

Office of the City Clerk

# The City of Morgantown

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**AGENDA**  
**MORGANTOWN CITY COUNCIL**  
**REGULAR MEETING**  
**JANUARY 3, 2012**  
**7:30 p.m.**

1. **CALL TO ORDER**
2. **ROLL CALL BY CITY CLERK**
3. **PLEDGE TO FLAG**
4. **APPROVAL OF MINUTES:** Regular Meeting – December 20, 2011
5. **CORRESPONDENCE:**
6. **PUBLIC HEARING:**
  - A. **PUBLIC HEARING on A BOND ORDINANCE PROVIDING FOR THE ISSUANCE OF ITS COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012 A AND COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012 B (COLLECTIVELY, THE "BONDS"). THE PROCEEDS OF THE BONDS WILL BE USED (I) TO PAY A PORTION OF THE COSTS OF A ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATER PORTION OF THE EXISTING PUBLIC COMBINED WATERWORKS, SEWERAGE AND STORMWATER SYSTEM OF THE ISSUER (THE "PROJECT"); AND (II) TO PAY CERTAIN COSTS OF ISSUANCE OF THE BONDS AND RELATED COSTS. THE BONDS ARE PAYABLE SOLELY FROM REVENUES TO BE DERIVED FROM THE OWNERSHIP AND OPERATION OF THE WATER SYSTEM OF THE CITY.**
  - B. **PUBLIC HEARING on A BOND ORDINANCE PROVIDING FOR THE ISSUANCE OF ITS COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012 (THE "SERIES 2012 BONDS"). THE PROCEEDS OF THE SERIES 2012 BONDS WILL BE USED (I) TO FINANCE THE COST OF**

ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE STORMWATER PORTION OF THE COMBINED WATERWORKS, SEWERAGE AND STORMWATER SYSTEM OF THE ISSUER; (II) TO FUND A RESERVE ACCOUNT FOR THE SERIES 2012 BONDS; AND (III) TO PAY CERTAIN COSTS OF ISSUANCE OF THE SERIES 2012 BONDS AND RELATED COSTS. THE SERIES 2012 BONDS ARE PAYABLE FROM THE REVENUES DERIVED FROM THE SYSTEM.

- C. PUBLIC HEARING on AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF REALTY IN THE SIXTH WARD OF THE CITY OF MORGANTOWN FROM (PUD) PLANNED UNIT DEVELOPMENT TO (R-1A) SINGLE-FAMILY RESIDENTIAL DISTRICT THEREBY RESCINDING THE "HABITAT FOR HUMANITY JEROME PARK PLANNED UNIT DEVELOPMENT" 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.
- D. PUBLIC HEARING on AN ORDINANCE BY THE CITY OF MORGANTOWN, REPEALING ARTICLE 161 OF THE CITY'S ADMINISTRATIVE CODE, AS THE SAME APPLIES TO THE HOUSING AUTHORITY.
- E. PUBLIC HEARING on A JOINT RESOLUTION OF THE COUNCIL FOR THE CITY OF FAIRMONT, WEST VIRGINIA, AND THE COUNCIL, FOR THE CITY OF MORGANTOWN, WEST VIRGINIA, PROVIDING FOR THE CONSOLIDATION OR MERGER OF THE HOUSING AUTHORITY OF THE CITY OF FAIRMONT, WEST VIRGINIA, AND THE MORGANTOWN HOUSING AUTHORITY PURSUANT TO THE PROVISIONS OF WEST VIRGINIA CODE 16-15-3B, AS AMENDED, TO FORM A REGIONAL HOUSING AUTHORITY AND FURTHER APPROVING THE PLAN OF MERGER AND AUTHORIZING THE EXECUTION THEREOF.

7. UNFINISHED BUSINESS:

- A. Consideration of APPROVAL of THIRD READING (ADOPTION) of A BOND ORDINANCE PROVIDING FOR THE ISSUANCE OF ITS COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012 A AND COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012 B (COLLECTIVELY, THE "BONDS"). THE PROCEEDS OF THE BONDS WILL BE USED (I) TO

**PAY A PORTION OF THE COSTS OF A ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATER PORTION OF THE EXISTING PUBLIC COMBINED WATERWORKS, SEWERAGE AND STORMWATER SYSTEM OF THE ISSUER (THE "PROJECT"); AND (II) TO PAY CERTAIN COSTS OF ISSUANCE OF THE BONDS AND RELATED COSTS. THE BONDS ARE PAYABLE SOLELY FROM REVENUES TO BE DERIVED FROM THE OWNERSHIP AND OPERATION OF THE WATER SYSTEM OF THE CITY. (First Reading December 6, 2011, Second Reading December 20, 2011)**

- B. Consideration of APPROVAL of THIRD READING (ADOPTION) of A BOND ORDINANCE PROVIDING FOR THE ISSUANCE OF ITS COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012 (THE "SERIES 2012 BONDS"). THE PROCEEDS OF THE SERIES 2012 BONDS WILL BE USED (I) TO FINANCE THE COST OF ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE STORMWATER PORTION OF THE COMBINED WATERWORKS, SEWERAGE AND STORMWATER SYSTEM OF THE ISSUER; (II) TO FUND A RESERVE ACCOUNT FOR THE SERIES 2012 BONDS; AND (III) TO PAY CERTAIN COSTS OF ISSUANCE OF THE SERIES 2012 BONDS AND RELATED COSTS. THE SERIES 2012 BONDS ARE PAYABLE FROM THE REVENUES DERIVED FROM THE SYSTEM. (First Reading December 6, 2011, Second Reading December 20, 2011)**
  
- C. Consideration of APPROVAL of SECOND READING (ADOPTION) of AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF REALTY IN THE SIXTH WARD OF THE CITY OF MORGANTOWN FROM (PUD) PLANNED UNIT DEVELOPMENT TO (R-1A) SINGLE-FAMILY RESIDENTIAL DISTRICT THEREBY RESCINDING THE "HABITAT FOR HUMANITY JEROME PARK PLANNED UNIT DEVELOPMENT" 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. (First Reading December 6, 2011)**
  
- D. Consideration of APPROVAL of SECOND READING (ADOPTION) of AN ORDINANCE BY THE CITY OF MORGANTOWN, REPEALING ARTICLE 161 OF THE CITY'S ADMINISTRATIVE CODE, AS THE SAME APPLIES**

**TO THE HOUSING AUTHORITY. (First Reading December 20, 2011)**

**E. Consideration of APPROVAL of A JOINT RESOLUTION OF THE COUNCIL FOR THE CITY OF FAIRMONT, WEST VIRGINIA, AND THE COUNCIL, FOR THE CITY OF MORGANTOWN, WEST VIRGINIA, PROVIDING FOR THE CONSOLIDATION OR MERGER OF THE HOUSING AUTHORITY OF THE CITY OF FAIRMONT, WEST VIRGINIA, AND THE MORGANTOWN HOUSING AUTHORITY PURSUANT TO THE PROVISIONS OF WEST VIRGINIA CODE 16-15-3B, AS AMENDED, TO FORM A REGIONAL HOUSING AUTHORITY AND FURTHER APPROVING THE PLAN OF MERGER AND AUTHORIZING THE EXECUTION THEREOF. (First Reading December 20, 2011)**

**F. BOARDS AND COMMISSIONS**

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

**9. NEW BUSINESS:**

**A. Consideration of A RESOLUTION AUTHORIZING THE EXECUTION OF A GOVERNOR'S COMMUNITY PARTICIPATION GRANT, FUNDS FOR USE BY THE METROPOLITAN THEATRE.**

**B. Consideration of A RESOLUTION AUTHORIZING THE EXECUTION OF A GOVERNOR'S COMMUNITY PARTICIPATION GRANT, FUNDS FOR USE BY THE MOUNTAINEER BOYS AND GIRLS CLUB.**

**C. Consideration of A RESOLUTION AUTHORIZING THE EXECUTION OF A GOVERNOR'S COMMUNITY PARTICIPATION GRANT, FUNDS FOR USE BY THE MORGANTOWN MARKET PLACE PROJECT.**

**10. SPECIAL COMMITTEE REPORTS**

**11. REPORT FROM CITY MANAGER:**

**INFORMATION:**

**1. Consideration and Analysis – Assess Property Valuation**

12. REPORT FROM CITY CLERK
13. REPORT FROM CITY ATTORNEY
14. REPORT FROM COUNCIL MEMBERS
15. EXECUTIVE SESSION
16. ADJOURNMENT

\*If you need an accommodation contact us at 284-7439\*

**REGULAR MEETING DECEMBER 20, 2011:**

The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Wednesday, December 20, 2011, at 7:30 P.M.

