



# The City of Morgantown

389 Spruce Street  
Morgantown, West Virginia 26505  
(304) 284-7439 Fax: (304) 284-7525  
www.morgantownwv.gov

Office of the City Clerk

## AGENDA REGULAR MEETING

May 4, 2021  
7:00 p.m.

To protect public health during the COVID-19 pandemic, personal attendance at the meeting is not permitted. This meeting will take place via WebEx at <https://cityofmorgantown.my.webex.com/meet/cityofmorgantown> using the meeting number 793 734 477. The meeting will be broadcast live on Morgantown 15 and live streamed via the City of Morgantown website at <https://morgantownwv.viebit.com/>. The public can also listen live by calling 415-655-0001 and using the access code 793 734 477. If members of the public wish to comment on a particular issue or public hearing, they should fill out the public comment sign-up form on our website, prior to the start of the meeting which can be found at: <http://bit.ly/MCC050421>. Additionally, the public can submit written comments via email to the City Clerk at [cwade@morgantownwv.gov](mailto:cwade@morgantownwv.gov).

1. **CALL TO ORDER:**

2. **ROLL CALL:**

3. **PLEDGE:**

4. **APPROVAL OF MINUTES:** April 20, 2021, Special Meeting minutes.

5. **CORRESPONDENCE:**

- A. Morgantown Fire Department Oath of Office
- B. Aisury Vasquez Recognition
- C. Infrastructure Week Proclamation

6. **PUBLIC HEARINGS:**

- A. AN ORDINANCE AUTHORIZING A LEASE AGREEMENT FOR WANDERLUST TRAVEL, LLC AT THE MORGANTOWN MUNICIPAL AIRPORT

7. **UNFINISHED BUSINESS:**

- A. Consideration of APPROVAL of (SECOND READING) of AN ORDINANCE AUTHORIZING A LEASE AGREEMENT FOR WANDERLUST TRAVEL, LLC AT THE MORGANTOWN MUNICIPAL AIRPORT (*First reading 4/20/2021*)

B. BOARDS & COMMISSIONS:

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

**9. SPECIAL COMMITTEE REPORTS:**

**A. COMMUNITY POLICING & CITIZENS REVIEW BOARD** – *Deputy Mayor Fetty, Chair; Mayor Dulaney, Vice-Chair*

**B. SPECIAL COMMITTEE ON UNSHELTERED HOMELESSNESS** – *Mayor Dulaney, Chair; Deputy Mayor Fetty, Vice-Chair; Members; Councilor Selin, and Councilor Harshbarger.*

**10. CONSENT AGENDA:** *Reminder: Matters on the Consent Agenda are voted on collectively without any debate. If any member objects, an item is removed and considered under New Business.*

**11. NEW BUSINESS:**

**A. Consideration of APPROVAL of (FIRST READING) of AN ORDINANCE AMENDING THE FY 2020-2021 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND**

**B. Consideration of APPROVAL of (FIRST READING) of AN ORDINANCE ESTABLISHING A CIVILIAN POLICE REVIEW AND ADVISORY BOARD**

**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 West Virginia Code Section 6-9A-4(b)(12) to discuss potential or pending litigation**

**17. ADJOURNMENT:**

**\*For accommodations, please contact us at 304-288-7072.**

# City of Morgantown

## SPECIAL MEETING April 20, 2021

The Special Meeting of the Common Council of the City of Morgantown was held via Webex on Tuesday, April 20, 2021, at 6:04 p.m. To protect public health during the COVID-19 pandemic, personal attendance at the meeting was not permitted. This meeting took place via WebEx at <https://cityofmorgantown.my.webex.com/meet/cityofmorgantown> using the meeting number 793 734 477, or by calling 415-655-0001 and using the access code 793 734 477.

**PRESENT:** Via Webex Mayor Ron Dulaney, Deputy Mayor Rachel Fetty, Council Members Bill Kawecki, Deb Bergen, Jenny Selin, Dave Harshbarger, and Barry Wendell.

The meeting was called to order by Mayor Dulaney.

**EXECUTIVE SESSION:** Pursuant to West Virginia Code Section 6-9a-4(b)(2)(a) to discuss Personnel Matters in considering new appointments for Board and Commissions. Motion by Councilor Kawecki, second by Councilor Harshbarger, to go into executive session. Motion carried by acclamation. Present: City Council. Time: 6:06 p.m.

### **HUMAN RIGHTS COMMISSION**

6:00 p.m. – Rosalynn Lauderback

### **CULTURAL ARTS COMMISSION**

6:20 p.m. - Deborah West

6:40 p.m. – Nikki Bowman Mills

### **ADJOURNMENT:**

There being no further business, motion by Councilor Harshbarger, second by Councilor Kawecki, to adjourn the meeting. Time: 7:15 p.m.

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City Clerk

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Mayor



# The City of Morgantown

389 Spruce Street  
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Office of the Mayor

## ***PROCLAMATION***

- Whereas,*** the week of May 10 through 14, 2021, is observed both in West Virginia and nationally as Infrastructure Week; and
- Whereas,*** the City of Morgantown, West Virginia, relies on critical infrastructure, including our roads and bridges, our railroads, our locks and dams, our airports, our sidewalks and rail-trails, our water system, our power grid, our broadband internet, and our connectivity to the regional, national, and global economy through the aforementioned modes of transportation; and
- Whereas,*** this infrastructure enhances our local and regional economy, our quality of life, our safety, our public health, and the strength of our communities as demonstrated by some recent local infrastructure investments, such as the annual city paving program, 8th Street sidewalk, bike lane, and trail access, the enhancements at Hazel Ruby McQuain Riverfront Park, and investment in the MUB Raw Water Reservoir; and
- Whereas,*** nationally, decades of deferred maintenance and underfunding have pushed our infrastructure to the point of a crisis, with preventable catastrophic failures, including derailments and collapses, occurring as a result; and
- Whereas,*** the United States of America risks losing its competitive advantage to foreign economies by failing to adequately invest in its infrastructure; and
- Whereas,*** the American economy is wasting both time and money due to our failing infrastructure; and
- Whereas,*** every dollar invested in infrastructure generates nearly two dollars in economic output; and
- Whereas,*** to grow our economy, keep Americans safe, and strengthen our communities, we need all levels of government to work with the private sector to rebuild and repair our nation's infrastructure; and
- Whereas,*** Infrastructure Week has been established to highlight our infrastructure needs and to encourage our leadership at the federal, state, and local levels to support future infrastructure projects.

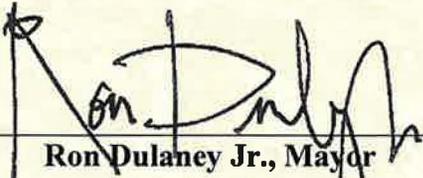
***Now, therefore be it resolved*** that I, Ron Dulaney Jr., Mayor of the City of Morgantown, West Virginia, on behalf of the City Council on this 4<sup>th</sup> day of April, do hereby recognize the week of May 10 through 14, 2021,  
as

## **Infrastructure Week**

and urges the citizens of community to join in this special observance with appropriate acknowledgements and learning opportunities found at the National Infrastructure Week website: [www.infrastructureweek.org](http://www.infrastructureweek.org).

Seal:



  
\_\_\_\_\_  
Ron Dulaney Jr., Mayor  
May 4, 2021

**AN ORDINANCE AUTHORIZING A LEASE AGREEMENT  
WITH WANDERLUS TRAVEL, LLC AT THE AIRPORT**

The City of Morgantown hereby ordains that the City Manager is authorized to execute the attached lease agreement with Wanderlust Travel, LLC, and such additional documents as necessary to effectuate the lease.

This ordinance is effective upon adoption.

FIRST READING: \_\_\_\_\_

\_\_\_\_\_  
Mayor

SECOND READING: \_\_\_\_\_

ADOPTED: \_\_\_\_\_

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

FILED: \_\_\_\_\_

**City of Morgantown**

**AND**

**Lisa Weese  
Wanderlust Travel LLC**

**Office Lease Agreement**

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**City of Morgantown  
and  
Lisa Weese  
Wanderlust Travel LLC**

**Office Lease Summary**

|                                      |   |
|--------------------------------------|---|
| <b>TYPE OF AGREEMENT</b>             | Office Space  |
| <b>TENANT</b>                        | Wanderlust Travel LLC   |
| <b>REPRESENTATIVE(S)</b>             | Lisa Weese  |
| <b>NOTICE ADDRESS</b>                | 100 Hart Field Rd, Suite 241<br>Morgantown, WV 26505<br>lisa@gowanderlust.net   |
| <b>COMMENCEMENT DATE</b>             | April 1, 2021   |
| <b>TERM</b>                          | Three (3) years   |
| <b>RENEWAL OPTIONS</b>               | Two (2) – One (1) year options  |
| <b>TERMINATION DATE</b>              | March 31, 2024  |
| <b>LEASEHOLD/ASSIGNED PREMISES</b>   | Office Space, South end of Terminal (See Exhibit A)                             |
| <b>INITIAL RENTAL RATE</b>           | \$3,600 annually or \$300 monthly for 240ft <sup>2</sup> @ \$15/ft <sup>2</sup> |
| <b>RENTAL ADJUSTMENT</b>             | CPI-U   |
| <b>OTHER FEES, RATES AND CHARGES</b> | None  |
| <b>AUTHORIZED USE(S)</b>             | Travel Agency   |

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 Lease, the requirements as stated in the remainder of the Lease will prevail.

