however, competition is encouraged. Purchases between $2,500.01 and $5,000 require three verbal bids to be documented on a verbal bid quotation summary. Purchases $5,000.01 to $25,000 require three written bids.

   Purchases exceeding $25,000 require public notices as a Class II legal advertisement in compliance with the provisions of West Virginia Code §59-3. This notice shall be published by the Grantee in the newspaper with the largest circulation serving the general area once a week for two successive weeks preceding the final bid date. The Grantee shall also, where feasible, solicit sealed bids by listing the project in the F. W. Dodge Reports, sending requests by mail to prospective suppliers or contractors, and by posting notice on a bulletin board in a public place. Any attempts by the Grantee to segregate the project into sections having an estimated value of less than $25,000 shall be cause for termination of this agreement.

9. **Construction.** The Grantee shall procure construction contracts in accordance with West Virginia Code §5-22-1. The term construction shall mean any construction, reconstruction, improvement, enlargement, painting, decorating, or repair of any public improvement let to contract. **The state and its subdivisions shall, except as provided in this section, solicit competitive bids for every construction project exceeding $25,000 in total cost. Further, the receipt and utilization of funds procured under this agreement mandate that ALL CONSTRUCTION CONTRACTS NECESSARY FOR THE UNDERTAKING AND COMPLETION OF THIS PROJECT, regardless of the source of funds utilized to pay such construction contracts, must comply with the provisions of West Virginia Code §21-5A.** These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions of West Virginia Code §59-3 as outlined in Section 8 of this agreement.

   Any contracts executed for the completion of construction services under this agreement, including contracts which involve the employment of any contractor and/or subcontractor, must comply with the provisions of the West Virginia Act on Wages on Construction of Public Improvements, West Virginia Code §21-5A. **This law applies to all construction contracts, regardless of cost and source of funds utilized to pay such contract.** Such provisions shall include the payment of the Fair Minimum Wage Rates as determined by the West Virginia Commissioner of Labor for each craft or classification of all workmen needed to perform the contract in the locality in which the public work is performed. For projects involving federal funds which are covered by the provisions of the Davis Bacon Act (40 U.S.C. 276-a 276a-5), the Grantee shall cause the contractor and/or subcontractors to pay the higher wage rate, federal or state.

   The Grantee shall note this requirement in the advertisement for bids and print these wage rates on all bidding blanks. The Grantee shall designate the time and place for opening such construction bids in accordance with West Virginia Code §5-22-2.

   The Grantee shall secure bonding in accordance with West Virginia Code §5-22-1. All bids submitted pursuant to this chapter shall include a valid bid bond or other surety as approved by the state of West Virginia or its subdivisions. Following the solicitation of such bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond, provided, that the state and its subdivisions may reject all bids and solicit new bids.

In the procurement of contracts or subcontracts for construction of less than $100,000, the Grantee shall follow local or State requirements relating to bid guarantees, performance bonds, and payment bonds, provided that the Grantee's and State's interests are adequately protected and that such contracts can be executed in a timely manner.

**In the procurement of contracts or subcontracts for construction that exceed $100,000, the Grantee shall obtain the following:**

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. This bid guarantee shall consist of a firm commitment such as bid bond, certified check, or other negotiable instrument accompanying a bid that the bidder will, upon acceptance of the bid, execute the contractual documents as may be required with the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. This performance bond shall be executed by the successful contractor in connection with the contract to secure fulfillment of the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. This payment bond shall be executed in connection with a contract to assure payment is required by law of all persons supplying labor and materials in the execution of the work provided for in the contract.

The Grantee shall procure architectural or engineering services in accordance with the provisions of West Virginia Code §5G. In the procurement of architectural and engineering services for projects estimated to cost $250,000 or more, the Grantee shall publish a Class II legal ad in compliance with West Virginia Code §59-3. In the procurement of services for projects estimated to cost less than $250,000, the Grantee shall conduct discussions with three or more professional firms.

