

**CITY MANAGER'S REPORT  
FOR  
COUNCIL MEETING OF MARCH 15, 2005**

Honorable Mayor and Members of City Council:

NEW BUSINESS:

Item No. 1:

Attached you will find a proposed contract with the Transportation Security Administration and the City of Morgantown. Through this contract, the City Police Department will provide security for all arriving and departing commercial air services at the Airport and be reimbursed its expenses by the Federal Government (first year \$50,108; second year \$85,000, and third year \$87,000). Based upon security requirements necessary to operate the Airport and the availability of federal funds, I recommend that the contract be approved.

Item No. 2:

In 2003, the Friends of Decker's Creek conducted a very successful Household Hazardous Waste Collection Day providing the community a safe, legal way to dispose of hazardous materials. The organization would like to repeat this service later this year. To support this event, I recommend that the City make a \$1,000 contribution from the Capital Escrow Account.

Item No. 3:

The second attachment is a memo from the Community Development Director concerning design engineering for the C D sidewalk program. I agree with his comments and recommend that the contract be authorized with Greenhome & O'Mara for \$27,400.

Item No. 4:

The last attachment is a memo from the Public Works Director regarding the Collins Ferry Rd. Sidewalk Project. I agree with her comments and recommend that the design engineering work be done by Greenhome & O'Mara for a cost not to exceed \$12,200.

This concludes the City Manager's Report.

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Dan Boroff, City Manager



## MORGANTOWN POLICE DEPARTMENT

### MEMO

Date: February 18, 2005

To: Dan Boroff, City Manager

From: Chief P.K. Scott

Attached is the Reimbursement Agreement between TSA and the City of Morgantown. The Federal Aviation and Transportation Act requires every airport to establish a security program that provides for law enforcement presence to ensure security at passenger/screening checkpoints. The agreement contracts with the city (police department) to provide security for outgoing flights from the Morgantown Airport by reimbursement for costs associated with this service. The agreement has been reviewed by the city attorney, Steve Fanok, and the changes and/or corrections that he requested have been addressed. After meeting with Mr. Dale Larson, Federal Security Director, it is my opinion that the agreement be approved as submitted.



**LAW ENFORCEMENT PERSONNEL  
REIMBURSEMENT AGREEMENT  
BETWEEN THE  
TRANSPORTATION SECURITY ADMINISTRATION AND  
CITY OF MORGANTOWN, WV**

**DEPARTMENT OF HOMELAND SECURITY  
TRANSPORTATION SECURITY ADMINISTRATION**

**SENSITIVE SECURITY INFORMATION/FOR OFFICIAL USE ONLY**

WARNING: THIS RECORD CONTAINS SENSITIVE SECURITY INFORMATION THAT IS CONTROLLED UNDER 49 CFR PARTS 15 AND 1520. NO PART OF THIS RECORD MAY BE DISCLOSED TO PERSONS WITHOUT A "NEED TO KNOW", AS DEFINED IN 49 CFR PARTS 15 AND 1520, EXCEPT WITH THE WRITTEN PERMISSION OF THE ADMINISTRATOR OF THE TRANSPORTATION SECURITY ADMINISTRATION OR THE SECRETARY OF TRANSPORTATION. UNAUTHORIZED RELEASE MAY RESULT IN CIVIL PENALTY OR OTHER ACTION. FOR U.S. GOVERNMENT AGENCIES, PUBLIC DISCLOSURE IS GOVERNED BY 5 U.S.C. 552 AND 49 CFR PARTS 15 AND 1520.

**REIMBURSEMENT AGREEMENT BETWEEN  
THE TRANSPORTATION SECURITY ADMINISTRATION AND  
CITY OF MORGANTOWN, WV  
REGARDING LAW ENFORCEMENT SERVICES AT  
CITY OF MORGANTOWN, WV (MGW)**

**I. PARTIES**

The parties to this Reimbursement Agreement (RA) or otherwise referred to herein as "Agreement" are the Transportation Security Administration (TSA) and City of Morgantown, WV.