# City of Morgantown

AND

Lisa Weese  
Wanderlust

## Office Space Lease Agreement

THIS LEASE AGREEMENT for office space (hereinafter referred to as the "Lease", is entered into this 15<sup>th</sup> day of March 2021, A.D., by and between the **CITY OF MORGANTOWN**, c/o Morgantown Municipal Airport, Morgantown, West Virginia, (hereinafter referred to as the "City"), and Wanderlust Travel LLC (hereinafter referred to as the "Tenant").

### WITNESSETH:

In consideration of the lease of certain real property and the covenants and agreements contained herein, the parties agree as follows:

### ARTICLE 1 PREMISES

The City hereby leases to Tenant, for its exclusive use as specifically authorized herein, and for no other use except as agreed to, and authorized herein, that space in the building commonly known as the Morgantown Municipal Airport Terminal Building [hereinafter the "**Terminal**"], described below and as shown on Exhibit A, attached hereto and incorporated herein by reference [hereinafter the "**demised premises**"].

#### Section 1.01 Demised Premises

1. Office Space: Office Space of approximately 240 square feet of space.

#### Section 1.02 Acceptance of Demised Premises

Tenant accepts the office space "AS IS" in its present condition. Tenant has had the right to inspect the space for suitability for the purposes it intends. Tenant acknowledges that neither the City nor its agents have made any representation or warranty as to the condition and/or suitability of the premises.

#### Section 1.03 Use of Demised Premises

1. The Tenant's use of the demised premises is limited to the general operation of a professional travel agency. Any future expansion, or change in use, of the demised premises will require the prior written approval of the City.
2. The Tenant, in addition to the use of the demised premises, shall be entitled to the general use, in common with others, of all non-aviation airport facilities made available for use to the general public except as otherwise hereinafter provided.
3. For the purpose of this Agreement, "airport facilities" available to the Tenant and its employees shall include automobile parking areas, roadways, sidewalks, or other areas of the Airport, that have been constructed at City expense for the benefit of Airport tenants and the general public.
4. The use of the above-mentioned airport facilities by Tenant shall be subject to their full compliance with such rules and regulations as now exist or may hereafter be enacted by the City. Approved uses of airport facilities are also subject to the payment of such fees and charges, as may be non-discriminatorily established from time to time by the City for the maintenance, operation or replacement of these facilities.

#### Section 1.04 Prohibited Uses

The following activities are expressly prohibited.

1. The Tenant may not use any part of the demised premises for any activity or purpose, other than as expressly set forth and authorized in Section 1.03, unless such use is approved, in writing, by the City.

2. The Tenant, and its employees, is prohibited access to, or use of, areas and facilities in the Air Operations Areas of the Airport.
3. Tenant is prohibited from using or permitting the demised premises to be used for the sale to its employees, or to the public, of any goods or services not directly related to those activities authorized in this Agreement.

## **ARTICLE 2 GENERAL REQUIREMENTS**

### **Section 2.01 Conduct of Operations on Demised Premises**

In its exercise and carrying out of the rights, privileges, duties, and obligations granted herein, and in its use of the demised premises, Tenant hereby obligates itself, and agrees to obligate all of its sub-lessees and/or occupants, to the following requirements and regulations:

1. Tenant shall not consent to any unlawful use of the demised premises, nor permit any such unlawful use thereof.
2. Tenant agrees that all local, federal and state ordinances and laws will be observed in its use and occupancy of the demised premises, including the rules and regulations of the federal and state aeronautical authorities and the local governing authorities.
3. Tenant shall comply with all City rules, regulations and ordinances as they now exist or may hereafter be amended or adopted.
4. The operations of Tenant, its sub-lessees, employees, invitees and those doing business with it, shall conduct all activities in an orderly and proper manner so as not to annoy, disturb or to be offensive to others at the Morgantown Municipal Airport. The City shall have the right to complain to Tenant as to the demeanor, conduct and appearance of Tenant's employees, sub-lessees, invitees and those doing business with it, and as to its and/or their failure to utilize said facilities at times, and in the manner, and according to the standards, mandated by the City, whereupon Tenant will take all steps reasonably necessary to remove the cause of the complaint and bring the operations and services into compliance with such standards.
5. The Tenant shall comply with all rules and regulations of the State Fire Marshall in the conduct of its operations on the demised premises.
6. Tenant shall not cause or permit the use, generation, storage, or disposal in or about the demised premises or elsewhere at the Airport of any Hazardous Materials except in strict compliance with State and Federal environmental laws and regulations.
7. Tenant agrees to return the demised premises to the City at the expiration of this Agreement in the same condition as when taken, reasonable wear and tear excepted unless other arrangements are made with the City.

The City reserves the right to further develop its building structures and to lease the same for any lawful purpose whatsoever or to provide any services it deems necessary or desirable in its sole and absolute discretion, for the public, regardless of the desires or views of Tenant, and without interference or hindrance.

## **ARTICLE 3 TERM AND COMPENSATION**

### **Section 3.01 Initial Term**

The initial term of this Agreement shall be for a three-year period, commencing **April 1, 2021, A.D.** and terminating on **March 31, 2024, A.D.**

### **Section 3.02 Options to Renew**

At the end of the initial three-year term of this Lease, the Tenant shall have the first option to renew this Agreement for the Premises, referred to in Article 1; **Provided**, that Tenant is not then in default.

1. Tenant shall have the option to renew this Agreement for two (2) additional one (1) year periods.
2. Prior to the conclusion of the initial and all renewal terms, The Tenant and City may initiate discussions regarding a new lease. The Tenant may declare its intention to begin negotiations on a new lease Agreement, in writing, on or before, the 180th day prior to the expiration of this Agreement. Such 180-day period shall expire at midnight of the last day of the Agreement.
3. During said 180-day period, all of the terms and conditions including the amount of rent and other fees to be paid under a new Agreement shall be negotiated in good faith by both parties and

reduced to writing and executed. If a written lease Agreement is not executed by the Tenant prior to the end of this negotiation period, this Agreement shall terminate in accordance with Article 11.

### **Section 3.03 Termination**

This agreement shall be considered terminated by the Tenant on the terminating of the agreement unless the Tenant provides the City written notice of Tenant's intent to renew the lease one hundred eighty (180) days prior to the expiration of the then current term.

### **Section 3.04 Rent**

1. **Office Rent.** The Tenant shall pay an annual office rent of **\$3,600.00**, which is equal to **\$15.00** per square foot for **240** square feet of office space. Said agreed rent shall be paid monthly in twelve (12) equal installments of **\$300.00** due in advance on the first day of each month.
2. **Payments:** All payments are to be made at the administrative office of the Morgantown Municipal Airport, 100 Hart Field Road, Morgantown, West Virginia 26505.
3. **Security Deposit:** Operator agrees, with the execution of this agreement to deposit one month's rent with the Airport as a security deposit. The security deposit is made by Operator to secure the faithful performance of all the terms, covenants and conditions of this Agreement to be performed by Operator. If Operator shall default with respect to any covenant or provision hereof, the City may use, apply or retain all or any portion of the security deposit to cure such default or to compensate City for any loss or damage which City may suffer thereby. If the City so uses or applies all or any portion of the security deposit, Operator shall immediately upon written demand deposit cash with City in an amount sufficient to restore the security deposit to the full amount hereinabove stated. City shall not be required to keep the security deposit separate from its general accounts and Operator shall not be entitled to interest on the Security Deposit. Within thirty (30) days after the expiration of the Agreement Term and the vacation of the demised premises by Operator, the security deposit, or such part as has not been applied to cure the default, shall be returned to Operator. In the event of any bankruptcy or other proceeding initiated by or against Operator, it is agreed that all such security deposit held hereunder shall be deemed to be applied by City to rent, sales tax and all other charges due from Operator to City for the last month of the Term and each preceding month until such security deposit is fully applied.
4. **Lease Guarantee:** In the absence of a good business credit history of at least five (5) years prior to the commencement of this Agreement, Operator agrees to arrange for a Lease Guaranty (personal or established business) that shall remain in full force and effect until all monthly installments of rent and charges due during the first 60 months of the Term of the Agreement have been paid, without regard to the security deposit noted above, construction bonds or other collateral held by or for the City for the performance of the terms or conditions of the Agreement, or the receipt, disposition, application, or release of any security deposit, construction bonds or other collateral, now or hereafter held by or for the City.