The Grantee shall procure design-build projects in accordance with West Virginia Code §5-22A-1. This applies solely to building projects. Highways, water, sewer, and all other public works projects are specifically prohibited from using the design-build method.

The Grantee shall require any facilities constructed under the auspices of this Contract to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A11/.1-1961, as modified (41CFR101-17.1703 and (13CFR309.14)). The Grantee shall be responsible for conducting inspections to ensure compliance with these specifications.

The Grantee shall operate and maintain all facilities constructed under the auspices of this Contract in accordance with minimum standards as may be required or prescribed by the applicable federal, state and local statute, law, ordinance or regulation as to actual construction procedures, as well as maintenance and operation of such facilities upon completion.

The Grantee shall comply with all applicable federal, state and local environmental and historical preservation laws and regulations. The Grantee acknowledges this requirement and certifies that the project will be in compliance with such laws and regulations.

10. **Interest of Officials, Members of WVDEVO and Others.** No officer, member or employee of the WVDEVO or officer, member or employee of the Grantee who exercises any function or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Contract which affects his personal interest or the interest of any corporation, partnership, or association in which he is directly or indirectly interested or has any personal or pecuniary interest, nor shall any officer, member of, or employee of, the Grantee or any member of its governing body, or officer, member, or employee of the contractor have any interest, direct or indirect, in this Contract or the proceeds thereof.

Furthermore, no member of the Legislature of the State of West Virginia, or individual performing a service for the Grantee in connection with this project, shall be admitted to any share thereof or to any benefit to arise from this Agreement.

11. **Inspections of Records and Audits.** At any time during normal business hours and as often as the WVDEVO or its designated representative may deem necessary, there shall be made available to the WVDEVO or its designated representative for examination, all of its records with respect to all matters covered by this Contract and permit the WVDEVO or its designated representative to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records and personnel, conditions of employment and other data relating to all matters covered by this Contract during the entire time period beginning with project approval and ending three years after the final disbursement of grant funds.

    The Grantee shall cause an audit of this program to be included in the audit of the Grantee performed by the West Virginia State Auditor's Office, Chief Inspection Division, or its designated representative in accordance with West Virginia Code §6-9-7. The audit shall be performed in conformance with generally acceptable accounting procedures.

    In accordance West Virginia Code §12-4-14, if the grantee is not audited by the West Virginia State Auditor's Office and the grantee received state funds or grants in the amount of fifteen thousand dollars or more, the grantee shall file an audit of the disbursement of funds with the legislative auditor's office. The audit shall be filed within two years of the disbursement of funds or grants by the grantee and shall be made by an independent certified public accountant at the cost of the corporation, association or other organization, and must show that the funds or grants were spent for the purposes intended when the grant was made. State funds or audits of state funds or grants under fifteen thousand dollars ($15,000) may be authorized by the joint committee on government and finance to be conducted by the legislative auditor's office at no cost to the grantee.

    The Grantee shall submit any reports requested by the WVDEVO concerning financial status and program progress.

12. **Political Activity.** No officer or employee of the Grantee whose principal employment is in connection with any activity which is financed in whole or in part pursuant to this agreement shall take part in any of the activities expressly prohibited by the Hatch Act.

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

14. **Termination of Contract.** If, through any cause, the Grantee shall fail to fulfill in a necessary and proper manner his obligations under this Contract, or if the Grantee shall violate any of the covenants, agreements, or stipulations of this Contract, the WVDEVO shall thereupon have the right to terminate this Contract by giving written notice to the Grantee of such termination and specifying the effective date thereof, at least fifteen days before the effective date of such termination. The Grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed on the described project.

    Notwithstanding the above, the Grantee shall not be relieved of liability to the WVDEVO for damages sustained by the WVDEVO by virtue of any breach of the Contract by the Grantee, and the WVDEVO may withhold any payments to the Grantee for the purpose of set-off until such time as the exact amount of damages due the WVDEVO from the Grantee is determined.

Furthermore, the WVDEVO may terminate this Contract at any time by giving written notice to the Grantee of such termination and specifying the effective date of termination. If the Contract is terminated by the WVDEVO as provided herein, the Grantee will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Grantee covered by this Contract, less payments of compensation previously made.