**II. BACKGROUND**

On November 19, 2001, the President and Congress enacted the Aviation and Transportation Security Act (ATSA), P.L. 107-71, 115 Stat. 597, which established TSA as a new Federal agency. ATSA provides authority to the Administrator of the Transportation Security Administration to carry out chapter 449 of Title 49 United States Code relating to civil aviation security, including responsibility for supervision of screening passengers and property at airports, and for ordering the deployment of law enforcement personnel (LEOs) authorized to carry firearms at each airport security passenger-screening location to ensure passenger safety and national security. See 49 U.S.C. §§ 44901. Much of the authority of the Administrator of the Transportation Security Administration provided by ATSA and the United States Code has been delegated to the Assistant Administrator for Aviations Operations and to the Federal Security Directors (FSDs). The FSD is TSA's representative for security matters at the airport. Pursuant to 49 U.S.C. § 44903(c) and 49 C.F.R. Part 1542, each Airport Authority is required to establish an air transportation security program that provides a law enforcement presence and capability at the airport that is adequate to ensure the safety of passengers. This reimbursement agreement is part of the cooperative effort of TSA through the FSD and the City of Morgantown, WV to deploy sufficient law enforcement officers to meet their dual responsibility to ensure the safety of passengers and to counter risks to transportation security.

**III. AUTHORITY**

TSA enters into this RA under the authority of 49 U.S.C. §§ 106(m) and 114(m). TSA has programmatic authority for the activities undertaken in this RA pursuant to 49 U.S.C. §§ 114(g), 44901(g), 44903(e) and 44922(f).

City of Morgantown, WV enters into this RA under the authority of City of Morgantown, WV.

#### **IV. SCOPE**

##### **A. Purpose**

The purpose of this RA is to provide reimbursement (subject to the availability of appropriated funds) for LEOs provided by Morgantown Police Department at the hourly rate, mutually agreed to by the parties in Appendix A of this RA, for providing qualified law enforcement services on-site at City of Morgantown, WV and to provide law enforcement response to the security passenger-screening checkpoints in keeping with requirements provided by TSA. This RA neither guarantees nor forbids reimbursement through other United States Government programs that may be available as long as the United States Government does not pay, fund or reimburse the Morgantown Police Department for the same expenses incurred by the qualified LEO in performing such services while assigned on-site at the airport to respond to the security passenger-screening checkpoints at City of Morgantown, WV. The Morgantown Police Department is prohibited from seeking or obtaining double recovery for LEO services performed at airports.

##### **B. Contributions of the Parties**

(1) City of Morgantown, WV is responsible for providing qualified LEOs at airports it operates in accordance with the most recent version of Security Directive 1542-01-07 (series), or other subsequent and superseding regulations or documents regarding law enforcement services regardless of the status of this RA.

(2) TSA agrees to pay pursuant to Appendix A the fixed hourly rate of the qualified LEOs for on-site response to airport security passenger-screening checkpoints supplied by Morgantown Police Department pursuant to the terms of this RA. Payment is subject to the availability of appropriated funds and compliance with the requirements of the applicable Security Directive(s), the Airport Security Program, and regulations or documents regarding law enforcement services as noted in Sub article (1) of this Paragraph above. Such appropriated funds shall cover such LEO services provided to the airport security passenger-screening checkpoints from execution of this RA while this RA remains in force in accordance with Article XV, Effective Date and Term of Agreement, Amendments, and Modifications of this RA or until such time as this RA is terminated in accordance with Article XVII, Termination. The applicable S.D. under which TSA makes payment for services is the S.D. that was in effect on the day the Contracting Officer signs this RA.

##### **C. Actions for Noncompliance or Material Breach**

If City of Morgantown, WV does not comply with all of the terms and requirements of this RA, or if a disagreement arises on the interpretation of the provisions of this RA, or modifications and/or revisions thereto, the Contracting Officer in consultation with the FSD will attempt to resolve the matter. If the matter cannot be resolved, the Contracting Officer will determine with the FSD the materiality of the breach and/or resolution of the interpretation of the RA and the appropriate action(s) that may be taken. The Contracting Officer's determination and proposed action will be in writing and shall be presented to City of Morgantown, WV by either the FSD or the Contracting Officer.