### **Section 3.05 Future Adjustments of Rents and Fees**

*The City reserves the right to adjust, or modify existing Airport fees and charges, or to establish additional fees and charges as necessary to maintain the financial integrity of the Airport through cost recovery and to make the Airport as self-sustaining as possible. Except for CPI adjustment of the annual ground site rent as noted below, all fees, rents and charges are subject to adjustment as a part of the City's annual budget approval process. Airport Tenants and the general public are provided the opportunity to comment on proposed fees, rents and charges changes during the budget approval process.*

Commencing on the first anniversary date of this agreement, and for each one (1) year period thereafter, the annual rental payment shall be adjusted by dividing the initial rental rate by the U.S. City Average of the Consumer Price Index for All Urban Consumers (CPI-U) published immediately preceding the Effective Date of this Lease, **April 2, 2021**, and multiplying the quotient thereof by the last Index (CPI-U) published immediately preceding each such one (1) year lease period  $\left( \left( \frac{\text{initial rental rate}}{\text{initial CPI-U}} \right) \times (\text{current CPI} - U) = \text{new rental rate} \right)$ . At no time, however, shall said rental be less than the rental paid during the previous year period of this Agreement.

For purposes of this Agreement, the Consumers Price Index means the Index for "All Goods and Services" for Urban areas for the U.S. City Average as determined by the United States Department of Labor, Bureau of Statistics.

Should the United States Government revise its price index at any time, the parties hereto will follow such suggestions as the Government may issue for making an arithmetical changeover from one Index to another. Should the price index be wholly discontinued, then its successor or the most nearly comparable successor index thereof, adjusted back to the anniversary date, shall be used.

**Section 3.06 Late Charges**

The Tenant shall pay to the City a late charge equal to 1.5% per month on all rent and fee charges which are 30 days past due. Said late charge shall commence on the past due amount from the date said payment was due and shall be computed to the date the past due amount is paid. This shall be in addition to, and in no way alters, any other rights reserved to the City, or existing in the City by virtue of the laws of the State of West Virginia, or by the terms of the Agreement.

**Section 3.07 Surrender of Possession**

At the expiration of the term of this Agreement, including any renewal term(s), whether by lapse of time or otherwise, Tenant shall promptly and peacefully surrender the demised premises to the City.

**Section 3.08 Holding Over**

If Tenant shall, with the written consent of the City, hold over after the expiration of the term of this Agreement, including any renewal term(s), tenancy shall be on a month-to-month basis, which may be terminated as provided for by the laws of the State of West Virginia.

**Section 3.09 Chronic Late Payment**

City may also terminate this Agreement for the reason that Tenant is chronically late with rental payments. Chronic late payments are defined as making a rental payment more than five (5) days after the due date on three (3) or more occasions during any consecutive 12-month period during the term of this Agreement.

**Section 3.10 Returned/Dishonored Checks**

If Tenant makes a payment due under this Agreement with a check that has been returned/dishonored by the bank, pursuant to West Virginia law, Tenant shall pay a \$25.00 service fee in addition to the amount of the returned/dishonored check, payable within ten (10) days of receipt of City's written demand for such payment. If not paid in full within ten (10) days, it will be sent to Magistrate Court for collection. This amount is in addition to the late fee incurred.

**Section 3.11 Application of Payment**

Money paid by Tenant to City for late fees and/or litigation settlements shall be applied first to interest, second to Court Costs legally chargeable to Tenant, third to attorney fees chargeable to Tenant, fourth to outstanding repair bills that are the responsibility of the Tenant, and fifth toward rent.

**ARTICLE 4  
TENANT'S FUTURE CONSTRUCTION REQUIREMENTS**

**Section 4.01 Requirements for Improvements on Demised Premises**

The Tenant shall, at its sole expense, construct on the demised premises, as provided in Sections of this Article 4, additions, and improvements as necessary in furtherance of the purposes set forth in Article 2, and the Tenant shall install herein and thereon such equipment and facilities as the Tenant or the City may deem necessary or desirable. Provided, however, that no improvement of any nature shall be made or installed by the Tenant without the prior written consent of the City as herein provided. The Tenant may also be required to provide the City with proof that funds necessary to complete construction of the improvements have been irrevocably dedicated to such construction. All improvements constructed under this Agreement shall be in accordance with the Airport's Tenant Improvement Manual as well as all other applicable laws, rules, regulations and ordinance.

**Section 4.02 Future Construction Dates**

1. **Additional Construction:** The construction of any additional improvement, occurring during the remaining term of this agreement, shall be substantially completed within 12 months of the date of the City's written approval of the Plans therefore in accordance with the construction schedule approved by the City. In the event of a failure to complete the additional construction within the 12-month period, the City shall have the right to terminate this Agreement pursuant to Article 9 hereof and make appropriate claims against required performance bonds to complete construction, unless it is determined at sole discretion of the City that there were delays beyond the control of the Tenant.

2. **Construction Period Extensions:** The Tenant may request an extension of the construction period for causes or conditions of delay that are beyond the control of the Tenant (hereinafter referred to as "Force Majeure"). Such conditions of delay may be, by way of example, but not limited to, strikes, acts of God, inability to obtain labor or materials, governmental restrictions, enemy action, civil commotion, fire or other casualty, or failure of the City to carry out its obligations. Accordingly, at the sole discretion of the City, the period for completion of construction shall be extended by the number of days of delay resulting from the Force Majeure.

#### **Section 4.03 Approvals of Future Construction Plans**

The Tenant covenants and agrees that prior to the preparation of detailed construction plans, specifications, and architectural renderings of any such addition or improvement, it shall first submit plans showing the general site plan, design and character of improvements and their locations, to the City for approval. The City agrees to review such plans within 30 days of receipt from the Tenant. The Tenant covenants and agrees that prior to the installation or construction of any present and future addition or improvement on the demised premises, it shall first submit to the City for approval, final detailed construction plans and specifications and architectural renderings prepared by registered architects and engineers, and that all construction will be in accordance with such plans and specifications and the Tenant Improvement Manual and all other applicable rules, regulations, laws and ordinances.

#### **Section 4.04 Future Extension of Utilities or Special Facilities**

The Tenant shall contract, and extend, at its sole expense, all necessary utility, electrical, communication lines needed to service any improvements constructed in the future by the Tenant on the demised premises. All utility extensions and other construction shall be in accordance with all applicable Codes, ordinances, and the Tenant Improvement Manual.

#### **Section 4.05 Alterations or Repairs to Premises**

The Tenant shall not construct, install, remove and/or modify internal, external or structural portions of the buildings constructed upon the demised premises without the prior written approval of the City. The Tenant shall submit for approval by the City, its plans and specifications for any proposed project as well as complying with all applicable code requirements and such other conditions considered by the City to be necessary.

#### **Section 4.06 Lien Indemnification**

Tenant shall keep the premises free from liens arising out of any work performed and/or materials ordered, or from any obligations incurred by Tenant. In the event any person or corporation shall, as a result of construction work being performed by or for the Tenant, attempt to assess a lien against the demised premises, the Tenant shall hold the City harmless from such claim, including the cost of defense.

#### **Section 4.07 Cost of Construction and Alterations**

Within thirty (30) days of completion of the construction or alterations, the Tenant shall present to the City for examination and approval a sworn statement of the construction and/or alteration costs. Construction and/or alteration costs for the purpose of this Section are hereby defined as all money paid by the Tenant for actual site preparation, construction, or alteration, including architectural and engineering costs plus pertinent fees in connection therewith. In the event that the Tenant makes further improvements or alterations on the demised premises, the use thereof shall be enjoyed by the Tenant during the term hereof without the additional rental therefore.

#### **Section 4.08 As-built Drawings**

Within ninety (90) days following completion of any future construction by the Tenant and any subsequent additions, alterations or improvements, the Tenant shall present to the City a complete set of "as-built" drawings including, but not limited to, architectural renderings, specifications, plumbing, and electrical plans.

#### **Section 4.09 Security Interest on Leasehold Improvements for Construction**

Tenant shall have no right to place a security interest, or "mortgage", upon demised premises, for improvements financed by the Tenant.

**Section 4.10 Ownership of Improvements**

The building and associated site improvements constructed and paid for by the City, as well as any approved improvements to demised premises, constructed during the term of this agreement, whether paid for by the Tenant or the City, excluding Tenant's personal property, shall remain the property of the City.

