



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
MORGANTOWN CITY COUNCIL
REGULAR MEETING
May 19, 2020
7:00 p.m.

City buildings remain closed to the public to protect public health during the COVID-19 pandemic. Personal attendance at the meeting will not be permitted. When it is time, the public may participate in the public portion by videoconference at the following link: <https://cityofmorgantown.my.webex.com/meet/cityofmorgantown> with meeting number (access code) 793 734 477, or by calling in at the following number 408-418-9388 and using the access code 793 734 477. All members of the public may view the meeting on Channel 15 and by streaming hosted on the City's website at www.morgantownwv.gov. If you do not wish to speak at the meeting, please view it by these methods to conserve capacity on the videoconference. Any person who wishes to speak at the meeting may complete the form at <http://morgantownwv.gov/FormCenter/Public-Comment-Sign-Up-Sheet-14/Public-Comment-Morgantown-City-Council-M-66> or provide their name, phone number they will use to participate, and the topic on which they would like to speak by texting 304-288-0847 or texting 304-288-7072. You may sign up to speak at any time until the meeting begins. Additionally, the public may submit written comments for the public portion of the meeting by sending written comments via email to the City Clerk at cwade@morgantownwv.gov. In the email, please use the subject line "Public Comment 05/19/2020" and indicate in the body of the email if you would like your comment read aloud during the public portion of the meeting.

1. **CALL TO ORDER:**

2. **ROLL CALL:**

3. **APPROVAL OF MINUTES:** May 5, 2020, Special Meeting minutes; May 5, 2020, Regular Meeting minutes; May 11, 2020, Special Meeting minutes; May 12, 2020, Special Meeting minutes.

4. **CORRESPONDENCE:** Mental Health Awareness Proclamation; Men's Health Month Proclamation

5. **PUBLIC HEARINGS:**

A. AN ORDINANCE AMENDING ARTICLE 545 REGULATING WEAPONS

B. AN ORDINANCE AMENDING ARTICLE 747 ESTABLISHING FIRE PROTECTION SERVICE CHARGES

6. **UNFINISHED BUSINESS:**

A. Consideration of APPROVAL of (SECOND READING) of AN ORDINANCE AMENDING ARTICLE 545 REGULATING WEAPONS (First reading May 5, 2020)

B. Consideration of APPROVAL of (SECOND READING) of AN ORDINANCE AMENDING ARTICLE 747 ESTABLISHING FIRE PROTECTION SERVICE CHARGES (First reading May 5, 2020)

C. **BOARDS & COMMISSIONS:**

7. **PUBLIC PORTION WHICH SHALL BE SUBJECT TO RULES ESTABLISHED BY COUNCIL AND ADOPTED BY RESOLUTION:**
8. **SPECIAL COMMITTEE REPORTS:**
9. **CONSENT AGENDA:**
10. **NEW BUSINESS:**
 - A. Consideration of **APPROVAL** of **(FIRST READING)** of **AN ORDINANCE AMENDING THE FY 2019-2020 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 AMENDING THE FY 2019-2020 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE COAL SEVERANCE FUND**
 - C. Consideration of **APPROVAL** of **AN EMERGENCY ORDINANCE CONTINUING THE STATE OF EMERGENCY AND AUTHORIZING ADDITIONAL OUTDOOR COMMERCIAL USES TO HELP PREVENT HARM TO THE PUBLIC DURING THE COVID-19 PANDEMIC**
11. **CITY MANAGER'S REPORT:**

Information:

 - A. Update on 2020 Census
 - B. City's Update on the Coronavirus (COVID-19) in West Virginia
 - C. Temporary Outdoor Dining Program

New Business:

 - A. Award of contract for City Manager Recruitment Firm
 - B. Acceptance of Morgantown Grant from FAA
 - C. Bid award – 8th Street Trailhead Project
12. **REPORT FROM CITY CLERK:**
13. **REPORT FROM CITY ATTORNEY:**
14. **REPORT FROM COUNCIL MEMBERS:**
15. **EXECUTIVE SESSION:** Pursuant to West Virginia Code Section 6-9A-4 (2) (B) (12) to discuss potential or pending litigation.
16. **EXECUTIVE SESSION:** Pursuant to West Virginia Code Section 6-9a-4(b)(2)(a) to discuss personnel matters.
17. **ADJOURNMENT:**

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

City of Morgantown

SPECIAL MEETING

May 5, 2020

The Special Meeting of the Common Council of the City of Morgantown was held via Webex on Tuesday, May 5, 2020, at 6:07 p.m.

City buildings remain closed to the public to protect public health during the COVID-19 pandemic. Personal attendance at the meeting will not be permitted. When it is time, the public may participate by videoconference at the following link:

<https://cityofmorgantown.my.webex.com/meet/cityofmorgantown> with meeting number (access code) 793 734 477, or by calling in at the following number 408-418-9388 and using the access code 793 734 477.