A material breach and/or resolution of the interpretation of this RA may result in action by the Contracting Officer including but not limited to: suspension or termination of the RA; or withholding and/or termination of reimbursement to City of Morgantown, WV.

If action based on noncompliance is taken, the Contracting Officer’s determination of a material breach and associated action may be appealed in accordance with Article XX of this RA. Should the City of Morgantown, WV have a continuing disagreement with the interpretation of the RA that interpretation may be appealed also in accordance with Article XX of this RA.

**V. FUNDING AND PAYMENT**

**A. Limitation of Funds**

The total estimated funding of this RA for Federal fiscal year 2005 shall not exceed **\$50,108.10** as payment for Morgantown Police Department providing the required law enforcement services on-site at the airport for response to the security passenger-screening checkpoints in accordance with the terms of this RA, Security Directive 1542-01-07 (series), the Airport Security Program, or other subsequent and superseding regulations or documents regarding law enforcement services for aviation security. Reimbursement is limited to payment for actual hours of LEO service at the agreed fixed hourly rate. The total estimated funding of this RA will be revised annually either by modification of this RA or by purchase order. The total estimated funding is considered to be a ceiling that City of Morgantown, WV may not exceed (except at its own financial risk) without the written approval of the Contracting Officer.

**B. Ceiling on Payment**

The funding ceiling amount of this RA provided by Paragraph A of Article V. of **\$50,108.10** may only be increased by mutual agreement of the parties. It is estimated that funding for this RA is sufficient to support providing the required law enforcement services on-site at the airport for response to the security passenger-screening checkpoints in accordance with the terms of this RA and meeting the level of effort and at the rate stated in Appendix A and from the effective date of the agreement through September 30, 2005. The funds presently available for payment and allotted to this RA are **\$50,108.10**.

**C. Process for Funding**

This RA may be incrementally funded during the fiscal year subject to the availability of Federal funds. Funds presently available for payment and allotted to this RA are **\$50,108.10**.

PR Number                    21-05-20-5-LEF-309

Accounting Data        5-AV05XA000D-2005-SDE010-GE0011-3100-2B00-LEF000-2B15MGW00000000-2531

Amount                      **\$50,108.10**

**D. Billing Instructions**

Invoices shall contain the information listed below. City of Morgantown, WV shall submit invoices to the following with a **full copy to the FSD**:

For FedEx or other overnight services, and/or US Mail:

Transportation Security Administration  
LEO Reimbursement Program  
TSA-Headquarters, East Building  
Floor 5, TSA-7  
601 South 12<sup>th</sup> Street  
Arlington, VA 22202-4220

Payment for work performed under this RA will be made as soon as possible after receipt of invoices, subject to review and approval by the TSA designated representatives. Should any relevant information reflected on submitted invoices be questioned, the Contracting Officer may withhold all amounts in question until such time as the information is confirmed.

Invoices shall be submitted no more frequently than monthly and shall only reflect the hours of LEO service provided at the fixed hourly rate accumulated through City of Morgantown, WV normal month-end accounting cutoff date. City of Morgantown, WV invoice formats are acceptable. However, all invoices shall, as a minimum include the following:

1. Reimbursable Agreement number – this number appears at the top of the cover sheet for this RA. The complete number must be provided and will appear in the following alpha numeric sequence: HSTS01-04-A-LEFNNN
2. Invoice date
3. Invoice number
4. Name and address of party requesting reimbursement
5. Point of contact, with address, telephone, fax and email contact information
6. Tax identification number
7. Period of service for which reimbursement is requested (from and to dates)
8. Description of services performed
9. Total number of LEO ours billed for time period
10. Total amount of reimbursement requested
11. Electronic Funds Transfer (EFT) Banking Information (only required on first submitted invoice unless information changes)
12. Remittance address
13. Certification of requester, including the following language:

*This is to certify that the services set forth herein were performed during the period stated and that the invoice is for hours actually worked.*

14. Signature of requester's authorized representative with date

The Department of Transportation will make payment using the Automatic Clearing House (ACH) Network, unless City of Morgantown, WV requests a waiver. After award, but before submitting the first invoice, City of Morgantown, WV shall designate a financial institution for receipt of electronic funds transfer payments. Said submission shall be done on a Standard Form 3881 which can be found at [www.gsa.gov/forms](http://www.gsa.gov/forms). Submit this form to the TSA Program Office indicated for the receipt of invoices.