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

**APPROVAL OF MINUTES:** The minutes of the Regular Meeting on December 6, 2011 and the Special Meeting on December 15, 2011 were approved as printed.

**CORRESPONDENCE:** Mayor Manilla asked Delegates Marshall and Barill to address Council on an announcement from the Governor. Delegate Marshall awarded to Council a \$4,000 Grant for the Boys and Girls Club and a \$20,000 grant to the Market Place from the Community Participation Program.

**PUBLIC HEARING - AN ORDINANCE AMENDING ARTICLE 169, SECTION 169.01, OF THE MORGANTOWN CITY CODE, AS THE SAME APPLIES TO MORGANTOWN UTILITY BOARD MEMBERS.**

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

**PUBLIC HEARING - AN ORDINANCE AUTHORIZING A LICENSE AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN, LICENSOR, AND MONONGALIA COUNTY DEVELOPMENT AUTHORITY, LICENSEE, AS THE SAME APPLIES TO A PORTION OF THE REALTY BEING UTILIZED FOR THE CONSTRUCTION OF ROAD KNOWN AS THE MORGANTOWN MUNICIPAL AIRPORT ACCESS ROAD.**

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

**UNFINISHED BUSINESS:**

**AN ORDINANCE AMENDING ARTICLE 169, SECTION 169.01, OF THE MORGANTOWN CITY CODE, AS THE SAME APPLIES TO MORGANTOWN UTILITY BOARD MEMBERS:** The below entitled Ordinance was presented for second reading:

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

**AN ORDINANCE AUTHORIZING AN AGREEMENT BETWEEN MON. COUNTY DEVLEOPMENT AUTHORITY AND AIRPORT ACCESS ROAD:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE AUTHORIZING A LICENSE AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN, LICENSOR, AND MONONGALIA COUNTY DEVELOPMENT AUTHORITY, LICENSEE, AS THE SAME APPLIES TO A PORTION OF THE REALTY BEING UTILIZED FOR THE CONSTRUCTION OF ROAD KNOWN AS THE MORGANTOWN MUNICIPAL AIRPORT ACCESS ROAD.

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

**BOARDS AND COMMISSIONS:** By acclamation of Council, the following persons were appointed to their respective boards and commissions: Shane Mardis as IAFF Local 313 Representative to the Fire Civil

Service Commission; William Wyant to the Traffic Commission as the Planning Commission representative; and Judith Kierig as the 2<sup>nd</sup> ward representative on the Urban Landscape Commission.

**PUBLIC PORTION:**

Renee Hernandez, Overdale Street, Greenmont, wished Happy Holidays to all, and stated her complete support of the County-wide smoking ban. Ms. Hernandez asked that Council address truck noise in her neighborhood, and requested that Council keep the fracking Ordinance on the books.

Paul Brown, 421 Grand Street, requested Council maintain the fracking Ordinance, and presented a draft Resolution for Council's consideration.

Phyllis Marshall, President, League of Women Voters, requested Council not repeal the fracking Ordinance, as the Marcellus legislation offers little protection in several key areas. Ms. Marshall asked that Council not repeal the ordinance until suitable State regulations are in place.

Candace Jordon, Westover, stated that she visited a 7<sup>th</sup> grade class that had been researching fracking and was amazed how much they understood. She expressed her interest in attending City Council meetings to join the dialogue on these issues. Ms. Jordon commented that she was disappointed that Council is considering repealing the fracking Ordinance after all the work the committee members have done. Ms. Jordon then handed Council a photo showing people who will be protected if Council keeps the Ordinance.

Don Spencer, 565 Harvard Avenue, stated that the Special Committee Bill was a compromise and the bill is geared toward industry, not community. Mr. Spencer noted that the bill removes the Select Committee provision, and allowed the DEP to "condition" or deny drilling permits based on proximity to water supplies, municipalities and densely populated areas, impact on water tables, public resources, natural landmarks, archeological sites, historical sites and other special places. He continued that there are legislators who want to make this work, and it would be beneficial to keep the Ordinance on the Agenda.

Eve Faulks, 49 Maple Avenue, congratulated Council for being leaders in democracy for implementing the fracking ban. She urged Council to continue that leadership by leaving the Ordinance in place to protect the community. She invited Council to a public forum on fracking.

Suzanne McDonald, 911 Fairfax Drive, President, Evansdale Neighborhood Association, asked that Council keep the fracking ban, as it sends a strong message to the State Legislature. She feels it would send the wrong message if the Ordinance were repealed.

Bill Kawecki, 329 Copen Avenue, spoke in support of the fracking ban and urged Council not to repeal the Ordinance.

There being no more appearances, Mayor Manilla declared this public portion closed.

**NEW BUSINESS:**

**AN ORDINANCE AUTHORIZING THE SABRATON STORMWATER PROJECT BONDS:**

The below entitled Ordinance was presented for second reading:

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE STORMWATER PORTION OF THE EXISTING COMBINED UTILITY 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 \$3,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF

COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012; PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER DOCUMENTS RELATING TO THE BONDS; AND ENACTING OTHER PROVISIONS WITH RESPECT TO SUCH BONDS.

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

**AN ORDINANCE AUTHORIZING THE WHISPERING WOODS/QUARRY RUN WATER PROJECT BONDS:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATER PORTION OF THE EXISTING PUBLIC COMBINED WATERWORKS, SEWERAGE AND STORMWATER SYSTEM OF THE CITY OF MORGANTOWN AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$1,100,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012 A (WEST VIRGINIA DWTRF PROGRAM) AND NOT MORE THAN \$1,600,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012 B (WEST VIRGINIA DWTRF PROGRAM); 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; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

**AN ORDINANCE REPEALING ARTICLE 721:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE BY THE CITY OF MORGANTOWN REPEALING ARTICLE 721 OF THE CITY OF MORGANTOWN BUSINESS AND TAXATION CODE, AS THE SAME APPLIES TO WELL DRILLING.

Motion by Bane, second by Nugent to pass the above entitled Ordinance to second reading. After discussion, and comments from the City Manager, Motion by Selin, second by Byrne, to table the above entitled Ordinance. Motion to table carried 4-3. Councilors Nugent, Herbst, and Mayor Manilla voted NO.

**AN ORDINANCE REPEALING ARTICLE 161:**The below entitled Ordinance was presented for first reading:

AN ORDINANCE BY THE CITY OF MORGANTOWN, REPEALING ARTICLE 161 OF THE CITY'S ADMINISTRATIVE CODE, AS THE SAME APPLIES TO THE HOUSING AUTHORITY.

Motion by Nugent, second by Byrne to pass the above entitled Ordinance to second reading. Following clarification from City Manager Terrence Moore and City Attorney Steve Fanok, motion carried 7-0.