The Grantee may unilaterally rescind this agreement at any time prior to the commencement of the project. After project commencement, this agreement may be rescinded, modified, or amended only by mutual agreement. A project shall be deemed commenced when the Grantee makes any expenditure or incurs any obligation with respect to the project.

This Contract shall be signed by the Executive Director of the West Virginia Development Office and by the Mayor of the City of Morgantown upon authorization of the City of Morgantown by adoption and passage of a resolution, motion or similar official action.

**IN WITNESS WHEREOF, the WVDEVO and the Grantee have executed this Agreement as of the date first above written.**

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

_____

**J. Keith Burdette, Executive Director**

**CITY OF MORGANTOWN**

By:_____

**Jenny Selin, Mayor**

Federal Employee Identification Number

_____

F.E.I.N.

Project Number: 14LEDA0138

0256-2014-7440-819-083

SECOND COPY

STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
1900 KANAWHA BOULEVARD, EAST
CHARLESTON, WV 25305
(304) 558-2000

EARL RAY TOMBLIN
GOVERNOR

June 16, 2014

The Honorable Jenny Selin
Mayor
City of Morgantown
389 Spruce Street
Morgantown, West Virginia 26505

Dear Mayor Selin:

Thank you for your application to the Governor's Community Participation Grant Program.

I, along with Senator Prezioso, am pleased to approve your request in the amount of $22,000. These funds will enable you to assist Operation Welcome Home with the purchase of a vehicle and other necessary equipment to provide transitional employment to veterans.

To proceed with this project, please fax this letter to 304-558-2246, or mail a copy to: Community Participation Program, West Virginia Development Office, 1900 Kanawha Boulevard, East, Charleston, West Virginia 25305. Please note that funds should not be obligated prior to the full execution of a contract with the State of West Virginia.

We are pleased to work with you to make this improvement a reality for the citizens of Morgantown.

Sincerely,

Earl Ray Tomblin

Earl Ray Tomblin
Governor

ERT:kf

Project Number: 14LEDA0138

# *RESOLUTION*

*WHEREAS, the City of Morgantown submitted the necessary paperwork to obtain $3,000 to help renovate the Metropolitan Theater through the Governor's Community Participation Grant Program, and the grant application has been approved for funding; and*

*WHEREAS, the grant (14LEDA0182) will allow the City of Morgantown to complete the electronic rigging system renovation on the stage of the theater ; and*

*WHEREAS, Morgantown City Council is of the opinion that this will be of great benefit to the residents of Morgantown, and therefore agrees to administer the grant contract.*

*NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown this 5th day of August, 2014, that the City agrees to the conditions of the contract and authorizes the Mayor to sign the West Virginia Development Office contract, and City Manager to administer the execution of the grant.*

_____

*Mayor*

_____

*City Clerk*

# GOVERNOR'S COMMUNITY PARTICIPATION GRANT PROGRAM CONTRACT

## BETWEEN THE WEST VIRGINIA DEVELOPMENT OFFICE AND THE CITY OF MORGANTOWN

Project Number 14LEDA0182

**THIS AGREEMENT**, entered into this 1st day of July, 2013, by the West Virginia Department of Finance and Administration on behalf of the West Virginia Development Office hereinafter called the "WVDEVO" and the City of Morgantown and its authorized officers, agents, and representatives, hereinafter called the "Grantee."

**WITNESS THAT**:

**WHEREAS**, the WVDEVO has promised and agreed to assist the Grantee to perform such tasks described in the scope of services, which is to be partially financed by funds made available through the Governor's Community Participation Grant program.

**NOW, THEREFORE**, the parties do mutually agree as follows:

1. **Scope of Services.** The Grantee shall complete in a satisfactory manner as determined by the WVDEVO, and appropriate regulatory agencies, if required, all duties, tasks, and functions necessary to renovate the Metropolitan Theatre. The project may include installation of a new rigging system and other renovations as funds permit.