**Section 4.11 Performance Bonds**

Tenant shall cause a surety bond to be issued in the amount of 100% of the building(s) and site development construction costs, prior to the beginning of any construction financed by Tenant, or another form of security acceptable to the City that assures that the funds to cover the cost of the project are irrevocably set aside and available to the City to complete the improvement to City owned property should the Tenant fail to do so.

**ARTICLE 5  
OBLIGATION OF TENANT**

**Section 5.01 Net Lease**

The use and occupancy of the demised premises by the Tenant will be without cost or expense to the City. It shall be the sole responsibility of the Tenant to maintain, repair and operate the entirety of the demised premises, and any approved improvements and facilities constructed thereon, at the Tenant's sole cost and expense.

**Section 5.02 Maintenance and Operation**

The Tenant shall maintain the demised premises at all times in a safe, neat and clean condition free of weeds, rubbish, or any unsightly accumulations of any nature whatsoever. The Tenant shall repair all damage to the demised premises caused by its employees, patrons, or its operation thereon.

1. The City remains responsible for the structural integrity of the building structure.
2. Upon occupancy, the Tenant shall be responsible for and perform all maintenance, including but not limited to:
  - a. Janitorial services, providing janitorial supplies, window washing, rubbish, and trash removal.
  - b. Supply and replacement of light bulbs and replacement of all glass in building, including plate glass.
  - c. Replacement of floor coverings.
  - d. Building interior maintenance, including painting, repairing and replacement.
  - e. Repair or replacement of equipment and utilities to include electrical, mechanical, and plumbing. All repairs to electrical and mechanical equipment are to be made by licensed personnel. Other repairs are to be made by craftsmen skilled in work done and performing such work regularly as trade.
  - f. The Tenant shall advise the City and obtain City's consent in writing before making changes involving structural changes to the premises, modifications, or additions to plumbing, electrical or other utilities
  - g. The Tenant is responsible for maintaining electric loads within the designed capacity of the system. Prior to any change desired by the Tenant in the electrical loading which would exceed such capacity, written consent shall be obtained from the City.
  - h. The Tenant shall provide and maintain hand fire extinguishers for the demised premises in accordance with applicable fire and safety codes.
3. The City's Airport Director, at his discretion, shall be the sole judge of the quality of maintenance; and the Tenant, upon written notice by the City to the Tenant, shall be required to perform whatever maintenance the City deems necessary. If said maintenance is not undertaken by the Tenant within fifteen (15) days after receipt of written notice, the City shall have the right to enter upon the demised premises and improvements constructed thereon, and perform the necessary maintenance, the cost of which shall be borne by the Tenant as additional rent which shall be paid by the Tenant to the City in full within ten (10) days after the same has been billed.

**Section 5.03 Utilities**

The Tenant shall assume and pay for all costs or charges for utility services, including electrical, gas, telephone, and other such utilities furnished to the Tenant during the term hereof.

**Section 5.04 Signs**

The Tenant shall not erect, maintain, or display upon the outside of any improvements on the demised premises any billboards or advertising signs without prior written approval by the City.

**Section 5.05 Nondiscrimination**

The Tenant, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that (A) 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 the demised premises; (B) that in the construction of any improvements on, over, or under such land and the furnishing of services thereof no persons the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination; (C) that the Tenant shall use the demised premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and Transportation, and said Regulations may be amended, to the extent that said requirements are applicable, as a matter of law, to the Tenant.

With respect to the demised premises, the Tenant agrees to furnish services on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, that the Tenant may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

**Section 5.06 Observance of Statutes and Regulations**

The granting of this Agreement and its acceptance by the Tenant is conditioned upon the right to use the Airport facilities in common with others authorized to do so, provided however, that the Tenant shall observe and comply with any and all requirements of the constituted public authorities and with all federal, state, or local statutes, ordinances, regulations and standards applicable to the Tenant for its use of the demised premises, including but not limited to, rules and regulations or standards promulgated from time to time by the City for the administration of the Airport.

**Section 5.07 Airport Security**

The Tenant recognizes the City's required compliance with Federal Aviation Regulations concerning airport security and agrees to comply with the Airport's Security Plan as it relates to its use of the demised premises and the Airport's public facilities.

**ARTICLE 6  
OBLIGATIONS OF THE CITY**

**Section 6.01 Operation as a Public Airport**

The City covenants and agrees that it will operate and maintain the Airport facilities at all times as a public airport consistent with, and pursuant to, the "Sponsor's Assurances" given by the City to the United States Government under Federal Airport Act.

**Section 6.02 Ingress and Egress**

Upon paying the rental prescribed herein, and performing the covenants of this Agreement, the Tenant shall have the right of ingress to, and egress from, the demised premises for the Tenant, its officers, employees, agents, servants, customers, vendors, suppliers, patrons, and invitee over the roadway serving the area of the demised premises. Airport roadways shall be used jointly with other tenants of the Airport, and the Tenant shall not interfere with the rights and privileges of other persons or firms using said facilities and shall be subject to such weight and type use restrictions as the City deems necessary.

**ARTICLE 7  
CITY'S RESERVATIONS**

**Section 7.01 Improvement, Relocation or Removal of Structure**

In the event the City requires the demised premises for expansion, improvements, development of the airport, the City reserves the right, on a twelve (12) month notice, at no cost to the Tenant, to relocate or replace the Tenant's improvements, in substantially similar form at another generally comparable location

on the Airport. All other Agreement terms shall remain in full force and effect. In the event of such relocation or replacement, the City agrees to suspend rental during any period such improvements are unusable.

**Section 7.02 Inspection of Demised Premises**

The City, through its duly authorized agent, shall have at any reasonable time with prior notice, the full and unrestricted right to enter the demised premises for the purpose of periodic inspection for fire protection, maintenance and to investigate compliance with the terms of this Agreement.

**ARTICLE 8  
INDEMNITY AND INSURANCE**

**Section 8.01 Indemnification**

1. The Tenant agrees to indemnify, save, hold harmless and defend the City, its agents and employees, its successors and assigns, individually or collectively, from and against all liability for any claims and actions and all reasonable expenses incidental to the investigation and defense thereof, in any way arising out of or resulting from any acts, omissions or negligence of the Tenant, its agents, employees, licensees, successors and assigns, or those under its control; in, on or about demised premises or upon demised premises; or in connection with its use and occupancy of demised premises or use of Airport; PROVIDED, HOWEVER, that the Tenant shall not be liable for any injury, damage, or loss to the extent occasioned by the negligence or willful misconduct of the City, its agents or employees. When knowledge of any action becomes known by the Tenant or the City, they shall give prompt written notice to the other party.
2. The Tenant shall indemnify, save, hold harmless, and defend the City, its agents and employees, its successors and assigns, individually or collectively, from and against all liability for any claims and actions and all expenses or fines incidental to the investigation and defense thereof, in any way arising from or based upon the violation of any federal, state, or municipal laws, statutes, ordinances or regulations by the Tenant's agents, employees, licensees, successors and assigns, or those under its control. The Tenant shall not be liable for any claims, actions and expenses or fines, incidental to the investigation and defense thereof, in any way arising from or based upon violation of any federal, state, or municipal laws, statutes, ordinances, or regulations by the City, its agents, employees, licensees, successors and assigns, or those under its control.

**Section 8.02 Insurance**

1. Without limiting the Tenant's obligation to indemnify the City, the Tenant shall provide, pay for, and maintain in force at all times during the term of this Agreement a policy of comprehensive general liability insurance to protect against bodily injury liability and property damage in an aggregate amount of not less than \$1,000,000.00 per occurrence; a policy of comprehensive automobile liability insurance in a combined single limit of not less than \$1,000,000.00; and statutory Workman's Compensation insurance.

The Tenant shall furnish the City, as evidence that such insurance is in force, a certified copy of the insurance Certificate including the City as an additional insured within thirty (30) days after the policy(s) is issued. Said policies shall be in a form and content satisfactory to the City and shall provide for thirty (30) days written notice to the City prior to the cancellation of or any material change in such policies.

2. Neither the City nor its agents shall be responsible for the theft of or damage to any personal property of Tenant or its guests or invitees, for damage, loss, or destruction of personal property of Tenant or of Tenant's guests or invitees because of fire, water, acts or omissions of third parties or any cause whatsoever unless caused by the negligent acts of City of its agents.

Tenant shall procure and maintain, at its own expense, insurance covering Tenant's personal property and to the fullest extent possible without violating any such insurance coverage, Tenant waives all claims and subrogation rights against City arising out of any loss of or damage to any personal property owned by or in the possession or control of Tenant.