**A JOINT RESOLUTION AUTHORIZING OF THE COUNCIL FOR THE CIT OF FAIRMONT, WEST VIRGINIA, AND THE COUNCIL, FOR THE CITY OF MORGANTOWN, WEST VIRGINIA, PROVIDING FOR THE CONSOLIDATION OR MERGER OF THE HOUSING AUTHORITY OF THE CITY OF FAIRMONT, WEST VIRGINIA, AND THE MORGANTOWN HOUSING AUTHORITY PURSUANT TO THE PROVISIONS OF WEST VIRGINIA CODE 16-15-3B, AS AMENDED, TO FORMA REGIONAL HUSING AUTHORITY AND FURTHER APPROVING THE PLAN OF MERGER AND AUTHORIZING THE EXECUTION THEREOF.**

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

**SPECIAL COMMITTEE REPORTS:** Councilor Nugent commended the Museum Commission for the success of their grand opening event, and announced upcoming events at the Museum.

Councilor Byrne then reported that the Sister Cities Commission has started work on a display of items and artifacts from our Sister City in Guanajuato, Mexico at the Municipal Airport, and thanked Airport Director Michael Clow for his cooperation.

**CITY MANAGERS REPORT:**

**INFORMATION:**

Item No. 1: Interim Budget and Financial Update.

Mr. Moore gave explanation on recent budget items, and allowed further remarks from Finance Director JR Sabatelli. Discussion followed.

**NEW BUSINESS:**

Item No. 1: Appointment of Airport Director Michael Clow to serve on the Monongalia County Development Authority.

By acclamation, Council unanimously approved Airport Director Michael Clow to serve on the Monongalia Development Authority.

Item No. 2: Proposed Budget Calendar for FY 2012-2013.

By acclamation, Council unanimously approved of the Proposed Budget Calendar for FY 2012-2013.

Item No. 3: Insurance Renewal.

By acclamation, Council unanimously approved of the Insurance Renewal.

**CITY CLERK'S REPORT:** City Clerk complimented the Woodburn Elementary School Choir for their performance, and thanked City Employees for their contributions to the Scotts Run Settlement House and the United Way.

**CITY ATTORNEY'S REPORT:** No Report.

**REPORT FROM COUNCIL MEMBERS:**

Councilor Bane: Councilor Bane thanked Clerk Little for all her hard work, despite being under the weather tonight. He thanked the WVU President for inviting Council to a recent event. He also thanked Mr. Sabatelli for his attentiveness to Council's budget inquiries and commented further on the budget, as well as the fracking Ordinance.

Councilor Nugent: Councilor Nugent announced that Morgantown has been ranked No. 3 as a 'Best Performing' small City in the nation by a recent study. He announced the upcoming Wiles Hill neighborhood association meeting. He also expressed interest in discussing some neighborhood issues with the City Manager.

Councilor Selin: Councilor Selin concurred with Councilor Bane, and then thanked those who are working in the legislature on fracking issues. She then expressed appreciation to City staff and administration.

Councilor Shamberger: Councilor Shamberger announced the upcoming MLK Day events at the Met Theatre.

Councilor Byrne: Councilor Byrne also stated that the reopening of the Morgantown Museum was an excellent event. He then asked that the Friendship City Application from Quanshan District, Xuzhou City, China be added to the Agenda for approval at the upcoming January 17<sup>th</sup> Council Meeting. Council agreed by consensus. He concluded by sharing additional comments about fracking issues.

Councilor Herbst: Councilor Herbst also commended the Museum reopening event. She encouraged those who are passionate about such issues, to continue petitioning the legislature for better fracking regulation.

Mayor Manilla: Mayor Manilla also commended the Museum Commission for all their hard work.

Each member of Council wished the citizens of Morgantown 'Happy Holidays' and 'Happy New Year'.

**ADJOURNMENT:** There being no further business, the meeting adjourned by unanimous consent at 9:40 p.m.

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

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

**BOARDS AND COMMISSIONS - TERMS EXPIRED AND CURRENT VACANCIES**

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

URBAN LANDSCAPE COMMISSION: 2 YEAR TERM:

**Urban Forester still vacant.** Nominated by CM, from each ward, 13 members with staggered terms, 1 councilmember, and non-ward members must represent specific category.

YOUTH COMMISSION 1 YEAR TERM:

**Marissa Travinski has names of all new members.** High School students residing in Metropolitan area.

**\*POLICE & FIRE CIVIL SERVICE COMMISSIONS APPOINT NEW PRESIDENTS 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.

12-22-11

**Sabraton Stormwater Project**  
**and**  
**Whispering Woods Water Project**  
**Bond Ordinances**

*In an effort to reduce the amount of resources used, the Bond Ordinances will be made available upon request due to their large size.*

*Both Bond Ordinances have been published in the November 29<sup>th</sup> Committee of the Whole Packet, as well as the December 6<sup>th</sup> and December 20<sup>th</sup> Regular Meeting Packest.*

*Additionally, paper copies may be viewed in the City Clerk's Office or sent via email upon request by contacting: (304) 284-7439*

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF REALTY IN THE SIXTH WARD OF THE CITY OF MORGANTOWN FROM (PUD) PLANNED UNIT DEVELOPMENT TO (R-1A) SINGLE-FAMILY RESIDENTIAL DISTRICT THEREBY RESCINDING THE "HABITAT FOR HUMANITY JEROME PARK PLANNED UNIT DEVELOPMENT" 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.

WHEREAS, the City of Morgantown adopted Ordinance 09-30 on July 7, 2009 to amend the Official Zoning Map of the City of Morgantown for the "Habitat for Humanity Jerome Park Planned Unit Development Outline Plan".

WHEREAS, Ordinance 09-30 provided for the zoning reclassification of Parcel 41 of Monongalia County Tax Map 24 (2006 tax assessment), Morgantown Corporation District from (R-1A) Single-family Residential District to (PUD) Planned Unit Development District.

WHEREAS, Article 1357.03 (D) of the City's Planning and Zoning Code provides that a PUD Development Plan must be submitted to the Planning Division not more than eighteen (18) months following City Council approval of the PUD Outline Plan. Said Article provides that the Planning Commission may extend the time for application for approval of the PUD Development Plan for good cause, consistent with the purposes of the Zoning Ordinance OR initiate action to amend the Official Zoning Map so as to rescind the Planned Unit Development designation.

WHEREAS, on February 10, 2011, the Planning Commission extended the original PUD Development Plan application deadline from January 7, 2011 to July 15, 2011.

WHEREAS, the Planning Division duly notified the "Habitat for Humanity Jerome Park" developer by means of a letter dated June 27, 2011 that:

1. Article 1357.03 "Procedure for Approval of Planned Unit Development" of the Planning and Zoning Code provides that a PUD Development Plan must be submitted to the Planning Division no later than eighteen (18) months following City Council approval of the Outline Plan. City Council approved the "Habitat for Humanity Jerome Park" PUD Outline Plan on July 7, 2009, which established an expiration deadline of January 7, 2011.
2. The Planning Commission approved on February 10, 2011 an extension of said expiration deadline from January 7, 2011 to July 15, 2011.
3. Article 1357.03 (D) (4) (c) requires the Planning Division to report to the Planning Commission on Planned Unit Developments with time limits that have expired and notify the original applicants of same and that the Morgantown Planning Commission may extend the PUD Development Plan submission deadline for good cause, consistent with the purposes of the Zoning Ordinance.

4. The Planning Division is to report the subject expiration to the Planning Commission with a recommendation to determine whether to consider extending the deadline or initiate action to amend the Official Zoning Map so as to rescind the Planned Unit Development designation.
5. Should the "Habitat for Humanity Jerome Park" developer seek to pursue an additional PUD Development Plan submission deadline extension, a letter detailing the merits and just cause for same must be submitted to the Planning Division no later than July 8, 2011 so that it may be advertised and considered by the Planning Commission at its August 11, 2011 hearing.

WHEREAS, the Planning Division did not receive a PUD Development Plan submission deadline extension request from the "Habitat for Humanity Jerome Park" developer.

WHEREAS, the Morgantown Planning Commission held a public hearing on November 10, 2011 and voted unanimously to initiate action to amend the Official Zoning Map so as to rescind the "Habitat for Humanity Jerome Park PUD Outline Plan" designation.