**E. Prompt Payment**

Notwithstanding any other payment clause in this RA, the Government will make invoice payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. All days referred to in this clause are calendar days, unless otherwise specified.

(a) Invoice Payments.

(1) For purposes of this clause, invoice payment means a Government disbursement of monies to City of Morgantown, WV under an agreement or other authorization for supplies or services accepted by the Government. This includes payments for partial deliveries that have been accepted by the Government, final payments under T&M and labor-hour contracts, and final cost or fee payments where amounts owed have been settled between the Government and City of Morgantown, WV.

(2) Except as indicated in Sub article (a)(3) and Article (c) of this clause, the due date for making invoice payments by the designated payment office shall be the later of the following two events:

(i) The 30th day after the designated billing office has received a proper invoice from City of Morgantown, WV.

(ii) The 30th day after Government acceptance of services performed by City of Morgantown, WV. On a final invoice where the payment amount is subject to agreement settlement actions, acceptance shall be deemed to have occurred on the effective date of the agreement settlement. However, if the designated billing office fails to annotate the invoice with the actual date of receipt, the invoice payment due date shall be deemed to be the 30th day after the date City of Morgantown, WV's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or City of Morgantown, WV compliance with agreement requirements.

(3) An invoice is City of Morgantown, WV's bill or written request for payment under the agreement for supplies delivered or services performed. An invoice shall be prepared and submitted to the designated billing officer specified in the agreement. A proper invoice must include the items listed in Article V, Paragraph D above. If the invoice does not comply with these requirements, then City of Morgantown, WV will be notified of the defect within seven (7) days after receipt of the invoice at the designated billing office. Untimely notification will be taken into account in the computation of any interest payment owed City of Morgantown, WV in the manner described in Sub article (a)(6) of this clause.

(4) An interest payment shall be made automatically by the Government, without request from City of Morgantown, WV, if payment is not made by the due date and the conditions listed in subdivisions (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable.

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quantity, quality, or City of Morgantown, WV compliance with any agreement term or condition.

(iii) In the case of a final invoice for any balance of funds due City of Morgantown, WV for supplies delivered or services performed, the amount was not subject to further agreement settlement actions between the Government and City of Morgantown, WV.

(5) The interest payment amount, interest rate and the period for which the interest payment was computed, will be separately stated by the designated payment office on the check, in accompanying remittance advice, or, in the case of wire transfers, by an appropriate electronic data message accompanying the wire transfer. If the designated billing office failed to notify City of Morgantown, WV of a defective invoice within the periods prescribed in Sub article (a)(3) of this clause, then the due date on the corrected invoice will be adjusted by subtracting the number of days taken beyond the prescribed notification of defects period. Any interest payment owed City of Morgantown, WV will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties, if requested by City of Morgantown, WV.

(i) For the sole purpose of computing an interest payment that might be due City of Morgantown, WV, Government acceptance shall be deemed to have occurred constructively on the 7th day (unless otherwise specified in this agreement) after City of Morgantown, WV delivered the supplies or performed the services in accordance with the terms and conditions of the agreement,

unless there is a disagreement over quantity, quality, or City of Morgantown, WV's compliance with a agreement provision. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest payment shall be based on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform agreement administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The following periods of time will not be included in the determination of an interest payment:

(A) The period taken to notify City of Morgantown, WV of defects in invoices submitted to the Government, but this may not exceed seven (7) days.

(B) The period between the defects notice and resubmission of the corrected invoice by the City of Morgantown, WV.

(C) Any period of delay caused by incorrect electronic funds transfer (EFT) information, in accordance with the EFT clause of this agreement.