Each party also releases the other party from any other liability for loss, damage or injury caused by fire or other casualty for which insurance is carried by the insured party to the extent of any recovery by the insured policy under such insurance policy, other than as set forth in Section 8.04 and 8.05 below.

### **Section 8.03 Environmental Impairment**

The Tenant will comply with any environmental regulations affecting its operations throughout the term of this Agreement.

### **Section 8.04 Fire and Extended Coverage Insurance**

The Tenant shall, at its expense, procure and keep in force at all times during the term of this Agreement with a company suitable to the City, insurance on the demised property, including all improvements, against loss and damage by fire, and extended coverage perils. The Tenant shall furnish evidence of insurance. Insurance shall name the City as an additional insured.

### **Section 8.05 Application of Insurance Proceeds**

If the demised premises shall be partially or totally destroyed or damaged, the Tenant and the City, within thirty (30) days of the damage shall decide whether or not to proceed with restoration. If the City and the Tenant elect not to restore the same to their previous condition, the proceeds of insurance payable by reason of such loss the City shall be entitled to receive and apply the entire proceeds of any insurance covering such loss to the cleanup of the leased site, except those proceeds identified to cover the loss of Tenants personal property contained within demised premises. The Agreement shall then be canceled. If the damage results from an insurable cause and if the City elects to have the Tenant restore demised premises with reasonable promptness, the Tenant shall be entitled to receive and apply the entire proceeds of any insurance covering such loss to said restoration, including applicable site clean-up, in which event this Agreement shall be appropriately amended as necessary and continue in full force and effect.

### **Section 8.06 Performance Bonds**

The Tenant shall cause a surety bond to be issued in the amount of 100% of the demised premises restoration costs, prior to the beginning of any construction financed by the Tenant or for the restoration of demised premises that is over and above insurance proceeds, in accordance with Section 8.05 above, or another form of security acceptable to the City that assures that the funds to cover the cost of the project are irrevocably set aside and available to the City to complete the improvement to City owned property should the Tenant fail to do so.

### **Section 8.07 Destruction of Premises (Uninsured Cause)**

In the event of damage to or destruction of the demised property by an uninsured cause, Tenant and the City shall decide, within thirty (30) days of the event, whether it will repair, restore, or rebuild the demised premises. Within sixty (60) days of the event, Tenant shall initiate restoration or raising activities and complete those activities within one hundred twenty (120) days of the event unless otherwise agreed by the City. In the event Tenant fails to take action as noted above, City shall have the right to restore the premises to its original condition. Tenant shall be liable for reimbursing the City for all costs incurred.

## **ARTICLE 9 CANCELLATION BY THE CITY**

### **Section 9.01 Events of Default by Tenants**

Each of the following events shall constitute an "Event of Default by Tenant":

1. Tenant fails to pay rentals, fees and charges when due, and such default continues for a period of ten (10) days after receipt of written notice from the City that such non-payment constitutes an event of default.
2. Tenant fails after receipt of written notice from the City to keep, perform or observe any term, covenant or condition of this Agreement, other than as set forth in paragraph 1 (above) and such failure continues for thirty (30) days after such receipt, or if by its nature such event of default by Tenants cannot be cured within such thirty (30) day period, Tenant fails to commence to cure or remove such event of default by the Tenant within said thirty (30) days and to cure or remove same as promptly as reasonably practicable.
3. Tenant abandons the premises. Tenant's intent not to re-occupy the premises may be presumed upon expiration of ten (10) days after receipt of written notice from the City that it believes in good faith that Tenant has abandoned the premises.
4. Tenant shall become insolvent, shall take the benefit of any present or future insolvency statute, shall make a general assignment for the benefit of creditors, shall file a voluntary petition in bankruptcy or a petition or answer seeking a reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under and other law or statute of the United States or of any

state thereof, or shall consent to the appointment of a receiver, trustee, or liquidation of all or substantially all of its property.

5. An Order for Relief shall be entered at the request of Tenant or any of its creditors under the federal bankruptcy or reorganization laws or under any law or statute of the United States or any state thereof.
6. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Tenant and shall not be dismissed within thirty (30) days after the filing thereof. Tenant shall pay to the City all reasonable costs and fees, including attorney and accounting fees and expenses, incurred by the City in the exercise of any remedy in the event of any default by the Tenant.
7. By or pursuant to, or under, any legislative act, resolution or rule, or any order of decree of any court or governmental board or agency, an officer, receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of Tenant and such possession or control shall continue in effect for a period of fifteen (15) days.
8. Tenant shall become a corporation in dissolution, or voluntarily or involuntarily forfeit their corporate charter, other than through merger with a successor corporation.
9. The rights of the Tenant hereunder shall be transferred to, pass to, or devolve upon, by operation of law or otherwise, any other person, firm, corporation, or other entity, as a result of any bankruptcy, insolvency, trusteeship, liquidation or other proceedings or occurrence described in Paragraphs 3 through 7 above.

#### **Section 9.02 Remedies for Tenants' Default**

1. Upon the occurrence of an "Event of Default by the Tenant", Tenant shall remain liable to the City for all arrearages of rentals, fees or charges payable hereunder and for all preceding breach (es) of any covenant herein contained. The City, in addition to the right of termination, and to any other rights or remedies it may have at law or in equity, shall have the right of re-entry and may remove all Tenant's persons and property from the demised premises. Upon any such removal, Tenant's property may be stored in a public warehouse or elsewhere at the cost of, and for the account of, the Tenant. Should the City elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided by law, it may, at any time subsequent to an "Event of Default by the Tenant", either terminate this Agreement or re-let the demised premises and any improvements thereon, or any part thereof, for such term or terms (which may be for a term extending beyond the term of this Agreement) at such rentals, fees and charges, and upon such other terms and conditions, as the City, in its sole discretion, may deem advisable, with the right to make alterations repairs or improvements on said demised premises. No re-entry or re-letting of the demised premises by the City shall be construed as an election on the City's part to terminate this Agreement, unless a written notice of such intention is given to the Tenant. In re-letting the demised premises, the City shall make a good faith effort to obtain terms and conditions no less favorable to itself than those contained herein and otherwise seek to mitigate any damage it may suffer as a result of the "Event of Default by the Tenant".
2. Unless the City elects to terminate this Agreement, the Tenant shall remain liable for and promptly pay all rentals, fees and charges accruing hereunder until termination of this Agreement at the expiration date set forth herein.
3. In the event that the City re-lets the demised premises, rentals, fees and charges received by the City from such re-letting shall be applied: first, to the payment of any indebtedness other than rentals, fees and charges due hereunder from the Tenant to the City; second, to the payment of any cost of such re-letting; third, to the payment of rentals, fees and charges due and unpaid hereunder; and, the residue, if any, shall be held by the City and applied in payment of future rentals, fees and charges as the same may become due and payable hereunder. Should that portion of such rentals, fees and charges received from such re-letting applied to the payment of rentals, fees and charges due hereunder be less than the rentals, fees and charges payable during the applicable period, Tenant shall pay such deficiency to the City. The Tenant shall also pay to the City, as soon as ascertained, any costs and expenses incurred by such re-letting not covered by the rentals, fees and charges received from such re-letting.
4. Notwithstanding anything to the contrary in this Agreement, if a dispute arises between the City and Tenant with respect to any obligation or alleged obligation of the Tenant to make payment(s) to the City, the payment(s) under protest by the Tenant of the amount claimed by the Tenant to be due shall not waive any of the Tenants' rights, and if any court or other body having jurisdiction determines all, or any part, of the protested payment was not due, then the City shall as promptly

as reasonably practicable reimburse the Tenant any amount determined as not due plus interest on such amount at the highest rate allowable under West Virginia law.

5. Tenant shall pay to the City all reasonable costs, fees (including attorneys and accountants) and expenses incurred by the City in the exercise of any remedy upon an event of default by the Tenant.

## **ARTICLE 10 CANCELLATION BY TENANT FOR EVENTS OF DEFAULT BY CITY**

### **Section 10.01 Event of Default by City**

Each of the following events shall constitute an "Event of Default by City":

1. The City fails, after receipt of written notice from Tenant, to keep, perform or observe any term, covenant or condition herein contained to be kept, performed or observed by the City and such failure continues for thirty (30) days; or, if, by its nature, such "Event of Default by City" cannot be cured within such thirty (30) day period, the City fails to commence to cure or remove such "Event of Default by City" within said thirty (30) days and to cure or remove the same as promptly as reasonably practicable.
2. The City closes the Airport to flights in general or to the flights of the Tenant, for reasons other than weather, acts of God or other reasons beyond its control, and fails to reopen the Airport to such flights within sixty (60) days of such closure, and such closure negatively affects the Tenant's use of demised premises.
3. The Airport is permanently closed by act of any federal, state or local government agency having competent jurisdiction.
4. The City is unable to use the Airport for a period of at least sixty (60) days due to any law or any order, rule or regulation of any appropriate governmental authority having jurisdiction over the operations of the airport, or any court of competent jurisdiction issues an injunction in any way preventing or restraining the use of the Airport, or any part thereof, for airport purposes, and such injunction remains in force for a period of at least sixty (60) days and such situation negatively affects the Tenant's use of demised premises.
5. 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 and its facilities in such a manner as to substantially restrict Tenant from conducting its operations, and such restrictions shall continue for a period of at least sixty (60) days.