NOW THEREFORE BE IT ORDAINED BY THE CITY OF MORGANTOWN:

1. That the zoning reclassification provided in Ordinance 09-30 is hereby rescinded;
2. That Parcel 41 of Monongalia County Tax Map 24 (2006 tax assessment), Morgantown Corporation District 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 (PUD) Planned Unit Development to (R-1A) Single-family Residential District; and,
3. That the Official Zoning Map be accordingly changed to show said zoning reclassification.

This Ordinance shall be effective from date of adoption.

FIRST READING:

\_\_\_\_\_  
Mayor

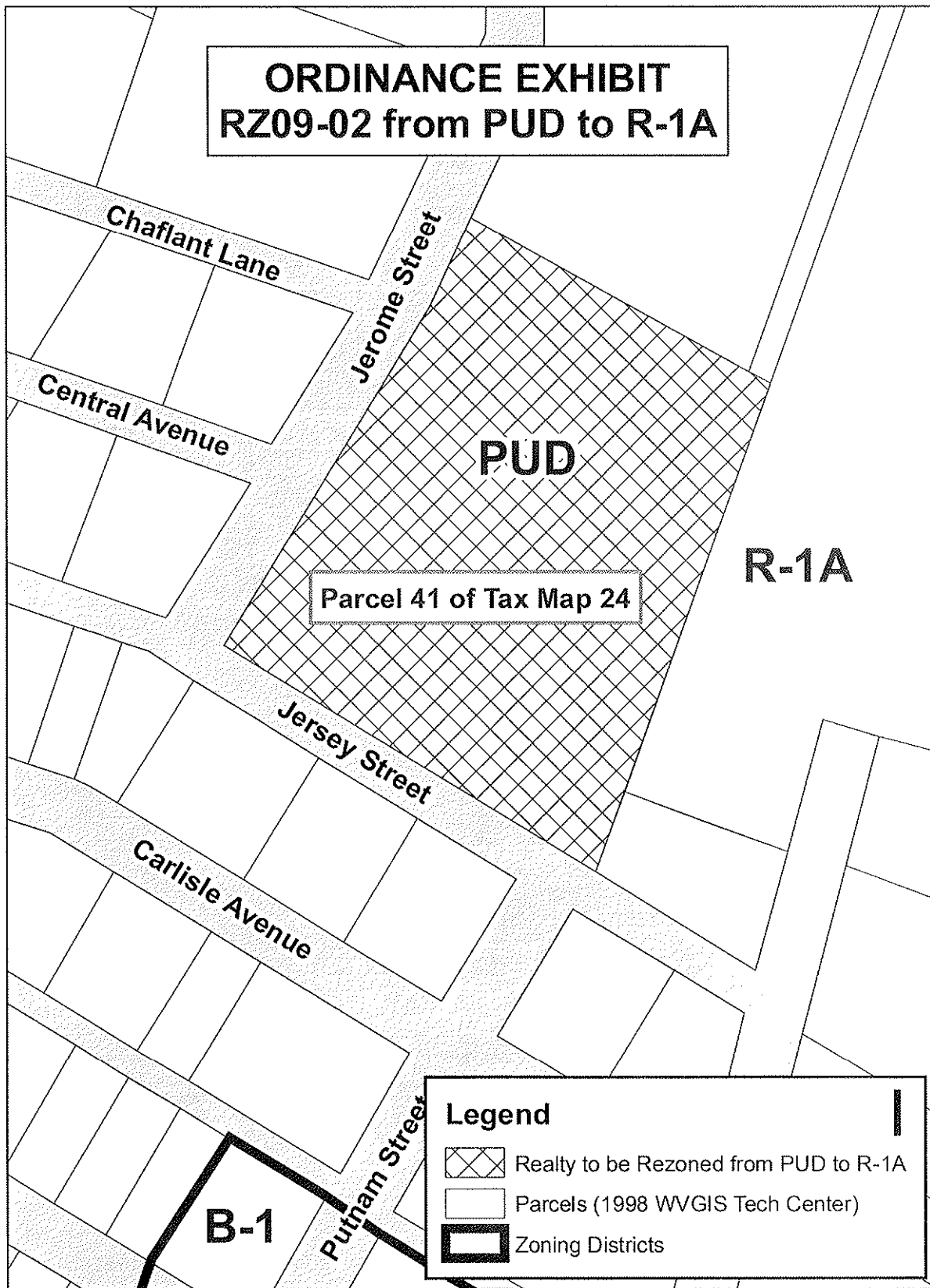
ADOPTED:

FILED:

RECORDED:

\_\_\_\_\_  
City Clerk

**ORDINANCE EXHIBIT  
RZ09-02 from PUD to R-1A**



Map prepared by the Morgantown Planning Division (11/16/2011)

AN ORDINANCE BY THE CITY OF MORGANTOWN, REPEALING ARTICLE 161 OF THE CITY'S ADMINISTRATIVE CODE, AS THE SAME APPLIES TO THE HOUSING AUTHORITY.

WHEREAS, the City of Morgantown is agreeable to consolidating its Housing Authority with the Fairmont Housing Authority pursuant to Section 16-15-3b of the West Virginia Code;

WHEREAS, Section 16-15-3b of the West Virginia Code states that two or more cities may merge their housing authorities by joint resolution; provided that each such city holds a public hearing prior to adopting the joint resolution;

WHEREAS, the City of Morgantown is processing a joint resolution at the same time that this ordinance is proceeding before Morgantown City Council;

WHEREAS, it is the intent of this Ordinance that Article 161 of the City of Morgantown Administrative Code be repealed effective with the City of Morgantown's adoption of a joint resolution pursuant to Section 16-15-36 of the West Virginia Code.

NOW, THEREFORE, the City of Morgantown hereby ordains that Article 161 of its Administrative Code is repealed in its entirety, effective upon the date that Morgantown City Council adopts a joint resolution, pursuant to Section 16-15-3b of the West Virginia Code, merging the City of Morgantown Housing Authority and the City of Fairmont Housing Authority.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_  
MAYOR

ADOPTED:

FILED:

\_\_\_\_\_  
CITY CLERK

RECORDED:

## RESOLUTION

**A JOINT RESOLUTION OF THE COUNCIL FOR THE CITY OF FAIRMONT, WEST VIRGINIA, AND THE COUNCIL FOR THE CITY OF MORGANTOWN, WEST VIRGINIA, PROVIDING FOR THE CONSOLIDATION OR MERGER OF THE HOUSING AUTHORITY OF THE CITY OF FAIRMONT, WEST VIRGINIA, AND THE MORGANTOWN HOUSING AUTHORITY PURSUANT TO THE PROVISIONS OF WEST VIRGINIA CODE §16-15-3b, AS AMENDED, TO FORM A REGIONAL HOUSING AUTHORITY TO BE KNOWN AS THE FAIRMONT-MORGANTOWN HOUSING AUTHORITY AND FURTHER APPROVING THE PLAN OF MERGER AND AUTHORIZING THE EXECUTION THEREOF**

**WHEREAS**, by the provisions of West Virginia Code 16-15-3(a) there has been created in each city and county in this State a housing authority which shall be a public body corporate and politic; provided however, that no such authority shall transact any business or exercise its powers until or unless the governing body of the city or the county, by proper resolution, determines that there is need for such authority;

**WHEREAS**, by resolution duly adopted on May 12, 1958, the governing body of the City of Fairmont found and determined a need for such authority within its corporate limits and did provide for the empowerment of such an authority to be known as the "Housing Authority of the City of Fairmont, West Virginia;"

**WHEREAS**, by resolution duly adopted on May 19, 1970, the governing body of the City of Morgantown found and determined a need for such authority within its corporate limits and did provide for empowerment of such an authority to be known as the "Morgantown Housing Authority;"

**WHEREAS**, West Virginia Code 16-15-3b authorizes two (2) or more cities or counties, or any combination thereof, by joint resolution of their respective governing bodies to merge or consolidate their existing housing authorities and to establish a regional housing authority;