(iii). Interest penalties of less than \$1.00 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and City of Morgantown, WV over the payment amount or other issues involving agreement compliance or on amounts temporarily withheld or retained in accordance with the terms of the RA. Agreement disputes, and any interest that may be payable, will be resolved in accordance with TSA agreement disputes resolution procedures.

(6) An interest payment shall also be paid automatically by the designated payment office, without request from City of Morgantown, WV, if a discount for prompt payment is taken improperly. The interest payment will be calculated as described in Sub article (a)(5) of this clause on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when City of Morgantown, WV is paid.

## **VI. AUDITS**

TSA shall have the right to examine or audit relevant financial records for a period of three (3) years after expiration of the terms of this RA. City of Morgantown, WV must maintain an established accounting system that complies with generally accepted accounting principles.

**A. Audit and Records**

As used in this clause, records includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

**B. Examination of Records**

This is a fixed labor-hour rate RA under which City of Morgantown, WV shall maintain and the Contracting Officer, Contracting Officer's Representative, or an authorized representative of the Contracting Officer, or other authorized Federal official shall have the right to examine and audit all records and other evidence sufficient to reflect properly all hours claimed to have been incurred in performance of this RA. This right of examination shall include inspection at all reasonable times of City of Morgantown, WV offices, or parts of them, engaged in performing the RA. City of Morgantown, WV shall provide notice to TSA of the location and custodian of supporting documentation to include Time Sheets, Payroll Reports or Other Documentation that substantiates the hours worked under the RA and will make them available for review during normal working hours when requested by an authorized Federal official.

**C. Comptroller General**

The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of City of Morgantown, WV's directly pertinent records involving transactions related to this RA or a subcontract hereunder.

This Article may not be construed to require City of Morgantown, WV or subcontractor to create or maintain any record that City of Morgantown, WV or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

**D. Availability**

City of Morgantown, WV shall make available at its office at all reasonable times the records, materials and other evidence described in Articles (A), (B), and (C) of this clause, for examination, audit, or reproduction, until three (3) years after final payment under this RA, or for any longer period required by statute or by other clauses of this RA. In addition:

- (1) If this RA is completely or partially terminated, the records relating to the work terminated shall be made available for three (3) years after any resulting final termination settlement; and

(2) Records relating to appeals under the "Agreement Disputes" clause or to litigation or the settlement of agreement disputes arising under or relating to this RA shall be made available until such appeals, litigation, or agreement disputes are finally resolved.

**E. Flow Down Clause**

City of Morgantown, WV shall insert a clause containing all the terms of Article VI. of this RA, including this Paragraph (E), in all subcontracts to perform services there under that are labor-hour rate agreements for LEOs.

This clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under this RA.

**F. Refund of Payments**

The Contracting Officer has the right to demand the return of payments made to City of Morgantown, WV should the Contracting Officer determine that the hours used to calculate the invoice exceeds the actual hours worked by City of Morgantown, WV.

**VII. CONTRACTING OFFICER'S REPRESENTATIVE**

The Contracting Officer will designate a Contracting Officer's Representative (COR) to act as his or her authorized representative for contract administration functions which do not involve changes to the scope, performance, price, schedule, or terms and conditions of the RA. The designation will be in writing, signed by the Contracting Officer, and will set forth the authorities and limitations of the representative(s) under the RA. Such designation will not contain authority to sign contractual documents, order contract changes, modify contract terms, or create any commitment or liability on the part of the Government different from that set forth in the RA.

City of Morgantown, WV shall immediately contact the Contracting Officer if there is any question regarding the authority of an individual to act as a representative of the Contracting Officer under this RA.