### **Section 10.02 Remedies for City's Defaults**

Upon the occurrence of an "Event of Default by City", the Tenant shall have the right to suspend or terminate this Agreement and all rentals, fees and charges payable by Tenant under this Agreement shall abate during a period of suspension or shall terminate, as the case may be. In the event that Tenant's operations at Airport should be substantially restricted by action of any governmental agency having jurisdiction thereof, then Tenant shall, in addition to the rights of termination herein granted, have the right to a suspension of this Agreement, or part thereof, and abatement of an equitable proportion of the payments due hereunder, from the time of giving written notice of such election until such restrictions shall have been remedied and normal operations restored. In addition to its remedy of termination, the Tenant shall be entitled to all other remedies available to it by law or equity.

## **ARTICLE 11 RIGHTS UNDER TERMINATION**

### **Section 11.01 Fixed Improvements**

It is the intent of this Agreement that the leasehold improvements, alterations and items affixed thereto shall be and remain the property of the City during the entire term of this Agreement. Upon termination of this Agreement, the Tenant shall have no further rights under this Agreement, nor shall it have any interest in the demised premises, buildings or improvements, constructed thereon.

### **Section 11.02 Personal Property**

Upon termination of this Agreement, the Tenant shall remove all personal property, and items not affixed, from the demised premises within sixty (60) days after said termination and restore the demised premises to its original condition. If the Tenant fails to remove said personal property, said property shall revert to City ownership and may thereafter be removed by the City at Tenant's expense.

**ARTICLE 12  
ASSIGNMENT AND SUBLETTING**

The Tenant shall not assign this Agreement or sublease, or any part hereof, in any manner whatsoever, or assign any of the privileges recited herein without the prior written consent of the City. Provided however:

1. Tenant may assign privileges of this agreement, and/or sublease space, in the Demised Premises directly to a parent, subsidiary or affiliate of Tenant, in the furtherance of its approved use of City / Airport facilities as detailed in 2.01, without City approval. However, Tenant remains obligated to notify City in writing of such assignment or sublease. Under such assignment or sublease, the Tenant remains fully responsible for the payment of all rents, fees and charges in accordance with the Agreement.
2. Any assignment of the privileges in this agreement, or sublease of Demised Premises, wherein the assignee/sub-lessee is responsible for the payment of rents, fees and charges directly to the City, must receive the prior approval of the City. In such assignment or sublease, Tenant shall remain liable to the City for the remainder of the term of this Agreement to pay to the City any portion of the rental and fees provided for herein upon failure of the assignee or sub-lessee to pay the same when due.
3. Said assignee or sub-lessee in either case above, shall not further assign or sublease said Agreement or leased space except with the prior written approval of the City and the Tenant herein, and any assignment or sublease agreement initiated by the Tenant to any third party shall contain a clause to this effect.

**ARTICLE 13  
QUIET ENJOYMENT**

The City covenants that the Tenant, upon payment of the rentals reserved herein and the performance of each and every one of the covenants, agreements and conditions on the part of the Tenant to be observed and performed, shall and may, peaceably and quietly, have, hold and enjoy the demised premises for the term of this Agreement, free from molestation, or disturbance.

**ARTICLE 14  
GENERAL PROVISIONS**

**Section 14.01 Non-Interference with Operations of Airport**

The Tenant, by accepting this Agreement, expressly agrees for itself, its successors and assigns, that it will not make use of the demised premises in any manner which might interfere with the operations of the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the City reserves the right to enter upon the premises hereby leased and cause the abatement of such interference at the expense of the Tenant.

**Section 14.02 Attorney's Fees**

In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover interest and its reasonable attorney's fees.

**Section 14.03 Taxes and Special Assessments**

The Tenant shall pay any and all leasehold interest tax assessed on said demised premises and all personal property taxes which may be assessed against equipment, merchandise, or other personal property belonging to the Tenant located on the demised premises, or other permitted portions of the Airport. The Tenant shall pay all real estate taxes attributed to the Tenant's leasehold interest and all other real estate taxes which may be levied and assessed which are attributed to the Tenant's leasehold interest in the demised premises. The Tenant shall pay all sales or use taxes and assessments, license fees or other charges of any kind or nature, without exception, levied or assessed, arising out of the activities conducted on, and/or the occupancy of, the demised premises.

**Section 14.04 Right to Contest**

The Tenant shall have the right to contest the validity or amount of any tax, assessment or charge, lien or claim of any kind in with respect to the demised premises. Tenant shall, if the City requires the same in writing and if the taxes or other assessments have not been paid under protest or otherwise escrowed or provided for, furnish reasonable security for the payment of all liability, costs and expenses at the end of the litigation, and Tenant, so long as the matter shall remain undetermined by final judgment, shall not be

considered in default hereunder by the nonpayment thereof; provided however, that Tenant shall not, under these provisions, permit the premises or any buildings or improvements situated thereon, to be sold or forfeited, and failure by the Tenant to do what is necessary to prevent any such sale or forfeiture within ten (10) days from the publication or receipt of notice for sale or forfeiture, shall be deemed to be a default hereunder, and the City may, at its option, pay any such sum as may be required to avoid the sale or forfeiture and seek reimbursement for its cost from the Tenant or ownership of the buildings or improvements involved.

#### **Section 14.05 License Fees and Permits**

The Tenant shall obtain and pay for all licenses, permits, fees or other authorization or charges as required under federal, state or local laws and regulations insofar as they are necessary to comply with the requirements of this Agreement and the privileges extended hereunder.

#### **Section 14.06 Non-Exclusive Rights**

It is hereby specifically understood and agreed between the parties that nothing herein contained shall be construed as granting or authorizing the granting of exclusive rights to the Tenant or others, as defined in Section 308 of the Federal Aviation Act of 1958, as amended.

#### **Section 14.07 Paragraph Headings**

The Section paragraph headings contained herein are for convenience in reference only and are not intended to define or limit the scope of any of the provision of this Agreement.

#### **Section 14.08 Interpretations**

This Agreement shall be interpreted in accordance with the laws of the State of West Virginia.

#### **Section 14.09 Non-Waiver**

No waiver by City of any agreement, condition or provision contained in this Agreement will be valid or binding unless expressed in writing and signed by the City. The waiver by City of any agreement, condition or provision contained in this Agreement will not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition or provision contained in this Agreement, nor will any custom or practice that may grow up between the parties in the administration of the terms of this Agreement be construed to waive or to lessen the right of City to insist upon the performance by Tenant in strict accordance with the terms of this Agreement. The subsequent acceptance of rent by City will not be needed to be a waiver of any preceding breach by Tenant of any agreement, condition or provision of this Agreement, other than the failure of Tenant to pay the particular rent so accepted, regardless of City's knowledge of such preceding breach at the time of acceptance of such rent.

#### **Section 14.10 Severability**

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

#### **Section 14.11 Binding Effect**

This Agreement, including all of its covenants, terms, provisions and conditions, shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, successors and assigns.

#### **Section 14.12 No Partnership**

Nothing contained in this Agreement shall be deemed to create the relationship of principal and agent or of a partnership or joint venture or any relationship between the City and Tenant other than the relationship of the City and Tenant.

#### **Section 14.13 Duty to be Reasonable**

Wherever in this Agreement the City is to give its consent, approval or otherwise exercise discretion in judgment, such consent, approval or judgment discretion shall not be unreasonably exercised or unreasonably withheld. When the City is called upon to give its consent or approval, or otherwise exercise its discretion and judgment as to financial matters which affect the City and the continuing operations of the Airport, the exercise of its judgment as to any such matters shall be solely and completely within the discretion of the City.

**Section 14.14 Notices**

Whenever any notice or payment is required by this Agreement to be made, given, or transmitted to the parties hereto, such notices or payments shall be enclosed in an envelope with sufficient postage attached to ensure delivery and deposited in the United States Mail, addressed to:

**Airport Director  
City of Morgantown  
Morgantown Municipal Airport  
100 Hart Field Road  
Morgantown, West Virginia 26505**

And notices, consents and approvals to the Tenant addressed to:

|  |
|--|
| <p><b>Wanderlust Travel LLC<br/>c/o Lisa Weese<br/>100 Hart Field Rd, Suite 241<br/>Morgantown, WV 26505</b></p> |
|--|

Or such other place as either party shall, by written directive, designate in the manner herein provided.