**WHEREAS**, the Board of Commissioners of the Housing Authority of the City of Fairmont, West Virginia, and the Board of Commissioners of the Morgantown Housing Authority have determined that it is desirable and in the best interests of the citizens of Fairmont and Morgantown for their respective authorities to consolidate or merge to form a regional housing authority to be known as "The Fairmont-Morgantown Housing Authority;"

**WHEREAS**, the Board of Commissioners of the Housing Authority of the City of Fairmont, West Virginia, and the Board of Commissioners of the Morgantown Housing Authority have determined that the consolidation or merger to form a regional housing authority will benefit the

citizens of Fairmont and Morgantown and their respective jurisdictions due to increased efficiencies of scale and strengthening of financial and administrative resources;

**WHEREAS**, the Board of Commissioners of the Housing Authority of the City of Fairmont, West Virginia, and the Board of Commissioners of the Morgantown Housing Authority adopted a joint resolution approving said merger on September 13, 2011;

**WHEREAS**, the Housing Authority of the City of Fairmont, West Virginia, and the Morgantown Housing Authority have agreed to the terms and conditions of said consolidation or merger, which terms and conditions have been reduced to writing and are expressed in that certain "Plan of Merger Consolidating the Housing Authority of the City of Fairmont, West Virginia, and The Morgantown Housing Authority to Be Known as The Fairmont-Morgantown Housing Authority" dated the \_\_\_\_\_ day of \_\_\_\_\_, 2011, a copy of which is attached hereto;

**WHEREAS**, said Plan of Merger expressly provides for the following:

1. The transfer of assets and liabilities and the performance of all outstanding obligations and responsibilities; and
2. The membership, terms and manner of appointment of commissioners of the regional housing authority.

**WHEREAS**, by this joint resolution, the governing bodies of the City of Fairmont and the City of Morgantown manifest approval for the consolidation or merger of the Housing Authority of the City of Fairmont, West Virginia, and the Morgantown Housing Authority into a regional housing authority to be known as "The Fairmont-Morgantown Housing Authority" and authorize the execution and delivery of the aforementioned Plan of Merger;

**NOW, THEREFORE, BE IT JOINTLY RESOLVED BY THE COUNCIL FOR THE CITY OF FAIRMONT AND THE COUNCIL FOR THE CITY OF MORGANTOWN THAT:**

**(a) Finding** - The Council for the City of Fairmont and the Council for the City of Morgantown hereby find that it is in the best interest of each City, respectively, and the citizens of each City, respectively, to consent to and approve the merger or consolidation of the Housing Authority of the City of Fairmont, West Virginia, and the Morgantown Housing Authority into a regional housing authority to be known as "The Fairmont-Morgantown Housing Authority."

**(b) Approval** - The Council for the City of Fairmont and the Council for the City of Morgantown, after a review of same, do each hereby approve the terms and conditions of that certain "Plan of Merger Consolidating the Housing Authority of the City of Fairmont, West Virginia, and The Morgantown Housing Authority to Be Known as The Fairmont-Morgantown Housing Authority" dated the \_\_\_\_\_ day of \_\_\_\_\_, 2011, a copy of which plan

of merger is attached hereto, and the terms and conditions of which are incorporated herein by reference and made a part hereof as if fully set forth verbatim herein.

**(c) Authorization** - The Mayor of the City of Fairmont and the Mayor of the City of Morgantown be and each of them are hereby authorized and empowered on behalf of each City, respectively, to enter into, execute and deliver any agreements on behalf of each City, respectively, and any and all documents, deeds, or other instruments of any kind necessary and desirable to consummate the consolidation of the Housing Authority for the City of Fairmont, West Virginia, and the Morgantown Housing Authority, and to carry out the purpose and intent of this Joint Resolution including that certain Plan of Merger, a copy of which is attached hereto and made a part hereof, with such revisions, modifications, and changes from the respective form as approved hereunder as the Mayor(s) executing the same may approve, such approval and the propriety and necessity of said changes to be conclusively evidenced by the execution thereof, and to do and to cause to be done any other act necessary for the consolidation of the Housing Authority for the City of Fairmont, West Virginia, and the Morgantown Housing Authority to form a regional housing authority known as "The Fairmont-Morgantown Housing Authority."

**(d) Applicable Law** - The consolidation by merger of the Housing Authority of City of Fairmont, West Virginia, and the Morgantown Housing Authority into a regional housing authority to be known as "The Fairmont-Morgantown Housing Authority shall be subject to applicable provisions of West Virginia Code 31E-11-1101 et seq.,

This Joint Resolution shall not take effect until passage by both the Council for the City of Fairmont and the Council for the City of Morgantown.

Passed by the Council for the City of Fairmont on this the 22nd day of November, 2011.

Passed by the Council for the City of Morgantown on this the \_\_\_\_\_ day of \_\_\_\_\_, 2011.



\_\_\_\_\_  
Mayor of the City of Fairmont

Attest: Janet L. Keller  
City Clerk

\_\_\_\_\_  
Mayor of the City of Morgantown

Attest: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Manager of the City of Morgantown

Attest: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Manager of the City of Fairmont

Attest: \_\_\_\_\_  
City Clerk

DRAFT of "EXHIBIT A"

PLAN OF MERGER

CONSOLIDATING THE HOUSING AUTHORITY OF THE CITY OF FAIRMONT, WEST VIRGINIA and THE MORGANTOWN HOUSING AUTHORITY into A REGIONAL HOUSING AUTHORITY TO BE KNOWN AS "THE FAIRMONT-MORGANTOWN HOUSING AUTHORITY"

WHEREAS, The Housing Authority of City of Fairmont Housing Authority ("FHA") is a public corporation and political subdivision of the State of West Virginia duly organized and in good standing under the laws of the State of West Virginia as a housing authority created pursuant to Section 16-15-3b of the West Virginia Code;

WHEREAS, FHA was formed pursuant to resolutions duly adopted by the City of Fairmont, West Virginia;

WHEREAS, FHA is vested with all requisite power and authority to carry on its programs and activities as a housing authority, and has the right to exercise all powers granted to a housing authority by Chapter 16, Article 15 of the Code of West Virginia, 1931, as amended (hereinafter referred to as the "State Housing Law");

WHEREAS, Morgantown Housing Authority ("MHA") is a public corporations and political subdivision of the State of West Virginia duly organized and in good standing under the laws of the State of West Virginia as a housing authority created pursuant to the State Housing Law;

WHEREAS, MHA was formed pursuant to resolutions duly adopted by the City of Morgantown, West Virginia;

WHEREAS, MHA is vested with all requisite power and authority to carry on its programs and activities as a housing authority, and has the right to exercise all powers granted to a housing authority by the State Housing Law;

WHEREAS, the City of Fairmont, West Virginia and the City of Morgantown, West Virginia have determined that it is desirable and in the best interests of the citizens of Fairmont and Morgantown for FHA and MHA to consolidate pursuant to the enacted and effective Section 16-15-3b of the State Housing Law to form a regional housing authority to be known as "The Fairmont-Morgantown Housing Authority;"

WHEREAS, the governing bodies of the Cities of Fairmont and Morgantown have previously adopted that certain Joint Resolution entitled:

"JOINT RESOLUTION OF THE MORGANTOWN HOUSING AUTHORITY, WEST VIRGINIA AND THE HOUSING AUTHORITY OF THE CITY OF FAIRMONT, WEST VIRGINIA PROVIDING FOR THE CONSOLIDATION OF THE MORGANTOWN HOUSING AUTHORITY WITH THE CITY OF FAIRMONT HOUSING AUTHORITY PURSUANT

TO SECTION 16-15-3b OF THE CODE OF WEST VIRGINIA, 1931, AS AMENDED, TO FORM A REGIONAL HOUSING AUTHORITY TO BE KNOWN AS THE FAIRMONT – MORGANTOWN HOUSING AUTHORITY, AND ADOPTING A PLAN OF MERGER RELATED THERETO.” (the “Joint Resolution”)

