



MORGANTOWN
CITY CLERK

304-284-7439
Morgantownwv.gov
389 Spruce St.
Morgantown, WV 26505

AGENDA

CITY COUNCIL REGULAR MEETING

City Hall Council Chambers, 389 Spruce Street, 2nd Floor, Morgantown, WV 26505

Tuesday, January 07, 2025, at 7:00 PM

This meeting will be broadcast live via YouTube at City of Morgantown - YouTube

<https://www.youtube.com/@CityofMorgantown/streams>

1. **PLEDGE:**

2. **CALL TO ORDER:**

3. **ROLL CALL:**

4. **APPROVAL OF MINUTES:**

A. December 17, 2024, Regular Meeting Minutes

5. **CORRESPONDENCE:**

A. Presentation of Neighborhood Survey Results - Marvin Davis Geospatial Services Manager (5 minutes)

6. **PUBLIC HEARINGS:**

A. **An Ordinance Closing the Police Pension Plan to New Entrants, Electing Optional-II Financing Method, and Authorizing Enrollment of New Hires in the Municipal Police Officers and Firefighters Retirement System**

B. **An Ordinance Closing the Fire Pension Plan to New Entrants, Electing Optional-II Financing Method, and Authorizing Enrollment of New Hires in the Municipal Police Officers and Firefighters Retirement System**

C. **An Ordinance Amending Article 747 Establishing Fire Protection Service Charges**

7. **UNFINISHED BUSINESS:**

A. Consideration of **APPROVAL** of (Second Reading) of **An Ordinance Closing the Police Pension Plan to New Entrants, Electing Optional-II Financing Method, and Authorizing Enrollment of New Hires in the Municipal Police Officers and Firefighters Retirement System** (*First reading 12/17/2024*)

B. Consideration of **APPROVAL** of (Second Reading) of **An Ordinance Closing the Fire Pension Plan to New Entrants, Electing Optional-II Financing Method, and**

Authorizing Enrollment of New Hires in the Municipal Police Officers and Firefighters Retirement System (First Reading 12/17/2024)

C. Consideration of **APPROVAL** of **(Second Reading)** of **An Ordinance Amending Article 747 Establishing Fire Protection Service Charges (First Reading 12/17/2024)**

D. Boards & Commissions

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

9. SPECIAL COMMITTEE REPORTS:

10. CONSENT AGENDA:

11. NEW BUSINESS:

A. Consideration of **APPROVAL** of **(First Reading)** of **An Ordinance Authorizing an Airline Agreement and Lease with SkyWest Airlines**

B. Consideration of **APPROVAL** of **(First Reading)** of **An Ordinance Confirming Sale of Property in Fourth Ward District to Jones Place, LLC and Authorizing Execution of Deed**

C. Consideration of **APPROVAL** of **Bid Call 2025-11 for Asbestos Abatement and Demolition of Asbestos Abatement and Demolition of 59 Donley Street and 64 Hogue Street and Restoration of Land**

D. Presentation of Annual report on Police Pension Fund

E. Presentation of Annual Report on Fire Pension

F. Consideration of **APPROVAL** of **A Resolution Designating Funds from Fiscal Stabilization Fund to Life and Health Fund**

12. CITY MANAGER'S REPORT:

13. REPORT FROM CITY CLERK:

14. REPORT FROM CITY ATTORNEY:

15. REPORT FROM COUNCIL MEMBERS:

16. EXECUTIVE SESSION:

A. Pursuant to WV State Code 6-9A-4(b)(12) to discuss matters protected by attorney-client privilege

17. ADJOURNMENT:

For accommodations please call or text 304-288-7072

AN ORDINANCE CLOSING THE CITY OF MORGANTOWN POLICE PENSION FUND TO NEW ENTRANTS, ADOPTING FUNDING METHOD FOR PENSION OBLIGATIONS, AND ENTERING INTO THE WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM

The City of Morgantown hereby ordains as follows:

Section 1. Findings and Purpose.

The City Council of the City of Morgantown finds and determines that it is essential to promote and preserve the security of the retirement funds available to its police officer employees, and the City must pursue this goal by ensuring the funding obligations for retirement funds are predictable and capable of being met by the City’s revenues. In order to achieve these goals in the manner permitted by state law, the City intends to close its existing pension fund for police officers to new entrants and enroll police officers who are hired in the future in the retirement plan created in West Virginia Code § 8-22A-28, and approved and administered by the West Virginia Consolidated Public Retirement Board.

Section 2. Maintenance of Pension Fund for Employees and Retirees; Closure of Plan to New Entrants; Enrollment of New Hires in State Pension Plan.

(1) The existing pension plan for police officer employees of the City, as established by Section 137.03 of the Codified Ordinances of the City of Morgantown and designated the “Policemen’s Pension and Relief Fund,” is closed to new participants, as provided in W. Va. Code § 8-22-16(e)(1), and all current active members, retirees, and other beneficiaries covered by the existing policemen’s or firemen’s pension and relief fund shall remain covered by that plan and shall be paid all benefits of that plan in accordance with and subject to the provisions of W. Va. Code Chapter 8, Article 22, Part III;

(2) In accordance with W. Va. Code § 8-22-16(e)(2), the City elects the “Optional-II” method of financing the unfunded actuarial accrued liability of the existing police officer pension plan defined herein, as provided in W. Va. Code § 8-22-20(g);

(3) Any police officer hired after the effective date of this ordinance shall be enrolled in a retirement plan created in Chapter 8, Article 22A, of the West Virginia Code, as it may be modified, amended, superseded, or replaced, and approved and administered by the West Virginia Consolidated Public Retirement Board, or its successors or assigns, subject to any actions, approvals, or enactments required for such enrollment and subject to governing law;

(4) In order to accomplish such enrollment, the enclosed “Resolution to Become a Participating Employer of the West Virginia Municipal Police Officers and Firefighters Retirement System for MUNICIPAL POLICE OFFICERS” is hereby adopted, ratified, and approved, and shall be executed and delivered to the West Virginia Consolidated Public Retirement Board at such a time and in such a manner as to make such enrollment effective July 1, 2025, or as soon thereafter as practicable, and the City Manager and City Clerk are authorized

and directed to take such actions and executed such documents as may be necessary and consistent with the purpose of closing the City’s “Policemen’s Pension and Relief Fund” to new entrants as of June 30, 2024, and enrolling all new hires in the West Virginia Municipal Police Officers and Firefighters Retirement System effective July 1, 2025;

(5) Section 137.03 of the City Code, entitled “Policemen’s Pension and Relief Fund,” shall remain applicable to employees participating in the fund established thereby but shall not have application to any person hired after the effective date of this ordinance.

Section 3. Repeal, Savings, Severability.

Any section of this Code repealed or modified by a subsequent ordinance will continue in force until the effective date of the repealing ordinance.

The repeal or modification of any part of this Code does not affect any existing right acquired, or liability or obligation incurred, under the code sections amended or repealed unless the modifying ordinance expressly so provides. Any repealed or modified part of this Code will remain in force for the purpose of sustaining any proper legal proceedings and prosecutions related to the enforcement of such right or liability brought prior to the repeal or modification.

The repeal of any repealing ordinance, clause, or provision does not revive any former ordinance, clause, or provision unless expressly provided by ordinance.

If any provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid by a court of competent jurisdiction or other entity or agency having jurisdiction to make such determination, the remainder of this Ordinance and the application to other persons or circumstances remain in effect.

Section 4. Effective date; application. This ordinance shall be effective upon completion of all actions necessary to enroll police officers hired in the future in the retirement plan created by West Virginia Code Chapter 8, Article 22A, and administered by the West Virginia Consolidated Public Retirement Board. The City Clerk shall determine when such actions are complete and shall enter in the official records of the City the effective date of this Ordinance based upon such determination. This Ordinance does not affect rights, duties, or liabilities that matured, penalties that were incurred, and proceedings that were begun, before its effective date. The law remains in force for the purpose of sustaining any proper action or prosecution for the enforcement of the right, penalty, forfeiture or liability.

Section 5. Recording of ordinance. The City Clerk is directed to obtain all signatures required by the form of Ordinance adopted and maintain an executed original ordinance with the official records of the City of Morgantown, to be maintained, preserved, and accessed in accordance with the laws of the State of West Virginia and the City of Morgantown, and to take the following additional actions: None.

FIRST READING: _____

Mayor

SECOND READING: _____

City Clerk

ADOPTED: _____

FILED: _____



**West Virginia
Consolidated Public Retirement Board (CPRB)**

601 57th Street SE, Suite 5
Charleston, WV 25304
304-558-3570 or 800-654-4406
www.wvretirement.com

Item 7A.

**Municipal Police Officers
and Firefighters
Retirement System (MPFRS)**

**Municipal Police Officer
Resolution**

**Resolution to Become a Participating Employer of the
West Virginia Municipal Police Officers and Firefighters Retirement System**
For
MUNICIPAL POLICE OFFICERS

The following Resolution was duly made and lawfully passed by the majority vote of the governing city council of
(municipality) the City of Morgantown, West Virginia
on the _____ day of _____, 20_____.

BE IT RESOLVED that (municipality) the City of Morgantown, West Virginia does hereby elect to join the Municipal Police Officers and Firefighters Retirement System pursuant to Chapter 8, Article 22A, Sections 28 and 33a of the West Virginia Code, and thereby will include all its municipal police officers who are eligible for membership in the Municipal Police Officers and Firefighters Retirement System. This municipality hereby agrees to pay its employer contributions and withhold applicable tax-deferred employee contributions monthly and remit same to the Municipal Police Officers and Firefighters Retirement System no later than fifteen (15) days following the end of each calendar month. This municipality understands that if contributions are delinquent, the employer will be required to pay the actuarial rate of interest lost, on the total employee and employer contributions per day, with a minimum charge of fifty dollars. This municipality further understands that once it becomes a participating employer of the Municipal Police Officers and Firefighters Retirement System, the municipality may not withdraw from participation in the retirement system without express statutory authority.

This Resolution shall become effective on the first day of the month following receipt of this Resolution with all other required documentation and following acceptance of this Resolution by the Consolidated Public Retirement Board.

It is the duty of the Mayor of each municipality electing to become a participating public employer in the Municipal Police Officers and Firefighters Retirement System to certify this Resolution to the West Virginia Consolidated Public Retirement Board within ten (10) days following the vote of its city council.

I, _____, Mayor of (municipality)
the City of Morgantown, West Virginia do hereby certify that this Resolution and accompanying documentation are true and correct. Further, I acknowledge that I am aware of the provisions of Chapter 8, Article 22A of the West Virginia Code.

Signature of Mayor (304) 225-4213

Phone Number

389 Spruce Street, Morgantown, WV 26505

Municipality Address

All municipalities MUST attach a copy of the minutes from the Board meeting that reflects the majority vote.

Note: Separate resolutions are required for municipal police officers and municipal paid professional firefighters.

**AN ORDINANCE CLOSING THE CITY OF MORGANTOWN
FIRE PENSION FUND TO NEW ENTRANTS,
ADOPTING FUNDING METHOD FOR PENSION OBLIGATIONS,
AND ENTERING INTO THE WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND
FIREFIGHTERS RETIREMENT SYSTEM**

The City of Morgantown hereby ordains as follows:

Section 1. Findings and Purpose.

The City Council of the City of Morgantown finds and determines that it is essential to promote and preserve the security of the retirement funds available to its firefighter employees, and the City must pursue this goal by ensuring the funding obligations for retirement funds are predictable and capable of being met by the City’s revenues. In order to achieve these goals in the manner permitted by state law, the City intends to close its existing pension fund for firefighters to new entrants and enroll firefighters who are hired in the future in the retirement plan created in West Virginia Code § 8-22A-28, and approved and administered by the West Virginia Consolidated Public Retirement Board.

Section 2. Maintenance of Pension Fund for Employees and Retirees; Closure of Plan to New Entrants; Enrollment of New Hires in State Pension Plan.

(1) The existing pension plan for firefighter employees of the City, as established by Article 139 of the Codified Ordinances of the City of Morgantown and designated the “Firemen’s Pension and Relief Fund,” is closed to new participants, as provided in W. Va. Code § 8-22-16(e)(1), and all current active members, retirees, and other beneficiaries covered by the existing policemen’s or firemen’s pension and relief fund shall remain covered by that plan and shall be paid all benefits of that plan in accordance with and subject to the provisions of W. Va. Code Chapter 8, Article 22, Part III;

(2) In accordance with W. Va. Code § 8-22-16(e)(2), the City elects the “Optional-II” method of financing the unfunded actuarial accrued liability of the existing firefighter pension plan defined herein, as provided in W. Va. Code § 8-22-20(g);

(3) Any firefighter hired after the effective date of this ordinance shall be enrolled in a retirement plan created in Chapter 8, Article 22A, of the West Virginia Code, as it may be modified, amended, superseded, or replaced, and approved and administered by the West Virginia Consolidated Public Retirement Board, or its successors or assigns, subject to any actions, approvals, or enactments required for such enrollment and subject to governing law;

(4) In order to accomplish such enrollment, the enclosed “Resolution to Become a Participating Employer of the West Virginia Municipal Police Officers and Firefighters Retirement System for MUNICIPAL PAID PROFESSIONAL FIREFIGHTERS” is hereby adopted, ratified, and approved, and shall be executed and delivered to the West Virginia Consolidated Public Retirement Board at such a time and in such a manner as to make such enrollment effective July 1, 2025, or as soon thereafter as practicable, and the City Manager and

City Clerk are authorized and directed to take such actions and executed such documents as may be necessary and consistent with the purpose of closing the City’s “Firemen’s Pension and Relief Fund” to new entrants as of June 30, 2024, and enrolling all new hires in the West Virginia Municipal Police Officers and Firefighters Retirement System effective July 1, 2025;

(5) Section 139.01 of the City Code, entitled “Firemen’s Pension and Relief Fund,” shall remain applicable to employees participating in the fund established thereby but shall not have application to any person hired after the effective date of this ordinance.

Section 3. Repeal, Savings, Severability.

Any section of this Code repealed or modified by a subsequent ordinance will continue in force until the effective date of the repealing ordinance.

The repeal or modification of any part of this Code does not affect any existing right acquired, or liability or obligation incurred, under the code sections amended or repealed unless the modifying ordinance expressly so provides. Any repealed or modified part of this Code will remain in force for the purpose of sustaining any proper legal proceedings and prosecutions related to the enforcement of such right or liability brought prior to the repeal or modification.

The repeal of any repealing ordinance, clause, or provision does not revive any former ordinance, clause, or provision unless expressly provided by ordinance.

If any provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid by a court of competent jurisdiction or other entity or agency having jurisdiction to make such determination, the remainder of this Ordinance and the application to other persons or circumstances remain in effect.

Section 4. Effective date; application. This ordinance shall be effective upon completion of all actions necessary to enroll firefighters hired in the future in the retirement plan created by West Virginia Code Chapter 8, Article 22A, and administered by the West Virginia Consolidated Public Retirement Board. The City Clerk shall determine when such actions are complete and shall enter in the official records of the City the effective date of this Ordinance based upon such determination. This Ordinance does not affect rights, duties, or liabilities that matured, penalties that were incurred, and proceedings that were begun, before its effective date. The law remains in force for the purpose of sustaining any proper action or prosecution for the enforcement of the right, penalty, forfeiture or liability.

Section 5. Recording of ordinance. The City Clerk is directed to obtain all signatures required by the form of Ordinance adopted and maintain an executed original ordinance with the official records of the City of Morgantown, to be maintained, preserved, and accessed in accordance with the laws of the State of West Virginia and the City of Morgantown, and to take the following additional actions: None.

FIRST READING: _____

Mayor

SECOND READING: _____

City Clerk

ADOPTED: _____

FILED: _____



**West Virginia
Consolidated Public Retirement Board (CPRB)**

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Item 7B.
**Municipal Police Officers
and Firefighters
Retirement System (MPFRS)**
**Municipal Paid Professional
Firefighter Resolution**

**Resolution to Become a Participating Employer of the
West Virginia Municipal Police Officers and Firefighters Retirement System
For
MUNICIPAL PAID PROFESSIONAL FIREFIGHTERS**

The following Resolution was duly made and lawfully passed by the majority vote of the governing city council of
(municipality) the City of Morgantown, West Virginia
on the _____ day of _____, 20_____.

BE IT RESOLVED that (municipality) the City of Morgantown, West Virginia does hereby elect to join the Municipal Police Officers and Firefighters Retirement System pursuant to Chapter 8, Article 22A, Section 28 of the West Virginia Code, and thereby will include all its municipal paid professional firefighters who are eligible for membership in the Municipal Police Officers and Firefighters Retirement System. This municipality hereby agrees to pay its employer contributions and withhold applicable employee contributions monthly and remit same to the Municipal Police Officers and Firefighters Retirement System no later than fifteen (15) days following the end of each calendar month. This municipality understands that if contributions are delinquent, the employer will be required to pay the actuarial rate of interest lost, on the total employee and employer contributions per day with a minimum charge of fifty dollars. This municipality further understands that once it becomes a participating employer of the Municipal Police Officers and Firefighters Retirement System, the municipality may not withdraw from participation of the retirement system without express statutory authority.

This Resolution shall become effective on the first day of the month following receipt of this Resolution with all other required documentation and following acceptance of this Resolution by the Consolidated Public Retirement Board.

It is the duty of the Mayor of each municipality electing to become a participating public employer in the Municipal Police Officers and Firefighters Retirement System to certify this Resolution to the West Virginia Consolidated Public Retirement Board within ten (10) days following the vote of its city council.

I, _____, Mayor of (municipality)
the City of Morgantown, West Virginia do hereby certify that this Resolution and

accompanying documentation are true and correct. Further, I acknowledge that I am aware of the provisions of Chapter 8, Article 22A of the West Virginia Code.

Signature of Mayor

(304) 225-4213
Phone Number

All municipalities MUST attach a copy of the minutes from the Board meeting that reflects the majority vote.

Note: Separate resolutions are required for municipal police officers and municipal paid professional firefighters.

**AN ORDINANCE OF THE CITY OF MORGANTOWN
AMENDING ARTICLE 747 ENTITLED
“FIRE PROTECTION SERVICE CHARGES”**

The City of Morgantown hereby ordains as follows:

Section 1. Findings and Purpose.

The City Council finds and concludes that West Virginia Code section 8-13-13 authorizes municipalities to establish fees for essential or special services provided to the users of those services, including fire protection, and that The City of Morgantown has codified its fire protection services charges within Article 747 of the City Code. The service fees paid by users of fire service within the City fund a significant portion of the cost to maintain, operate, and equip the Morgantown Fire Department, including payment of employee salaries and benefits, provision of safety equipment and training to employees, and funding capital needs such as fire trucks and fire stations. The fire protection service charge was last updated in 2020, by City Council ordinance number 2020-15. The City of Morgantown has been able to maintain these service fees at the 2020 rates by making additional contributions of general funds to the costs of operating the fire department. In order to take advantage of an opportunity to fully fund the pension obligations to current firefighter employees which has been presented by recent legislation, City Council finds and concludes that the fire protection service charge should be increased by fifteen percent, equivalent to an additional annual fee of 1.41 cents per square foot of total structure area, or an annual fee increase approximating \$25.38 for an 1800 square foot house. This fee increase will allow the City to make the additional contributions necessary to elect the Optional-II funding method for firefighter pensions pursuant to W. Va. Code § 8-22-20(g) and ensure those pension obligations are fully funded by July 1, 2063. The City Council further finds and concludes that the previously enacted requirement to establish and propose a hazard classification to assess additional fire fees on occupancies that create additional hazard of fire or response has not been implemented by the fire department following the 2020 ordinance including the requirement and should be removed from Article 747, that updates to the time for payment and for early payment rebates should be included to assist the finance department with administration of this Article, that fees specifically related to additional costs incurred by the City in collection of delinquent accounts should be imposed to address the additional cost of service related to such accounts, and that additional revisions to the definition of structure area and method of calculating structure area by the fire department should be made to allow the fire chief and their designees to efficiently and effectively assess the correct amount of fire fees on each structure within the City as prescribed by Article 747.

Section 2. Adoption of Amendment to Article 747 of the City Code.

Article 747 of the City Code, entitled “Fire Protection Service Charges” is hereby amended as follows (new matter underlined; deleted matter ~~stricken~~):

Sec. 747.01. - Definitions.

~~Gross square footage~~ Total area means the size of a structure measured as the sum of the square footage measurements of the various stories of the structure, as measured from the exterior walls; or for structures that are not enclosed by exterior walls, the outside of the roof covering such structure.

Stories means the various horizontal levels of a structure including, for the purposes of this article, all identifiable horizontal levels including finished basements and finished attic areas, but excluding crawlspaces, unfinished basements in residential structures, and unfinished attic areas.

Structures means any residence, commercial building, church, warehouse, office or classroom building, storage building, barn, garage, service station, mobile home, parking garage, lumber shed, pole building or other building or roofed and walled area, whether completely or partially roofed, or completely or partially enclosed with walls, intended for human habitation or for the storage or protection of assets, except that porches, breezeways, carports, patios, loading docks and other similar appurtenances shall not be considered to be structures for the purposes herein.

Users of fire protection services means any person, partnership, corporation, firm, association, trust or other legal entity owning buildings, structures or other improvements and any user not otherwise chargeable herein, located within the City and hereinafter declared to be subject to the levying and imposition of a fire service protection fee.

Sec. 747.02. - Levy and imposition of fee.

(a) ~~Gross floor~~ Total area fee. There is hereby levied and imposed upon all users of the fire protection service provided by the City, a fee for the continuation, maintenance and improvement of such service. The fee shall be as follows:

Before July 1, 2025: 9.42 cents per square foot of space within each structure, per annum. Structures exceeding three floors shall be charged an additional 5.95 cents per square foot of space for each additional space above the third floor.

Effective July 1, 2025: 10.83 cents per square foot of space within each structure, per annum. Structures exceeding three floors shall be charged an additional 6.84 cents per square foot of space for each additional space above the third floor.

~~(b) Reserved. Hazard classification. On or before October 31, 2020, the Chief of the Fire Department shall prepare and deliver to the City Manager, the Finance Director, and the City Council a method for assessing fire protection service charges based upon hazard classification in addition to or in conjunction with the fee levied by subsection (a) of this section, so that the inclusion of a hazard classification program can be considered in the City Fiscal Year 2022 budget. The proposal should include the following information, but the contents and extent of the proposal will be in the discretion of the Chief of the Fire Department:~~

~~(1) — The manner in which a hazard classification is established and the various hazard classifications that may apply to properties within the City;~~

~~(2) — A list of the uses of property that will qualify for a hazard classification, and which proposed hazard classification will apply to each property use;~~

~~(3) — A count or estimate of the number of properties within the City to which a hazard classification would apply;~~

~~(4) — A summary of the additional costs imposed upon the Fire Department by the maintenance of such property uses within the City;~~

~~(5) — A proposed fee for fire protection service charges to be assessed based on hazard classifications, including the fee imposed on each use identified to which a hazard classification will apply and the total revenue proposed to be raised by such fee;~~

~~(6) — A timeline for identifying each user of fire protection services who may be subject to a hazard classification and imposition of the proposed fee on such users.~~

(c) ~~Duty to establish area of structures, measure and to assign hazard classifications.~~ The ~~gross square footage total area~~ of each structure ~~subject to the fee imposed by this Article~~ shall be determined by the Fire Chief, ~~in accordance with the definition of terms in Section 747.01 and the gross square footage measurements for each structure shall then be multiplied by the rates shown above to determine the amount of the fee to be charged against the use of the fire protection service.~~ When determining the total area of any structure ~~gross square footage of each structure~~, the Fire Chief may rely upon plans and permit applications submitted to the City or otherwise on record with the City, data collected or published by the Monongalia County Assessor, and any other data source capable of reliably identifying the total area of a structure as required to establish the fire protection service charge for such structure under this Article. On or before May 1 of each year, the Fire Chief shall deliver to the Finance Director a list of each structure within the City and the total area ~~gross square footage~~ thereof determined in accordance with this article.