**Section 14.15 Entire Agreement**

This Office Lease Agreement constitutes the entire agreement between the parties. There are no verbal or written agreements between the parties that are to be considered a part of this Agreement unless they have been specifically enumerated herein and this Agreement supersedes all prior or other agreements, understandings, and representations. This Agreement may be amended solely by a written instrument, signed by all parties.

**Section 14.16 No Construction Against Drafting Party**

City and Tenant acknowledge that each of them and their counsel have had an opportunity to review this Agreement and that this Agreement will not be construed against City merely because City has prepared it.

**Section 14.17 Third Party Beneficiaries**

It is specifically understood and agreed that no person shall be a third-party beneficiary hereunder, and that none of the provisions of this Agreement shall be for the benefit of, or be enforceable by, anyone other than the parties hereto, and that only the parties hereto and their permitted assignees shall have rights hereunder.

**Section 14.18 Authorization and Execution**

By its execution hereof, Tenant and the City warrant that all necessary corporate action has been taken with regard to the authorization and execution of this Agreement and that the individual(s) executing this Lease Agreement on behalf of Tenant is/are duly authorized to do so. Whoever signs this Agreement on behalf of Tenant and the City hereby confirms that they have the appropriate authority and have been so authorized to execute this Agreement on behalf of Tenant and City, respectively.

IN WITNESS WHEREOF, the parties have caused this **Office Lease Agreement** to be executed on their behalf by their duly authorized officers.

**CITY OF MORGANTOWN**

**WANDERLUST TRAVEL LLC**

By: \_\_\_\_\_

**A. Kim Haws**  
City Manager

Date: \_\_\_\_\_

Witness:

By: \_\_\_\_\_

**Name, Title**

Date: \_\_\_\_\_

By: *Lisa Weese* \_\_\_\_\_

**Lisa Weese**  
Owner

Date: 3-15-21 \_\_\_\_\_

Witness:

By: *Amy W Collesky* *Financial*  
**Name, Title** *Manager*

Date: 3/15/21 \_\_\_\_\_

**AN ORDINANCE AMENDING THE FY 2020-2021 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND.**

The City of Morgantown hereby ordains:

That the FY 2020-2021 Annual Budget of the General Fund of the City of Morgantown is amended as shown in the revised budget (Revision 06) attached hereto and made a part of this ordinance.

First Reading:

Adopted:

\_\_\_\_\_  
Mayor

Filed:

Recorded:

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

| CITY OF MORGANTOWN        |                 |             |                 |                         |   |
|---------------------------|-----------------|-------------|-----------------|-------------------------|---|
| GENERAL FUND - REVISION 6 |                 |             |                 |                         |   |
| FY 2020-2021              |                 |             |                 |                         |   |
| ACCT NO                   | REVENUES        | BUDGET FY21 | PROPOSED REV 06 | PROPOSED AMENDED BUDGET | EXPLANATION OF PROPOSED ADJUSTMENTS         |
|                           |                 |             |                 |                         |   |
|                           |                 |             |                 |                         |   |
|                           |                 |             |                 |                         |   |
| ACCT NO                   | EXPENDITURES    | BUDGET FY21 | PROPOSED REV 06 | PROPOSED AMENDED BUDGET | EXPLANATION OF PROPOSED ADJUSTMENTS         |
| 420                       | Engineering     | 445,659     | 600             | 446,259                 | Increase for changes due to re-organization |
| 440                       | City Hall       | 795,025     | 24,300          | 819,325                 | Increase for changes due to re-organization |
| 699                       | Contingency     | 4,305,674   | 2,200           | 4,307,874               | Offset for changes due to re-organization   |
| 750                       | Street          | 2,765,857   | (3,100)         | 2,762,757               | Decrease for changes due to re-organization |
| 752                       | Signs & Signals | 731,613     | (24,000)        | 707,613                 | Decrease for changes due to re-organization |
|                           |                 |             |                 |                         |   |
|                           |                 |             |                 |                         |   |

**AN ORDINANCE ESTABLISHING  
A CIVILIAN POLICE REVIEW AND ADVISORY BOARD**

The City of Morgantown hereby ordains that a new Article 181 is established within the City Code entitled “Civilian Police Review and Advisory Board” as follows:

**Section 181.01. Board Established; Purpose.**

The City shall have a Civilian Police Review and Advisory Board, established and operated in accordance with this Article. The general purpose of this Article is to provide for citizen participation in reviewing Police Department policies, practices, and procedures; to promote the availability of data relating to police practices and procedures; and to provide a prompt, impartial, and fair review of misconduct complaints relating to the Morgantown Police Department in a manner which protects the rights of police officers and the rights of individuals who have contact with the Morgantown Police Department

**Section 181.02. Definitions.**

*Board* means the Civilian Police Review and Advisory Board established by this Article.

*City* means The City of Morgantown, West Virginia.

*Immediate family* means a parent, spouse, child, sibling, or domestic partner.

*Member* means a member of the Board.

*Morgantown City Administration* means all employees and officers of The City of Morgantown and all employees and officers of the boards, commissions, authorities, and agencies established by The City of Morgantown, excluding the appointed members of such boards, commissions, authorities, and agencies who serve without compensation.

*Chief* means the Chief of the Morgantown Police Department.

*Misconduct* means inappropriate behavior or actions by a police officer, including but not limited to excessive use of force; abuse of authority; harassment; unlawful arrest, stop, or search; arrest, stop, or search motivated to any degree by bias based on race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, age, blindness, disability, familial status, or veteran status; or use of unprofessional, demeaning, or offensive language or conduct.

**Section 181.03. Membership and Terms.**

- (a) Members. The Board shall consist of nine members appointed by City Council.

(b) Qualifications.

(1) Each member shall be a resident of the City or an active member of an organization that works within the City to promote purposes consistent with the purpose of the Board. If a member ceases to meet this qualification, the member shall immediately notify City Council, but the member shall remain in office until a successor is appointed unless he or she resigns or is removed from the Board. Each member shall be at least 18 years of age.

(2) No member shall hold any other office or employment with the City while a member of the Board.

(3) No member of the Board shall be a former employee of the Morgantown Police Department.

(4) No member of the Board shall be an immediate family member of any member of the Morgantown City Administration, City Council, or Morgantown Police Department.

(5) Three members shall come from historically disadvantaged communities that have traditionally experienced disparate policing or shall be residents of publicly subsidized housing. Three additional members shall be nominated by organizations that seek racial or social justice on behalf of historically disadvantaged communities or persons with disabilities.

(6) Openings on the Board should be filled based on The City of Morgantown Diversity, Equity, and Inclusion Plan adopted by [Resolution XX-XX of the Morgantown City Council on (Date)], as amended.. In the event of a conflict between the membership qualifications and appointment procedures of this Article and the provisions of the City's diversity, equity, and inclusion plan, the provisions of this Article shall control.

(7) In the event that no applicant meets the requirements of subparagraph(b)(5), a position may be filled by seeking applicants according to the process identified by The City of Morgantown Diversity, Equity, and Inclusion Plan.

(c) Terms of office. The Board shall initially consist of nine members appointed to the following terms: (i) three members appointed for a term of 1 year, (ii) three members appointed for a term of two years, and (iii) three members appointed for a term of 3 years. Each term thereafter shall be a 3-year term. Members shall continue in office until a successor is appointed, unless the member resigns or is removed from office. Vacancies shall be filled in the same manner as an initial appointment, and the member appointed shall be appointed for the remainder of the vacant term. Any member may resign by delivering a written notice to the City Clerk stating the effective date of the resignation.

#### **Section 181.04. Officers; Meetings; Bylaws.**

(a) Officers. The Board shall elect a chair, vice- chair, and secretary annually at its first regular meeting in each calendar year. The Board may elect such additional officers as it deems prudent or as required by its bylaws.

(b) Regular meetings. The Board shall conduct regular meetings no less than monthly , on a schedule established by the Board. The Board may conduct special meetings on the call of the chair or a majority of the members. Meetings will be conducted in accordance with the West Virginia Open Governmental Proceedings Act. The City Clerk shall assist the Board in convening and conducting its meetings.

(c) Bylaws. The Board may adopt bylaws for the conduct of its business. Any bylaws adopted must be consistent with the purpose of this Article and may not contravene any specific provision of this Article. The bylaws shall be delivered to the City Clerk and City Council upon adoption, and upon any revision.