NOW, THEREFORE, WITNESSETH, that, pursuant to the Joint Resolution, the Cities of Fairmont and Morgantown hereby agree as follows:

1. The names of the housing authorities which are to be consolidated are The Housing Authority of the City of Fairmont (sometimes hereinafter referred to as “FHA”) and The Morgantown Housing Authority (sometimes hereinafter referred to as “MHA”). The name of the consolidated regional housing authority shall be “The Fairmont-Morgantown Housing Authority.”
2. Since each of the housing authorities to be consolidated is a public corporation having no members or shareholders, neither shares of stock nor any membership interests shall be issued, exchanged or redeemed as a result of this consolidation.
3. Since the consolidated regional housing authority will be a public corporation organized and existing under the State Housing Law, there will be no shares, membership interests, or obligations or securities of the consolidated regional housing authority issued as a result of the consolidation.
4. Since the consolidating housing authorities are public corporations formed, existing and operating under the provision of the State Housing law, neither of the consolidating housing authorities was formed pursuant to articles of incorporations. The consolidated regional housing authority formed by the subject consolidations will continue to be a public corporation organized, existing and operating pursuant to the State Housing Law, and will not have articles of incorporation.
5. The consolidated regional housing authority shall operate pursuant to the by-laws of FHA, originally adopted, as the same have been amended from time to time, and as the same may hereafter be amended from time to time. Any reference in said by-laws to “The Housing Authority of the City of Fairmont” shall be amended to read “The Fairmont-Morgantown Housing Authority.”

#### Shareholders or Members Entitled to Vote

6. Each being a public corporation organized, existing and operating under the State Housing Law, neither FHA nor MHA has any shareholders or members entitled to vote upon the consolidation of FHA and MHA.

#### Approval of Consolidation

7. A regular meeting of the governing body of the City of Fairmont was held on \_\_\_\_\_. During the course of such meeting, the governing body of the City of Fairmont held a public hearing to present the proposed consolidation of FHA and MHA to the public and to receive public comment and input regarding the same.

8. A regular meeting of the governing body of the City of Morgantown was held on \_\_\_\_\_. During the course of such meeting, the governing body of the City of Morgantown held a public hearing to present the proposed consolidation of FHA and MHA to the public and to receive public comment and input regarding the same.
9. A regular meeting of the governing body of the City of Fairmont was held on \_\_\_\_\_. At such meeting, the governing body of the City of Fairmont adopted the Joint Resolution, thereby authorizing the consolidation of FHA and MHA and approving this Plan of Merger.
10. A regular meeting of the governing body of the City of Morgantown was held on \_\_\_\_\_. At such meeting, the governing body of the City of Morgantown adopted the Joint Resolution, thereby authorizing the consolidation of FHA and MHA and approving this Plan of Merger.

#### Appointment of Commissioners

11. As of the effective date of this Plan of Merger, as set forth hereinbelow, the terms of office of all of the current commissioners of FHA, and the terms of office of all the current commissioners of MHA, shall terminate.
12. Subsequent to the execution of this Plan of Merger, but prior to the effective date of the Plan of Merger, the Cities of Fairmont and Morgantown shall appoint the commissioners of the consolidated regional housing authority in the following manner:
  - a. The governing body of the City of Fairmont shall be entitled to appoint two (2) commissioners to the board of commissioners of the consolidated regional housing authority. The commissioners who are first appointed by the City of Fairmont shall be designated to serve for terms of two (2) years and four (4) years, respectively, from the date of their appointment. Thereafter commissioners appointed by the City of Fairmont shall serve a term of office of five (5) years, except that all vacancies shall be filled for the unexpired term. A certificate of the appointment or reappointment of any commissioner appointed by the City of Fairmont shall be filed with the Clerk of the City of Fairmont and shall be conclusive evidence of the due and proper appointment of a commissioner by the City of Fairmont.
  - b. The governing body of the City of Morgantown shall be entitled to appoint two (2) commissioners to the board of commissioners of the consolidated regional housing authority. The commissioners who are first appointed by the City of Morgantown shall be designated to serve for terms of one (1) years and three (3) years, respectively, from the date of their appointment. Thereafter commissioners appointed by the City of Morgantown shall serve a term of office of five (5) years, except that all vacancies shall be filled for the unexpired term. A certificate of the appointment or reappointment of any commissioner appointed by the City of Morgantown shall be filed with the Clerk of the City of Morgantown and shall be conclusive evidence of the due and proper appointment of a commissioner by the City of Morgantown.

- c. The fifth commissioner appointed to the board of commissioners of the consolidated regional housing authority shall be a resident of a residential property owned or operated by the consolidated regional housing authority, or a resident receiving rental assistance pursuant to a program administered by the consolidated regional housing authority. This commissioner shall be known as the "Resident Commissioner." The Resident Commissioner shall be first appointed by the City of Morgantown. Each Resident Commissioner shall serve a term of office of five (5) years, except that all vacancies shall be filled for the unexpired term alternately by the City of Fairmont and then the City of Morgantown. A certificate of appointment or reappointment of any resident Commissioner shall be filed with the Clerk of the appointing city and shall be conclusive evidence of the due and proper appointment of the Resident Commissioner by the City of Fairmont or City of Morgantown.
- d. The qualifications, privileges, duties, rules and regulations relating to the commissioners of the consolidated regional housing authority shall be governed by the State Housing Law.

#### Effect of Consolidation

13. As of the Effective Date (defined hereinbelow) of the consolidation of FHA and MHA, all property and assets of FHA, and all property and assets of MHA, of all types and any nature, wherever situate, whether tangible or intangible, shall be deemed to have been assigned, transferred and set over unto The Fairmont-Morgantown Housing Authority. Within thirty (30) days of the Effective Date of the consolidation, a confirmatory deed, assignment and bill of sale from FHA and MHA to The Fairmont-Morgantown Housing Authority shall be executed, delivered and recorded in the office of the Clerk of the County Commission of Marion County, West Virginia evidencing such transfer and assignment.
14. Upon the Effective Date (defined hereinbelow) of the consolidation of FHA and MHA, all current and outstanding debts, obligations responsibilities and duties of FHA, and all current and outstanding debts, obligations responsibilities and duties of MHA, shall be deemed to have been assumed by The Fairmont-Morgantown Housing Authority.
15. As of the Effective Date (defined hereinbelow), The Fairmont-Morgantown Housing Authority shall be organized and in existence, and shall operate pursuant to, the State Housing Law as a regional housing authority.

#### Effective Date of Consolidation; First Meeting of Commissioners

16. The consolidation of FHA and MHA to form a consolidated regional housing authority known as "The Fairmont-Morgantown Housing Authority" shall become effective at 12:01 a.m. EDT on \_\_\_\_\_ (the "Effective Date").
17. At 5:00 p.m. EDT on \_\_\_\_\_, the newly appointed commissioners of The Fairmont-Morgantown Housing Authority shall hold their first meeting. At such meeting,

the commissioners shall organize for the transaction of business in accordance with Section 16-15-5 of the State Housing Law.

IN WITNESS WHEREOF, the City of Fairmont, West Virginia has caused the Plan of Merger to be executed by its Mayor thereunto duly authorized, and the City of Morgantown, West Virginia has caused this Plan of Merger to be executed by its Mayor thereunto duly authorized, all as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**RESOLUTION**

*WHEREAS, the City of Morgantown submitted the necessary paperwork to obtain \$5,000 for the Metropolitan Theater through the Governor's Community Participation Grant Program, and the grant application has been approved for funding; and*

*WHEREAS, the grant (11LEDA0653) will allow the City of Morgantown to continue to purchase material, equipment, and general repairs for the Metropolitan 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 3rd day of January, 2012, 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*

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*Mayor*

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*City Clerk*

**GOVERNOR'S COMMUNITY PARTICIPATION  
GRANT PROGRAM CONTRACT**

**between the**

**WEST VIRGINIA DEVELOPMENT OFFICE**

**and the**

**CITY OF MORGANTOWN**

**THIS AGREEMENT**, entered into this 1st day of July, 2010, 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 hereafter 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 hereto do mutually agree as follows:

1. **Assistance of the Grantee**. The WVDEVO hereby agrees to assist the Grantee including all authorized officers, agents, and representatives, to perform such tasks and functions as set forth below in the scope of services.