PRESENT: Via Webex were City Attorney Ryan Simonton, Mayor William A. Kawecki, Deputy Mayor Rachel Fetty, and Council Members Jenny Selin, Ron Dulaney, Dave Harshbarger, and Barry Wendell. Zackery Cruze was absent.

The meeting was called to order by Mayor Kawecki.

EXECUTIVE SESSION: Pursuant to West Virginia Code Section 6-9a-4(b)(2)(a) to discuss personnel matters related to the recruitment of a new City Manager. Motion by Councilor Selin, second by Councilor Harshbarger, to go into executive session. Motion carried by acclamation. Present: City Council. Time: 6:08 p.m.

ADJOURNMENT:

There being no further business, motion by Councilor Wendell, second by Councilor Harshbarger, to adjourn the meeting. Time: 6:39 p.m.

City Clerk

Mayor

City of Morgantown

SPECIAL MEETING May 11, 2020

The Special Meeting of the Common Council of the City of Morgantown was held via Webex on Monday, May 11, 2020, at 11:35 a.m.

City buildings remain closed to the public to protect public health during the COVID-19 pandemic. Personal attendance at the meeting will not be permitted. All members of the public may view the meeting live on Channel 15 and by streaming hosted on the City's website at www.morgantownwv.gov.

PRESENT: Via Webex were Interim City Manager Emily Muzzarelli, Mayor William A. Kawecki, Deputy Mayor Rachel Fetty, and Council Members Jenny Selin, Ron Dulaney, Dave Harshbarger, and Barry Wendell. Zackery Cruze was absent.

The meeting was called to order by Mayor Kawecki.

EXECUTIVE SESSION: Pursuant to West Virginia Code Section 6-9a-4(b)(2)(a) to discuss personnel matters related to the recruitment of a new City Manager. Motion by Councilor Dulaney, second by Councilor Harshbarger, to go into executive session. Motion carried by acclamation. Present: City Council. Time: 11:37 a.m.

ADJOURNMENT:

There being no further business, motion by Councilor Dulaney, second by Councilor Wendell, to adjourn the meeting. Time: 12:19 p.m.

City Clerk

Mayor

City of Morgantown

SPECIAL MEETING May 12, 2020

The Special Meeting of the Common Council of the City of Morgantown was held via Webex on Tuesday, May 12, 2020, at 4:00 p.m.

City buildings remain closed to the public to protect public health during the COVID-19 pandemic. Personal attendance at the meeting will not be permitted. When it is time, the public may participate by videoconference at the following link:

<https://cityofmorgantown.my.webex.com/meet/cityofmorgantown> with meeting number (access code) 793 734 477, or by calling in at the following number 408-418-9388 and using the access code 793 734 477. All members of the public may view the meeting live on Channel 15 and by streaming hosted on the City's website at www.morgantownwv.gov.

PRESENT: Via Webex were Interim City Manager Emily Muzzarelli, City Attorney Ryan Simonton, Mayor William A. Kawecki, Deputy Mayor Rachel Fetty, and Council Members Zackery Cruze, Jenny Selin, Ron Dulaney, Dave Harshbarger, and Barry Wendell.

The meeting was called to order by Mayor Kawecki.

NEW BUSINESS: RECRUITMENT FIRM INTERVIEWS

- A. 4:00 p.m. EST: GovHR – Sarah McKee
- B. 5:00 p.m. EST: The Novak Consulting Group – Catherine Tuck Parrish and Jenn Reichelt
- C. 6:00 p.m. EST: Strategic Government Resources Group – Jennifer Fadden
- D. 7:00 p.m. EST: Deliberation and Discussion

After discussion, motion by Councilor Cruze, second by Councilor Wendell, to recruit The Novak Consulting Group for the search of the new City Manager. Motion carried 6-1 with Mayor Kawecki voting No.

ADJOURNMENT:

There being no further business, motion by Councilor Wendell, second by Councilor Dulaney, to adjourn the meeting. Time: 8:02 p.m.