(d) There is hereby levied and imposed on the user of fire protection services of the City, who otherwise is not chargeable herein, an hourly fee for each and every use of such fire protection services, payable on demand by the City, as determined by the City Manager or designee based on an hourly rate as calculated from the City's current Fire Department budget divided by 8,760 hours. Additional charges for expendable materials not otherwise contracted for by the City shall also be levied.

(e) For the purpose of this section, the first story of a structure shall be that story, any side of which has a floor level that is not more than one-half of the story height below grade, and when at any point along the length of the side, it is counted as the first story, it will result in a structure height which is in excess of three stories.

A story that is more than one-half of its height below grade ~~and those which are specifically excluded in Section 747.01(d)~~, shall not be counted when determining building height.

Sec. 747.03. - Collection of fee.

The fees levied and imposed in Section 747.02 shall be collected from each user of the fire protection service in equal, semi-annual installments unless the user shall choose to pay the entire annual fee at one time. Installment payments shall be due on September 15 ~~August 15~~ and ~~February~~ March 15 of each City fiscal year. Users who pay the entire annual fee prior to the due date of the first installment shall receive a five percent discount. There shall be a late payment penalty in the amount of five percent of all amounts remaining unpaid as of ~~February~~ March 15 of each City fiscal year.

Any user who fails to pay the fee when due shall owe an additional fee of \$40.00 in respect of the costs related to administration, lien placement, and lien release, and an additional fee of 30 percent of the delinquent amount in respect of the costs related to collection of outstanding fees. Such amount shall be added to, and included in, the fee owed by each user subject to such fees as of the date the obligation is incurred, and shall be collectible and enforceable in the same manner as other fees assessed in this Article.

Sec. 747.04. - Fee list; publication of notice of availability.

The Finance Director is hereby directed to prepare, no later than August 1 ~~July 1~~ of each year, an alphabetical listing of the names of the users of the fire protection service, a description, to include the total area square footage, of each of the user's structures, and the amount of the fire service protection fee to be charged against each structure. The fee list prepared pursuant to this Section 747.04 shall be a public record available upon request. The Finance Director shall cause to be delivered to each user of the fire protection service an invoice or statement showing the amount of fees due from that user, by any method determined adequate in the discretion of the Finance Director, including but not limited to electronic notification through a City fee payment or permitting system; provided, that the failure of any user to receive such invoice or statement shall not excuse or delay the obligation to pay the fire protection service charges established by this Article.

Sec. 747.05. - Requests for adjustments or corrections; appeals.

Any user of the service may request an adjustment or correction to any information included on the list required in Section 747.04, or on the user's invoice, if the user believes the information to be erroneous or incomplete. Any such request shall be filed prior to the end of the City Fiscal Year for which the fees are owed in writing with the Finance Director and shall be filed on forms provided by the Finance Director.

The Finance Director, upon receipt of a properly filed request for adjustment or correction of information included on the list shall, within 30 calendar days, review the request and inform the user whether the requested adjustments or corrections will be made. If the user who has filed the request is dissatisfied with the Finance Director's response to the request, the user of the services may apply to Council by petition, in writing, within 30 days after notice is mailed to him or her by the Finance Director for a hearing and adjustments or correction of the list or fee as set by the Finance Director. Said petition shall set forth the reasons why such hearing should be granted and why the requested changes should be made. Council shall promptly consider such petition, and may grant such hearing or deny the same. If denied, the petitioner shall immediately be

notified of the same; if granted, Council shall notify the petitioner of the time and place fixed for such hearing. After such hearing, Council may make such order in the matter as may appear to it just and lawful, and shall furnish a copy of such order to petitioner. Any user of the service may appeal the administrative decision of the Council to Circuit Court of Monongalia County within 60 days after being served with the notice of Council's order.

Sec. 747.06. – Reserved.

Sec. 747.07. - Rules and regulations.

The Finance Director shall have the right to make and promulgate regulations governing the implementation of this article, the making of statements of accounts, the collections thereof, and other appropriate rules and regulations for the enforcement of this article. Upon adoption or modification of any rules or regulations under this article, the Finance Director shall file a complete, current copy of all adopted rules and regulations under this article with the City Clerk. The City Clerk shall maintain a record of all current and past regulations. Upon delivery of an update to the regulations by the Finance Director, the City Clerk shall promptly delivery a copy to the City Manager and each member of City Council.

Sec. 747.08. - Use of funds.

The funds, moneys and revenues received from the collection of the fees levied and imposed in this Article Section 747.02 shall be used only for the continuance, maintenance or improvement of the essential or special fire protection service provided by the City, and no part of such funds, moneys or revenues shall be used for any other purpose.

Sec. 747.09. - Fee is supplementary; debt to City.

The fee levied and imposed in this Article Section 747.02 shall be in addition to any other licenses, taxes or fees levied under the statutes of the State, by the provisions of this Code or by other ordinances of the City, and the payment thereof shall be a condition precedent to the use and enjoyment of the essential and special fire protection services provided by the City. The fee levied and imposed in this Article Section 747.02 shall be a debt due the City from each user of such service and the Finance Director is hereby authorized and directed to pursue the collection of such debt through the use of all legal means available to the City.

Sec. 747.10. - No user of service exempt from fee.

No person or organization defined in this Article Section 747.01 as a user of the fire protection service provided by the City shall be exempt from the payment of a properly calculated fire protection service fee whether the person or organization is the United States Government, the State of West Virginia, or any political subdivision thereof, or any other person or organization who, because of the educational, literary, scientific, religious, charitable or other use of their property is normally exempted from paying Federal, State or local taxes.

Sec. 747.11. - Liens on real property for unpaid and delinquent fire service fees.

Liens may be filed on real property located within the municipal corporate limits for unpaid and delinquent fire service fees. Prior to the lien being filed, the City will give notice to the property owner, by certified mail, return receipt requested, that the City will file the lien unless the delinquency is paid within 90 days from the date the notice is mailed. Any requests for adjustments or corrections to the assessment may be submitted pursuant to Section 747.05, except that the request for review may be submitted at any time within 90 days from the date the notice was mailed.

Sec. 747.99. - Penalty.

See Section 701.99 for general Code penalty.

Section 3. Repeal, Savings, Severability.

Any section of this Code repealed or modified by a subsequent ordinance will continue in force until the effective date of the repealing ordinance.

The repeal or modification of any part of this Code does not affect any existing right acquired, or liability or obligation incurred, under the code sections amended or repealed unless the modifying ordinance expressly so provides. Any repealed or modified part of this Code will remain in force for the purpose of sustaining any proper legal proceedings and prosecutions related to the enforcement of such right or liability brought prior to the repeal or modification.

The repeal of any repealing ordinance, clause, or provision does not revive any former ordinance, clause, or provision unless expressly provided by ordinance.

If any provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid by a court of competent jurisdiction or other entity or agency having jurisdiction to make such determination, the remainder of this Ordinance and the application to other persons or circumstances remain in effect.

Section 4. Effective date; application. This ordinance shall be effective upon adoption. This Ordinance does not affect rights, duties, or liabilities that matured, penalties that were incurred, and proceedings that were begun, before its effective date. The law remains in force for the purpose of sustaining any proper action or prosecution for the enforcement of the right, penalty, forfeiture or liability.

Section 5. Recording of ordinance. The City Clerk is directed to obtain all signatures required by the form of Ordinance adopted and maintain an executed original ordinance with the official records of the City of Morgantown, to be maintained, preserved, and accessed in accordance with the laws of the State of West Virginia and the City of Morgantown, and to take the following

additional actions: Distribute executed copies of the ordinance to the Finance Director and the Fire Chief.

Section 6. Notice of Public Hearing (Class I-0).

The City Clerk shall cause to be published a notice of proposed adoption of this Ordinance as a Class I-0 legal advertisement in a qualified newspaper of general circulation in the City of Morgantown, and said notice shall state that this Ordinance has been introduced, the title of the proposed ordinance, the places where a copy of this ordinance may be inspected by the public, and that any person interested may appear before the Morgantown City Council at a public hearing on December 17, at 7:00 p.m., which date is not less than five (5) days after the date of the publication of the notice, and present any comment or protest thereto, following which hearing, Council shall take such action as it shall deem proper. Copies of this Ordinance shall be available to the public for inspection at the office of the City Clerk, City of Morgantown, Morgantown, West Virginia.

FIRST READING: _____

Mayor

SECOND READING: _____

ADOPTED: _____

City Clerk

FILED: _____

Boards & Commissions Vacant Position List

Updated 12/26/2024

- **Board of Zoning Appeals: 1 Vacant – (City Resident)**
1 – 2yr – 3yr term: 1/1/2025 – 12/31/2027
- **Civilian Police Review & Advisory Board: 2 Vacant – (City Resident or Work within City)**
1 – 1yr – 3yr term: 7/5/2023 – 7/4/2026
1 – 2yr – 3yr term: 7/5/2024 – 7/4/2027
- **Cultural Arts Commission: 1 Vacant**
1 – 3yr – 4yr term: 4/1/2024 – 3/31/2028
- **Fire Code Board of Appeals: 1 Vacant – City Resident (Legal, Building Contractor, Engineering/Architectural Design)**
1– 3yr terms: 5/2/2022 – 4/30/2025 (Legal)
- **Health & Wellness Commission: 3 Vacant – (City Resident or Work within City)**
2 – 3yr – 3yr term: 1/1/2024 – 12/31/2026
1 – 1yr – 3yr term: 1/1/2025 – 12/31/2027
- **Historic Landmarks Commission: 2 Vacant – City Resident**
1 – 2yr – 4yr term: 11/5/2022 – 11/4/2026
1 – 4yr – 4yr term: 11/5/2024 – 11/4/2028
- **Human Rights Commission: 3 Vacant – City Resident**
2 – 2yr – 2yr term: 7/1/2024 – 6/30/2026
1 – 1yr – 2yr term: 7/1/2023 – 6/30/2025
- **“ICC” Building Code Board of Appeals: 1 Vacant (Architect/Engineer or Bldg. Contractor)**
1 – 1yr – 5yr term: 5/1/2021 – 4/30/2026
- **Library Board of Director: 1 Vacant – City Resident**
1 – 4yr – 5yr term: 7/1/2023 – 6/30/2028
- **Personnel Board: 1 Vacant – City Resident**
1 – 3yr – 1yr – 3yr term: 7/1/2024 – 6/30/2027
- **Planning Commission: 2 Vacant – City Resident (Ward Specific)**
1 – 1yr – 3yr term: 3rd Ward 1/1/2023 – 12/31/2025
1 – 3yr – 3yr term: 7th Ward 1/1/2025 – 12/31/2027
- **Sister Cities Commission: 2 Vacant**
1 – 1yr – 3yr term: 6/1/2023 – 5/31/2026
1 – 3yr – 3yr term: 6/1/2022 – 5/31/2025
- **Traffic Commission: 3 Vacant – City Resident (Ward Specific)**
3 – 3yr term: 4/4/2024 – 4/3/2027 – 2nd Ward, 4th Ward, and 7th Ward
- **Transit Authority Board of Directors: 1 Vacant – (Registered Voter within Mon County)**
1 – 3yr – 3yr term: 1/1/2023 – 12/31/2025
- **Tree Board: 2 Vacant**
1 – 3yr – 3yr term: 7/1/2023 – 6/30/2026
1 – 3yr – 3yr term: 7/1/2024 – 6/30/2027
- **Urban Landscape Commission: 2 Vacant – City Resident (Landscape Design – Horticulture - Plant Health)**
1 – 3yr – 3yr term: 7/1/2023 – 6/30/2026
1 – 1yr – 3yr term: 7/1/2024 – 6/30/2027
- **Ward & Boundary Commission: 2 Vacant – City Resident (Ward Specific)**
2 – 2yr terms: 7/1/2023 – 6/30/2025 - Wards 4 & 7
- **Woodburn Commission: 2 Vacant**
1 – 2yr – 3yr terms: 1/1/2022 – 12/31/2025
1 – 1yr – 3yr terms: 1/1/2024 – 12/31/2026

Boards & Commissions Vacant Position List

Updated 12/26/2024

Upcoming Scheduled Special Meetings

Special Meeting Tuesday, January 7, 2025, at 5:30 p.m. (C) Confirmed (T) Tentative

T – 5:30 p.m. – Gabe DeWitt – Board of Zoning Appeals

T – 5:45 p.m. – Brennan Williams 5th Ward – Planning Commission

Council may appoint or reappoint the following at the January 7, 2025, Regular Meeting:

- Board of Zoning Appeals – Gabe DeWitt (1/7/25)
- Civilian Police Review & Advisory Board - Ashley DeNardo (8/27/24), Jason Gavril (9/17/2024)
- Human Rights Commission – Jaiden Ellis (1/7/25)
- Planning Commission – Brennan Williams 5th Ward (1/7/25)

Special Meeting Tuesday, January 7, 2025, at 6:00 p.m. with Raftelis Recruitment Services for City Manager Search

Special Meeting Tuesday, January 21, 2025, at 6:00 p.m. (C) Confirmed (T) Tentative

C – 6:00 p.m. – Katie Purnell – Library Board

C – 6:15 p.m. – Lauren Krupica – Health & Wellness Commission – Library Board – Woodburn Commission

C – 6:30 p.m. – Jayden Emerick – Sister Cities Commission

Council may appoint or reappoint the following at the January 21, 2025, Regular Meeting:

- Transit Authority Board of Directors – Karis Fields (10/15/24)
- Woodburn Commission – Lauren Krupica (1/21/25)

Special Meeting Tuesday, January 28, 2025, at 6:30 p.m. (C) Confirmed (T) Tentative

C – 6:00 p.m. – Allie Harshenas – Health & Wellness Commission

C – 6:15 p.m. – Rebekah Call – Health & Wellness Commission

C – 6:30 p.m. – Troy Krupica – Health & Wellness Commission – Library Board

There are 6 applicants who have applied for multiple boards and commissions that are not scheduled yet. I cannot schedule any special meeting interviews for boards and commissions because we are waiting for Municipal Court Judge interviews to be scheduled. I have listed below those that have applied and what is available and what they will be interviewing for.

Cultural Arts Commission: Isabella Happ & Julia Rosploch

Health & Wellness Commission: Chloe Hernandez & Isabella Happ

Human Rights Commission: Jaiden Ellis & Isabella Happ

Library Board of Directors: Danny Williams

Tree Board: Robert Eckenrode

City of Morgantown
Morgantown Municipal Airport
and
SkyWest Airlines
Standard Airline Agreement &
Lease

**City of Morgantown
Morgantown Municipal Airport
and
SkyWest Airlines
Lease Summary**

TYPE OF AGREEMENT	Standard Airline Agreement & Lease
TENANT	SkyWest Airlines
REPRESENTATIVE(S)	Wade Steel, Chief Commercial Officer
NOTICE ADDRESS	444 South River Road St. George , UT 84790
EFFECTIVE DATE	12/13/2024
INITIAL TERM	4 years
RENEWAL OPTIONS	Two (2) two (2) year options, subject to DOT EAS approval
TERMINATION DATE	12/31/2028
LEASEHOLD/ASSIGNED PREMISES	Preferential Air Carrier space: 1391 ft ² Common Use space: 876 ft ² Apron : 36,293 ft ² See Exhibit A for details
INITIAL RENTAL RATE	Preferential Air Carrier space: 1391ft ² @ \$15/ft ² = \$20865/per anum or \$1738.75/month Common Use space: 876ft ² @ \$5/ft ² = \$4,380/anum or \$365/month Landing fees: # landings@ \$9.00/1000 pounds maximum landed weight
RENTAL ADJUSTMENT	Annual CPI-W during the Initial Term; Increase during Renewal Options TBD
OTHER FEES, RATES AND CHARGES	Passenger Facility Charges
AUTHORIZED USE(S)	Commercial Air Carrier operation

NOTE: THIS SUMMARY IS PRESENTED AS A REFERENCE OF THE AGREEMENT INFORMATION AT THE TIME OF EXECUTION. IF THERE IS A DISCREPANCY BETWEEN THE INFORMATION CONTAINED IN THIS SUMMARY AND THE REQUIREMENTS CONTAINED IN THE REMAINDER OF THE AGREEMENT, THE REQUIREMENTS AS STATED IN THE REMAINDER OF THE AGREEMENT WILL PREVAIL.

AIRLINE LEASE AGREEMENT

THIS **AIRLINE-AIRPORT LEASE AND OPERATING AGREEMENT** (as amended, modified or altered from time to time, the "Agreement") is made and entered into this 13th day of December 2024, by and between the **City of Morgantown, West Virginia**, a public body politic and corporate, as amended (hereinafter referred to as **City**), and **SkyWest Airlines**, a corporation organized and existing under the laws of the State of Utah and authorized to do business in the State of West Virginia (hereinafter referred to as **Airline**).

WITNESSETH

WHEREAS, CITY is now operating on certain real property located in the County of Monongalia, State of West Virginia, known as Morgantown Municipal Airport (hereinafter sometimes referred to as the "**AIRPORT**"); and

WHEREAS AIRLINE is a corporation primarily engaged in the business of transportation by air of persons, property, cargo, and mail; and

WHEREAS AIRLINE desires to obtain certain rights, services, and privileges in connection with the use of the **AIRPORT**; and **CITY** is willing to grant and lease the same to **AIRLINE** upon the terms and conditions hereinafter stated;

WHEREAS, AIRLINE desires to lease certain premises and obtain certain rights, services and privileges in connection with the use of the **AIRPORT** and its facilities, and **City** is willing to grant and lease the same to **AIRLINE** upon the terms and conditions hereinafter stated; and **NOW, THEREFORE** in consideration of the mutual covenants and agreements herein contained, **CITY** and **AIRLINE** do hereby mutually undertake, promise, and agree, each for itself and its successors and assigns, as follows:

ARTICLE 1 DEFINITIONS

The following words, terms and phrases wherever used in this Agreement shall for the purposes of this Agreement have the following meanings:

1.01 Affiliate or Affiliated Airline shall mean an Air Transportation Company designated in writing by a Signatory Airline provided that such other Air Transportation Company is (a) the parent corporation of a Signatory Airline or (b) a wholly owned subsidiary of such Signatory Airline's parent corporation, or (c) a wholly owned subsidiary of such Signatory Airline, or (d) an Air Transportation Company operating under a code share arrangement with a Signatory Airline, or an Air Transportation Company having another form of contractual arrangement with a Signatory Airline, or its parent corporation, for which all or part of the passenger seats, or cargo space, on each aircraft into and out of Airport, are sold under the same airline code designator as those used by such Signatory Airline, and subject to the conditions of Article 6.03 herein.

1.02 Air Transportation Business shall mean that business operated by Airline at the Airport for the commercial transportation by air of persons, property, mail, parcels and/or cargo.

1.03 Air Transportation Company shall mean a legal entity certificated by the Secretary of Transportation and engaged in the business of scheduled or non-scheduled commercial transportation by air of persons, property, mail, parcels and/or cargo.

1.04 Airfield shall mean those portions of the Airport, including the Terminal Aircraft Aprons and the Cargo Aircraft Aprons, provided for the landing, taking off, and taxiing of aircraft, including without limitation approach and turning zones, clear zones, aviation or other easements, runways, a fully

integrated taxiway system, runway and taxiway lights, and other appurtenances related to the aeronautical use of the Airport, including any airfield property purchased for noise mitigation purposes.

1.05 Airfield Area Cost and Revenue Center shall include all Debt Service, Capital Expenditures, all direct and indirect Operating Expenses; all fund deposits pursuant to the Bond Resolution, and operating Revenues for the Airfield.

1.06 Airline Premises shall mean those areas in the Terminal Building assigned to Airline as Preferential Use Premises and Common Use Premises, as defined herein and shown on Exhibit A attached hereto.

1.07 Airport shall mean the presently existing Morgantown Municipal Airport which may be modified from time-to-time.

1.08 City shall mean the City of Morgantown dba Morgantown Municipal Airport and the person, division, department, bureau, or agency as may from time to time be expressly designated by the City to exercise functions equivalent or similar to those now exercised by the City with respect to rights and obligations of the City under this Agreement.

1.09 City Council shall mean the governing organization of the City of Morgantown.

1.10 Bond Resolution shall mean, collectively, the Resolution as from time-to-time restated, amended or supplemented by the supplemental resolutions in accordance with the terms and provisions of the Resolution, and shall include the Series Resolution and Sales Order (if any) for each series of Bonds.

1.11 Bonds shall mean any Series Bond or Bonds or any Subordinate Lien Bond or Bonds, established and created by Resolution and issued pursuant to a Series Resolution.

1.12 Capital Expenditure shall mean an expenditure made to acquire, purchase or construct a single capital item or project for the purpose(s) of improving, maintaining or developing the Airport and shall include expenses incurred for acquisition, development, study, analysis, review, design, or capital planning efforts.

1.13 Cargo Aircraft Aprons shall mean those areas of the Airport that are primarily designated for the parking of cargo aircraft and support vehicles and the loading and unloading of cargo aircraft.

1.14 Cargo Airline Operating Agreement shall mean the agreement enacted into by the City with all cargo carriers serving the Airport.

1.15 Chargeable Landings shall mean all Revenue Landings and Non-Revenue Landings except for those Non-Revenue Landings which are of an emergency nature.

1.16 Common Use Premises shall mean those areas of the Airport, including without limitation Common Use Gates and other areas beyond the passenger security check point, Common Use Baggage make-up, and Baggage Claim areas, not assigned on a preferential use basis but rather used in common by Airline and one or more other Air Transportation Companies. The Airline's total cost for such Common Use Premises shall be based on the ratio of the number of the Airline's Enplaned Passengers to the total number of Enplaned Passengers of all Scheduled Airline users at the Airport during the same period of time.

1.17 Cost and Revenue Centers shall mean those areas or functional activities of the Airport used for the purposes of accounting for Revenues, Operating Expenses, Renewal and Replacement Costs and Debt Service.

1.18 Cost Centers shall mean those areas or functional activities of the Airport used for the purposes of accounting for Operating Expenses, Renewal and Replacement Costs and Debt Service.

1.19 Debt Service shall mean any principal, interest, premium, and other fee or amount either paid or accrued for Bonds and such other accounts which may be established for Subordinated Indebtedness.

1.20 Debt Service Reserve Fund shall mean the fund created by the Bond Resolution for maintaining a balance equal to the maximum annual Debt Service on all outstanding Bonds.