The COR for this RA is:

**Toni Smith  
Transportation Security Administration  
TSA Headquarters, East Tower  
Floor #5, TSA-7  
601 South 12<sup>th</sup> Street  
Arlington, VA 22202-4220  
(571) 227-2467**

### **VIII. RECORDS AND RELEASE OF INFORMATION**

In the course of service under this RA, LEOs will have access to certain information called "Sensitive Security Information" or SSI, which is protected by Federal statute and regulation. LEOs may also create and maintain records that contain SSI, such as investigative reports that relate to aviation security. SSI is specifically defined in 49 CFR 1520.7. LEOs assigned to work under this RA are subject to the duties and requirements imposed by 49 CFR Part 1520, Protection of Sensitive Security Information. As such, they may not publicly disclose SSI in any context, including litigation or pursuant to a state open records act request, without the advance approval of TSA as provided in 49 C.F.R. part 1520. If a party in a legal proceeding seeks SSI in discovery or otherwise seeks disclosure of SSI from a LEO performing duties under this agreement, the LEO must provide immediate notice of the request for SSI to the FSD or the FSD's designee, who will, in turn, forward the request to TSA's Field Counsel. LEOs asked to testify about purely factual matters that do not reveal SSI may do so without consultation with TSA.

All records created by LEOs that contain SSI shall be marked with the following legend:

WARNING: THIS RECORD CONTAINS SENSITIVE SECURITY INFORMATION THAT IS CONTROLLED UNDER 49 CFR PARTS 15 AND 1520. NO PART OF THIS RECORD MAY BE DISCLOSED TO PERSONS WITHOUT A "NEED TO KNOW", AS DEFINED IN 49 CFR PARTS 15 AND 1520, EXCEPT WITH THE WRITTEN PERMISSION OF THE ADMINISTRATOR OF THE TRANSPORTATION SECURITY ADMINISTRATION OR THE SECRETARY OF TRANSPORTATION. UNAUTHORIZED RELEASE MAY RESULT IN CIVIL PENALTY OR OTHER ACTION. FOR U.S. GOVERNMENT AGENCIES, PUBLIC DISCLOSURE IS GOVERNED BY 5 U.S.C. 552 AND 49 CFR PARTS 15 AND 1520.

### **IX. LEGAL DOCUMENTS**

A copy of any summons, complaint, subpoena, or other legal document served upon a State or local LEO that is related to a legal proceeding that seeks records or testimony containing SSI shall be promptly forwarded to the FSD or the FSD's designee for forwarding to TSA's Field Counsel.

### **X. PROTECTION OF INFORMATION**

The parties agree that they shall take appropriate measures to protect proprietary, privileged, or otherwise confidential information that may come into their possession as a result of this RA, including SSI as explained in Article VIII above.

### **XI. MEDIA INQUIRIES**

All media releases and other contact with or by media specific to the Security Directive 1542-01-07 (series), the Airport Security Program, or other subsequent and superseding regulations or documents regarding law enforcement services for aviation security shall be coordinated with the FSD or the FSD's designee. All media releases and other contact with or by media on the terms and conditions of this RA shall be coordinated with the Contracting Officer. See Article XIX.

**XII. GENERAL ALLOCATION OF LIABILITY**

Unless specifically addressed by the terms of this RA or otherwise provided by Federal law, the parties agree to be responsible for the negligent or wrongful acts or omissions of their respective employees.

**XIII. OTHER PROVISIONS**

Nothing in this RA or any appendix thereto is intended to conflict with current law or regulation or the directives of DHS, TSA, or any other Executive Department. If a term of this RA or any appendix thereto is inconsistent with such authority, then that term shall be invalid to the extent of such inconsistency, but the remainder of that term and all other terms and conditions of this RA and any appendix thereto shall remain in full force and effect.

**XIV. RIGHTS AND BENEFITS**

Nothing in this RA is intended to diminish or otherwise affect the authority of any agency to carry out its statutory, regulatory, or other official functions, nor is it intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies or officers, state agencies or officers carrying out programs authorized under Federal law, or any other person.

**XV. EFFECTIVE DATE AND TERM OF AGREEMENT, AMENDMENTS, AND MODIFICATIONS**

This RA will become enforceable when signed by all parties. The effective date and term of this RA is February 20, 2005 and shall continue in effect until September 30, 2005, unless terminated earlier by the parties as provided herein. The termination of this RA by either party does not, in itself, relieve the City of Morgantown, WV from compliance with any Federal law, rule, regulation, or directive in effect.