(d) Orientation and Training. In order to effectively promote the purposes of the Board, each member should attend a public meeting of the Board prior to beginning the member's term, shall participate in a board orientation that includes a Morgantown Police Department ride along, and shall participate in ongoing training endorsed by the National Association for Civilian Oversight of Law Enforcement (NACOLE) or similar organizations. The board shall establish in its bylaws the training requirements for its members.

#### **Section 181.05. Powers and duties.**

The Board shall have the following powers and duties:

(a) Develop and administer a process to conduct initial, periodic, and complaint-based compliance auditing for existing policies and procedures of the Morgantown Police Department and to make recommendations regarding the findings, the audit process, and the compliance by the Morgantown Police Department with established policies and procedures.

(b) Develop and administer a process to conduct initial, periodic, and complaint-based review of existing policies and procedures of the Morgantown Police Department and make recommendations on the review findings as to the policies and procedures and any recommended revisions, modifications, or additions.

(c) Develop and administer a process to receive, review, and advise upon materials and practices related to the recruitment, hiring, and training of the Morgantown Police Department, with the goals of increasing diversity, furthering community cooperation, and eliminating misconduct.

(d) Develop and administer a process to receive public suggestions for recruitment, hiring, and training to be offered to the Morgantown Police Department; to review the suggestions;

and to advise the Morgantown Police Department as to the recommendations of the Board upon the suggestions.

(e) Develop and administer a process to receive civilian complaints about misconduct of the Morgantown Police Department or its officers, to forward such complaints to the Chief of Police, to review the findings and recommendations of the Chief after his internal investigation, and to notify the Chief of the results of the Board's review before the Chief's findings and recommendations are made public, as provided in section 181.06 of this Article.

(f) Review internal investigations into misconduct conducted by the Morgantown Police Department, as provided in section 181.06 of this Article.

(g) Organize and conduct community outreach related to the Board's purposes and activities. The Board should hold public meetings to report to community members on its activities, summarize its findings and recommendations, and allow residents to ask questions and raise concerns. The Board should establish goals and measurements of progress toward those goals, provide regular reports on its activity and progress toward the goals, and provide means for recognition of officers who contribute to positive policing practices.

(h) Provide policy recommendations to the City Council, City Manager, Morgantown Police Civil Service Commission, and Morgantown Police Department. Review and provide input on recruitment methods and whether the City is meeting its diversity goals and engaging in sufficient recruitment methods to promote diversity.

(i) Enter into contracts necessary and helpful to the conduct of its business, subject to the availability of funds allocated for such purpose. Such contracts may include, but shall not be limited to, retention of such persons or entities as may be necessary or helpful to assist the Board in the conduct of its functions.

(j) Request, and receive information, documents, reports, and assistance from officers and agencies of the City upon request. The Morgantown Police Department shall render assistance to the board in order to provide insight into policies, procedures and officer experience.

#### **Section 181.06. Complaint and Complaint Review Process.**

(a) Scope and authority. The Board shall have the duty and the responsibility to receive complaints relating to the Morgantown Police Department, to forward such complaints to the Chief of Police for investigation, and to review the proposed findings of the Chief, in accordance with the provisions of this Article and pursuant to the procedures established in this Section.

(b) Complaints.

(1) A complaint should be filed in writing by the complainant with the Board by mailing or personal delivery to the Office of the City Manager, c/o Morgantown Civilian

Police Review and Advisory Board, 389 Spruce Street, Morgantown, WV 26505, or by email to \_\_\_\_\_@morgantownwv.gov. A complaint may be filed orally or by the Board or any member of the Board based on information received by the Board or member, in which case it will be reduced to writing by a Board member appointed by the chair and signed by the complainant.

(2) When the complaint is received, it is filed with the Board and the date of filing is recorded.

(3) Upon receipt of a complaint, the Board shall forward it to the Chief of Police for investigation.

(c) Review of Police Department Investigations and Recommendations

(1) This section 181.06(c) shall apply to all complaints received by the Board pursuant to section 181.06(b), and also to all complaints of police misconduct received by the City Manager, Police Department or any other agency of the City of Morgantown, and also to all Police Department internal investigations of misconduct.

(2) Upon the completion of the Police Department's investigation of the complaint or other internal investigation of misconduct, the Chief shall prepare proposed findings and, if appropriate, recommendations for change of policy or discipline of officers.

(3) Before the proposed findings and recommendations described in section 181.06(c)(2) become final, the Chief shall transmit them in writing to the Board for its review.

(4) In the event of exigent circumstances requiring immediate disciplinary action, the Chief may take such action immediately. In such circumstances, the Chief will also transmit his findings and recommendations to the Board.

(5) Along with his findings and recommendations, the Chief shall transmit to the Board all evidence relevant to his proposed findings and recommendations. Such evidence may include writings, video or other recordings, photographs, sketches, etc. However, in the event that the Chief has referred the matter to the Prosecuting Attorney of Monongalia County or other entity for possible criminal prosecution of an officer, the Chief shall transmit his proposed findings and recommendations to the Board but need not transmit the evidence to the Board until the criminal proceedings have been completed.

(6) The Board shall keep the Chief's proposed findings and recommendations, and the evidence relevant to the proposed findings, confidential until after the Chief has issued his final findings and recommendations, as provided in section 181.06(d).

- (7) Upon receipt of the Chief's proposed findings and recommendations, and the evidence relevant to the findings, the Board shall promptly initiate a review. The chair of the Board may appoint a panel of three (3) members of the Board to conduct the review.
- (8) As part of its review, the Board may propound questions about the proposed findings, recommendations or evidence to the Chief. If such questions are propounded, the Chief shall promptly answer them in writing or in person.
- (9) As part of its review, the Board may interview the complainant or witnesses, and may consult with people outside of the Board. Anyone consulted shall keep all matters confidential, as provided in section 181.06(c)(6). However, the Board may not interview Morgantown Police Department officers.
- (10) After the conclusion of its review, the Board shall notify the Chief in writing whether it accepts the Chief's proposed findings and recommendations or whether it suggests any changes. Such changes shall be specified. If the Board has conducted interviews as provided in section 181.06(c)(9), a summary of such interviews shall be provided to the Chief.
- (11) The Board shall provide this notification to the Chief within 30 days of receipt of the Chief's proposed findings and recommendations and the relevant evidence. However, this time period may be extended in extraordinary circumstances with the written agreement of the Chief.
- (12) Upon receiving the Board's notification of its review, the Chief shall issue his findings and recommendations, as originally proposed or as modified in light of the Board's review.

(d) Making Public the Board's Review of Complaints.

- (1) The Board may not disclose to the public any information about the Chief's proposed findings and recommendations, or about the Board's review of the findings and recommendations, until after the Chief has issued his final findings and recommendations, as provided in section 181.06(c)(12).
- (2) In making public information about its review of a complaint, the Board shall keep confidential the identity of the complainant, witnesses and officers involved in the matter.

**Section 181.07. Reports.**

(a) Annual Report; Work Plan. On or before January 31 of each year, the Board shall file a report with the City Clerk setting forth the activities of the Board for the previous year and establishing a work plan for the Board for the current year. The City Clerk shall distribute the report to City Council, the City Manager, the Chief of the Morgantown Police Department, and the President of the Morgantown Police Civil Service Commission.

(b) Statistical data and reporting. No less than annually, the Board shall collect and report statistical data relating to the operations of the Morgantown Police Department including, but not limited to, calls for assistance, stops, arrests, charges, and convictions, which will include demographic data such as race, sex, age, and other relevant and available characteristics of involved persons. The Morgantown Police Department and the Board will work together to collect, maintain, and report the data while ensuring that all appropriate or required privacy and confidentiality protections are afforded to the individuals involved in the incidents underlying the reported data.

**Section 181.08. Legislative intent; Severability.**

It is the intention of the City Council of The City of Morgantown in enacting this Article to establish the Board with each power and authority described herein to promote the purposes identified in Section 181.01 and this Article, and the City Council finds and determines that such legislative intent will best be served by giving effect to all valid provisions of the Article in the event that any other provision is determined invalid for any reason. To serve the expressed legislative purpose, in the event that a court or agency of competent jurisdiction holds that any federal or state law, rule, or regulation invalidates any provision of this Article or the application thereof to any person or circumstances, it is the intent of the City Council of The City of Morgantown that the court or agency sever such provision and that the remainder of this Article shall remain in effect and its validity and application to other persons or circumstances shall not be affected by the determination of invalidity.

This ordinance shall be effective \_\_\_\_ days from adoption.

FIRST READING: \_\_\_\_\_

\_\_\_\_\_  
Mayor

SECOND READING: \_\_\_\_\_

ADOPTED: \_\_\_\_\_

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

FILED: \_\_\_\_\_