1.21 Deplaned Passenger shall mean any passenger disembarking an aircraft, including any such passenger that shall subsequently board another aircraft of the same or a different Air Transportation Company or the same aircraft previously operating under a different flight number.

1.22 Director shall be the Airport Director of Morgantown Municipal Airport and shall include such person or persons as may from time to time be authorized in writing by City or by the Director or applicable law to act for the Director with respect to any or all matters pertaining to this Agreement.

1.23 Enplaned Passenger shall mean any passenger boarding an aircraft, including any such passenger that previously disembarked from another aircraft of the same or a different Air Transportation Company or from the same aircraft previously operating under a different flight number.

1.23 Environmental Laws shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state superlien or environmental clean-up statutes.

1.24 FAA shall mean the Federal Aviation Administration or its authorized successor(s).

1.25 Fiscal Year shall mean the annual accounting period of City for its general accounting purposes which, at the time of entering into this Agreement, is the period of twelve (12) consecutive months ending with the last day of June of any year or any other 12-month period adopted by the City for its financial affairs.

1.26 Gate shall mean those portions of the Terminal Building individually comprised of a passenger loading bridge, if any, a passenger holdroom and a Gate Ramp.

1.27 Gate Ramp shall mean the ramp area associated with the Gate.

1.28 Hazardous Materials shall mean any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws, and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Laws or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

1.29 Landing Fee shall mean a fee per thousand pounds of the Maximum Gross Landed Weight of each type of Airline's aircraft effective July 1st of each Fiscal Year as determined according to the methods set forth in Article 8.04 hereof and shall be multiplied by the total of all Maximum Gross Landed Weight for all Chargeable Landings of each type of aircraft landed at the Airport by Airline.

1.30 Maximum Gross Landed Weight shall mean the maximum gross certificated landing weight in one thousand pound units for each aircraft operated at the Airport by Airline as certificated by the FAA or its successor.

1.31 Non-Revenue Landing shall mean any aircraft landed by Airline at the Airport for a flight for which Airline receives no revenue, including without limitation irregular and occasional ferry or emergency flights that shall include any flight that after having taken off from the Airport and without making a landing at any other airport returns to land at the Airport because of meteorological conditions, mechanical or operating causes, or any other reason of emergency or precaution.

1.32 Non-Signatory Airline shall mean any Air Transportation Company that has not entered into an Airline-Airport Lease and Operating Agreement, substantially similar to this Agreement, with City.

1.33 Non-Signatory Airline Operating Agreement shall mean the agreement executed by City and any Non-Signatory Airline pertaining to such Non-Signatory Airline's operations and use of certain facilities at the Airport.

1.34 Operating Expenses shall mean the current expenses, paid or accrued, of operation, maintenance, and ordinary current repairs of said Airport and shall include, without limiting the generality of the foregoing, insurance premiums, administrative expenses of City relating solely to the Airport, including engineering, architectural, legal, consultants, and accounting fees and expenses, bad debt expenses, and other reasonable current expenses in accordance with sound accounting practices. Operating Expenses shall not include any allowance for depreciation or renewals or replacements or obsolescence of capital assets of the Airport or any operating expenses of special purpose facilities buildings where the lessees thereof are obligated to pay such operating expenses.

1.35 Other Available Funds shall mean amounts (other than Revenues or PFC Revenues) made available to pay Debt Service in any period pursuant to Sections 501(b) and 501(c) of the Bond Resolution and restrictions contained therein. Other Available Funds includes, but is not limited to, rolling debt service coverage amounts, revenue sharing amounts credited to the Terminal Cost and Revenue Center, and grant funds used to pay Debt Service.

1.36 Other Indebtedness shall mean any debt incurred by City for Airport purposes which is outstanding and not authenticated and delivered under and pursuant to the Bond Resolution or any Subordinated Bond Resolution.

1.37 Passenger Facility Charges ("PFCs") shall mean the passenger facility charge authorized under Section 1113(e) of the Federal Aviation Administration of 1958 as amended by Section 9110 of the Omnibus Budget Reconciliation Act of 1990 (Pub L. 101-508.49 U.S.C. App. Section 1513) and the rules promulgated thereunder (14 C.F.R. Part 158, hereafter the "PFC Regulations") as they currently exist or as they may be amended during the Term of this Agreement.

1.38 Preferential Use Premises shall mean those portions of the Terminal Building and Terminal Aircraft Aprons, as shown on Exhibit A attached hereto, to which Airline shall have priority over other Air Transportation Companies, subject to the provisions hereof.

1.39 Revenue Landing shall mean a landing of any aircraft by Airline at the Airport for which Airline receives revenue.

1.40 Revenues shall mean income accrued by City in accordance with generally accepted accounting practices, including investment earnings, from or in connection with the ownership or operation of the Airport or any part thereof or the leasing or use thereof. PFCs and the interest earned therefrom shall be excluded from the calculation of revenues.

1.41 Scheduled Airline shall mean an Air Transportation Company performing Scheduled Operations at the Airport.

1.42 Scheduled Operation shall mean a Scheduled Airline's operation (arrival or departure) that occurs pursuant to a schedule that is published in the Official Airline Guide (OAG) or any successor publication and that is also made available to City at least forty-five (45) days prior to the commencement of such operation.

1.43 Signatory Airline shall mean an Air Transportation Company that (a) provides passenger service, (b) leases an amount of support space in the Terminal Building deemed sufficient by the Director to support its operation, (c) operates scheduled air transportation service, and (d) signs an agreement with City substantially similar to this Agreement. An all-cargo Air Transportation Company shall be considered a Signatory Airline if it (a) provides Scheduled Operations per week throughout the Term of this Agreement, (b) leases cargo support space on the Airport from City for a term at least equal to the Term of this Agreement and (c) signs an agreement with City substantially similar to this Agreement.

1.44 Subordinated Indebtedness shall mean any bonds or other financing instrument or obligation subordinate to the Bonds issued pursuant to any Series Resolution.

1.45 Subordinated Series Resolution shall mean a Series Resolution subordinated to the Resolution authorizing the issuance by City of Subordinated Indebtedness, as such may be supplemented or amended from time to time.

1.46 Substantial Completion shall mean the date on which City's architects and/or engineers certify any premises at the Airport to be substantially complete as to permit use and occupancy by Airline.

1.47 Term shall mean the period of time during which Airline's activities at the Airport shall be governed by this Agreement. Said Term shall begin on the Effective Date (as set forth in Article 2 hereof), and, except as otherwise set forth herein, terminate on the termination date set forth in Article 3.

1.48 Terminal Aircraft Aprons shall mean those areas of the Airport that are primarily designated for the parking of passenger aircraft and support vehicles and the loading and unloading of passenger aircraft.

1.49 Terminal Building shall mean the passenger terminal buildings as set forth in Exhibit A attached hereto.

1.50 Terminal Building Cost and Revenue Center shall include all Debt Service, Capital Expenditures, all direct and indirect Operating Expenses, all fund deposits pursuant to the Bond Resolution, and operating Revenues allocable to the Terminal Building.

1.51 Terminal Building Rents shall mean the rents effective July 1st of each Fiscal Year as determined according to the methods set forth in Article 8.02 hereof.

Additional words and phrases used in this Agreement but not defined herein shall have the meanings set forth in the Bond Resolution or, if not so set forth, shall have their usual and customary meanings.

Whenever in this Agreement words, including pronouns, are used in the masculine, they shall be read in the feminine or neuter whenever they would apply and vice versa, and words that are singular shall be read as plural whenever the latter would so apply and vice versa.

ARTICLE 2 EFFECTIVE DATE

2.01 Effective Date. This Agreement, along with the determination of rentals, fees, and charges set forth herein, shall be effective on December 13, 2024 (the "Effective Date").

2.02 Cancellation of Prior Agreements. All Terminal Building leases and operating agreements heretofore executed between the parties covering or pertaining to the Airport are canceled and terminated as of the effective date of this Agreement, provided that such cancellation and termination shall not be construed as a waiver, relinquishment, or release of any claims, damages, liability, rights of action, or causes of action that either of the parties hereto may have against the other under such existing leases and agreements and that have accrued before the Effective Date of this Agreement.

ARTICLE 3 TERM

3.01 Termination Date. This initial Agreement shall commence on the Effective Date and shall terminate at midnight on December 31, 2028, unless canceled sooner as herein provided, and provided further that said lease shall be terminated in the event the **AIRLINE'S** authorization to serve the Morgantown Municipal Airport should be suspended by action of the US Department of Transportation or the Federal Aviation Administration.

3.02 Extension. The Term of this Agreement may be extended for two (2) two-year additional renewal periods. The first two year option would be in effect from January 1, 2028 to December 31, 2030. The second option if exercised would be in effect from January 1, 2030 through December 31, 2032 through the mutual written agreement of the Signatory Airline and City.

ARTICLE 4 – PREMISES

4.01 Airline Premises. The City does hereby lease and demise to Airline and Airline does hereby lease and accept from City the Preferential Use Premises and Common Use Premises designated in Exhibit A.

4.02 Terminal Building Equipment. Terminal Building equipment owned or acquired by the City for use by Airline shall remain the property and under the control of the City.

4.03 Employee Parking. City will make reasonable efforts to make available area(s) at the Airport for vehicular parking for Airline's personnel employed at the Airport; provided, however, such area(s) shall not be used for: (a) vehicle parking or storage for any period other than such personnel's performance of employment for Airline at the Airport, or (b) parking or storage of trailers at any time. Usage of any parking area(s) made available by the City at the Airport is subject to Article 6 and to Airport Rules and Regulations approved by City Council.

ARTICLE 5 ASSIGNMENT OF AIRLINE PREMISES

5.01 No Exclusive Use Airline Premises. All Airline Premises will be for either Common Use or Preferential Use Premises in accordance with the terms of this Article. Airline's use of all leased premises shall at all times be subject to reassignment or reallocation by City.

5.01.1 It is recognized that, from time to time during the Term of this Agreement, it may become necessary to reassign, reallocate, or relocate part or all of the Airline Premises referred to in Article 4.01. The Director may only make such reassignment, reallocation, or relocation for the following reasons:

- a) To comply with a rule, regulation, or order of any federal, State, or other governmental agency that has jurisdiction over City.
- b) To implement a Capital Improvement at the Airport.
- c) To comply with Article 5.02 of this Agreement.

5.01.2 If it becomes necessary to make adjustments in Airline's Preferential Use Premises, the Director shall arrange for all parties holding affected space to discuss reassignment, reallocation, or relocation of their space among themselves. If the parties do not reach agreement within sixty (60) days from the time the Director requests such discussions, the Director is authorized to make such decisions regarding reassignment, reallocation, or relocation for each of the parties (including Airline), while making every effort to minimize any disruptions to airline operations. If the Director makes decisions regarding reassignment, reallocation, or relocation of Airline Premises, Airline shall not be required to:

- a) Incur any expense to relocate its operation to other premises that it does not agree to incur.
- b) Accept premises not reasonably comparable to its existing space in size, finish and location based upon conditions at the Airport.
- c) Pay, at its new location, rental rates per square foot in excess of the amount that it would have been required to pay in its original Airline Premises.

5.01.3 If City decides to reassign, reallocate, or relocate Airline's Airline Premises after failure of the affected parties to reach agreement within the sixty (60) day period described above, the Director will give Airline sixty (60) days notice of its intent to modify all or portions of Airline's Airline Premises. Within thirty (30) days, Airline will be given an opportunity to meet with the Director to show cause why the reassignment, reallocation, or relocation should not be made. If the Director elects to proceed with the reassignment, reallocation, or relocation after meeting with Airline, the City:

- a) May replace such tenant improvements with reasonably similar improvements in the newly assigned premises.
- b) May provide airline premises reasonably required for the conduct of Airline's Air Transportation Business

5.02 Accommodation of Airline and Other Airlines. To maximize the use of all Terminal Building facilities at the Airport and to facilitate the entry of new airlines, as well as any expansion plans of present airlines, Airline agrees, upon the request of the Director, to accommodate such Requesting Airlines in its Airline Premises. To ensure compliance with this obligation and to provide open access and uniform treatment for all tenants, the following procedure is hereby established.

5.02.1 In order to secure the use of the terminal facilities, a Requesting Airline shall:

Contact City to use any Preferential Use Premises not currently leased; or
If vacant terminal space is unavailable, contact Airline and other airlines to request the use of such airline's Airline Premises under a sublease or handling arrangement with the approval of the City.

5.02.2 In the event that no Preferential Use Premises are available, and the Requesting Airline has demonstrated to City that it has contacted all airline lessees and has pursued all reasonable efforts to secure accommodations without success, such Requesting Airline shall notify the Director of its desire to be accommodated.

5.02.3 The Director shall then notify all airlines in writing that, if Requesting Airline is not accommodated within fifteen (15) days from the receipt of said notice, Director shall select one of the airlines to comply with the request for accommodation.

5.02.4 At the end of said fifteen (15) day period, if Requesting Airline has not been accommodated, Director will select an airline (the "Accommodating Airline") to accommodate the Requesting Airline, taking into consideration such factors as current utilization of airline terminal facilities, schedule

compatibility, union work rules, competitive relationships, etc. In that event, Director shall send written notice to such airline to begin accommodating the Requesting Airline within thirty (30) days from the receipt of said notice. Director shall include in such notice the reason or reasons why such airline was selected. In the event that the Accommodating Airline is not satisfied with the Director's final determination, the Accommodating Airline may request a review of this issue before the City Manager or City Council if required.

5.02.5 Upon receipt of said notice, the selected Accommodating Airline may submit written comments to the Director contesting its selection. However, the decision of the Director shall be final.

5.02.6 Unless Director rescinds such selection within said thirty (30) day period, the Accommodating Airline shall accommodate the Requesting Airline by sharing its Airline Premises, subject to the following conditions:

- a) In case of a conflict between schedules of the Accommodating Airline and the Requesting Airline, the Accommodating Airline shall have Preferential Use of its Airline Premises.
- b) During the use of the Accommodating Airline's Preferential Use Premises by the Requesting Airline, the Accommodating Airline shall be relieved of any obligation under this Agreement to indemnify and save harmless City, its officers, directors, employees, or agents with regard to any claim for damages or injury arising out of or in connection with Requesting Airlines use of Accommodating Airline's Preferential Use Premises unless said damages or injury are caused by the negligence of Accommodating Airline, its officers, directors, employees, agents, representatives, or Affiliates who have come upon the premises in connection with Accommodating Airlines occupancy. City shall, however, require such indemnification from the Requesting Airline and its Affiliates.
- c) The Accommodating Airline may assess the Requesting Airline reasonable fees and charges under an appropriate contract for services rendered to, or premises shared with, Requesting Airline, with such fees and charges not to exceed 115% of actual direct and indirect Airline costs.

5.02.7 Airline agrees that, if requested to accommodate another airline pursuant to this paragraph, it will effect such accommodation on a timely, good faith basis and in a reasonable and equitable manner.

5.03 Airline Access to Airline Premises.

5.03.1 Subject to the provisions hereof, and the Rules and Regulations, City hereby grants to Airline, its agents, suppliers, employees, contractors, passengers, guests, and invitees, the right and privilege of access, ingress, and egress to the Airline Premises and to Public Areas and public facilities of the Airport provided, however, that the City reserves the right to require all third-parties to secure a permit from the City to do business at the Airport, to comply with all applicable Rules and Regulations, and to pay any applicable fees to the City to conduct such activity at the Airport.

5.03.2 Ingress and egress shall not be used, enjoyed, or extended to any person engaging in any activity or performing any act or furnishing any service for or on behalf of Airline that Airline is not authorized to engage in or perform under the provisions hereof unless expressly authorized by the Director.

5.03.3 City shall have the right at any time or times to close, relocate, reconstruct, change, alter, or modify any such means of access provided for Airline's use pursuant to this Agreement or otherwise, either temporarily or permanently, provided that reasonable notice to Airline and a reasonably convenient and adequate alternative means of access, ingress, and egress shall exist or be provided in lieu thereof. City shall suffer no liability by reason thereof, and such action shall in no way alter or affect any of Airline's obligations under this Agreement.

ARTICLE 6 GRANT OF RIGHTS TO USE AIRPORT

6.01 Airline Rights and Privileges. In addition to all rights granted elsewhere in this Agreement, Airline

shall have the right to use, in common with others so authorized by City, areas (other than areas leased preferentially to others), facilities, equipment, and improvements at the Airport for the operation of Airline's Air Transportation Business and all activities reasonably necessary to such operations, including but not limited to:

6.01.1 The landing, taking off, flying over, taxiing, towing, and conditioning of Airline's aircraft and, in areas designated by City, the extended parking, servicing, deicing, loading or unloading, storage, or maintenance of Airline's aircraft and support equipment subject to the availability of space and subject to such reasonable charges and regulations as City may establish; provided, however, Airline shall not permit the use of the Airfield by any aircraft operated or controlled by Airline which exceeds the design strength or capability of the Airfield as described in the then-current FAA-approved Airport Layout Plan ("ALP") or other engineering evaluations performed subsequent to the then-current ALP, including the then-current Airport Certification Manual.

6.01.2 The sale of air transportation tickets and services, the processing of passengers and their baggage for air travel, the sale, handling, and providing of mail, cargo, and express services, and reasonable and customary airline activities.

6.01.3 The training of personnel in the employ of or to be employed by Airline and the testing of aircraft and other equipment being utilized at the Airport in the operation of Airline's Air Transportation Business; provided, however, said training and testing shall be incidental to the use of the Airport in the operation by Airline of its Air Transportation Business and shall not hamper or interfere with the use of the Airport and its facilities by others entitled to the use of same. City reserves the right to restrict or prohibit such training and testing operations which it deems to interfere with the use of the Airport, including excessive noise as reasonably determined by City.

6.01.4 The sale, disposition, or exchange of Airline's aircraft engines, accessories, gasoline, oil, grease, lubricants, fuel, or other similar equipment or supplies; provided, however, Airline shall not sell or permit to be sold aviation fuels or propellants except (i) to such Air Transportation Company which is a successor company to Airline, (ii) for use in aircraft of others which are being used solely in the operation of Airline's Air Transportation Business, including, but not limited to, Airline's Affiliate or Affiliated code sharing partner(s), or (iii) when a comparable grade and type of fuel desired by others is not available at the Airport except from Airline.

6.01.5 The purchase at the Airport or elsewhere of fuels, lubricants, and any other supplies and services from any person or company, subject to City's right to require that each provider of services and/or supplies to Airline secures a permit from City to conduct such activity at the Airport, pays required fees, and abides by all reasonable rules and regulations established by City. No discriminatory limitations or restrictions shall be imposed by City that interfere with such purchases; provided, however, nothing herein shall be construed to permit Airline to store aviation fuels at the Airport. This Agreement grants no right to store aviation fuels; the granting of any right to store aviation fuels shall be subject to the execution of a separate agreement between Airline and City.

6.01.6 The servicing by Airline or its suppliers of aircraft and other equipment being utilized at the Airport by Airline on the Terminal Aircraft Aprons, Cargo Aircraft Aprons, or such other locations as may be designated by the Director.

6.01.7 The loading and unloading of persons, property, cargo, parcels and mail by motor vehicles or other means of conveyance reasonably approved by City at Terminal Aircraft Aprons or such other locations as may be designated by the Director; provided Airline shall not use Terminal Aircraft Aprons immediately adjacent to the passenger Terminal Building to load or unload all-cargo aircraft unless otherwise authorized in writing by City.

6.01.8 The provision, either alone or in conjunction with other Air Transportation Companies or through a nominee, of porter/skycap service for the convenience of the public, at no cost to City. In the event that the City provides such services, the cost of such services will be included in the terminal rental calculations.

6.01.9 The installation, maintenance, and operation, at no cost to City, of such radio communication, company telephone system, computer, meteorological and aerial navigation equipment and facilities on Airline's Preferential Use Premises as may be necessary or convenient for the operation of its Air Transportation Business; provided, however, that except for equipment and facilities already in place, such installations shall be subject to the prior written approval of the Director. Prior to any written approval, Airline shall provide the Director with all necessary supporting documentation related to such installations.

6.01.10 Such rights of way as may reasonably be required by Airline for communications, computer equipment, teletype, telephone, interphone, conveyor systems and power, and other transmission lines in areas preferentially-leased by Airline, subject to the availability of space and/or ground areas as determined by the Director. City reserves the right to require the execution of a separate agreement between City and Airline for the lease and use of such space and/or ground area outside Terminal Building areas or to provide such service directly to Airline.

6.01.11 The installation of personal property, including furniture, furnishings, supplies, machinery, and equipment, in Airline's Preferential Use Premises as Airline may deem necessary, useful or prudent for the operation of its Air Transportation Business. Title to such personal property (including removable trade fixtures but excluding other fixtures and improvements to the Terminal Building) shall remain with Airline, subject to the provisions of this Agreement.

6.01.12 The construction of modifications, finishes, and improvements in Airline's Preferential Use Premises as Airline may deem necessary or prudent for the operation of its Air Transportation Business, subject to the provisions of Article 10.

6.01.13 Airline shall have the right to ingress to and egress from the Airport and Airline Premises for Airline's officers, employees, agents, and invitees, including passengers, suppliers of materials, furnishers of services, aircraft, equipment, vehicles, machinery and other property. Such right shall be subject to 49 CFR Part 1542, applicable laws, and City's right in accordance with its applicable law to establish reasonable and nondiscriminatory Rules and Regulations and Operating Directives governing (i) access by the general public, including Airline's passengers, and (ii) access to non-public areas at the Airport by Airline's employees, suppliers of materials, and furnishers of services; provided, however, any such Rules and Regulations and Operating Directives of City shall not unreasonably interfere with the operation of Airline's Air Transportation Business. City may at any time temporarily or permanently close, re-route, or consent to or request the closing or re-routing of any roadway or access to the Airport, so long as a means of ingress and egress reasonably equivalent is concurrently made available to Airline. Notwithstanding the foregoing, as part of the obligations of Airline set forth in Article 12, Airline hereby releases and discharges City from any and all claims, demands, or causes of action which Airline may now or at any time hereafter have arising or alleged to arise out of such a closing or re-routing.

6.01.14 Subject to any applicable Airport Rules and Regulations, nothing in this paragraph shall prohibit Airline from (i) providing food and beverages, at Airline's sole cost and expense, in its non-public Preferential Use Premises solely for Airline's employees, (ii) installing or maintaining vending machines in Airline's non-public Preferential Use Premises solely for Airline's employees, the type, kind, and locations of which shall be subject to the approval of the Director and (iii) providing under a separate agreement with City for its own flight kitchen for catering services to its passengers and crews for consumption aboard aircraft or (iv) selling or providing food and beverages in a "VIP room" or similar private club at the Airport so long as Airline purchases all alcoholic beverages or other beverages and any related food

service items sold at or within any such area from an Airport concessionaire.

6.01.15 The rights and privileges granted to Airline pursuant to this Article 6 may be exercised on behalf of Airline by other Signatory Airlines or contractors authorized by City to provide such services at the Airport, subject to the prior written approval of City and further subject to all laws, rules, regulations, fees and charges and the terms hereof as may be applicable to the activities undertaken.