Changes and/or modifications to this RA shall be in writing and signed by a TSA Contracting Officer and the Dan Boroff. The modification shall cite the subject RA, and shall state the exact nature of the modification. No oral statement by any person shall be interpreted as modifying or otherwise affecting the terms of this RA.

**XVI. OPTION TO EXTEND AGREEMENT**

The TSA may elect to continue performance under this RA with the limits and at the rates specified in Appendix A and Appendices A-1 through A-2 as applicable to this RA. This option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed four (4) years. The Contracting Officer may exercise the option by written notice to City of Morgantown, WV within thirty (30) days of the end of the term of the RA.

## **XVII. TERMINATION**

In addition to any other termination rights provided by this RA, either party may terminate this RA at any time prior to its expiration date, with or without cause, and without incurring any liability or obligation to the terminated party (other than payment of amounts due and owing and performance of obligations accrued, in each case on or prior to the termination date) by giving the other party at least thirty (30) days prior written notice of termination. Termination by any party does not, in itself, relieve the City of Morgantown, WV from compliance with any Federal law, rule, regulation, or directive in effect.

In the event of termination or expiration of this RA, any funds that have not been spent or obligated for allowable expenses prior to the date of termination, and are not reasonably necessary to cover termination expenses shall be unilaterally de-obligated via a modification to the purchase order that is issued as a result of this RA.

## **XVIII. ORDER OF PRECEDENCE**

In the event of any inconsistency between the terms of the RA or any law, regulation, or Security Directive, the inconsistency shall be resolved by giving preference in the following order:

- (1) Laws, Regulations, Security Directives
- (2) This RA, then
- (3) The Appendices to this RA

## **XIX. POINTS OF CONTACT**

The contacts of each party to this RA are:

**Toni Smith**  
**Contracting Officer's Representative**  
**Transportation Security Administration**  
**TSA Headquarters, East Tower, Floor #5, TSA-7**  
**601 South 12<sup>th</sup> Street**  
**Arlington, VA 22202-4220**  
**Telephone: 571-227-2467**  
**Email: toni.smith@dhs.gov**

**Holly Hamilton Bolger**  
**Contracting Officer**  
**Transportation Security Administration**  
**TSA Headquarters, West Tower, Floor #10, TSA-25**  
**601 South 12<sup>th</sup> Street**  
**Arlington, VA 22202-4220**  
**Telephone: (571) 227-3036**  
**Email: holly.bolger@dhs.gov**

**Jennifer Harker  
Administrative Assistant  
300 Spruce Street  
Morgantown, WV 26505  
304-284-7496**

The parties agree that if there is a change regarding the information in this Article, the party making the change will notify the other parties in writing of such change.

**XX. RESOLUTION OF DISAGREEMENTS**

**A. Material Breach**

If action based on noncompliance with the terms of the RA is taken under Article IV, the Contracting Officer's determination of a material breach and associated action may be appealed to the Assistant Administrator for Aviation Operations. Appeals must be submitted in writing to the Assistant Administrator for Aviation Operations, via the FSD and Contracting Officer within 60 days of the receipt of the TSA determination that a material breach of this RA has occurred. The appeal shall state the specific basis for contesting the determination of a material breach. The appeal will be reviewed by the TSA Assistant Administrator for Aviation Operations, who shall render a decision regarding the appeal with the concurrence of the Director, TSA Office of Acquisitions and the Deputy Chief Counsel for Procurement.

**B. Interpretation**

Should disagreement arise on the interpretation of the provisions of this RA, or amendments and/or revisions thereto that cannot be resolved by the Contracting Officer in consultation with the FSD as provided in Article IV. C., the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement on interpretation is not reached within sixty (60) days, the parties shall forward the written presentation of the disagreement to the TSA Assistant Administrator for Aviation Operations, who shall render a decision regarding the disagreement with the concurrence of the Director, TSA Office of Acquisition and the TSA Deputy Chief Counsel for Procurement.

Any appeal of decisions under A. or B. above will be subject to applicable Federal law.

**XXI. APPROVED BY**

The undersigned represent and warrant that they have full authority to sign the instant document and bind the parties in question.