2. **Personnel and Employment.** The Grantee will secure at its own expense, personnel with the necessary qualifications and experience required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with WVDEVO.

   With respect to employment in carrying out the program objectives, the Grantee agrees that it will not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, national origin, or physical handicap.

3. **Time Performance.** The Grantee will commence its duties under this Contract on July 1, 2013, and such duties shall be undertaken and completed by June 30, 2015.

4. **Compensation and Fiscal Management.** In consideration of the services rendered by the Grantee, the WVDEVO agrees to pay the Grantee the sum of $3,000. This amount constitutes complete compensation for all services rendered.

   The Grantee shall provide local matching funds totaling ten percent of the total compensation for all services rendered.

   The Grantee shall be responsible for establishing and maintaining adequate procedures and internal financial controls governing the management and utilization of funds provided under this Contract, as well as funds provided as the Grantee's matching share.

5. **Amendments.** Any changes to the scope of services, completion date, compensation or any other terms or conditions of this agreement shall be incorporated in written amendments to the Contract. If necessary and/or required, any amendments to this Contract are subject to the reappropriation of funds and approval of the WVDEVO and/or the Governor of the State of West Virginia.

6. **Payments and Repayment.** In order to receive payments under the terms of this Agreement, the Grantee shall submit the following: (a) a Letter of Transmittal containing a progress report, and (b) a Request for Payment

Financial Report. The final ten percent shall be made available upon submission of certification of completion and acceptance of the project by the Grantee.

Furthermore, the Grantee shall refund to the State any expenditures determined to be made for an ineligible purpose for which State funds were received.

7. **Sub-Grantees and Reversion of Property.** The Grantee may administer funds on behalf of sub-grantees, provided that the sub-grantee is certified as a nonprofit organization by the United States Internal Revenue Service and the West Virginia Secretary of State's Office. Should the sub-grantee cease to exist, all commodities or supplies purchased with funds provided under the auspices of this Contract by or for the sub-grantee shall become the property of the Grantee.

8. **Competitive Bid Procedures.** Competitive bidding shall be pursued in all instances. The Grantee must follow the more stringent of either state or local purchasing regulations. The West Virginia Purchasing Division requirements, at a minimum, are as follows: Commodities and services expected to cost $2,500 or less require no bids, however, competition is encouraged. Purchases between $2,500.01 and $5,000 require three verbal bids to be documented on a verbal bid quotation summary. Purchases $5,000.01 to $25,000 require three written bids.

   Purchases exceeding $25,000 require public notices as a Class II legal advertisement in compliance with the provisions of West Virginia Code §59-3. This notice shall be published by the Grantee in the newspaper with the largest circulation serving the general area once a week for two successive weeks preceding the final bid date. The Grantee shall also, where feasible, solicit sealed bids by listing the project in the F. W. Dodge Reports, sending requests by mail to prospective suppliers or contractors, and by posting notice on a bulletin board in a public place. Any attempts by the Grantee to segregate the project into sections having an estimated value of less than $25,000 shall be cause for termination of this agreement.

9. **Construction.** The Grantee shall procure construction contracts in accordance with West Virginia Code §5-22-1. The term construction shall mean any construction, reconstruction, improvement, enlargement, painting, decorating, or repair of any public improvement let to contract. **The state and its subdivisions shall, except as provided in this section, solicit competitive bids for every construction project exceeding $25,000 in total cost. Further, the receipt and utilization of funds procured under this agreement mandate that ALL CONSTRUCTION CONTRACTS NECESSARY FOR THE UNDERTAKING AND COMPLETION OF THIS PROJECT, regardless of the source of funds utilized to pay such construction contracts, must comply with the provisions of West Virginia Code §21-5A.** These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions of West Virginia Code §59-3 as outlined in Section 8 of this agreement.