2. **Scope of Services**. The Grantee, or its designated agent, shall do, perform and carry out, in a satisfactory and proper manner as determined by the WVDEVO, and appropriate regulatory agencies, if required, all duties, tasks, and functions necessary to continue improvements at the Metropolitan Theater. Purchases will include lighting equipment, reference material, and general repairs as funds permit.

3. **Personnel**. The Grantee represents that it has, or 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.

4. **Time Performance**. The Grantee will commence its duties under this Contract on July 1, 2010, and such duties shall be undertaken and completed in such sequences as to assure their expeditious completion in the light of the purpose of the Contract; but, in any event, all of the services required hereunder shall be completed by June 30, 2012. The completion date of this contract may only be extended by mutual written agreement of both parties dependent on the reappropriation of funds under the Governor's Community Participation Grant program. If no such agreement exists, the Grantee shall not receive payment for services rendered or work performed relative to this grant after June 30, 2012.

5. **Compensation**. In consideration of the services rendered by the Grantee, the WVDEVO agrees to pay the Grantee the sum of \$5,000. This amount constitutes complete compensation for all services rendered. In

no instance shall the agreed upon compensation exceed \$5,000 without the written consent of the Governor of the State of West Virginia.

6. **Method of Payment.** 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. Upon receipt of said documents, the WVDEVO shall review the same for reasonableness and appropriateness.

7. **Changes.** The WVDEVO and the Grantee may, from time to time, require changes in the scope of the services of the work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Grantee's compensation and work to be performed, which are mutually agreed upon by and between the WVDEVO and the Grantee, shall be incorporated in written amendments to this Contract.

8. **Sub-Grantees and Reversion of Property.** The Grantee may administer funds on behalf of sub-grantees, provided that such a 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 such a 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.

9. **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.

**The Grantee shall solicit competitive, sealed bids for commodities and supplies related to this project which have an estimated value of over \$25,000. 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 under the provisions of Paragraph 28.** These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions 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. The Grantee shall have available upon request for review by the WVDEVO or its designated representative, bid documents and other evidence of compliance with these procedures.

10. **Project Wage Rates.** Every contract involving construction, reconstruction, demolition, improvement, enlargement, painting, decoration, alteration, and/or repair work which involves the employment of any contractor and/or subcontractor necessary for the undertaking and completion of this project, regardless of the source of funds utilized to pay such contract, must comply with 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.**

**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.**

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.

Further, the Grantee shall note this requirement in the advertisement for bids and print these wage rates on all bid documents. The Grantee shall also have available upon request for review by the WVDEVO or its designated representative, bid documents and other evidence of compliance including copies of contractor's payrolls.

11. **Construction.** The Grantee shall procure construction contracts in accordance with West Virginia Code §5-22-1. **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.**

The term construction shall mean any construction, reconstruction, improvement, enlargement, painting, decorating, or repair of any public improvement let to contract. These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions 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.

Any contracts under this agreement must comply with 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. 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.

12. **Bonding.** 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.

13. **Architecture and Engineering**. The Grantee shall procure architectural or engineering services in accordance with of the 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.

14. **Design-Build**. 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.

15. **Environmental and Historical Assessment**. 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.

16. **Equal Employment Opportunity**. 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.

17. **Facilities Accessible to the Handicapped**. 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 A117.1-1961, as modified (41CFR101-17.1703 and (13CFR309.14)). The Grantee shall be responsible for conducting inspections to ensure compliance with these specifications.

18. **Facilities Operation**. 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.

19. **Interest of 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.

20. **Officials Not To Benefit.** 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.

21. **Inspections of Project Records.** 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.

22. **Project Audits.** (a) 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.

(b) 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.

23. **Reporting.** The Grantee shall submit any reports requested by the WVDEVO concerning financial status and program progress. Failure to provide such reports as required by WVDEVO in a timely manner shall be cause for termination of this Contract under the terms of Paragraph 7.

24. **Fiscal Management.** 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.

25. **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.

26. **Repayment.** The Grantee shall refund to the State any expenditures determined to be made for an ineligible purpose for which State funds were received.

27. **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.

28. **Termination of Contract for Cause.** 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.

29. **Termination for Convenience of WVDEVO.** 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.

30. **Termination by the Grantee.** 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.

31. **Signing.** 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: \_\_\_\_\_  
**Jim Manilla, Mayor**

Federal Employee Identification Number

\_\_\_\_\_  
F.E.I.N.

**RESOLUTION**

*WHEREAS, the City of Morgantown submitted the necessary paperwork to obtain \$4,000 for the Mountaineer Boys and Girls Club through the Governor's Community Participation Grant Program, and the grant application has been approved for funding; and*

*WHEREAS, the grant (11LEDA0658) will allow the Mountaineer Boys and Girls Club to purchase general use and recreational equipment to include a pool table, ping pong table, air conditioners, paint, tires; and*

*WHEREAS, Morgantown City Council is of the opinion that this program will be of great benefit to the residents of Morgantown that utilize the Boys and Girls Club.*

*NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown this 3rd day of January, 2012, 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*

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*Mayor*

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*City Clerk*

**GOVERNOR'S COMMUNITY PARTICIPATION  
GRANT PROGRAM CONTRACT**

**between the**

**WEST VIRGINIA DEVELOPMENT OFFICE**

**and the**

**CITY OF MORGANTOWN**

**THIS AGREEMENT**, entered into this 1st day of July, 2010, 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 hereafter 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 hereto do mutually agree as follows:

1. **Assistance of the Grantee**. The WVDEVO hereby agrees to assist the Grantee including all authorized officers, agents, and representatives, to perform such tasks and functions as set forth below in the scope of services.
2. **Scope of Services**. The Grantee, or its designated agent, shall do, perform and carry out, in a satisfactory and proper manner as determined by the WVDEVO, and appropriate regulatory agencies, if required, all duties, tasks, and functions necessary to purchase recreation equipment and furnishings for the Mountaineer Boys & Girls Club. Purchase will include a pool table, ping pong table, air conditioners, paint, tires, and other items as funds permit.
3. **Personnel**. The Grantee represents that it has, or 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.
4. **Time Performance**. The Grantee will commence its duties under this Contract on July 1, 2010, and such duties shall be undertaken and completed in such sequences as to assure their expeditious completion in the light of the purpose of the Contract; but, in any event, all of the services required hereunder shall be completed by June 30, 2012. The completion date of this contract may only be extended by mutual written agreement of both parties dependent on the reappropriation of funds under the Governor's Community Participation Grant program. If no such agreement exists, the Grantee shall not receive payment for services rendered or work performed relative to this grant after June 30, 2012.
5. **Compensation**. In consideration of the services rendered by the Grantee, the WVDEVO agrees to pay the Grantee the sum of \$4,000. This amount constitutes complete compensation for all services rendered. In

no instance shall the agreed upon compensation exceed \$4,000 without the written consent of the Governor of the State of West Virginia.

6. **Method of Payment.** 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. Upon receipt of said documents, the WVDEVO shall review the same for reasonableness and appropriateness.

7. **Changes.** The WVDEVO and the Grantee may, from time to time, require changes in the scope of the services of the work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Grantee's compensation and work to be performed, which are mutually agreed upon by and between the WVDEVO and the Grantee, shall be incorporated in written amendments to this Contract.

8. **Sub-Grantees and Reversion of Property.** The Grantee may administer funds on behalf of sub-grantees, provided that such a 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 such a 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.

9. **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.