6.01.16 Airline may exercise on behalf of any other Air Transportation Company having an operating agreement or permit with City any of the rights granted to Airline herein, so long as Airline is concurrently exercising those same rights in the operation of Airline's own Air Transportation Business at the Airport, subject to the provisions hereof. City reserves the right to require Airline to secure a permit from the City, to comply with all applicable Rules and Regulations, and to pay any applicable fees to the City to conduct such activity at the Airport.

6.01.17 Airline may only enter into agreements providing for pay telephones for the public in its airline clubs and VIP rooms, and Airline shall not enter into any agreements providing for pay telephones for the public anywhere else within the Airport.

6.02 Exclusions and Reservations.

6.02.1 Nothing in this Article 6 shall be construed as authorizing Airline to conduct any business separate and apart from the conduct of its Air Transportation Business.

6.02.2 Airline shall not knowingly interfere or permit interference with the use, operation, or maintenance of the Airport, including but not limited to, the effectiveness or accessibility of the drainage, sewerage, water, communications, fire protection, utility, electrical, or other systems installed or located from time to time at the Airport; and Airline shall not engage in any activity prohibited by City's approved FAR Part 150 Noise Compatibility Study as amended or supplemented from time to time.

6.02.3 As soon as possible after release from proper authorities, Airline shall remove any of its disabled aircraft from the Airfield, Terminal Aircraft Aprons or Cargo Aircraft Aprons, shall place any such disabled aircraft only in such storage areas as may be reasonably designated by the Director, and shall store such disabled aircraft only upon such terms and conditions as may be reasonably established by City. In the event Airline shall fail to remove any of its disabled aircraft as expeditiously as possible, City may, but shall not be obligated to, cause the removal of such disabled aircraft. Airline shall pay to City, upon receipt of an invoice, the costs incurred for such removal plus fifteen percent (15%). Nonpayment of such invoice shall be deemed a default of this Agreement pursuant to Article 13.

6.02.4 Airline shall not do or permit to be done anything, either by act or failure to act, that shall cause the cancellation or violation of the provisions, or any part thereof, of any policy of insurance for the Airport or that shall cause a hazardous condition so as to increase the risks normally attendant upon operations permitted by this Agreement. If Airline shall do or permit to be done any act not permitted under this Agreement, or fail to do any act required under this Agreement, regardless of whether such act shall constitute a breach of this Agreement, which act or failure, in and of itself, causes an increase in City's insurance premiums, Airline shall immediately remedy such actions and/or pay the increase in premiums, upon notice from City to do so.

6.02.5 Airline shall not maintain or operate in the Terminal Building or elsewhere at the Airport a cafeteria, restaurant, bar, or cocktail lounge for the purpose of selling food and beverages to the public or to Airline's employees and passengers, except as may be permitted under Article 6.01.14 above.

6.02.6 City may, at its sole option, install or cause to be installed advertising and revenue generating devices, including vending machines, in Common Use Premises and Preferential Use Premises. City

may also, at its sole option, install pay telephones in any part of the Terminal Building excluding airline clubs and VIP rooms. City shall be entitled to reasonable access upon Airline Premises to install or service such telephones and devices. Income generated by such telephones and devices shall be accounted for in the same manner as other non-airline Revenues of the Airport.

6.02.7 Airline shall not dispose of nor permit any other person to dispose of any waste material into the sanitary or storm sewers at the Airport or elsewhere (whether liquid or solid) unless such waste materials or products are first properly treated. Nothing herein shall prohibit Airline from disposing of human waste taken from its aircraft in proper designated sanitary sewer facilities.

6.02.8 Except as otherwise provided in Article 6.01.14 above, Airline shall not install or operate amusement machines or vending machines.

6.02.9 Airline shall not disturb any asbestos at the Airport.

6.02.10 The rights and privileges granted Airline pursuant to this Article 6 shall be subject to any and all reasonable and nondiscriminatory Rules and Regulations and Operating Directives established by City, as such Rules and Regulations and Operating Directives may be amended from time to time, and to the provisions of this Agreement. Airline covenants and agrees that it will not violate or permit its agents, contractors or employees to violate any such Rules and Regulations and Operating Directives. City may prescribe civil penalties and injunctive remedies for violations of any Rules and Regulations and Operating Directives, and the same may be applied to Airline for violations of Airline's agents, contractors or employees.

6.02.11 Any and all rights and privileges not specifically granted to Airline for its use of and operations at the Airport pursuant to this Agreement are hereby reserved for and to City.

6.03 Affiliate or Affiliated Airline.

For purposes of this Agreement, one or more other Air Transportation Companies may be designated as an "Affiliate or Affiliated Airline" by a Signatory Airline provided that each such other Air Transportation Company (a) is a wholly-owned subsidiary or code-share partner of the Signatory Airline and (b) is party to a Non-Signatory Airline Operating Agreement with City.

Airline may request designation of another Air Transportation Company as an Affiliate or Affiliated Airline by submitting to the City the designation with sufficient documentation to demonstrate to the satisfaction of the Director that the conditions for designating the Affiliate or Affiliated Airline have been met. The designation of an Affiliate or Affiliated Airline shall become effective on the first day of the calendar month following at least 15 (fifteen) days from receipt by City of the designation. The designation shall remain in effect for so long as the conditions for designating the Affiliate or Affiliated Airline continue to be met and until Airline withdraws its designation of the Affiliate or Affiliated Airline by submitting to City the withdrawal of designation. A withdrawal of designation of an Affiliate or Affiliated Airline shall become effective on the last day of the calendar month following at least 15 (fifteen) days from receipt by City of the withdrawal of designation. Any Air Transportation Company serving as an Affiliate or Affiliated Airline on the effective date of this agreement shall retain such status for a period of 60 days to permit Airline time to submit the appropriate authorizing designation. After the expiration of this 60 day period, such Air Transportation Company not so formally designated as an Affiliate or Affiliated Airline, shall be classified as a Non-Signatory Airline.

If Airline designates one or more other Air Transportation Companies as its Affiliate or Affiliated Airline, Airline shall be responsible for the actions and obligations of each of its Affiliate or Affiliated Airlines, including without implied limitation the obligation to pay all charges owed to City on account of Affiliate or Affiliated Airline activities at the Airport and the duty to provide information, insurance and indemnification.

Airline will be responsible for ensuring that each of its Affiliate or Affiliated Airlines complies with all terms and conditions of this Agreement to the same extent that Airline is responsible for compliance, including without implied limitation compliance with the provisions of Articles 9, 12 & 14 of this Agreement. Airline shall be the financial guarantor of all amounts owed to City by each of Airline's Affiliate or Affiliated Airlines.

For so long as Airline is a Signatory Airline and the conditions of this Article 6 are satisfied, each of Airline's Affiliate or Affiliated Airlines shall be treated as if it were Airline for purposes of Article 8 and 9 of this Agreement.

ARTICLE 7 OPERATION AND MAINTENANCE OF THE AIRPORT

7.01 Designation of Operation and Maintenance Responsibilities. The obligations of Airline and City are set forth in this Article 7, responsibilities for maintenance, cleaning, and operation of the Airport.

7.02 City Obligations.

7.02.1 City shall, with reasonable diligence, prudently develop, improve, and at all times maintain and operate the Airfield and Terminal Building at the Airport in a manner compliant with applicable law and with appropriately trained qualified personnel. City shall keep the Airport in an orderly, clean, neat and sanitary condition and good repair, unless such maintenance, operation, or repair shall be Airline's obligation pursuant to Article 7.03.5.

7.02.2 City shall, to the extent it is legally and practically able so to do, use reasonable efforts to keep the Airport and its aerial approaches free from ground obstruction for the safe and proper use thereof by Airline.

7.02.3 City shall provide facilities for and the delivery of heating and air conditioning to those areas of the Terminal Building presently having facilities for the same and to such additional areas as may be agreed upon by the parties from time to time and permitted by appropriate authority. City shall also provide electricity for illumination. City shall also replace lamps/bulbs where appropriate in the Airport, other than in Airline offices which shall be the responsibility of Airline. Finally, City shall provide water and sanitary sewer connections to those areas of the Terminal Building presently having facilities for the same and to such additional areas as may be agreed upon by the parties from time to time. Water and sanitary sewer connections are for normal domestic usage and will be provided in compliance with state and federal water quality guidelines. In the event Airline requires water for commercial or maintenance purposes, the same may be furnished to and paid for by Airline as mutually agreed upon by Airline and City.

7.02.4 Notwithstanding the foregoing, as part of the obligations of Airline set forth in Article 12, Airline hereby releases and discharges City from any and all claims, demands, or causes of action which Airline may now or at any time hereafter have arising or alleged to arise out of City's failure to furnish all or any of such services to be provided in accordance with this Article 7.

7.02.5 City shall maintain (i) loading bridges owned by City, if any; (ii) associated 400 Hertz units owned by City, if any; (iii) baggage conveyors owned and installed by City, when available, for Airline's use; and (iv) other systems that may be acquired by City in the future, subject to appropriate capital improvement funding levels.

7.02.6 City shall, in the operation of the Airport, comply with all applicable local, state and federal laws, rules and regulations.

7.02.7 All currently occupied Airline Premises are in good condition as the date of this agreement including the paint of offices, operations areas, and ticket counter spaces, clean and waxed hard surface

flooring, and clean carpeted areas. If any of these areas need to be cleaned or corrected, the Airline will be invoiced directly for these expenses associated with Airline's Preferential Use Premises.

7.03 Airline Obligations.

7.03.1 Notwithstanding anything set forth herein to the contrary, Airline shall keep its Preferential Use Premises in an orderly, clean, neat and sanitary condition and shall be responsible for the repair and maintenance thereof.

7.03.2 In addition, Airline shall keep all of its Airline Premises free of debris and in an orderly condition; provided, however, this requirement shall not be construed to mean Airline shall have custodial or other maintenance responsibilities designated to be those of City pursuant to Article 7.03.5 above.

7.03.3 Airline shall keep, at its own expense, the Terminal Aircraft Aprons and Cargo Aircraft Aprons free of fuel, oil, debris and other foreign objects.

7.03.4 Airline shall operate and maintain, at its own expense, any improvements and/or equipment installed by Airline, or City, for the exclusive use of Airline.

7.03.5 In the event that Airline fails to perform its maintenance obligations as detailed in this Article, City shall give Airline written notice of non-compliance, detailing the specific discrepancies. Airline shall have fifteen (15) days to respond to the notice by either, initiating corrective actions, or providing a plan for correcting the deficiencies, which is acceptable to City. In the absence of corrective actions, or an approved plan to correct deficiencies, City shall have the right to enter Airline Premises and to perform such maintenance activities necessary to remedy the discrepancies. If City exercises such right after due notice, or under emergency conditions, Airline shall pay City, upon receipt of invoice, the cost of such services and materials provided plus an administrative fee of fifteen percent (15%). Nonpayment of such invoice shall be deemed a default of this Agreement, pursuant to Article 13.

ARTICLE 8 RATES AND CHARGES

8.01 Rate-Setting Methods. The Terminal Building Rents, Apron Use Fees, and Landing Fees to be charged by City and paid by Airline (and by all other Signatory Airlines) for its use of the Airport from the Effective Date until the expiration or earlier termination of this Agreement shall be calculated using the rate-setting methods set forth in this Article. All rates and charges shall be at reasonable and non-discriminatory rates based on City's costs, as defined in this Agreement, for the facility or service provided to and used by Airline.

8.02 Terminal Building Rents. The Terminal Building Rents effective July 1st of each Fiscal Year shall be adjusted to meet the annual Airport Operating budget as approved by City Council.

8.04 Landing Fee. The Landing Fee effective July 1st of each Fiscal Year shall be adjusted to meet the annual Airport Operating budget as approved by City Council.

8.05 Activity Reports.

8.05.1 Information to be supplied by Airline.

- a) Not later than ten (10) days after the end of each month, Airline shall file with City separate written reports on forms provided or approved by the City, for activity conducted by Airline and each Affiliate or Affiliated Airline identified separately by operator. Such activity reports will be for all activity handled by Airline for each Air Transportation Company not having an agreement with City providing for its own submission of activity data to City. Such activity reporting shall include, but not be limited to the number of aircraft landings, the type and certificated maximum gross

landed weight for each aircraft type, total landed weight the amount of revenue and non-revenue Enplaned Passengers, Deplaned Passengers, connecting passengers, through-passengers, and pounds of cargo, mail, and express shipments. City shall have the right to rely on said activity reports in determining rentals and charges due hereunder. Airline shall have full responsibility for the accuracy of said reports. Payment deficiencies due to incomplete or inaccurate activity reports shall be subject to interest charges as set forth in Article 9.04.

- b) Airline shall at all times maintain and keep records reflecting the activity statistics of Airline's activities at the Airport to be reported pursuant to sub-article 8.07.1(a). Such records shall be retained by Airline for a period of four (4) years subsequent to the activities reported therein, or such other retention period as set forth in FAR Part 249, and upon prior written notice to Airline shall be made available, at no cost to City for audit and/or examination by City or its duly authorized representative during all normal business hours. Airline shall produce such books and records within thirty (30) calendar days of City's notice to do so or pay all reasonable expenses, including but not limited to transportation, food, and lodging, necessary for an auditor selected by City to audit said books and records.
- c) The cost of an audit, with the exception of the aforementioned expenses, shall be borne by City; provided, however, the total cost of said audit shall be borne by Airline if the audit reveals an underpayment of more than two percent (2%) of rentals, fees, and charges due on an annual basis hereunder, as determined by said audit.
- d) In the future, City may elect to collect Airport activity information using an electronic reporting system rather than the system that is described above. If City elects to utilize such a system during the Term of this Agreement, Airline shall comply with the reporting requirements applicable thereto.

ARTICLE 9 PAYMENTS

9.01 Terminal Building Rent. Payments of one-twelfth (1/12) of the total annual Terminal Building Rent for Airline's Preferential Use Premises shall be due monthly in advance, as invoiced, on the first day of each month. Said Preferential Use Terminal Building Rent shall be deemed delinquent if payment is not received by the tenth (10) day of the month.

Preferential Air Carrier space: 1391 ft² @ \$15/ft² = \$20865/ per anum or \$1738.75/month

9.02 Common-Use Premises Fees, and Landing Fees. Payment of Airline's Common-Use Premises Fees, Apron Use Fees and Landing Fees shall be due in arrears on the thirtieth (30) day of the following month, as invoiced. Common-Use, Apron, and Landing fees shall be deemed delinquent if not received by the due date stated on the invoice.

Common Use space: 876 ft² @ \$5/ft² = \$4,380/anum or \$365/month

Landing fees: # landings@ \$9.00/1000 pounds maximum landed weight

9.03 Other Fees and Charges. Payment for all other fees and charges due hereunder shall be due as of the due date stated on City's invoice. Said fees and charges shall be deemed delinquent if payment is not received within thirty (30) days of the stated date of such invoice.

9.03.1 Delayed and Cancelled Flight Fees In the event the air carriers last scheduled flight of the day arrives later than the scheduled flight time, the following fees apply:

9.03.1.1 Delayed Last Flight Fee: \$100/hr for first three hours past 01:00 am, \$200 each additional hour between 04:00am and 05:30am.

9.03.1.2 Cancelled Flight Fee: \$100/hr until notified, If carrier cancels flight at last minute within two hours past scheduled arrival time, the fee will be incurred beginning at two hour mark past

scheduled arrival time until the airport FBO is notified.

9.04 Payment Delinquencies. City shall provide notice of any and all payment delinquencies, including payments of any deficiencies which may be due as a result of City's estimates of activity pursuant to Article 9.05 below or due to an audit performed pursuant to sub-article 8.07.1b herein; provided, however, interest at the rate of eighteen percent (18%) per annum shall accrue against any and all delinquent payment(s) from the due date until the date payments are received by City. This provision shall not preclude City from canceling this Agreement for default in the payment of rentals, fees, or charges, as provided for in Article 13 hereof, or from exercising any other rights contained herein or provided by law.

9.05 Estimates. In the event Airline fails to submit its monthly activity reports as required in Article 8.05, City shall estimate the rentals, fees, and charges due from Airline based upon the highest month of the previous twelve (12) month's activity reported by Airline and issue an invoice to Airline for same. If no activity data is available, City shall reasonably estimate such activity and invoice Airline for same. Airline shall be liable for any deficiencies in payments based on estimates made under this provision; payment for said deficiencies shall be deemed due as of the date such rental fee or charge was due and payable. If such estimate results in an overpayment by Airline, City shall apply such overpayment as a credit against subsequent amounts due for such rentals, fees, and charges from Airline; provided, however, Airline shall not be entitled to any credit for interest on payments of such estimated amounts.

9.06 Proration. In the event Airline's obligations with respect to Airline Premises or any rights, licenses, or privileges granted hereunder shall commence or terminate on any date other than the first or last day of the month, Airline's rentals, fees, and charges shall be prorated on the basis of the number of days such premises, facilities, rights, licenses, services, or privileges were enjoyed during that month.

9.07 Payment Process. All payments due and payable hereunder shall be paid in lawful money of the United States of America, without deduction or set off, via U.S. Mail, or electronic format payable to City and delivered to the City.

9.07.1 Payment Acceptance. The acceptance by City of any payments hereunder shall not preclude City from verifying the accuracy of any reports submitted by Airline to City or recovering from Airline any additional payments to City that are actually due.

9.08 Security for Performance.

9.08.1 Airline shall provide City on the Effective Date of this Agreement with a irrevocable letter of credit or other security acceptable to City ("Contract Security") in an amount equal to the estimate of two (2) months' rentals, fees and charges payable by Airline (excluding PFCs) pursuant to this Article 9 to guarantee the faithful performance by Airline of its obligations under this Agreement and the payment of all rentals, fees and charges due hereunder. City may use the Contract Security to pay delinquent rentals, fees and charges (including but not limited to PFCs) resulting from Airline's operations at the Airport in order to ensure prompt payment of required fees and charges. The Director may adjust such Contract Security requirement from time to time upon a determination that an additional amount is warranted to protect City and the Airport. Airline shall be obligated to maintain such Contract Security during the Term hereof. Such Contract Security shall be in a form and with a company acceptable to City and licensed to do business in the State of West Virginia. In the event that any such Contract Security shall be for a period less than the full period required by this Article 9.08 or if Contract Security shall be canceled, Airline shall provide a renewal or replacement Contract Security for the remaining required period at least sixty (60) days prior to the date of such expiration or cancellation. Airline's obligation to obtain and/or keep in force the Contract Security required hereunder shall be a condition precedent to City's obligation to perform hereunder. Notwithstanding anything set forth herein to the contrary, if Airline shall fail to obtain and/or keep in force the Contract Security required hereunder, City shall no longer be required to perform under the terms of this Agreement and this Agreement shall automatically terminate

unless City waives the automatic termination provision mentioned above in writing. In the event that City waives the automatic termination requirement, City shall not be obligated to perform under the terms of this Agreement so long as Airline is not in compliance with the terms hereof with respect to the Contract Security. As provided in Article 18.02, any waiver by City of the automatic termination provision hereunder shall not be construed to be a waiver of any subsequent automatic termination hereof. City's rights under this Article 9 shall be in addition to all other rights and remedies provided to City under this Agreement.

9.08.2 Any obligation of Airline to provide and maintain the Contract Security mentioned above shall be a continuing obligation in the nature of a payment obligation. In the event City is required to draw down or collect against Airline's Contract Security for any reason, Airline shall, within ten (10) business days after City's written notice to Airline of such draw down or collection, take such action as may be necessary to replenish the existing Contract Security to its original amount (two months' estimated rentals, fees, and charges) or to provide additional or supplemental Contract Security from another source so that the aggregate of all Contract Security is equal to two months' estimated rentals, fees, and charges payable by Airline pursuant to this Article 9. Notwithstanding anything set forth herein to the contrary, City shall not be barred from drawing down or collecting against Airline's Contract Security by (i) the insolvency of Airline, (ii) the election of Airline to take the benefit of any present or future insolvency statute, (iii) a general assignment by Airline for the benefit of creditors, or (iv) any action of Airline to seek a reorganization or the readjustment of its indebtedness under any law or statute of the United States or of any state thereof including the filing by Airline of a voluntary petition of bankruptcy or the institution of proceedings against Airline or the adjudication of Airline as a bankrupt pursuant thereto.

9.08.3 Airline and City agree that this Agreement is intended by the parties to constitute and does constitute an "executory contract" for the purposes of Article 365 of the United States Bankruptcy Code (Title 11 USC) subject to assumption or rejection, and subject to the terms and conditions of assumption or rejection, as provided in said Article 365. Furthermore, Airline and City agree that any Contract Security provided by Airline is not "property of the estate" for purposes of Article 541 of the United States Bankruptcy Code (Title 11 USC), it being understood that any Contract Security is property of the third party providing it (subject to City's ability to draw against the Contract Security) and that all PFCs collected by Airline with respect to Enplaned Passengers at the Airport shall be held by Airline in a trust fund for City until the collected PFCs are delivered to City. Any such trust fund for the collected PFCs shall not be invalidated or defeated if the funds therein are not segregated by Airline and rather are commingled with Airline's other assets.

ARTICLE 10 ALTERATIONS AND IMPROVEMENTS BY AIRLINE

10.01 Except as expressly provided herein, Airline shall make no alterations, additions, improvements to, or installations in the Airline Premises without the prior written approval of the Director.

10.02 Should Airline from time to time require alterations, additions, improvements to, or installations in the Airline's Preferential Use Premises, it may make alterations, additions, improvements to or installation in the Airline's Preferential Use Premises if Airline complies with the following conditions:

10.02.1 Before the commencement of any such work, plans, cost estimates, and specifications shall be approved by and filed with the Director and all governmental departments or authorities having jurisdiction. The contractors performing the work shall be specified to the Director, and all work shall be subject to and in accordance with the requirements of law and applicable regulations of all applicable governmental departments or authorities and, where required, each affected public utility company.

10.02.2 Such work shall be performed in accordance with the plans and specifications approved for the same. Airline shall redo or replace, at its sole cost and expense, any work that is not performed in this manner and in accordance with such plans and specifications as approved by the Director. Airline shall

notify the Director within ten (10) days of final cessation of any work, and the Director will make a final inspection and will issue a letter of approval or disapproval. Any request to redo or replace any such work shall be made by the Director within ninety (90) days after receipt of notice of completion from Airline.

10.03 All alterations, additions, or improvements placed at any time upon the Airport by Airline shall be deemed to be and become a part of the realty and the sole and absolute property of City upon termination or cancellation of Airline's lease of the premises where the same is located; provided, however, movable furniture, movable personal property, and other removable trade fixtures, including but not limited to passenger loading bridges or baggage conveyor systems put in at the expense of Airline or at the expense of third parties leasing such property to Airline, shall not be deemed to become the property of City at the termination or cancellation of this Agreement, and Airline shall have the right to remove said property from its Preferential Use Premises on or about the time of termination of this Agreement, subject to any valid lien which City may have thereon. Any damage to the Airport, including the Preferential Use Premises, caused by such removal shall be repaired at Airline's expense.