\_\_\_\_\_  
**Dan Boroff**  
**City Manager**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Holly Hamilton Bolger**  
**Contracting Officer**  
**Transportation Security Administration**

\_\_\_\_\_  
**Date**

**APPENDIX A**

**BASE YEAR -- FY 2005  
(February 20, 2005– September 30, 2005)**

Airport Code	Maximum On-Site Hours Per Day	Hourly Rate	Estimated FY 2005 Funding
MGW	10	\$22.47	\$50,108.10

**SENSITIVE SECURITY INFORMATION/FOR OFFICIAL USE ONLY**

WARNING: THIS RECORD CONTAINS SENSITIVE SECURITY INFORMATION THAT IS CONTROLLED UNDER 49 CFR PARTS 15 AND 1520. NO PART OF THIS RECORD MAY BE DISCLOSED TO PERSONS WITHOUT A "NEED TO KNOW", AS DEFINED IN 49 CFR PARTS 15 AND 1520, EXCEPT WITH THE WRITTEN PERMISSION OF THE ADMINISTRATOR OF THE TRANSPORTATION SECURITY ADMINISTRATION OR THE SECRETARY OF TRANSPORTATION. UNAUTHORIZED RELEASE MAY RESULT IN CIVIL PENALTY OR OTHER ACTION. FOR U.S. GOVERNMENT AGENCIES, PUBLIC DISCLOSURE IS GOVERNED BY 5 U.S.C. 552 AND 49 CFR PARTS 15 AND 1520.

**APPENDIX A-1**

**OPTION YEAR 1 -- FY 2006  
(October 1, 2005 – September 30, 2006)**

Airport Code	Maximum On-Site Hours Per Day	Hourly Rate	Estimated FY 2006 Funding
MGW	10	\$23.14	\$84,461.00

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**APPENDIX A-2**

**OPTION YEAR 2 -- FY 2007  
(October 1, 2006 – September 30, 2007)**

Airport Code	Maximum On-Site Hours Per Day	Hourly Rate	Estimated FY 2007 Funding
MGW	10	\$23.83	\$86,979.50

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City of Morgantown  
Community Development Office  
389 Spruce Street  
Morgantown, WV 26505

March 10, 2005

To: Dan Boroff, City Manager  
From: David Bott, Community Development Director   
Re: Contract Engineering and Construction Services  
CDBG Sidewalk Project, James, and Darst/Mineral Streets

The Community Development Office recommends acceptance of the contract for engineering and construction services from Greenhorne & O'Mara, Inc at Twenty-Seven Thousand Four Hundred Dollars (\$27,400.00). The scope of work includes preliminary evaluation, preparation of project documents for funding agencies, project mapping, preparation of construction drawings, contract documents, and advertisement for bids, pre-bid meeting, bid opening, recommendation for award, construction management and inspection services.

The Community Development Office and the City Engineer's Office, which found this contract proposal to be similar in scope and cost with other sidewalk projects performed in the City of Morgantown, reviewed these contract documents.

This project is in accordance with the CDBG FY 2004 Action Plan. The intent is to begin on James Street with design, construction, and the design of the Darst/Mineral Street sidewalk.

# Memo

## City of Morgantown Public Works Department

**To:** Dan Boroff, City Manager

**From:** Terry Hough, Public Works Director 

**Subject:** Engineering for Collins Ferry Road Sidewalk

**Date:** March 10, 2005

As you are aware, City Council approved Collins Ferry Rd. for a new sidewalk. Give several issues, such as right-of-way width, utility poles, and drainage, the sidewalk needs to be engineered. Attached is a proposal for engineering services submitted by Greenhorne & O'Mara for \$12,200.00. Their fees are reasonable given the project. One thing about this proposal is that it is based on an hourly rate not to exceed \$12,200.00. Therefore, if the actual cost is less than \$12,200.00 then we only pay for work that they actually did. I am hoping that it will be less than that amount given the fact that the City crews are doing the work and a set of details and technical specifications are not required.

I would therefore like to request that Greenhorne & O'Mara be awarded the contract for engineering services for the sidewalk on Collins Ferry Road.

If you wish to discuss this matter, please contact me.