City Clerk

Mayor



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Office of the Mayor

Proclamation

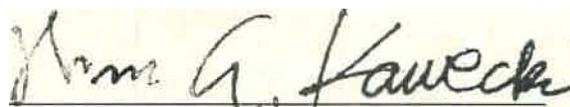
- Whereas, mental health is part of overall health, and sustains an individual's thought processes, relationships, productivity, and ability to adapt to change; and
 - Whereas, one in twenty-five adults live with mental illness, such as major depression, bipolar disorder, or schizophrenia, and roughly one-half of chronic mental illnesses begin by the mid-teens and three-fourths by the mid-20s; and
 - Whereas, early identification and treatment can make a difference in successful management of mental illness and recovery, and it is important to maintain mental health and to recognize the symptoms of mental illness and seek help when it is needed; and
 - Whereas, every citizen and community can help end the silence and stigma surrounding mental illness; and through public education and civic activities, the state of West Virginia, Monongalia County, and the City of Morgantown remain engaged in the promise to address the challenges facing people with mental illness; and
 - Whereas, the distancing measures essential to public health responses to the COVID-19 pandemic can make addressing mental illness even more difficult due to increased isolation or difficulty accessing services; and
 - Whereas, the City of Morgantown recognizes these difficulties and encourages the community to consider the impacts of this pandemic on mental health, and also to be mindful of how each person is coping with the added stress of COVID-19 and take steps to support your mental health needs; and
 - Whereas, mental health awareness month is an opportunity to increase public understanding of the importance of mental health and to promote the identification and treatment of mental illness;
- Now therefore, I, William A. Kawecki, Mayor of the City of Morgantown, West Virginia, on behalf of the City Council on this 19th day of May, do hereby recognize May 2020 as

Mental Health Awareness Month

and calls this observance to the attention of all citizens.

Seal




William Kawecki, Mayor



Office of the Mayor

The City of Morgantown

389 Spruce Street
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Proclamation

- Whereas,** despite advances in medical technology and research, men continue to live an average of five years less than women with Native American and African-American men having the lowest life expectancy; and
- Whereas,** educating the public and health care providers about the importance of a healthy lifestyle and early detection of male health problems will result in reducing rates of mortality from disease; and
- Whereas,** men who are educated about the value of preventative health can play in prolonging their lifespan and their role as productive family members will be more likely to participate in health screenings; and
- Whereas,** fathers who maintain a healthy lifestyle are role models for their children and have happier, healthier children; and
- Whereas,** Men's Health Network worked with Congress to develop National Men's Health Awareness period as a special campaign to help educate men and their families about the importance of positive health attitudes and preventative health practices; and
- Whereas,** the Men's Health Month web site has been established at www.MensHealthWeek.org and features resources, proclamations, and information about awareness events and activities, including Wear Blue for Men's Health (www.WearBlueForMensHealth.com); and
- Whereas,** Morgantown Men's Health Month will focus on a broad range of men's health issues, including heart disease, mental health, diabetes, prostate, testicular and colon cancer; and
- Whereas,** the citizens of this city are encouraged to increase awareness of the importance of a healthy lifestyle, regular exercise, and medical check-ups.

Now therefore, I, William A. Kawecki, Mayor of the City of Morgantown, West Virginia, do hereby proclaim June 2020, as

Men's Health Month

in the City of Morgantown and encourages all citizens to pursue preventative health practices and early detection efforts.

Seal:




William Kawecki, Mayor

AN ORDINANCE AMENDING ARTICLE 545 REGULATING WEAPONS

WHEREAS, the West Virginia state legislature passed, and the Governor of West Virginia signed, 2020 Senate Bill 96, effective June 2, 2020, which limits the authority of municipalities to regulate deadly weapons within their boundaries; and

WHEREAS, the West Virginia state legislature passed, and the Governor of West Virginia signed, 2020 House Bill 4618, effective June 3, 2020, amending the limitations on sale of deadly weapons and accordingly limiting, in conjunction with Senate Bill 96, the manner in which municipalities may limit the sale of deadly weapons; and

WHEREAS, the current Article 545 contains limitations on the carrying or use of deadly weapons that are preempted by the adoption of Senate Bill 96 and House Bill 4618 and require amendment to remain consistent with state law;

NOW, THEREFORE, The City of Morgantown hereby ordains that Article 545 is amended as follows:

545.01 DEFINITIONS.

As used in this article, ~~unless the context otherwise requires~~ the following terms shall have the meanings given, which shall be consistent with the definitions established by West Virginia Code Section 61-7-2 and 61A-1-101:

- ~~(a) "Blackjack" means a short bludgeon consisting, at the striking end, of an encased piece of lead or some other heavy substance and, at the handle end, a strap or springy shaft which increases the force of impact when a person or object is struck. "Blackjack" includes, but is not limited to, a billy, billy club, sand club, sandbag or slapjack.~~
- ~~(b) "Gravity knife" means any knife that has a blade released from the handle by the force of gravity or the application of centrifugal force, and when so released is locked in place by means of a button, spring, lever or other locking or catching device.~~
- ~~(c) "Knife" means an instrument, intended to be used or readily adaptable to be used as a weapon, consisting of a sharp edged or sharp pointed blade, usually made of steel, attached to a handle, which is capable of inflicting cutting, stabbing or tearing wounds. "Knife" includes, but is not limited to, any dagger, dirk, poniard or stiletto with a blade over three and one half inches in length, any switchblade knife or gravity knife, and any other instrument capable of inflicting cutting, stabbing or tearing wounds. A pocket knife with a blade three and one half inches or less in length, a hunting or fishing knife carried for hunting, fishing,~~