10.04 Airline shall promptly pay all lawful claims and discharge all liens made against it or against City by Airline's contractors, subcontractors, materialmen, and workmen and all such claims and liens made against Airline or City by other third parties arising out of or in connection with, whether directly or indirectly, any work done by or for Airline, its contractors, subcontractors, or materialmen; provided, however, that Airline shall have the right to contest the amount or validity of any such claim or lien without being in default of this Agreement upon furnishing security satisfactory to the Director guaranteeing that such claim or lien will be properly and fully discharged forthwith in the event that such contest is finally determined against Airline or City.

10.05 Airline shall procure and maintain during construction of any and all improvements by Airline comprehensive public liability insurance, or if the work is to be done by an independent contractor, Airline shall require such contractor to procure and maintain such insurance in Airline's name. In either case, insurance shall be procured and maintained in limits and meeting requirements reasonably satisfactory to the City, and Airline shall defend, indemnify and hold harmless City and its officers, agents, and employees for all loss, cost damage, or expense arising out of or relating in any way to such construction, except such loss, cost, damage, or expense arising from or caused by the negligence of City. Airline, on work in excess of \$5,000, shall require contractors to procure and maintain a payment bond in the face amount of the cost of improvements and in a form satisfactory to the City's attorney.

10.06 If, in the construction of any improvements to or upon the Preferential Use Premises, Airline causes disturbance to or damage of any asbestos and/or asbestos-containing materials, Airline shall be solely responsible for the costs of remedying the disturbance or damage, including, without limitation, the removal of any asbestos and asbestos-containing materials.

ARTICLE 11 DAMAGE OR DESTRUCTION

11.01 Damage and Repair.

11.01.1 Partial Damage. If any part of Airline Premises, or adjacent facilities directly and substantially affecting the use of Airline Premises, shall be partially damaged by fire or other casualty, but said circumstances do not render Airline Premises untenable as reasonably determined by City, the same shall be repaired to usable condition with due diligence by City as hereinafter provided. No abatement of rentals shall accrue to Airline so long as Airline Premises remain tenable.

11.01.2 Substantial Damage. If any part of Airline Premises, or adjacent facilities directly and substantially affecting the use of Airline Premises, shall be so extensively damaged by fire or other casualty as to render any portion of said Airline Premises untenable but capable of being repaired, as reasonably determined by

City, the same shall be repaired to usable condition with due diligence by City as hereinafter provided. If such repairs have not been commenced by City within ninety (90) days of such damage, Airline shall have the option to terminate its agreement related to those facilities so damaged. In such case, the rentals payable hereunder with respect to Airline's affected Airline Premises shall be paid up to the time of such damage and shall thereafter be abated equitably in proportion as the part of the area rendered untenable bears to total Airline Premises until such time as such affected Airline Premises shall be restored adequately for Airline's use. City shall use its best efforts to provide Airline with alternate facilities acceptable to Airline to continue its operation while repairs are being completed, at a rental rate not to exceed that provided for in this Agreement for comparable space.

11.01.3 Destruction.

- a) If any part of Airline Premises, or adjacent facilities directly and substantially affecting the use of Airline Premises, shall be damaged by fire or other casualty, and is so extensively damaged as to render any portion of said Airline Premises not economically feasible to repair, as reasonably determined by City, City shall notify Airline within a period of forty-five (45) days after the date of such damage of its decision whether to reconstruct or replace said space; provided, however, City shall be under no obligation to replace or reconstruct such premises. The rentals payable hereunder with respect to affected Airline Premises shall be paid up to the time of such damage and thereafter shall abate until such time as replacement or reconstructed space becomes available for use by Airline.
- b) In the event City elects to reconstruct or replace affected Airline Premises, City shall use its best efforts to provide Airline with alternate facilities reasonably acceptable to Airline to continue its operation while reconstruction or replacement is being completed at a rental rate not to exceed that provided for in this Agreement for comparable space.
- c) In the event City elects to not reconstruct or replace affected Airline Premises, the agreement for the affected premises shall be terminated and City shall meet and consult with Airline on ways and means to permanently provide Airline with adequate replacement space for affected Airline Premises. In such event, City agrees to amend this Agreement to reflect related additions and deletions to Airline Premises.

11.02 Damage Caused by Airline. Notwithstanding the provisions of this Article 11, in the event that due to the negligence or willful act or omission of Airline, its employees, its agents, or licensees, Airline Premises shall be damaged or destroyed by fire, other casualty or otherwise, there shall be no abatement of rent during the repair or replacement of said Airline Premises. To the extent that the costs of repairs shall exceed the amount of any insurance proceeds payable to City by reason of such damage or destruction, Airline shall pay the amount of such additional costs to City.

ARTICLE 12 INDEMNIFICATION, WAIVER OF CLAIMS AND INSURANCE

12.01 Indemnification

12.01.1 Airline agrees to protect, defend, reimburse, indemnify and hold City, its agents, employees, board members and elected officers and each of them, free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages (including actually incurred reasonable attorney's fees) and causes of action of every kind and character, whether or not meritorious, against or from City by reason of any damage to property or bodily injury (including death) incurred or sustained by any party hereto, any agent or employee of any party hereto, and any third or other party whomsoever or any governmental agency, arising out of or incident to or in connection with Airline's performance under this Agreement, Airline's use or occupancy of the Airline Premises, Airline's negligent acts, omissions or operations hereunder or the performance, non-performance or purported performance of Airline or any breach of the terms of this Agreement by Airline; provided, however, that Airline shall not be so obligated to protect, defend, reimburse, indemnify and hold City free and harmless when the applicable claim, liability, expense, loss, cost, fine, damage or cause of action is caused by the

negligence of the agents, employees, contractors, officers or City Council of Directors (but only to the extent of the portion of the claim, liability, expense, loss, cost, fine, damage or cause of action caused by such negligence). Upon the filing by anyone of a claim with City for damages arising out of incidents for which Airline herein agrees to indemnify and hold City harmless, City shall promptly notify Airline of such claim and, in the event that Airline does not settle or compromise such claim, then Airline shall undertake the legal defense of such claim both on behalf of Airline and on behalf of City. It is specifically agreed, however, that City, at its option and at its own expense, may participate in the legal defense of such claim. Any final judgment rendered against City for any cause for which Airline is liable hereunder shall be conclusive against Airline as to liability and amount upon the expiration of the time for appeal without an appeal having been taken therefrom. Airline recognizes the broad nature of this indemnification and hold harmless clause and voluntarily makes this covenant and expressly acknowledges that the terms and conditions of this Agreement constitute good and valuable consideration provided by City in support of this indemnification in accordance with laws of the State of West Virginia.

12.01.2 If City and Airline are jointly, concurrently or successively liable for an actionable wrong to an injured person, each party shall have a right to contribution from the other party. The right of contribution shall be limited to the amounts paid by a party in excess of that party's share of liability, based upon principles of equity (including the principle of comparative fault). If either party receives any claim, demand, suit or judgment for which the other party is or may be jointly, concurrently or successively liable, that other party shall be given prompt notice thereof. If City and Airline become co-defendants, either may file a cross-complaint against the other for a declaration of rights respecting the relative responsibility of each for contribution. If either City or Airline becomes a defendant in an action or proceeding in which the other is a non-party, the defendant therein may either file a cross-complaint against the non-party for a declaration of rights of contribution or may, within one (1) year after payment of a disproportionate share of liability, bring a separate and independent action against the non-party for contribution.

12.01.3 This Article 12.01 shall survive the termination of this Agreement as to claims arising during the Term thereof. Compliance with the insurance requirements of this Article 12 shall not relieve Airline of its liability or obligation to indemnify City as set forth in this Article 12.

12.02 Waiver of Claims. Airline, as a material part of the consideration to be rendered to City under this Agreement, hereby waives all claims or causes of action against City, its officers, or employees which it may now or hereafter have for damages to any property on, about, or related to the Airport, and for injuries or death to persons on, about, or related to the Airport, from any cause or causes arising at any time, except from the negligent or willful act or omission of City, its officers, or employees. By way of example and not limitation, save and except as arises out of the negligent or willful act of City, its officers, or employees, Airline hereby waives any and all claims or causes of action which it may now or hereafter have against City, its officers, or employees (a) for loss, injury, or damage sustained by reason of any deficiency, impairment, and interruption of any water, electrical, gas, plumbing, air conditioning, or sewer service or system serving any portion of the Airport; (b) for any loss, injury, or damage arising or resulting from any act or neglect or omission of any other tenant, subtenant, permittee, concessionaire, or occupant of the Airport, or any person who uses said Airport with authorization or permission of the City (City agrees to use its best efforts to control said tenants, subtenants, permittees, concessionaires, occupants, or Airport users to prevent loss, injury, or damage); and (c) for any loss or damage to the property of, or injury or damage to Airline, its officers, employees, agents, contractors, or any other person whomsoever, from any cause or causes arising at any time because of Airline's use or occupancy of such building or of the Airport, or its operations thereon (City will use its best efforts to control the activities of other users).

12.03 Insurance.

12.03.1 Airline, at its sole cost and expense, and for the full Term of this Agreement or any renewal thereof, shall obtain and maintain all of the following minimum insurance:

- a) An Aircraft Liability policy which shall include but not necessarily be limited to all of the following coverages, Aircraft Liability, Premises Liability, Products & Completed Operations, Contractual Liability, Hangar Keepers Liability, Motor Vehicle Liability within the confines of the Airport, Cargo Legal Liability, and War and Named Perils, for at least the following minimum limits of liability for bodily injury and property damage:
 - I. Twenty Five Million Dollars (\$25,000,000) combined single limit for bodily injury and property damage; and
- b) A Commercial General Liability policy with a minimum limit of not less than Five Million Dollars (\$5,000,000) which shall include but not necessarily be limited to at least Commercial General Liability in respects of all Ground Operations of the named insured, including but not limited to Premises Operations, Contractual, Independent Contractors, Personal Injury, Airport Operations, Fueling or Refueling Operation (if such operations are conducted by Airline), products and completed operations.
- c) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of West Virginia providing coverage for any and all employees of Airline and providing coverage as follows:
 - I. Workers' Compensation (Coverage A);
 - II. One Million Dollars (\$1,000,000) in Employers' Liability (Coverage B);
 - III. Broad Form All States Endorsement;
 - IV. Voluntary Compensation Endorsement; and
 - V. Waiver of Subrogation
- d) A Commercial Business Auto policy with a minimum limit of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage providing that coverages shall be applicable to any and all leased, owned, hired or non-owned vehicles used in pursuit of any of the activities associated with this Agreement. Any and all mobile equipment, including cranes, which is not covered under the Comprehensive Business Auto policy shall have said coverage provided for under the Comprehensive General Liability policy required above.
- e) A Property Insurance policy in an amount equal to "Value of Improvement". Coverage shall include Replacement Value, covering Air Transportation Company improvements, with waiver of subrogation, Fire & Extended Coverage, including Sprinkler Leakage, Vandalism & Malicious Mischief, and Debris Removal.
- f) Liquor Liability insurance for any facility of Airline serving alcoholic beverages at the Airport in an amount not less than Five Million Dollars (\$5,000,000) per occurrence.

12.03.1 Any deductibles or self-insured retentions must be declared and accepted by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, and employees, or Airline shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

12.03.2 The insurance policies are to contain, or be endorsed to contain, the following provisions:

- a) City and its officials, employees, agents and contractors is to be covered as an additional insured as respects (i) liability arising out of activities performed by, or on behalf of, Airline, (ii) the products and completed operations of Airline, (iii) premises owned, leased or used by Airline, or (iv) automobiles owned, leased, hired or borrowed by Airline. The coverage shall contain no special limitations on the scope of protection afforded to City, its officials, employees, agents and contractors.
- b) Airline's insurance coverage shall be primary insurance as respects City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by City, its officials, employees, agents or contractors, shall be excess of Airline's insurance and shall not contribute with it.

12.03.4 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to

City, its officials, employees, agents or contractors.

12.03.5 Coverage shall state that Airline's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

12.03.6 City shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of City, the insurance provisions in this Agreement do not provide adequate protection for City and/or for members of the public, City may require Airline to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. City's requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of risk which exist at the time a change in insurance is required, and Airline agrees to provide same within (30) days of receiving notice from City.

12.03.7 Provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Airline may be held responsible for the payment of damages to persons or property resulting from its activities or of any person or persons for which it is otherwise responsible.

12.03.8 Each insurance policy required by this Article shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to City.

12.03.9 Insurance is to be placed with insurers acceptable to City's Risk Manager.

12.03.10 Airline shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

12.03.11 Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the Risk Manager:

**Airport Director
Morgantown Municipal Airport
100 Hart Field Road
Morgantown, WV 26505**

12.03.12 Airline shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

12.03.13 City shall, during the term of this Agreement, procure and maintain liability and fire and extended coverage insurance for the Airport, Terminal Building, and other facilities at the Airport in such amounts and for such insured coverages as City may determine as being reasonably required and in the prudent operation of the Airport.

12.03.14 Airline shall self-insure (by establishing reserves in accordance with accepted accounting practices) or procure and keep in force fire and extended coverage insurance upon its leasehold improvements located within its Preferential Use Premises, to the full replacement-cost, insurable value thereof and shall furnish City, upon execution of this Agreement, with evidence that such self-insurance reserves have been established or such coverage has been procured and is being maintained in full force and effect. Said evidence of insurance shall be endorsed to require (30) days written notice to City of cancellation or material change and to provide that any insurance carried by City be excess insurance only.

ARTICLE 13 CANCELLATION

Cancellation By City:

13.01 Events of Default. The events described below shall be deemed events of default by Airline hereunder. Upon the occurrence of any one of the following events of default, City may immediately issue written notice of default:

13.01.1 The conduct of any business or performance by Airline of any acts at the Airport not specifically authorized herein or by other agreements between City and Airline, and said business or acts do not cease within thirty (30) days of receipt of City's written notice to cease said business or acts.

13.01.2 The failure to cure a default in the performance of any of the terms, covenants, and conditions required herein (except Contract Security requirements, insurance requirements, and payment of rentals, fees, and charges, all as provided for in Article 9) within thirty (30) days of receipt of written notice by City to do so; or if by reason of the nature of such default, the same cannot be remedied within thirty (30) days following receipt by Airline of written demand from City to do so, Airline fails to commence the remedying of such default within said thirty (30) days following such written notice, or having so commenced, shall fail thereafter to continue with diligence the curing thereof. Airline shall have the burden of proof to demonstrate (i) that the default cannot be cured within thirty (30) days, and (ii) that it is proceeding with diligence to cure said default and that such default will be cured within a reasonable period of time.

13.01.3 The failure by Airline to pay any part of the rentals, fees, and charges due hereunder and the continued failure to pay said amounts in full within thirty (30) days of City's written notice of payments past due; provided, however, if a dispute arises between City and Airline with respect to any obligation or alleged obligation of Airline to make payments to City, payments under protest by Airline of the amount due shall not waive any of Airline's rights to contest the validity or amount of such payment.

13.01.4 The failure by Airline to provide and keep in force Contract Security in accordance with Article 9.08, subject, however, to the terms thereof.

13.01.5 The failure by Airline to provide and keep in force insurance coverage in accordance with Article 12.

13.01.6 The appointment of a trustee, custodian, or receiver of all or a substantial portion of Airline's assets.

13.01.7 The divestiture of Airline's estate herein by operation of law, by dissolution, or by liquidation (not including a merger or sale of assets).

13.01.8 The abandonment by Airline of the Airline Premises, or its conduct of business at the Airport; and, in this connection, suspension of operations for a period of sixty (60) days will be considered abandonment in the absence of a labor dispute or other governmental action in which Airline is directly involved.

13.01.9 The failure by Airline to remit PFCs in accordance with Article 21.03.

13.02 Continuing Responsibilities of Airline. Notwithstanding the occurrence of any event of default, Airline shall remain liable to City for all rentals, fees, and charges payable hereunder and for all preceding breaches of any covenant of this Agreement. Furthermore, unless City elects to cancel this Agreement, Airline shall remain liable for and promptly pay all rentals, fees, and charges accruing hereunder until termination of this Agreement as set forth in Article 3.

13.03 City's Remedies. Upon the occurrence of any event enumerated in Articles 13.01 and after any applicable notice and cure periods, the following remedies shall be available to City:

13.03.1 City may exercise any remedy provided by law or in equity, including but not limited to the remedies hereinafter specified.

13.03.2 City may cancel this Agreement, effective upon the date specified in the notice of cancellation. Upon such date, Airline shall be deemed to have no further rights hereunder and City shall have the right to take immediate possession of the Airline Premises.

13.03.3 City may reenter the Airline Premises and may remove all Airline persons and property. Upon any removal of Airline property by City hereunder, Airline property may be stored at a public warehouse or elsewhere at Airline's sole cost and expense.

13.03.4 City may relet Airline premises and any improvements thereon or any part thereof, at such rentals, fees, and charges and upon such other terms and conditions as City, in its sole discretion, may deem advisable, with the right to make alterations, repairs of improvements on said Airline Premises.

13.03.5 In the event that City relets Airline Premises, rentals, fees, and charges received by City from such reletting shall be applied: (i) to the payment of any indebtedness, other than rentals, fees, and charges due hereunder, from Airline to City; (ii) to the payment of any cost of such reletting; and (iii) to the payment of rentals, fees, and charges due and unpaid hereunder. The residue, if any, shall be held by City and applied in payment of future rentals, fees, and charges as the same may become due and payable hereunder. If that portion of such rentals, fees, and charges received from such reletting and applied to the payment of rentals, fees, and charges hereunder is less than the rentals, fees, and charges as would have been payable during applicable periods by Airline hereunder, then Airline shall pay such deficiency to City whenever rentals, fees or charges are due to City hereunder. Airline shall also pay to City, as soon as ascertained, any reasonable costs and expenses incurred by City in such reletting not covered by the rentals, fees, and charges received from such reletting.

13.03.6 No reentry or reletting of Airline Premises by City shall be construed as an election on City's part to cancel this Agreement unless a written notice of cancellation is given to Airline.

Cancellation By Airline:

13.04 Events of Default. The events described below shall be deemed events of default by City hereunder:

13.04.1 City fails to keep, perform, or observe any material term, covenant, or condition herein contained, to be kept, performed, or observed by City and such failure continues for thirty (30) days after receipt of written notice from Airline; or, if by its nature such default cannot be cured within such thirty (30) day period, City shall not commence to cure or remove such default within said thirty (30) days and to cure or remove the same as promptly as reasonably practicable; provided, however, City's performance under this paragraph shall be subject to the provisions of Article 18.25 of this Agreement.

13.04.2 Airport is closed to flights in general or to the flights of Airline, for reasons other than those circumstances within Airline's control, and Airport fails to be reopened to such flights within sixty (60) consecutive days from such closure.

13.04.3 The Airport is permanently closed as an air carrier airport by act of any federal, state, or local government agency having competent jurisdiction; or Airline is unable to use Airport for a period of at least forty-five (45) consecutive days due to any law or any order, rule or regulation of any governmental authority having jurisdiction over the operations of the Airport; or any court of competent jurisdiction issues an injunction preventing City or Airline from using Airport for airport purposes, for reasons other than those circumstances within Airline's control, and such injunction remains in force for a period of at least forty-five

(45) consecutive days.

13.04.4 The United States Government or any authorized agency of the same (by executive order or otherwise) assumes the operation, control, or use of the Airport in such a manner as to substantially restrict Airline from conducting its operations, if such restriction be continued for a period of sixty (60) consecutive days or more.

13.05 Airline's Remedy. So long as Airline is not in default as set forth in Section 13.01 of this Agreement, including but not limited to payments due to City hereunder, Airline may cancel this Agreement upon the occurrence of an event of default, as set forth in Section 14.01. In such event, Airline shall serve fifteen (15) day advance written notice of cancellation to City. All rentals, fees, and charges payable by Airline shall cease as of the date of such cancellation and Airline shall surrender the Airline Premises in accordance with Article 15 hereof.

ARTICLE 14 ENVIRONMENTAL

14.01 Hazardous Materials.

14.01.1 Standards of Operation - Disposal, Use and Storage of Hazardous Materials. Disposal of Hazardous Materials on the Airport is strictly prohibited. Storage and use of Hazardous Materials on the Airport is prohibited, except:

- a) Airline may store and use Hazardous Materials on the Airline Premises in a safe and prudent manner and in accordance with the requirements of all applicable Environmental Laws but only for those kinds and quantities of Hazardous Materials that are normally used in conducting the activities permitted under this Agreement. Airline shall provide Director with a copy of any application for a permit for use or storage of Hazardous Materials on the Airline Premises from any regulatory agency responsible for enforcement of Environmental Laws, and shall also provide a copy of any permit received from such agency; and
- b) Airline may use Hazardous Materials on the Airport other than the Airline Premises only in a safe and prudent manner and in accordance with the requirements of all applicable Environmental Laws but only for those kinds and quantities of Hazardous Materials which are commonly used in conducting the activities permitted under this Agreement and for which no permit is required to be obtained from any regulatory agency under any Environmental Law.

14.01.2 Liability. Airline shall be solely and fully responsible and liable for:

- a) Storage, use or disposal of Hazardous Materials on the Airline Premises or the Airport, by Airline, Airline's officers, agents, employees, or contractors, or Affiliated Airlines, or;
- b) Any Hazardous Material release which is caused by or results from the activities of Airline, Airline's officers, agents, employees, or contractors, or Affiliated Airlines on the Airline Premises or the Airport.

14.01.3 Prevention of Release. Airline shall take all necessary precautions to prevent its activities from causing any Hazardous Material release to occur on the Airline Premises or the Airport, including, but not limited to any release into soil, groundwater, or City's sewage or storm drainage system.

14.01.4 Obligation to Investigate and Remediate. Airline, at Airline's sole cost and expense, shall promptly investigate and remediate, in accordance with requirements of all applicable Environmental Laws:

- a) Any release or danger of release of Hazardous Material on the Airline Premises or the Airport, including, but not limited to, into soil or groundwater, or City's sewage or storm drainage system which was caused or results in whole or in part from the activities of Airline, Airline's officers, agents, employees, contractors, permittees or invitees; or

- b) Any release or danger of release of Hazardous Material which commenced during the Term of this Agreement and which is discovered on the Preferential Use Premises, unless Airline establishes through investigation, sampling, testing and analysis acceptable to City, that the release was caused by the sole negligence or willful misconduct of City, City's officers, agents, employees, contractors or permittees or solely by migration of Hazardous Materials onto the Preferential Use Premises from a specifically identifiable source off the Preferential Use Premises.

In addition to all other rights and remedies of City hereunder, if Airline does not promptly commence, and diligently pursue to remediate, any such release, or danger of release, of Hazardous Materials, City, in its discretion, may pay to have same remediated and Airline shall reimburse City within fifteen (15) business days of City's demand for payment. The failure to commence remediation and provide City with a schedule for diligent completion of the remediation within thirty (30) days after discovery of such release, or danger of release, of Hazardous Material shall constitute prima facie evidence of failure to promptly commence remediation. The demand for payment by City shall be prima facie evidence that the expense incurred was necessary and reasonable and that such expense was incurred by City on behalf of Airline.