**The Grantee shall solicit competitive, sealed bids for commodities and supplies related to this project which have an estimated value of over \$25,000. 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 under the provisions of Paragraph 28.** These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions 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. The Grantee shall have available upon request for review by the WVDEVO or its designated representative, bid documents and other evidence of compliance with these procedures.

10. **Project Wage Rates.** Every contract involving construction, reconstruction, demolition, improvement, enlargement, painting, decoration, alteration, and/or repair work which involves the employment of any contractor and/or subcontractor necessary for the undertaking and completion of this project, regardless of the source of funds utilized to pay such contract, must comply with 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.**

**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.**

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.

Further, the Grantee shall note this requirement in the advertisement for bids and print these wage rates on all bid documents. The Grantee shall also have available upon request for review by the WVDEVO or its designated representative, bid documents and other evidence of compliance including copies of contractor's payrolls.

11. **Construction.** The Grantee shall procure construction contracts in accordance with West Virginia Code §5-22-1. **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.**

The term construction shall mean any construction, reconstruction, improvement, enlargement, painting, decorating, or repair of any public improvement let to contract. These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions 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.

Any contracts under this agreement must comply with 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. 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.

12. **Bonding.** 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.

13. **Architecture and Engineering.** The Grantee shall procure architectural or engineering services in accordance with of the 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.

14. **Design-Build.** 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.

15. **Environmental and Historical Assessment.** 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.

16. **Equal Employment Opportunity.** 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.

17. **Facilities Accessible to the Handicapped.** 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.

18. **Facilities Operation.** 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.

19. **Interest of 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.

20. **Officials Not To Benefit.** 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.

21. **Inspections of Project Records.** 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.

22. **Project Audits.** (a) 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.

(b) 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.

23. **Reporting.** The Grantee shall submit any reports requested by the WVDEVO concerning financial status and program progress. Failure to provide such reports as required by WVDEVO in a timely manner shall be cause for termination of this Contract under the terms of Paragraph 7.

24. **Fiscal Management.** 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.

25. **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.

26. **Repayment.** The Grantee shall refund to the State any expenditures determined to be made for an ineligible purpose for which State funds were received.

27. **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.

28. **Termination of Contract for Cause.** 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.

29. **Termination for Convenience of WVDEVO.** 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.

30. **Termination by the Grantee.** 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.

31. **Signing.** 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: \_\_\_\_\_  
**Jim Manilla, Mayor**

Federal Employee Identification Number

\_\_\_\_\_  
F.E.I.N.

**RESOLUTION**

*WHEREAS, the City of Morgantown submitted the necessary paperwork to obtain \$20,000 for the Morgantown Marketplace project through the Governor's Community Participation Grant Program, and the grant application has been approved for funding; and*

*WHEREAS, the grant (11LEDA0657) will allow the City of Morgantown to purchase material to construct the Morgantown Marketplace pavilion to be the home of the Downtown Farmers' Market ; and*

*WHEREAS, Morgantown City Council is of the opinion that this program will be of great benefit to the residents of Morgantown that utilize the Farmers' Market to buy locally grown foods and products.*

*NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown this 3rd day of January, 2012, 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*

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*Mayor*

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*City Clerk*

**GOVERNOR'S COMMUNITY PARTICIPATION  
GRANT PROGRAM CONTRACT**

**between the**

**WEST VIRGINIA DEVELOPMENT OFFICE**

**and the**

**CITY OF MORGANTOWN**

**THIS AGREEMENT**, entered into this 1st day of July, 2010, 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 hereafter 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 hereto do mutually agree as follows:

1. **Assistance of the Grantee.** The WVDEVO hereby agrees to assist the Grantee including all authorized officers, agents, and representatives, to perform such tasks and functions as set forth below in the scope of services.

2. **Scope of Services.** The Grantee, or its designated agent, shall do, perform and carry out, in a satisfactory and proper manner as determined by the WVDEVO, and appropriate regulatory agencies, if required, all duties, tasks, and functions necessary to construct the Morgantown Market Place, a multi-use permanent pavilion that will house the downtown farmers market.

3. **Personnel.** The Grantee represents that it has, or 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.

4. **Time Performance.** The Grantee will commence its duties under this Contract on July 1, 2010, and such duties shall be undertaken and completed in such sequences as to assure their expeditious completion in the light of the purpose of the Contract; but, in any event, all of the services required hereunder shall be completed by June 30, 2012. The completion date of this contract may only be extended by mutual written agreement of both parties dependent on the reappropriation of funds under the Governor's Community Participation Grant program. If no such agreement exists, the Grantee shall not receive payment for services rendered or work performed relative to this grant after June 30, 2012.

5. **Compensation.** In consideration of the services rendered by the Grantee, the WVDEVO agrees to pay the Grantee the sum of \$20,000. This amount constitutes complete compensation for all services rendered. In

no instance shall the agreed upon compensation exceed \$20,000 without the written consent of the Governor of the State of West Virginia.

6. **Method of Payment.** 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. Upon receipt of said documents, the WVDEVO shall review the same for reasonableness and appropriateness.

7. **Changes.** The WVDEVO and the Grantee may, from time to time, require changes in the scope of the services of the work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Grantee's compensation and work to be performed, which are mutually agreed upon by and between the WVDEVO and the Grantee, shall be incorporated in written amendments to this Contract.

8. **Sub-Grantees and Reversion of Property.** The Grantee may administer funds on behalf of sub-grantees, provided that such a 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 such a 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.

9. **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.

**The Grantee shall solicit competitive, sealed bids for commodities and supplies related to this project which have an estimated value of over \$25,000. 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 under the provisions of Paragraph 28.** These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions 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. The Grantee shall have available upon request for review by the WVDEVO or its designated representative, bid documents and other evidence of compliance with these procedures.

10. **Project Wage Rates.** Every contract involving construction, reconstruction, demolition, improvement, enlargement, painting, decoration, alteration, and/or repair work which involves the employment of any contractor and/or subcontractor necessary for the undertaking and completion of this project, regardless of the source of funds utilized to pay such contract, must comply with 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.**

**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.**

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.

Further, the Grantee shall note this requirement in the advertisement for bids and print these wage rates on all bid documents. The Grantee shall also have available upon request for review by the WVDEVO or its designated representative, bid documents and other evidence of compliance including copies of contractor's payrolls.

11. **Construction.** The Grantee shall procure construction contracts in accordance with West Virginia Code §5-22-1. **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.**

The term construction shall mean any construction, reconstruction, improvement, enlargement, painting, decorating, or repair of any public improvement let to contract. These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions 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.

Any contracts under this agreement must comply with 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. 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.

12. **Bonding.** 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.

13. **Architecture and Engineering.** The Grantee shall procure architectural or engineering services in accordance with of the 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.

14. **Design-Build.** 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.

15. **Environmental and Historical Assessment.** 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.

16. **Equal Employment Opportunity.** 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.

17. **Facilities Accessible to the Handicapped.** 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 A117.1-1961, as modified (41CFR101-17.1703 and (13CFR309.14)). The Grantee shall be responsible for conducting inspections to ensure compliance with these specifications.

18. **Facilities Operation.** 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.

19. **Interest of 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.

20. **Officials Not To Benefit.** 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.

21. **Inspections of Project Records.** 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.

22. **Project Audits.** (a) 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.

(b) 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.

23. **Reporting.** The Grantee shall submit any reports requested by the WVDEVO concerning financial status and program progress. Failure to provide such reports as required by WVDEVO in a timely manner shall be cause for termination of this Contract under the terms of Paragraph 7.

24. **Fiscal Management.** 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.

25. **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.

26. **Repayment.** The Grantee shall refund to the State any expenditures determined to be made for an ineligible purpose for which State funds were received.

27. **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.

28. **Termination of Contract for Cause.** 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.

29. **Termination for Convenience of WVDEVO.** 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.

30. **Termination by the Grantee.** 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.

31. **Signing.** 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: \_\_\_\_\_  
**Jim Manilla, Mayor**

Federal Employee Identification Number

\_\_\_\_\_  
F.E.I.N.