   Any contracts executed for the completion of construction services under this agreement, including contracts which involve the employment of any contractor and/or subcontractor, must comply with the provisions of the West Virginia Act on Wages on Construction of Public Improvements, West Virginia Code §21-5A. **This law applies to all construction contracts, regardless of cost and source of funds utilized to pay such contract.** Such provisions shall include the payment of the Fair Minimum Wage Rates as determined by the West Virginia Commissioner of Labor for each craft or classification of all workmen needed to perform the contract in the locality in which the public work is performed. For projects involving federal funds which are covered by the provisions of the Davis Bacon Act (40 U.S.C. 276-a 276a-5), the Grantee shall cause the contractor and/or subcontractors to pay the higher wage rate, federal or state.

   The Grantee shall note this requirement in the advertisement for bids and print these wage rates on all bidding blanks. The Grantee shall designate the time and place for opening such construction bids in accordance with West Virginia Code §5-22-2.

   The Grantee shall secure bonding in accordance with West Virginia Code §5-22-1. All bids submitted pursuant to this chapter shall include a valid bid bond or other surety as approved by the state of West Virginia or its subdivisions. Following the solicitation of such bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond, provided, that the state and its subdivisions may reject all bids and solicit new bids.

In the procurement of contracts or subcontracts for construction of less than $100,000, the Grantee shall follow local or State requirements relating to bid guarantees, performance bonds, and payment bonds, provided that the Grantee's and State's interests are adequately protected and that such contracts can be executed in a timely manner.

**In the procurement of contracts or subcontracts for construction that exceed $100,000, the Grantee shall obtain the following:**

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. This bid guarantee shall consist of a firm commitment such as bid bond, certified check, or other negotiable instrument accompanying a bid that the bidder will, upon acceptance of the bid, execute the contractual documents as may be required with the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. This performance bond shall be executed by the successful contractor in connection with the contract to secure fulfillment of the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. This payment bond shall be executed in connection with a contract to assure payment is required by law of all persons supplying labor and materials in the execution of the work provided for in the contract.

The Grantee shall procure architectural or engineering services in accordance with the provisions of West Virginia Code §5G. In the procurement of architectural and engineering services for projects estimated to cost $250,000 or more, the Grantee shall publish a Class II legal ad in compliance with West Virginia Code §59-3. In the procurement of services for projects estimated to cost less than $250,000, the Grantee shall conduct discussions with three or more professional firms.

The Grantee shall procure design-build projects in accordance with West Virginia Code §5-22A-1. This applies solely to building projects. Highways, water, sewer, and all other public works projects are specifically prohibited from using the design-build method.

The Grantee shall require any facilities constructed under the auspices of this Contract to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A11/.1-1961, as modified (41CFR101-17.1703 and (13CFR309.14)). The Grantee shall be responsible for conducting inspections to ensure compliance with these specifications.

The Grantee shall operate and maintain all facilities constructed under the auspices of this Contract in accordance with minimum standards as may be required or prescribed by the applicable federal, state and local statute, law, ordinance or regulation as to actual construction procedures, as well as maintenance and operation of such facilities upon completion.

The Grantee shall comply with all applicable federal, state and local environmental and historical preservation laws and regulations. The Grantee acknowledges this requirement and certifies that the project will be in compliance with such laws and regulations.

10. **Interest of Officials, Members of WVDEVO and Others.** No officer, member or employee of the WVDEVO or officer, member or employee of the Grantee who exercises any function or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Contract which affects his personal interest or the interest of any corporation, partnership, or association in which he is directly or indirectly interested or has any personal or pecuniary interest, nor shall any officer, member of, or employee of, the Grantee or any member of its governing body, or officer, member, or employee of the contractor have any interest, direct or indirect, in this Contract or the proceeds thereof.

Furthermore, no member of the Legislature of the State of West Virginia, or individual performing a service for the Grantee in connection with this project, shall be admitted to any share thereof or to any benefit to arise from this Agreement.

11. **Inspections of Records and Audits.** At any time during normal business hours and as often as the WVDEVO or its designated representative may deem necessary, there shall be made available to the WVDEVO or its designated representative for examination, all of its records with respect to all matters covered by this Contract and permit the WVDEVO or its designated representative to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records and personnel, conditions of employment and other data relating to all matters covered by this Contract during the entire time period beginning with project approval and ending three years after the final disbursement of grant funds.