14.01.5 Indemnification. Airline shall defend, indemnify and hold City harmless from and against all loss, damage, liability (including all foreseeable and unforeseeable consequential damages) and expense (including, without limitation, the cost of any required cleanup and remediation of the Hazardous Materials) which City may sustain as a result of:

- a) Storage, use or disposal of Hazardous Materials on the Airline Premises or the Airport by Airline, Airline's officers, agents, employees, contractors, or Affiliated Airlines.
- b) Any Hazardous Material release on the Airline Premises or the Airport Preferential Use Premises, including, but not limited to any release into soil or groundwater, or City's sewage or storm drainage system, which is caused by or results from the activities of Airline, Airline's officers, agents, employees, contractors, or Affiliated Airlines.

14.01.7 Cessation of Activities. Airline shall cease its activities on the Airline Premises and the Airport, to the extent requested by City, if City determines, in its sole discretion, that such cessation is necessary to investigate, cure or remediate any release of Hazardous Materials. Airline shall not recommence its activities on the Airline Premises or the Airport, as appropriate, until notified by City that such release or danger of release of Hazardous Material has been investigated, cured and remediated in a manner satisfactory to City.

14.01.8 Abatement of Fees and Charges on Preferential Use Premises. Airline shall be entitled to an abatement of any fees or charges due under this Agreement after Airline has been requested to cease activities for investigation, cure or remediation of Hazardous Materials on the Preferential Use Premises, except if City establishes, through investigation, sampling, testing and analysis that the presence of Hazardous Materials on the Preferential Use Premises was due to the sole negligence or willful activity of Airline, Airline's officers, agents, employees, contractors or.

14.01.9 Abatement of Fees and Charges on Airport other than Preferential Use Premises. Airline shall not be charged fees or charges for use of the Airline Premises or the Airport other than the Preferential Use Premises, to the extent that City requests Airline to cease activities on that portion of the Airline Premises or the Airport due to City's efforts to investigate, cure or remediate contamination, unless the release is one for which Airline is responsible under this Lease.

14.01.10 Records and Inspections.

- a) Airline shall maintain, during the term of this Agreement and for a period of not less than four (4) years after the expiration or termination of this Agreement, or for any longer period of time required by any applicable law, regulation, policy, order or decree, separate and accurate daily

- records pertaining to the use, handling and disposal of any Hazardous Material(s) by Airline, Airline's officers, agents, employees, contractors, permittees or invitees on or from the Airport.
- b) Upon request by City, Airline shall furnish City with such daily records, and such other documentation or reports as the Director, from time to time, and at any time during the term of this Agreement, may reasonably require pertaining to the use, handling and disposal of any Hazardous Material(s) by Airline, Airline's officers, agents, employees, contractors, permittees or invitees on or from the Airport.
 - c) After the expiration of four (4) years following the termination of this Agreement, Airline may destroy the records pertaining to the use, handling and disposal of any Hazardous Material(s) by Airline, Airline's officers, agents, employees, contractors, permittees or invitees on or from the Airport, provided; however, that Airline shall notify City no later than sixty (60) days prior to any proposed destruction of any of said records and shall upon request by City within thirty days (30) days after such notice is received, deliver copies of said records to City.
 - d) City shall have the right, under the terms hereof, to enter the Airline Premises during the Term hereof to conduct periodic environmental inspections and testing. Prior to conducting environmental testing, City shall provide written notice to Airline concerning the planned testing procedures and locations. However, in the event of an emergency, no written notice shall be required prior to access to the Airline Premises for any necessary environmental response activities, including environmental testing needed in response to the emergency. City shall conduct each inspection or test in a manner that does not unreasonably interfere with Airline's operations.

14.01.11 No Third Party Beneficiaries. Nothing contained in this Article 14 shall be construed as conferring any benefit on any person not a party to this Agreement, nor as creating any right in any person not a party to this Agreement to enforcement of any obligation created under this Agreement.

14.01.12 Airline Obligations upon Termination. Prior to vacating the Airline Premises, and in addition to all other requirements under this Agreement and without limiting Airline's indemnification obligations under Article 12.01, Airline shall remove any Hazardous Materials placed on the Airline Premises during the Term by Airline or as a result of Airline's use or occupancy of the Airline Premises during the Term and shall demonstrate to City's reasonable satisfaction that such removal is in compliance with all applicable Environmental Laws, including without limitation conducting any environmental audits as may be required by City. This removal and demonstration shall be a condition precedent to City's return or release of any portion of the Contract Security, if any, to Airline upon termination or expiration of this Agreement.

14.01.13 Survival of Obligations. Airline's obligations under this Article 14.01 shall survive the expiration or earlier revocation or suspension of this Agreement.

14.02 Storm Water.

14.02.01 Notwithstanding any other provisions or terms of this Agreement, Airline acknowledges that certain properties within the Airport, or on City-owned land, are subject to storm water rules and regulations. Airline agrees to observe and abide by such storm water rules and regulations as may be applicable to City's property and uses thereof.

14.02.02 Airline acknowledges that any storm water discharge permit issued to City may name Airline as a co-permittee. City and Airline both acknowledge that close cooperation is necessary to insure compliance with any storm water discharge permit terms and conditions, as well as to insure safety and to minimize cost of compliance. Airline acknowledges further that it may be necessary to undertake such actions to minimize the exposure of storm water to "significant materials" generated, stored, handled or otherwise used by Airline, as such term may be defined by applicable storm water rules and regulations, by implementing and maintaining "best management practices" as that term may be defined in applicable

storm water rules and regulations.

14.02.03 City will provide Airline with written notice of any storm water discharge permit requirements applicable to Airline and with which Airline will be obligated to comply from time-to-time, including, but not limited to: certification of non-storm water discharges; collection of storm water samples; preparation of storm water pollution prevention or similar plans; implementation of best management practices; and maintenance of necessary records. Such written notice shall include applicable deadlines. Airline agrees that within ten (10) days of receipt of such written notice it shall notify City in writing if it disputes any of the storm water permit requirements it is being directed to undertake. If Airline does not provide such timely notice, Airline will be deemed to assent to undertake such storm water permit requirements. In that event, Airline agrees to undertake, at its sole expense, unless otherwise agreed to in writing between City and Airline, those storm water permit requirements for which it has received written notice from City, and Airline agrees that it will hold harmless and indemnify City for any violations or non-compliance with any such permit requirements.

ARTICLE 15 SURRENDER OF AIRLINE PREMISES

15.01 Surrender and Delivery. Upon termination or cancellation of this Agreement, Airline shall promptly and peaceably surrender to City its Airline Premises and all improvements thereon to which City is entitled in good and fit condition, reasonable wear and tear as well as damage or repair which is the responsibility of City hereunder excepted. In the event the Airline Premises are not so yielded or delivered to City, City shall remedy said Airline Premises and the cost thereof will be deducted from any contract security amounts provided to the City as outlined in Article 9.08 . The Director shall reasonably determine the condition of the Airline Premises at the termination of this Agreement by expiration or otherwise.

15.02 Removal of Property. Provided Airline is not in default for payment of rentals, fees and charges hereunder, Airline shall have the right at any time during the Term of this Agreement to remove from the Airport its aircraft, tools, equipment, removable trade fixtures and other personal property, title to which shall remain in Airline, unless otherwise set forth in Articles 6.01.11 and 10.03 of this Agreement. Airline shall remove such aircraft, tools, equipment, removable trade fixtures and other personal property within fifteen (15) business days following termination of this Agreement, whether by expiration of time or otherwise, as provided herein, subject to any valid lien which City may have thereon for unpaid rentals, fees and charges. Airline shall not abandon any portion of its property at the Airport without the written consent of City. Any and all property not removed by Airline within fifteen (15) business days following the date of termination of this Agreement shall, at the option of City, (i) become the property of City at no cost to City; (ii) be stored by City at no cost to City or (iii) be sold at public or private sale at no cost to City. Except as may be agreed to otherwise by City and Airline, all City property damaged by or as a result of the removal of Airline's property shall be restored by Airline to the condition existing before such damage at Airline's expense.

15.03 Holding Over. In the event Airline uses its Airline Premises without the written consent of City after this Agreement has been canceled or expires, Airline shall be deemed a month to month tenant during the period of such use and shall pay the rate for rentals, fees, and charges established by City for Air Transportation Companies which are not Signatory Airlines during such period.

ARTICLE 16 ASSIGNMENT, SUBLETTING AND HANDLING AGREEMENTS

16.01 Assignment and Subletting by Airline.

16.01.1 Airline shall not assign or transfer this Agreement or any interest therein nor sublet the whole or any portion of the Airline Premises without first obtaining City's written consent, nor shall this Agreement or any interest there under be assignable or transferable by operation of law or by any process or

proceeding of any court or otherwise without the consent of City first had and obtained, which consent shall not be unreasonably withheld. Airline shall also have the right to assign this agreement to an Affiliated Airline as long as such Affiliated Airline continues to operate scheduled flights into and out of the Airport, and to assign this agreement to any successor to Airline's Air Transportation Business through merger, consolidation, voluntary sale, or transfer of substantially all of its assets, with the written consent of the City. This agreement shall be and remain binding on and inure to the benefit of the successors and assigns as consented to by City.

16.01.2 In the event that Airline shall, directly or indirectly, assign, sell, hypothecate, or otherwise transfer this Agreement, or any portion of Airline Premises, in contravention hereof without the prior written consent of City, City in its sole discretion may terminate this Agreement upon thirty (30) days written notice.

16.01.03 Airline shall include with any request for consent to assign or sublease a copy of the proposed assignment or sublease agreement. The assignment or sublease agreement submitted with Airline's request shall include the following information: (i) the term; (ii) the area or space to be assigned or subleased; (iii) the sublease rental to be charged; and (iv) the provision that assignee or sublessee must execute a separate agreement with City for operating at the Airport whose approval shall not be unreasonably withheld. Any other information reasonably requested by City pertaining to said sublease or assignment shall be promptly provided by Airline. A fully executed copy of such sublease or assignment shall be submitted to City for final approval within sixty (60) days of the occupancy of Airline Premises, or any portion thereof, by the assignee or sublessee. Such sublease or assignment shall be substantially similar to the sublease or assignment that was submitted by Airline to City prior to such sublease or assignment for approval.

16.01.4 Nothing in this Article 16 shall be construed to release Airline from its obligations under this Agreement, including but not limited to, the payment of rentals, fees, and charges provided herein.

16.02 Handling Agreements. In the event Airline agrees to ground handle any portion of the operations of another Air Transportation Company, Airline shall provide City advance written notice of such proposed activities, including a description of the type and extent of services to be provided and a handling agreement between Airline and the Air Transportation Company, and Airline shall pay ten percent (10%) of its gross revenue from any handling agreement (other than a handling agreement with an Affiliate or Affiliate of Airline) to City. Notwithstanding the foregoing, Airline shall not ground handle any Air Transportation Company which does not have consent of City for the operation of its Air Transportation Business at the Airport.

ARTICLE 17 GOVERNMENT INCLUSION

17.01 Government Agreements. This Agreement shall be subordinate to the provisions of any existing or future agreements between City and the United States Government or other governmental authority relative to the operation or maintenance of the Airport or the execution of which has been or will be required as a condition precedent to the granting of Federal or other governmental funds for the development of the Airport to the extent that the provisions of any such existing or future agreements are generally required by the United States or other governmental authority. City agrees to provide Airline with written advance notice of any provisions that would adversely modify the material terms of this Agreement.

17.02 Federal Government's Emergency Clause. All provisions of this Agreement shall be subordinate to the rights of the United States of America to operate the Airport or any part thereof during time of war or national emergency. Such rights shall supersede any provisions of this Agreement inconsistent with the operations of the Airport by the United States of America.

17.03 Nondiscrimination.

17.03.1 Airline for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree as a covenant running with the land that (i) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of Airline Premises, (ii) in the construction of any improvements on, over, or under Airline Premises and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination, and (iii) Airline shall use the Airline Premises in compliance with all other requirements imposed by or pursuant to 14 CFR 152 and Title VI of the Civil Rights Act of 1964 and 49 CFR, Subtitle A, Part 21, Nondiscrimination in Federally Assisted Programs of the DOT, and as said title and regulations may be amended.

17.03.2 In the event of a breach of any of the above nondiscrimination covenants which is not cured City shall have the right to cancel this Agreement after such action as the United States Government may direct to enforce this covenant has been followed and completed, including exercise or expiration of appeal rights.

17.04 Security. Airline, its officers, employees, agents, and those under its control, shall comply with security measures required of Airline or City by the FAA or the Transportation Security Administration (the "TSA") or their authorized successor(s) or contained in any Airport master security plan approved by the FAA or the TSA or their authorized successor(s). If Airline, its officers, employees, agents, or those under its control, shall fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against City, then, in addition to the provisions of Article 13.01, Airline shall be responsible for and shall reimburse City in the full amount of any such monetary penalty or other damages.

ARTICLE 18 GENERAL PROVISIONS

18.01 Reserved.

18.02 Nonwaiver. No waiver of default by either party of any of the terms, covenants, or conditions of this Agreement to be performed, kept, and observed by the other party shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants, and conditions to be performed, kept, and observed by the other party and shall not be deemed a waiver of any right on the part of the other party to cancel this Agreement as provided herein.

18.03 Passenger Facility Charge. City reserves the right to assess and collect PFCs subject to the terms and conditions set forth in the Aviation Safety and Capacity Expansion Act of 1990, Section 9110 (the "PFC Act") and implementing regulations as may be supplemented or amended from time to time. Airline shall collect and pay all PFCs for which it is responsible under the provisions of 14 CFR Part 150. Failure by Airline to remit PFCs within the time frame required by 14 CFR Part 158 shall be grounds for immediate cancellation of this Agreement pursuant to Article 13.03.

18.04 Rights Non-Exclusive. Notwithstanding anything herein contained that may be or appear to the contrary, the rights, privileges, and licenses granted under this Agreement are "non-exclusive" and City reserves the right to grant similar privileges to others. Nothing herein contained shall be deemed to grant to Airline any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act (49 U.S.C. Section 1349a) for the conduct of any activity on the Airport.

18.05 Quiet Enjoyment.

18.05.1 City agrees that, so long as Airline's payment of rentals, fees, and charges is timely and Airline

keeps all covenants and agreements contained herein, Airline shall peaceably have and enjoy its Airline Premises and all rights, privileges, and licenses of the Airport, its appurtenances and facilities granted herein, subject to the terms and conditions herein contained.

18.05.2 Consistent with the nature of Airline's business, Airline agrees that occupancy of its Airline Premises will be lawful and that it will not knowingly use or permit the use of Airline Premises in any way that would violate the terms of this Agreement, create a nuisance, or disturb other tenants or the general public. Airline shall be responsible for the activity of its officers, employees, agents, and others under its control with respect to this provision.

18.06 Performance. The parties expressly agree that time is of the essence in this Agreement. Failure by a party to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall relieve the other party, without liability, of any obligation to accept such performance.

18.07 Avigation Rights. City reserves unto itself and its successors and assigns for the use and benefit of the public a right of flight for the passage of aircraft in the airspace above the surface of the Airport, including the Airline Premises, for navigation or flight in the said airspace for landing on, taking off from, or operating at the Airport.

18.08 Rules and Regulations and Operational Directives.

18.08.1 Airline and its officers, employees, agents, and others under its control shall observe and obey in all material respects, all laws, regulations, and orders of the federal, state, county and municipal governments and City (acting in its governmental capacity) which may be applicable to Airline's operations at the Airport.

18.08.2 City, acting in its governmental capacity, may from time to time adopt, amend, or revise the Airport's Rules and Regulations and Operating Directives governing the conduct of operations at the Airport for reasons of safety, health, preservation of property, or for the maintenance of the good and orderly appearance of the Airport. Airline and its officers, employees, agents, and others under its control shall faithfully comply with and observe, in all material respects, such reasonable and non-discriminatory Rules and Regulations and Operating Directives, except as they may conflict with the terms and provisions of this Agreement, or the regulations of another governmental entity having appropriate jurisdiction. City shall notify Airline at least 14 days in advance of any amendments or supplements to such Rules and Regulations and Operating Directives that would materially alter the terms of this Agreement adversely.

18.08.3 Airline shall be strictly liable and responsible for obtaining, maintaining current, and fully complying with, any and all permits, licenses, and other governmental authorizations, however designated, as may be required at any time throughout the entire Term of this Agreement by any federal, state, or local governmental entity or any court of law having jurisdiction over Airline or Airline's operations and activities.

18.09 Inspection. Airline shall allow City's authorized representatives access to the Airline Premises for the purpose of examining and inspecting said premises; for purposes necessary, incidental to, or connected with the performance of City's obligations under this Agreement; or, in the exercise of City's governmental functions. Except in the case of an emergency, City shall conduct such inspections during reasonable business hours, after reasonable prior notice to Airline and in the presence of Airline's representative, and without undue interference with Airline's operations.

18.11 No Individual Liability. No member, officer, agent, director, or employee of City or Airline shall be charged personally or held contractually liable by or to the other party under the terms or provisions of

this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

18.12 Relationship of Parties. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship between the parties hereto. It is understood and agreed that neither the method of computation of rentals, fees, and charges, nor any other provisions contained herein, nor any acts of the parties hereto, creates a relationship other than the relationship of landlord and tenant.

18.13 Capacity to Execute. Airline shall submit a copy of any corporate resolution, if requested by City, which authorizes any director or officer to act on behalf of Airline or which authorizes Airline to enter into this Agreement.

18.14 Savings. The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein.

18.15 Successors and Assigns Bound. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

18.16 Incorporation of Exhibits. All exhibits and attachments referred to in this Agreement are intended to be and are hereby specifically made a part of this Agreement.

18.17 Titles. Paragraph titles are inserted only as a matter of convenience and for reference. They in no way define, limit, or describe the scope or extent of any provision of this Agreement.

18.18 Severability. In the event that any covenant, condition, or provision of this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of such covenant, condition, or provision shall not materially prejudice either City or Airline in their respective rights and obligations contained in the valid covenants, conditions, or provisions of this Agreement.

18.19 Amendments. Except as otherwise provided herein, no amendment, modification or alteration of the terms of this Agreement shall be binding unless the same shall be in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

18.20 Other Agreements. Other than as set forth herein, nothing contained in this Agreement shall be deemed or construed to nullify, restrict, or modify in any manner the provisions of any other lease or contract between City and Airline authorizing the use of the Airport, its facilities, and appurtenances.

18.21 Approvals.

18.21.1 Unless otherwise stated, whenever this Agreement calls for approval by City, such approval shall be evidenced by the written approval of the Director.

18.21.2 Except as otherwise provided herein, any approval required by either party to this Agreement shall not be unreasonably withheld, conditioned or delayed.

18.22 Notice.

18.22.1 All notices, requests, consents, and approvals served or given under this Agreement shall be served or given in writing with proof of delivery. If intended for City, notices shall be delivered to:

**Airport Director
Morgantown Municipal Airport
100 Hart Field Road
Morgantown, WV 26505**

or to such other address as may be designated by City by written notice to Airline.

18.22.2 Notices to Airline shall be delivered to:

**Russell Childs
President & CEO
444 South River Road
St. George , UT 84790**

or to such other address as may be designated by Airline by written notice to City.

18.23 Agent for Service. It is expressly understood and agreed that if Airline is not a resident of the State of West Virginia, or is an association or partnership without a member or partner resident of said state, Airline shall appoint an agent for the purpose of service of process in any court action between it and City arising out of or based upon this Agreement. Airline shall immediately, within ten (10) days of execution of this Agreement, notify City, in writing, of the name and address of said agent. Such service shall be made as provided by the laws of the State of West Virginia for service upon a non-resident engaging in business in the State. It is further expressly agreed, covenanted, and stipulated that, if for any reason, such service of process is not possible, as an alternative method of service of process; Airline may be personally served out of the State of West Virginia by the registered mailing of such service at the address set forth in Article 18.22.2.

18.24 Governing Law and Legal Forum. This lease agreement shall be deemed to have been made in and construed in accordance with the laws of the State of West Virginia. To that end, should there be a need for the litigation of any article or provision contained within this lease, it will be done in the Circuit Court of Monongalia County, West Virginia.

18.25 Force Majeure. Except as herein provided, neither City nor Airline shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations, other than the payment of rentals, fees, and charges hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of God, acts of the public enemy, weather conditions, riots, rebellion, or sabotage, or any other circumstances for which it is not responsible or which are not within its control.

18.26 Americans with Disabilities Act. Airline shall be solely and fully responsible for complying with the Americans with Disabilities Act of 1990 ("ADA") in connection with (i) the Preferential Use Premises or any portion thereof and its operations thereon, (ii) Airline's operations at the Airport (iii) removing physical barriers on the Preferential Use Premises, (iv) providing auxiliary aids and services, where necessary or required, and (v) modifying its policies, practices and procedures to comply with the ADA. Airline shall develop a workplan to correct or avoid any violations or non-compliance with the ADA. Airline shall deliver to the City, upon City's request, a copy of each such report and workplan. City's approval of or acceptance of any aspect of Airline's activities under this Agreement shall not be deemed or construed in any way as a representation that such item, activity or practice complies with the ADA. Airline agrees to indemnify, defend, and hold the City harmless from any and all costs incurred by City with respect to Airline's failure to comply with the ADA.

City shall be responsible for complying with the provisions and obligations of the ADA applicable to City in all Common Use Premises and Public Space of the Airport.

18.27 Federal Grant Agreement Covenants. Airline acknowledges that City is subject to Federal Grant Agreement obligations as a condition precedent to granting of funds for improvement of the Airport, and, accordingly, agrees to be bound by the following covenants provided by the FAA, as they may apply to Airline.

18.27.1 Airline for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated at the Airport for a purpose for which a DOT program or activity is extended, or for another purpose involving the provision of similar services or benefits, Airline shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Sub-title A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

18.27.2 Airline for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under the Airport and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation or denied the benefits of, or otherwise be subjected to discrimination, (3) that Airline shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, DOT, Sub-title A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

18.27.3 That in the event of breach of any of the above nondiscrimination covenants, City shall have the right to terminate this Agreement, to re-enter and repossess any of said Airport premises and the facilities thereon, and to hold the same as if this Agreement had never been made or issued. This provision shall not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.

18.27.4 Airline assures that it will comply with pertinent statutes, executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap, be excluded from participating in any activity conducted with or benefiting from Federal assistance. This paragraph obligates Airline or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of, personal property or real property or interests therein or structures or improvements thereon. In these cases, this paragraph obligates the party or any transferee for the longer of the following periods: (i) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (ii) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this paragraph binds the contractors from the bid solicitation period through the completion of the contract.

18.27.5 Notwithstanding anything set forth herein to the contrary, City reserves the right to further develop or improve the landing area of the Airport, and will coordinate such improvements with the Airlines to ensure that improvements or developments are performed in a manner that will not place a financial burden upon the Airlines, nor interfere unnecessarily with Airline's operations.

18.27.6 This Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between City and the United States relative to the development, operation or maintenance of the Airport.

18.27.7 Airline agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event any future structure or building is planned for the Airport premises or in the event of any planned modification or alteration of any present or future building or structure situated on the permitted premises.

18.27.8 Airline, by accepting this Agreement, agrees for itself and its successors and assigns that it will not make use of the Airport premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, City reserves the right to enter upon the Airport premises and cause the abatement of such interference at the expense of Airline.

18.27.9 Airline, by accepting this Agreement, expressly agrees for itself and its successors and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Airport premises, above the main sea level elevation that would exceed FAR Part 77 standards or elevations affecting the Airport navigable airspace. In the event the aforesaid covenants are breached, City reserves the right to enter upon the permitted premises and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of Airline.

18.28 Modifications for Granting FAA Funds. In the event that the FAA requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this Agreement, Airline agrees to consent to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required to enable City to obtain said FAA funds, provided that in no event shall such changes impair the rights of Airline hereunder.

18.29 Taxes.

18.29.1 Airline shall pay, but such payment shall not be considered part of Airport Revenue, all taxes, assessments and charges of a like nature, if any (including any possessory interest tax), which at any time during the term of this Agreement may be levied against Airline or become a lien by virtue of any levy, assessment or charge against Airline by the federal government, the State of West Virginia, Monongalia County or any governmental successor in authority to the foregoing, or any other tax- or assessment-levying bodies, in whole or in part, upon or in respect to (a) the Airline Premises or such facilities of the Airport as are made available for use by Airline hereunder or (b) any personal property belonging to Airline situated on or in the Airline Premises. The property interest of Airline, if any, created by this Agreement may be subject to property taxation, and Airline may be subject to the payment of property tax levied on such interest. Payment of such additional charges for all such taxes, assessments and charges, when and if levied or assessed, shall be made by Airline directly to the taxing or assessing authority charged with collection thereof, in which event Airline shall be responsible for promptly providing City with evidence of payment therefore.

18.29.2 Airline may, at its expense, contest the amount or validity of any tax or assessment or the inclusion of the Airline Premises as taxable or assessable property directly against the taxing or assessing authority. Airline shall indemnify City from all taxes, penalties, costs, expenses, and attorneys' fees incurred by City resulting directly or indirectly from all such tax contests other than contests of City-imposed taxes.

18.29.3 Upon any termination of this Agreement, all lawful taxes then levied or a lien upon any of such property or taxable interest therein shall be paid in full by Airline forthwith or as soon as a statement thereof has been issued by the tax collector if termination occurs during the interval between the attachment of the lien and the issuance of the statement.

18.30 Exclusiveness of Airline's Rights. Nothing contained in this Agreement shall be deemed to grant to Airline any exclusive right or privilege within the meaning of 49 U.S.C. § 40103(e) with respect to activity on the Airport.

18.31 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

18.32 Liens and Encumbrances. Airline shall keep the Airline Premises free and clear of any liens and encumbrances arising or growing out of Airline's use and occupancy of the Airline Premises or activities at the Airport. Airline agrees to fully indemnify and defend City in connection with any such liens filed against the Airline Premises. At City's request, Airline shall furnish City with written proof of payment of any item that would or might constitute the basis for such a lien on the Airline Premises if not paid.

18.33 Labor Disputes. Airline agrees to use reasonable efforts to avoid disruption to City, its tenants or members of the public arising from labor disputes involving Airline, and in the event of a strike, picketing, demonstration or other labor difficulty involving Airline, to use its good offices, including the utilization of available legal remedies, to minimize or eliminate any disruption to City, its tenants or members of the public, arising from such strike, picketing, demonstration or other labor difficulty.

18.34 SEC Rule 15c2-12. Airline, upon request by City, shall provide City with such information as City may reasonably request in writing to comply with City's continuing disclosure requirements under SEC Rule 15c2-12 as it may be amended from time to time; provided, however, that Airline may in lieu of providing the requested information direct City to an Airline or SEC website where the requested information is then currently available.

18.35 Memorandum of Lease. In the event that City so requests, Airline shall execute, attest, acknowledge, and deliver for recording with the Recorder of Monongalia County a short form Memorandum of Lease of this Agreement.

18.36 Entire Agreement. It is understood and agreed that this instrument contains the entire agreement between the parties hereto with respect to the subject matter hereof. It is further understood and agreed by Airline that City and City's agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except such as are in this Agreement expressly set forth, and no claim or liability or cause for termination shall be asserted by Airline against City for, and City shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on their behalves by their respective duly authorized officers all as of the day and year first above written.

CITY OF MORGANTOWN

A Kim Hawes
City Manager

SKYWEST AIRLINES


Wade Steel
Chief Commercial Officer

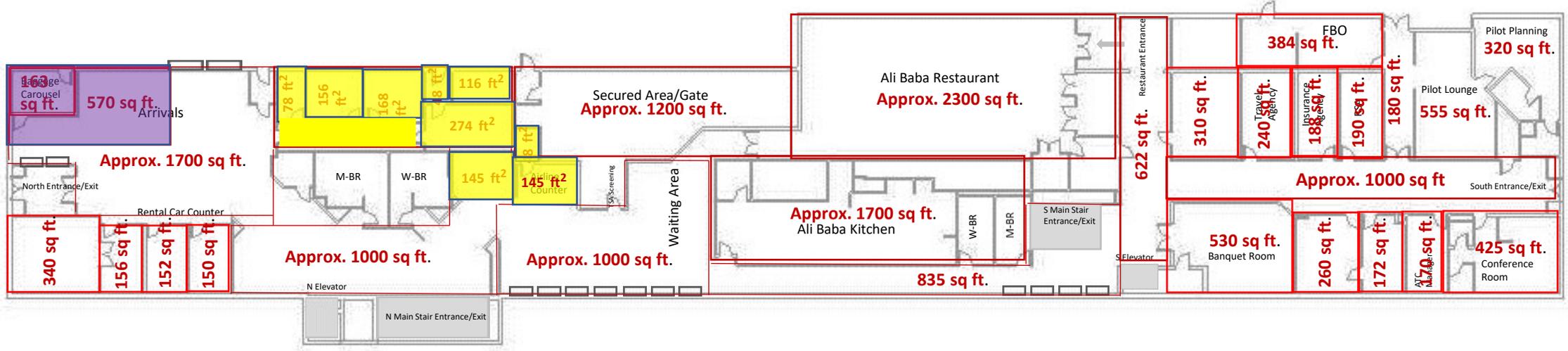
APPENDIX A

Appendix A – Terminal Drawing



Morgantown Municipal Airport

SECOND LEVEL



- Baggage Claim – Shared by all airlines
- SkyWest Airlines – Preferential use space

Ordinance No. 2025-____

**AN ORDINANCE AUTHORIZING AIRLINE AGREEMENT AND LEASE
WITH SKYWEST AIRLINES**

The City of Morgantown hereby ordains that the City Manager is authorized to execute the enclosed Standard Airline Agreement and Lease with SkyWest Airlines providing for commercial air carrier operations at Morgantown Municipal Airport, and to take such other actions and execute such other documents as necessary and helpful to accomplish the purposes of the Agreement and/or as may be authorized to be done on behalf of the City of Morgantown by such agreement.

This ordinance is effective upon adoption.

Mayor

City Clerk

Ordinance No. 2025-_____

**AN ORDINANCE CONFIRMING SALE OF CITY REAL ESTATE
TO JONES PLACE, LLC**

WHEREAS, by Ordinance No. 2014-36, a copy of which is enclosed with this Ordinance as **Exhibit A**, The City of Morgantown ordained that its City Manager was authorized to executed a deed, by and on behalf of the City of Morgantown, to Jones Place, LLC, transferring real estate then owned by the City of Morgantown and designated as being in Fourth Ward District, Tax Map 20, Parcel 241, and with the legal description “Lot 23, Block W, Beauty Terrace Addition,” in consideration of payment of the sum of \$50,250.00; and

WHEREAS, the City of Morgantown received the agreed upon payment for the transfer of the above-described real estate, as shown in the “City of Morgantown Receipt for Purchase,” enclosed with this ordinance as **Exhibit B**; and

WHEREAS, the deed conveying the property described herein to Jones Place, LLC, does not appear of record in the Office of the Clerk of the Monongalia County Commission, and Jones Place, LLC, after diligent search, is unable to locate an original deed to be recorded with such records; and

WHEREAS, The City of Morgantown and Jones Place, LLC, intend to ensure that the records of the City of Morgantown and the Clerk of the Monongalia County Commission accurately reflect that the above-described transfer was duly authorized and consummated;

NOW, THEREFORE, The City of Morgantown hereby ordains the following:

The City Manager is authorized to execute a corrective or confirmatory deed, or such other instrument or instruments as may be necessary and appropriate, to convey the above-described property to Jones Place, LLC, consistent with the terms of Ordinance No. 2014-36 and the records of the City of Morgantown, and to deliver the same to Jones Place, LLC for recording with the Office of the Clerk of the County Commission of Monongalia County.

This Ordinance is effective upon adoption.

FIRST READING: _____

Mayor

SECOND READING: _____

ADOPTED: _____

City Clerk

FILED: _____

AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING THE SALE OF REALTY OWNED BY IT IN THE FOURTH WARD OF THE CITY TO JONES PLACE, LLC.

The City of Morgantown hereby ordains that it authorizes its City Manager to execute the deed hereto attached, by and on behalf of the City of Morgantown, for the consideration of \$50,250.00 being paid to it by JONES PLACE, LLC.

This Ordinance shall be effective upon date of adoption.

FIRST READING: August 19, 2014

ADOPTED: September 2, 2014

FILED: September 3, 2014

RECORDED: September 3, 2014


MAYOR


CITY CLERK

THIS DEED, made this the 2ND day of September, 2014, by and between the CITY OF MORGANTOWN, a municipal corporation, organized and existing under the laws of the State of West Virginia, party of the first part, GRANTOR, and JONES PLACE, LLC., party of the second part, GRANTEE,

WITNESSETH: That for an in consideration of the sum of Ten Dollars (\$10.00), this day cash in hand paid, and of other good and valuable consideration, the receipt of all of which is hereby acknowledged, the said Grantor, the CITY OF MORGANTOWN, a municipal corporation, does hereby grant and convey unto the said Grantee, JONES PLACE, LLC., with covenants of SPECIAL WARRANTY , all that certain tract and parcel of real estate, situate, lying and being Parcel 241 on Tax Map 20, Fourth Ward, Morgantown Corporation, Monongalia County, West Virginia, which real estate is more particularly bounded and described as follows, to-wit:

Lot 23, Block W, Beauty Terrace Addition.

AND BEING the same real estate conveyed to the CITY OF MORGANTOWN, a municipal corporation, by deed from William Moreland, Deputy Commissioner of Forfeited and Delinquent Lands for Monongalia County, West Virginia, acting for and on behalf of the State of West Virginia, which deed is dated April 16, 1960, and of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 583 at Page 392.

The above described real estate is further conveyed subject to all exceptions, reservations, restrictions, conditions and rights of way as heretofore imposed upon said property by the Grantor's predecessors in title.

The real estate herein conveyed is assessed, for the year 2013 upon the Land Books of the Fourth Ward of the City of Morgantown, Morgan District, Monongalia County, West Virginia, as follows:

City of Morgantown
20 - 0241
0000 - 0000
583 - 392

BLW, Lot 23
Beauty Terrace
0.1217 AC

DECLARATION OF CONSIDERATION OF VALUE

Under penalties of fine and imprisonment, as provided by law, the undersigned Grantor does hereby declare that the total consideration paid for the property transferred by the document to which this declaration is appended is exempt from taxation for the following reason: That being a transfer of property by a political subdivision of the State of West Virginia; and therefore exempt from excise tax as provided by West Virginia Code Chapter 11, Article 22, Section 1.

IN WITNESS WHEREOF, the said City of Morgantown, a municipal corporation, has caused its corporate name to be subscribed hereto, and its corporate seal affixed hereto by Jeff Mikorski, its City Manager by authority duly given.

THE CITY OF MORGANTOWN
A MUNICIPAL CORPORATION ORGANIZED
AND EXISTING UNDER THE LAWS OF
THE STATE OF WEST VIRGINIA

BY: _____
ITS: CITY MANAGER

STATE OF WEST VIRGINIA

COUNTY OF MONONGALIA, to-wit:

The foregoing instrument was acknowledged before me this the _____ day of _____, 2014, by _____, as the City Manager of the CITY OF MORGANTOWN, a municipal corporation, for and on behalf of said corporation.

My commission expires: _____

NOTARY PUBLIC

THIS DEED WAS PREPARED BY:
Stephen R. Fanok, Attorney at Law
WV Bar # 1158
389 Spruce Street
Morgantown, West Virginia 26505
(304) 284-7477

City of Morgantown Receipt for Purchase

DATE: October 28, 2014

BUYER: Jones Place, LLC

PROPERTY: Vacant lot in the Fourth Ward along Stewart Street, Tax Map 20, Parcel 241

SALE PRICE: \$50,250.00

DOWN PAYMENT: \$ 5,025.00

BALANCE DUE: \$45,225.00

Received \$ 45,225.00 (Check # 1415) from
Jones Place Holdings, LLC on October 28, 2014 for the above listed property sold in
"as is" condition.

[Signature] _____ Date 10/28/14
Purchaser

[Signature] _____ Date 10/28/14
Representative, City of Morgantown

JONES PLACE HOLDINGS, LLC
P.O. BOX 818
MORGANTOWN, WV 26507
(304) 296-7400

BB&T
BRANCH BANKING AND TRUST COMPANY
WEST VIRGINIA
69-339-515

E23checkSM Check Fraud
Protection for Business

1415

PAY TO THE
ORDER OF

City of Morgantown

Forty Five Thousand Two Hundred Twenty Five

\$ 45,225⁰⁰

100

DOLLARS

VOID AFTER 90 DAYS

MEMO

Tax Map 20, Parcel 241



[Signature]
AUTHORIZED SIGNATURE

Security features: Details on back.



MORGANTOWN
DEVELOPMENT SERVICES

304-284-7431
Morgantownwv.gov
430 Spruce St.
Morgantown, WV 26505

MEMORANDUM

To: J. Damien Davis, City Manager

From: Rickie Yeager, Director, Development Services Department

Cc: Ryan Simonton, City Attorney
Christine Wade, City Clerk
Heather Carl, Deputy City Clerk
Drew Cantis, Chief Building Official, Development Services Department
Barb Morgan, Executive Assistant, Engineering and Public Works Department
Vanessa Johnson, Executive Assistant, Engineering and Public Works Department

Date: January 2, 2025

Re: Request to Award Bid Call 2025-11 – Asbestos Abatement and Demolition of Asbestos Abatement and Demolition of 59 Donley Street and 64 Hogue Street and Restoration of Land

Please be aware that the City of Morgantown received the following six (qualified) bid responses for the above-mentioned project:

Company Name:	Bid Amount:
Blue Gold Development, LLC	\$ 37,500.00
Badger Construction	\$ 27,200.00
24/7 Environmental, LLC	\$ 28,750.00
Reclaim Company, LLC	\$ 29,450.00
Anderson Excavating	\$ 47,448.00
Orange Construction	\$ 65,000.00

After review, staff recommends that Bid Call 2025-11 be awarded to Badger Construction. This firm was the lowest responsible bidder. If you have any questions or concerns, please let me know.



P: 304-284-7412
 Morgantownwv.gov
 389 Spruce St.
 Morgantown, WV 26505

Annual Report of Policemen's Pension and Relief Funds to the Municipal Pensions Oversight Board

as required by WV Code §8-22-19(d)(1)(B) and §8-22-22a(a)

Fiscal Year Ending June 30, 2024

This report provides a comprehensive overview of the financial condition and performance of the Policemen’s Pension and Relief Fund for the fiscal year ended June 30, 2024. The report is prepared in compliance with the requirements set forth by the West Virginia Municipal Pensions Oversight Board (MPOB) and serves as a certification to the governing body of the municipality.

Upon presentation and certification of this report, the City will be eligible to request its share of the WV Surcharge Tax assessed on insurance from the State, amounting to **\$839,936.87** for the fiscal year ending June 30, 2025.

Financial Highlights for FY24

1. Total Pension Assets (Fair Market Value):

	As of June 30th 2023	As of June 30th 2024	Difference
United Bank - Checking Account	\$ 266,593.71	\$ 626,835.19	\$ 360,241.48
John Hancock Investment Account	16,673,666.77	17,709,902.06	1,036,235.29
Morgan Stanley Investment Account	7,357.42	9,869.83	2,512.41
Receivables - Employee Contributions	20,103.07	9,409.87	(10,693.20)
Total Assets	<u>\$ 16,967,720.97</u>	<u>\$ 18,356,016.95</u>	<u>\$ 1,388,295.98</u>

2. Total Contributions:

- **Employee Contributions:** \$443,758 (9.50% of total gross wages)
- **City Employer Required Contributions:** \$1,401,389
(Alternative Funding Method: 107% of PY Contribution)
- **WV Surcharge Tax Received:** \$737,407

3. Investment Earnings:

- **Total Gross Investment Income:** \$1,578,376
- **Investment Advisor Fees and Expenses:** \$62,760
- ***Net Investment Income:*** \$1,515,616
(Gross Investment Income less Investment Advisor Fees and Expenses)

4. Benefit Payments:

- **Total Retirement, Disability, and Survivor Benefits Paid:** \$2,654,713
- **Return of Contributions to Former Employees or Survivors:** \$44,943

5. Administrative Expenses:

- **Allocation of City Audit Fees:** \$2,280
- **Office Supplies:** \$51
- **Outsourced Pension processing fees:** \$13,876

6. Investment Performance:

- **Overall Return on Investments:** 9.0% for the period July 1, 2023 to June 30, 2024.

Conclusion

We remain committed to maintaining the financial integrity of the Fund and ensuring the continued provision of benefits to our dedicated Police Officers and their families. The City Council's support and oversight are invaluable as we strive to uphold these commitments.

This report is hereby presented for certification, enabling the City to proceed with the request for its share of the WV Surcharge Tax for the upcoming fiscal year.

Respectfully yours,

Jonathan Furgison, CPA
Director of Finance

Dated: December 26, 2024

**Annual Report of Policemen's and Firemen's Pension and Relief Funds
to the Municipal Pensions Oversight Board
as required by WV Code §8-22-19(d)(1)(B) and §8-22-22a(a)**

Item 11D.

Pension Fund	Morgantown Policemen's Pension & Relief Fund
Treasurer	Jonathan Furgison, Finance Director
Municipality	City of Morgantown, West Virginia
Fiscal Year (July 1 - June 30)	2024
Actuarial Funding Method	<input type="checkbox"/> Standard Funding Method <input type="checkbox"/> Optional Funding Method <input checked="" type="checkbox"/> Alternative Funding Method (107%) <input type="checkbox"/> % Necessary to Maintain Plan Solvency for 15 Years

PART I - Asset Reconciliation from Beginning of Fiscal Year to End of Fiscal Year		Item	Amount
Beginning Fair Value of Pension Plan	July 1 (cash value)		\$ 16,947,617.90
a. Prior year net receivable/payable			\$ 20,103.07
Beginning Fair Value of Pension Plan	July 1 (accrued value)		\$ 16,967,720.97
I. Revenue During Fiscal Year			
1. Employee Contributions			
a. For Employees hired prior to Jan. 1, 2010	Percent of Gross Salary	9.50%	\$ 151,132.22
b. For Employees hired on or after Jan. 1, 2010	Percent of Gross Salary	9.50%	\$ 283,215.86
c. Total Employee Contributions			\$ 434,348.08
2. Government Contributions			
a. From Parent Local Government	Required employer contributions from your municipality		\$ 1,325,118.00
b. Overpayment Authorized by City Council Pursuant to §WV Code 8-22-27A(d)			\$ 76,271.00
c. Additional Employer Contributions From Your Municipality			\$ -
d. From State Government	Municipal Pensions Oversight Board (premium surcharges on fire and casualty insurance)		\$ 737,407.01
e. Total Government Contributions			\$ 2,138,796.01
3. Receivable Contributions			
a. Employee Contributions			\$ 9,409.87
b. Local Government Contributions			\$ -
c. State Government Contributions			\$ -
d. Other Contributions			\$ -
e. Total Receivable Contributions			\$ 9,409.87
4. Earnings on Investments			
a. Net Appreciation/(Depreciation) of Fair Value of Investments			\$ 218,570.55
b. Net Realized Gain/(Loss) on Sale/Exchange			\$ 1,233,021.30
c. Interest and Dividends			\$ 126,784.52
d. Other Income			\$ -
e. Investment Expenses (enter as negative)			\$ (62,760.00)
f. Receivable Investment Income			\$ -
g. Payable Investment Expenses (enter as negative)			\$ -
h. Total Earnings on Investments			\$ 1,515,616.37
5. All Other Revenues			
Please Specify			\$ -
Total Revenues	The sum of items I.1. through I.7.		\$ 4,098,170.33

**Annual Report of Policemen's and Firemen's Pension and Relief Funds
to the Municipal Pensions Oversight Board
as required by WV Code §8-22-19(d)(1)(B) and §8-22-22a(a)**

Item 11D.

Item		Amount
II Expenditures During Fiscal Year <small>Does not include Investment Expenses, see I.4.e. and I.4.g. on first page.</small>		
1. Benefits Paid	Retirement, disability, survivor and any other benefits.	\$ 2,654,712.95
2. Withdrawals	Amount paid to employees or former employees or their survivors, representing return of contributions made by employees during the period of their employment	\$ 44,942.93
3. Administration Expenses	Administrative expenses and other costs or payments not representing benefit payments or withdrawals.	
a. Municipal Administration	Municipal administration fees.	\$ 2,280.00
b. Other Administration	Example: Pension Secretary expenses; Rent; etc.	\$ 7,938.47
c. Total Administration Expenses		\$ 10,218.47
4. Payables	Monies payable after the end of the fiscal year	
a. Benefit Payments		\$ -
b. Withdrawals		\$ -
c. Administration Expenses		\$ 5,987.87
d. Total Payables		\$ 5,987.87
Total Expenditures	<small>The sum of items II.1. through II.4</small>	\$ 2,715,862.22
Net Income/(Loss)		\$ 1,382,308.11
Ending Fair Value of Pension Plan	June 30 (cash value)	\$ 18,346,607.08
a. Net receivable/payable		\$ 3,422.00
Ending Fair Value of Pension Plan	June 30 (accrued value)	\$ 18,350,029.08

**Annual Report of Policemen's and Firemen's Pension and Relief Funds
to the Municipal Pensions Oversight Board
as required by WV Code §8-22-19(d)(1)(B) and §8-22-22a(a)**

Item 11D.