    The Grantee shall cause an audit of this program to be included in the audit of the Grantee performed by the West Virginia State Auditor's Office, Chief Inspection Division, or its designated representative in accordance with West Virginia Code §6-9-7. The audit shall be performed in conformance with generally acceptable accounting procedures.

    In accordance West Virginia Code §12-4-14, if the grantee is not audited by the West Virginia State Auditor's Office and the grantee received state funds or grants in the amount of fifteen thousand dollars or more, the grantee shall file an audit of the disbursement of funds with the legislative auditor's office. The audit shall be filed within two years of the disbursement of funds or grants by the grantee and shall be made by an independent certified public accountant at the cost of the corporation, association or other organization, and must show that the funds or grants were spent for the purposes intended when the grant was made. State funds or audits of state funds or grants under fifteen thousand dollars ($15,000) may be authorized by the joint committee on government and finance to be conducted by the legislative auditor's office at no cost to the grantee.

    The Grantee shall submit any reports requested by the WVDEVO concerning financial status and program progress.

12. **Political Activity.** No officer or employee of the Grantee whose principal employment is in connection with any activity which is financed in whole or in part pursuant to this agreement shall take part in any of the activities expressly prohibited by the Hatch Act.

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

14. **Termination of Contract.** If, through any cause, the Grantee shall fail to fulfill in a necessary and proper manner his obligations under this Contract, or if the Grantee shall violate any of the covenants, agreements, or stipulations of this Contract, the WVDEVO shall thereupon have the right to terminate this Contract by giving written notice to the Grantee of such termination and specifying the effective date thereof, at least fifteen days before the effective date of such termination. The Grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed on the described project.

    Notwithstanding the above, the Grantee shall not be relieved of liability to the WVDEVO for damages sustained by the WVDEVO by virtue of any breach of the Contract by the Grantee, and the WVDEVO may withhold any payments to the Grantee for the purpose of set-off until such time as the exact amount of damages due the WVDEVO from the Grantee is determined.

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The Grantee may unilaterally rescind this agreement at any time prior to the commencement of the project. After project commencement, this agreement may be rescinded, modified, or amended only by mutual agreement. A project shall be deemed commenced when the Grantee makes any expenditure or incurs any obligation with respect to the project.

This Contract shall be signed by the Executive Director of the West Virginia Development Office and by the Mayor of the City of Morgantown upon authorization of the City of Morgantown by adoption and passage of a resolution, motion or similar official action.

**IN WITNESS WHEREOF, the WVDEVO and the Grantee have executed this Agreement as of the date first above written.**

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

_____

**J. Keith Burdette, Executive Director**

**CITY OF MORGANTOWN**

By:_____

**Jenny Selin, Mayor**

Federal Employee Identification Number

_____

F.E.I.N.

Project Number: 14LEDA0182

0256-2014-7440-819-083

STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
1900 KANAWHA BOULEVARD, EAST
CHARLESTON, WV 25305
(304) 558-2000

EARL RAY TOMBLIN
GOVERNOR

May 23, 2014

The Honorable Jenny Selin
Mayor
City of Morgantown
389 Spruce Street
Morgantown, West Virginia 26505

Dear Mayor Selin:

Thank you for your application to the Governor's Community Participation Grant Program.

I, along with Senator Beach, am pleased to approve your request in the amount of $3,000. These funds will enable you to renovate the Metropolitan Theatre. The project will include installation of a new rigging system and other renovations as funds permit.

To proceed with this project, please fax this letter to 304-558-2246, or mail a copy to: Community Participation Program, West Virginia Development Office, 1900 Kanawha Boulevard, East, Charleston, West Virginia 25305. Please note that funds should not be obligated prior to the full execution of a contract with the State of West Virginia.

We are pleased to work with you to make this improvement a reality for the citizens of Morgantown.

Sincerely,

Earl Ray Tomblin

Earl Ray Tomblin
Governor

ERT:kf

Project Number: 14LEDA0182