PART II - Asset Allocation at End of Fiscal Year		
1. Cash and Cash Equivalents - Short Term	Percent of Total Assets	3.42%
Financial Institution or Money Manager	Type of Account	Fair Value
a. United Bank	Checking	\$ 626,835.19
b.	Treasury Bills	\$ -
c.	Savings or Money Market Account	\$ -
d.	Short Term Investment Funds	\$ -
e.	Re-Purchase Agreements	\$ -
f.	Commercial Paper	\$ -
g.	CDs and Bankers' Acceptances	\$ -
		Fair Value
Total Cash and Cash Equivalents	The sum of items 1.a. through 1.g.	\$ 626,835.19
2. Fixed Income - Long Term	Percent of Total Assets	73.98%
Financial Institution or Money Manager	Type of Account	Fair Value
a.	US Govt Agencies & Instruments	\$ -
b.	Foreign Govt, Subdivisions, Agencies or Enterprise	\$ -
c.	International agencies or supranational entities	\$ -
d.	Mortgage-related or others asset back securities	\$ -
e.	Corporate Debt Securities	\$ -
f.	Corporate Inflation-index bonds	\$ -
g.	Bank CD's, fixed time deposits, Bankers Acceptance	\$ -
h.	State & Local Govt Debt Securities	\$ -
i. John Hancock	Mutual Funds (Bonds)	\$ 13,575,907.24
j.	International Mutual Funds - Bonds	\$ -
k.	Exchange Traded Funds (ETF) - Bonds	\$ -
l.	International Exchange Traded Funds (ETF) - Bonds	\$ -
		Fair Value
Total Fixed Income (at fair value)	The sum of items 2.a. through 2.l.	\$ 13,575,907.24
3. Equity Investments	Percent of Total Assets	22.58%
Financial Institution or Money Manager	Type of Account	Fair Value
a.	Individual Stocks Held	\$ -
b. John Hancock	Mutual Fund Shares (Equities)	\$ 4,133,994.82
c.	Exchange Traded Funds (ETF)	\$ -
d. Morgan Stanley	International Stocks Held	\$ 9,869.83
e.	International Mutual Funds - Equities	\$ -
f.	International Exchange Traded Funds (ETF)	\$ -
		Fair Value
Total Equity Investments (at fair value)	The sum of items 3.a. through 3.f.	\$ 4,143,864.65
4. Alternative Investments	Percent of Total Assets	0.00%
Financial Institution or Money Manager	Type of Account	Fair Value
a.	Real Estate Investment Trust	\$ -
b.	Private Equity Fund	\$ -
c.	Hedge Funds	\$ -
d.	Other Alternative Investments	\$ -
		Fair Value
Total Alternative Investments (at fair value)	The sum of items 4.a. through 4.d.	\$ -
5. Receivables and Payables	Percent of Total Assets	0.02%
	Type	Fair Value
a.	Receivable Contributions	\$ 9,409.87
b.	Receivable Investment Income	\$ -
c.	Payable Investment Expense	\$ -
d.	Payable Benefits, Withdrawals, and Admin Expenses	\$ (5,987.87)
		Fair Value
Net Receivable/(Payable)	The sum of items 5.a. through 5.d.	\$ 3,422.00
Total Assets	Sum of 1. through 5.	\$ 18,350,029.08
6. Total return on investments for the period of July 1 thru June 30	(Obtain from financial institution or money manager)	9.00%

**Annual Report of Policemen's and Firemen's Pension and Relief Funds
to the Municipal Pensions Oversight Board
as required by WV Code §8-22-19(d)(1)(B) and §8-22-22a(a)**

Item 11D.

PART III - Membership and Beneficiaries

* Please report the figures requested below, for the fiscal year reported on page 1. To figure the Average Monthly Number of Persons, add figures for each month and divide by 12. Please round to two decimal places. An employee must have been paid for 100 hours in any month to be included in that month.
 ** Please report the total number of disability applications received during the fiscal year, the status of each application at the end of the fiscal year, the total applications granted and denied, and the percentage of disability benefit recipients to the total number of active members of the fund. This requirement satisfies §8-22-23a(a) of the WV Code if the report is submitted to the Municipal Pensions Oversight Board prior to August 1st of each year.

Item		Avg. Monthly #
I. Members of your Pension Fund		
	<small>Exclude Beneficiaries</small>	
1. Active Members	<small>Current number of employees contributing to the pension fund</small>	60.33
2. Inactive Members	<small>Non-active vested members and employees on extended leave without pay</small>	0.00
II. Beneficiaries Receiving Periodic Benefit Payments During Fiscal Year		
1. Retirees		54.00
2. Disability Retirees	<small>Includes the new applications approved during reporting period</small>	7.00
a. Number of Disability Applications received during the fiscal year		0.00
b. Status of each Disability Application at end of fiscal year - please attach separate sheet with details		
(1.) Disability Applications Approved during Fiscal Year		0.00
(2.) Disability Applications Denied during Fiscal Year		0.00
3. Percentage of Disability Benefit Recipients to the Total of Active Members in the fund		11.60%
4. Survivors (of Deceased Members) Drawing Benefits		11.00

PART IV - Legal Thresholds for Investments

	(1)	(2)	(3)
	%	Maximum % and \$	(Over) Under
Equity Investments	23%	75%	52%
International Securities	0%	30%	30%
Alternative Investments	0%	25%	25%
Cash/Cash Equivalents and Fixed Income (Low 25%; High 75%)	77%	25% 75%	-52% -2%
Short Term Investment - (90 days of expenses)		\$ 678,965.56	\$ 52,130.37



P: 304-284-7412
 Morgantownwv.gov
 389 Spruce St.
 Morgantown, WV 26505

Annual Report of Firemen's Pension and Relief Funds to the Municipal Pensions Oversight Board

as required by WV Code §8-22-19(d)(1)(B) and §8-22-22a(a)

Fiscal Year Ending June 30, 2024

This report provides a comprehensive overview of the financial condition and performance of the Firemen’s Pension and Relief Fund for the fiscal year ended June 30, 2024. The report is prepared in compliance with the requirements set forth by the West Virginia Municipal Pensions Oversight Board (MPOB) and serves as a certification to the governing body of the municipality.

Upon presentation and certification of this report, the City will be eligible to request its share of the WV Surcharge Tax assessed on insurance from the State, amounting to **\$807,973.62** for the fiscal year ending June 30, 2025.

Financial Highlights for FY24

1. Total Pension Assets (Fair Market Value):

	As of June 30th 2023	As of June 30th 2024	Difference
United Bank - Checking Account	\$ 21,116.88	\$ 84,975.11	\$ 63,858.23
John Hancock Investment Account	-	15,387,602.48	15,387,602.48
Morgan Stanley Investment Account	14,248,252.11	8,232.21	(14,240,019.90)
Receivables - Employee Contributions	15,854.88	-	(15,854.88)
Total Assets	<u>\$ 14,285,223.87</u>	<u>\$ 15,480,809.80</u>	<u>\$ 1,195,585.93</u>

2. Total Contributions:

- **Employee Contributions: \$393,437**
 - 7.00% of total gross wages for EE's hired prior to 01/01/2010
 - 9.50% of total gross wages for EE's hired on or after 01/01/2010
- **City Employer Required Contributions: \$1,117,217**
(Alternative Funding Method: 107% of PY Contribution)
- **Additional City Employer Contribution: \$149,999.64**
(See attached letter and correspondence)
- **WV Surcharge Tax Received: \$690,530**

3. Investment Earnings:

- **Total Gross Investment Income: \$1,318,495**
- **Investment Advisor Fees and Expenses: \$63,365**
- ***Net Investment Income: \$1,255,130***
(Gross Investment Income less Investment Advisor Fees and Expenses)

4. Benefit Payments:

- **Total Retirement, Disability, and Survivor Benefits Paid: \$2,330,242**
- **Return of Contributions to Former Employees or Survivors: \$76,904**

5. Administrative Expenses:

- **Allocation of City Audit Fees: \$2,280**
- **Pension Secretary Fee & Supplies: \$703**

6. Investment Performance:

- **Overall Return on Investments: 8.82% for the period July 1, 2023 to June 30, 2024.**

Conclusion

We remain committed to maintaining the financial integrity of the Fund and ensuring the continued provision of benefits to our dedicated Firefighters and their families. The City Council's support and oversight are invaluable as we strive to uphold these commitments.

This report is hereby presented for certification, enabling the City to proceed with the request for its share of the WV Surcharge Tax for the upcoming fiscal year.

Respectfully yours,

Jonathan Furgison, CPA
Director of Finance

Dated: December 26, 2024

**Annual Report of Policemen's and Firemen's Pension and Relief Funds
to the Municipal Pensions Oversight Board
as required by WV Code §8-22-19(d)(1)(B) and §8-22-22a(a)**

Item 11E.

Pension Fund	Morgantown Firemen's Pension & Relief Fund
Treasurer	Jonathan Furgison, Finance Director
Municipality	City of Morgantown, West Virginia
Fiscal Year (July 1 - June 30)	2024
Actuarial Funding Method	<input type="checkbox"/> Standard Funding Method <input type="checkbox"/> Optional Funding Method <input checked="" type="checkbox"/> Alternative Funding Method (107%) <input type="checkbox"/> % Necessary to Maintain Plan Solvency for 15 Years

PART I - Asset Reconciliation from Beginning of Fiscal Year to End of Fiscal Year		Item	Amount
Beginning Fair Value of Pension Plan	July 1 (cash value)		\$ 14,269,368.99
a. Prior year net receivable/payable			\$ 15,255.88
Beginning Fair Value of Pension Plan	July 1 (accrued value)		\$ 14,284,624.87
I. Revenue During Fiscal Year			
1. Employee Contributions			
a. For Employees hired prior to Jan. 1, 2010	Percent of Gross Salary	7.00%	\$ 108,781.22
b. For Employees hired on or after Jan. 1, 2010	Percent of Gross Salary	9.50%	\$ 284,655.86
c. Total Employee Contributions			\$ 393,437.08
2. Government Contributions			
a. From Parent Local Government	Required employer contributions from your municipality		\$ 1,075,754.36
b. Overpayment Authorized by City Council Pursuant to §WV Code 8-22-27A(d)			\$ 41,463.00
c. Additional Employer Contributions From Your Municipality			\$ 149,999.64
d. From State Government	Municipal Pensions Oversight Board (premium surcharges on fire and casualty insurance)		\$ 690,530.02
e. Total Government Contributions			\$ 1,957,747.02
3. Receivable Contributions			
a. Employee Contributions			\$ -
b. Local Government Contributions			\$ -
c. State Government Contributions			\$ -
d. Other Contributions			\$ -
e. Total Receivable Contributions			\$ -
4. Earnings on Investments			
a. Net Appreciation/(Depreciation) of Fair Value of Investments			\$ (252,591.70)
b. Net Realized Gain/(Loss) on Sale/Exchange			\$ 1,347,548.10
c. Interest and Dividends			\$ 223,538.54
d. Other Income			\$ -
e. Investment Expenses (enter as negative)			\$ (63,364.85)
f. Receivable Investment Income			\$ -
g. Payable Investment Expenses (enter as negative)			\$ -
h. Total Earnings on Investments			\$ 1,255,130.09
5. All Other Revenues			
Please Specify			
Total Revenues	The sum of items I.1. through I.7.		\$ 3,606,314.19

**Annual Report of Policemen's and Firemen's Pension and Relief Funds
to the Municipal Pensions Oversight Board
as required by WV Code §8-22-19(d)(1)(B) and §8-22-22a(a)**

Item 11E.

Item		Amount
II Expenditures During Fiscal Year <small>Does not include Investment Expenses, see I.4.e. and I.4.g. on first page.</small>		
1. Benefits Paid	Retirement, disability, survivor and any other benefits.	\$ 2,330,241.60
2. Withdrawals	Amount paid to employees or former employees or their survivors, representing return of contributions made by employees during the period of their employment	\$ 76,904.46
3. Administration Expenses	Administrative expenses and other costs or payments not representing benefit payments or withdrawals.	
a. Municipal Administration	Municipal administration fees.	\$ 2,280.00
b. Other Administration	Example: Pension Secretary expenses; Rent; etc.	\$ 703.20
c. Total Administration Expenses		\$ 2,983.20
4. Payables	Monies payable after the end of the fiscal year	
a. Benefit Payments		\$ -
b. Withdrawals		\$ -
c. Administration Expenses		\$ -
d. Total Payables		\$ -
Total Expenditures	<small>The sum of items II.1. through II.4</small>	\$ 2,410,129.26
Net Income/(Loss)		\$ 1,196,184.93
Ending Fair Value of Pension Plan	June 30 (cash value)	\$ 15,480,809.80
a. Net receivable/payable		\$ -
Ending Fair Value of Pension Plan	June 30 (accrued value)	\$ 15,480,809.80

**Annual Report of Policemen's and Firemen's Pension and Relief Funds
to the Municipal Pensions Oversight Board
as required by WV Code §8-22-19(d)(1)(B) and §8-22-22a(a)**

Item 11E.

PART II - Asset Allocation at End of Fiscal Year		
1. Cash and Cash Equivalents - Short Term	Percent of Total Assets	0.55%
Financial Institution or Money Manager	Type of Account	Fair Value
a. United Bank	Checking	\$ 84,975.11
b.	Treasury Bills	\$ -
c.	Savings or Money Market Account	\$ -
d.	Short Term Investment Funds	\$ -
e.	Re-Purchase Agreements	\$ -
f.	Commercial Paper	\$ -
g.	CDs and Bankers' Acceptances	\$ -
		Fair Value
Total Cash and Cash Equivalents	The sum of items 1.a. through 1.g.	\$ 84,975.11
2. Fixed Income - Long Term	Percent of Total Assets	77.67%
Financial Institution or Money Manager	Type of Account	Fair Value
a.	US Govt Agencies & Instruments	\$ -
b.	Foreign Govt, Subdivisions, Agencies or Enterprise	\$ -
c.	International agencies or supranational entities	\$ -
d.	Mortgage-related or others asset back securities	\$ -
e.	Corporate Debt Securities	\$ -
f.	Corporate Inflation-index bonds	\$ -
g.	Bank CD's, fixed time deposits, Bankers Acceptance	\$ -
h.	State & Local Govt Debt Securities	\$ -
i. John Hancock	Mutual Funds (Bonds)	\$ 12,023,603.07
j.	International Mutual Funds - Bonds	\$ -
k.	Exchange Traded Funds (ETF) - Bonds	\$ -
l.	International Exchange Traded Funds (ETF) - Bonds	\$ -
		Fair Value
Total Fixed Income (at fair value)	The sum of items 2.a. through 2.l.	\$ 12,023,603.07
3. Equity Investments	Percent of Total Assets	21.78%
Financial Institution or Money Manager	Type of Account	Fair Value
a.	Individual Stocks Held	\$ -
b. John Hancock	Mutual Fund Shares (Equities)	\$ 3,363,999.41
c.	Exchange Traded Funds (ETF)	\$ -
d. Morgan Stanley	International Stocks Held	\$ 8,232.21
e.	International Mutual Funds - Equities	\$ -
f.	International Exchange Traded Funds (ETF)	\$ -
		Fair Value
Total Equity Investments (at fair value)	The sum of items 3.a. through 3.f.	\$ 3,372,231.62
4. Alternative Investments	Percent of Total Assets	0.00%
Financial Institution or Money Manager	Type of Account	Fair Value
a.	Real Estate Investment Trust	\$ -
b.	Private Equity Fund	\$ -
c.	Hedge Funds	\$ -
d.	Other Alternative Investments	\$ -
		Fair Value
Total Alternative Investments (at fair value)	The sum of items 4.a. through 4.d.	\$ -
5. Receivables and Payables	Percent of Total Assets	0.00%
	Type	Fair Value
a.	Receivable Contributions	\$ -
b.	Receivable Investment Income	\$ -
c.	Payable Investment Expense	\$ -
d.	Payable Benefits, Withdrawals, and Admin Expenses	\$ -
		Fair Value
Net Receivable/(Payable)	The sum of items 5.a. through 5.d.	\$ -
Total Assets	Sum of 1. through 5.	\$ 15,480,809.80
6. Total return on investments for the period of July 1 thru June 30	(Obtain from financial institution or money manager)	8.82%

**Annual Report of Policemen's and Firemen's Pension and Relief Funds
to the Municipal Pensions Oversight Board
as required by WV Code §8-22-19(d)(1)(B) and §8-22-22a(a)**

Item 11E.

PART III - Membership and Beneficiaries

* Please report the figures requested below, for the fiscal year reported on page 1. To figure the Average Monthly Number of Persons, add figures for each month and divide by 12. Please round to two decimal places. An employee must have been paid for 100 hours in any month to be included in that month.
 ** Please report the total number of disability applications received during the fiscal year, the status of each application at the end of the fiscal year, the total applications granted and denied, and the percentage of disability benefit recipients to the total number of active members of the fund. This requirement satisfies §8-22-23a(a) of the WV Code if the report is submitted to the Municipal Pensions Oversight Board prior to August 1st of each year.

Item		Avg. Monthly #
I. Members of your Pension Fund		
	<small>Exclude Beneficiaries</small>	
1. Active Members	<small>Current number of employees contributing to the pension fund</small>	60.33
2. Inactive Members	<small>Non-active vested members and employees on extended leave without pay</small>	0.00
II. Beneficiaries Receiving Periodic Benefit Payments During Fiscal Year		
1. Retirees		47.00
2. Disability Retirees	<small>Includes the new applications approved during reporting period</small>	0.00
a. Number of Disability Applications received during the fiscal year		0.00
b. Status of each Disability Application at end of fiscal year - please attach separate sheet with details		
(1.) Disability Applications Approved during Fiscal Year		0.00
(2.) Disability Applications Denied during Fiscal Year		0.00
3. Percentage of Disability Benefit Recipients to the Total of Active Members in the fund		0.00%
4. Survivors (of Deceased Members) Drawing Benefits		14.00

PART IV - Legal Thresholds for Investments

	(1)	(2)	(3)
	%	Maximum % and \$	(Over) Under
Equity Investments	22%	75%	53%
International Securities	0%	30%	30%
Alternative Investments	0%	25%	25%
Cash/Cash Equivalents and Fixed Income (Low 25%; High 75%)	78%	25% 75%	-53% -3%
Short Term Investment - (90 days of expenses)		\$ 602,532.32	\$ 517,557.21

Jonathan Furgison

From: Taylor, Blair M <blair.m.taylor@wv.gov>
Sent: Thursday, September 5, 2024 4:47 PM
To: Jonathan Furgison
Cc: Matthew D Pauley
Subject: Re: City of Morgantown Fire Pension

Mr. Furgison,

As we discussed on the phone this afternoon, Thursday, September 5, 2024, the Municipal Pensions Oversight Board will allow the City of Morgantown to apply the additional contribution made to the Firemen's Pension Fund in FY2024 of \$149,999.64 towards the City's required minimum contribution for FY2025. The additional contribution made by the City in FY2024 is allowable pursuant to WV Code §8-22-20(c)(1) which state in part "***...Provided further, That in order to avoid penalizing municipalities and to provide flexibility when making contributions, municipalities using the alternative contribution method may exclude a one-time additional contribution made in any one year in excess of the minimum required by this section:...***".

Blair



Blair Taylor

Executive Director

West Virginia Municipal Pensions Oversight Board

301 Eagle Mountain Road, Suite 251

Charleston, West Virginia 25311

Phone: 304-356-2422

Cell Phone: 304-941-5488

Facsimile: 304-558-1016

Office Email: MPOB@wv.gov

Email: Blair.M.Taylor@wv.gov

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On Tue, Sep 3, 2024 at 11:49 AM Jonathan Furgison <jfurgison@morgantownwv.gov> wrote:

Good morning!

As discussed last Thursday (08/29/24), I've prepared and attached the letter requesting the MPOB's permission to allocate the additional \$149,999.64 (\$150K less \$0.36) deposited into the Fire Pension Board's checking account to the City of Morgantown's Fiscal Year 2025 annual required employer contribution to the City of Morgantown Firemen's Pension and Relief Fund.

Please let me know if you have any questions or need anything other clarification to resolve this issue.

Respectfully yours,

Jon

Jonathan Furgison, CPA

Finance Director

City of Morgantown

Office Phone: 304-284-7407

Cell Phone: 304-290-7615

Address: 389 Spruce St. Morgantown, WV 26505

Office Hours: Monday-Thursday 7:00 a.m. – 5:30 p.m.

Morgantownwv.gov





P: 304-284-7412
Morgantownwv.gov
389 Spruce St.
Morgantown, WV 26505

September 3, 2024

To: Mr. Blair M. Taylor, Executive Director
West Virginia Municipal Pensions Oversight Board

RE: City of Morgantown Firemen's Pension and Relief Fund

Dear Mr. Taylor,

I am writing to humbly request that the \$149,999.64 additional employer contribution deposited into the Firemen's Pension and Relief Fund's checking account on August 29, 2023, be applied to the City of Morgantown's required employer contribution for the Fiscal Year Ended June 30, 2025 (FY25).

The \$149,999.64 contribution was made **in addition to** the City's total Fiscal Year 2024 required alternative contribution of \$1,117,217.36 into the Firemen's Pension and Relief Fund. As discussed in detail last week, this was an unintentional oversight by former members of the Finance Department. The intention was to "float" the Firemen's Pension and Relief Fund's checking account during a period of low balance until they received the "big payments" for the City's final portion of the Annual Employer Contribution and the WV MPOB Premium Surcharge so that it could meet the cash needs of its monthly payments to beneficiaries. **While acting in the best interests of the beneficiaries, the Finance Department inadvertently made an unauthorized irrevocable contribution to the account.**

We are now respectfully requesting that the MPOB allow the City of Morgantown to apply this unintentional contribution to its required employer contribution for the Fiscal Year Ended June 30, 2025 (FY25). This adjustment will ensure compliance with both Federal and West Virginia State laws and regulations, while accounting for the \$149,999.64 of City taxpayer funds in a fair and equitable manner.

If granted, we acknowledge that this will be a "one-time only" exception. The City of Morgantown's Finance Department has already implemented measures to prevent any future unauthorized irrevocable contributions.

We sincerely thank you for your understanding and consideration of this request. We look forward to your favorable response.

Respectfully yours,

A handwritten signature in black ink that reads "Jonathan Furgison". The signature is written in a cursive style with a large, prominent "J" and "F".

Jonathan Furgison, CPA
Finance Director
Tel: 304-284-7407
Email: jfurgison@morgantownwv.gov

Resolution No. 2025-____

RESOLUTION

WHEREAS, The City of Morgantown has established a Fiscal Stabilization Fund, as authorized by W. Va. Code § 8-37-3 and as codified at City Code § 129.15; and

WHEREAS, in accordance with the City Code, the funds in the Fiscal Stabilization Fund may be used to cover the General Fund's operating short falls and any other purpose City Council considers appropriate; and

WHEREAS, the City sponsors a health insurance plan for its employees under which claims are paid by the City, up to certain limits, and variations in actual costs of healthcare provided to employees and their spouses and dependents occur, while pre-scheduled employee and employer contributions to the plan remain consistent; and

WHEREAS, the City's Department of Finance and Support Services has established an internal guideline targeting funds on hand for the average three-month cost of paying actual benefits required under the health insurance plan to ensure that coverage is adequately funded at all times; and

WHEREAS, since January 2024, the City has experienced higher than usual healthcare costs, requiring the City to pay more actual costs than planned during this period and indicating that a higher amount of reserve funding for the plan is required going forward; and

WHEREAS, the funds needed to address these increased costs and secure an appropriate reserve amount to \$3,315,039.62; and

WHEREAS, such funding is available in the Fiscal Stabilization Fund and is, in the opinion of City Council, an appropriate use of such funds;

NOW, THEREFORE, City Council hereby resolves as follows:

1. That the sum of \$3,315,039.62 is allocated from the Fiscal Stabilization Fund for purposes of funding health care costs which the City is obligated to pay and funding reserves for anticipated future health care costs the City may be obligated to pay; and
2. The Finance Director is authorized to make any transfers and/or expenditures of funds necessary and appropriate to accomplish the foregoing purposes.

Adopted this 7th day of January, 2025:

Mayor

City Clerk