~~sports or other recreational uses, or a knife designed for use as a tool or household implement shall not be included within the term "knife" as defined herein, unless such knife is knowingly used or intended to be used to produce serious bodily injury or death.~~

- ~~—(d) "Switchblade knife" means any knife having a spring operated blade which opens automatically upon pressure being applied to a button, catch or other releasing device in its handle.~~
- ~~—(e) "Nunchuka" means a flailing instrument consisting of two or more rigid parts, connected by a chain, cable, rope or other nonrigid, flexible or springy material, constructed in such a manner as to allow the rigid parts to swing freely, so that one rigid part may be used as a handle and the other rigid part may be used as the striking end.~~
- ~~—(f) "Metallic or false knuckles" means a set of finger rings attached to a transverse piece, to be worn over the front of the hand for use as a weapon, and constructed in such a manner that, when striking another person with the fist or closed hand, considerable physical damage may be inflicted upon the person struck. The term "metallic or false knuckles" includes any such instrument, without reference to the metal or other substance or substances from which the metallic or false knuckles are made.~~
- ~~—(g) "Pistol" means a short firearm having a chamber which is integral with the barrel, designed to be aimed and fired by the use of a single hand.~~
- ~~—(h) "Revolver" means a short firearm having a cylinder of several chambers that are brought successively into line with the barrel to be discharged, designed to be aimed and fired by the use of a single hand.~~
- ~~—(i) "Deadly weapon" means an instrument which is designed to be used to produce serious bodily injury or death, or is readily adaptable to such use. The term "deadly weapon" includes, but is not limited to, the instruments defined in subsections (a) to (h) hereof inclusive, or other deadly weapons of like kind or character which may be easily concealed on or about the person. For the purposes of West Virginia Code 18-3-1a and 61-7-11a, in addition to the definition of "knife" set forth in subsection (c) hereof, "deadly weapon" also includes any instrument included within the definition of "knife" with a blade of three and one-half inches or less in length. Additionally, for the purposes of West Virginia Code 18-3-1a and 61-7-11a, "deadly weapon" includes explosives, chemical, biological and radiological materials. Notwithstanding any other provision of this section, the term "deadly weapon" does not include any item or material owned by the school or county board, intended for curricular use, and used by the student at the time of the alleged offense solely for curricular purposes.~~
- ~~—(j) "Concealed" means hidden from ordinary observation so as to prevent disclosure or recognition. A deadly weapon is concealed when it is carried on or about the person in such a manner that another person in the ordinary course of events would not be placed on notice that the deadly weapon was being carried. For purposes of concealed handgun licensees, a licensee shall be deemed to be carrying on or about his or her person while in or on a motor vehicle if the firearm is located in a storage area in or on the motor vehicle.~~
- ~~—(k) "Firearm" means any weapon which will expel a projectile by action of an explosion.~~
- ~~—(l) "Controlled substance" has the same meaning as is ascribed to that term in West Virginia~~

Code 61A-1-101(d).

~~(m) "Drug" has the same meaning as is ascribed to that term in West Virginia Code 61A-1-101(l). (WVaC 61-7-2)~~

(a) Controlled Substance - a drug, substance or immediate precursor in Schedules I through V of article two of Chapter 60A of the West Virginia Code.

(b) Deadly Weapon – an instrument which is designed to be used to produce serious bodily injury or death or is readily adaptable to such use. The term Deadly Weapon includes, but is not limited to, the instruments defined in subdivisions (1) through (8), inclusive, of this Paragraph (b) or other deadly weapons of like kind or character which may be easily concealed on or about the person. The term Deadly Weapon does not include pepper spray as defined in this section when used by any person over the age of 16 solely for self-defense purposes. The following instruments are deadly weapons:

(1) Blackjack – a short bludgeon consisting, at the striking end, of an encased piece of lead or some other heavy substance and, at the handle end, a strap or springy shaft which increases the force of impact when a person or object is struck. The term “blackjack” includes, but is not limited to, a billy, billy club, sand club, sandbag, or slapjack.

(2) Gravity Knife – any knife that has a blade released from the handle by the force of gravity or the application of centrifugal force and when so released is locked in place by means of a button, spring, lever, or other locking or catching device.

(3) Knife – an instrument, intended to be used or readily adaptable to be used as a weapon, consisting of a sharp-edged or sharp-pointed blade, usually made of steel, attached to a handle which is capable of inflicting cutting, stabbing, or tearing wounds. The term “knife” includes, but is not limited to, any dagger, dirk, poniard, or stiletto, with a blade over three and one-half inches in length, any switchblade knife or gravity knife, and any other instrument capable of inflicting cutting, stabbing, or tearing wounds. A pocket knife with a blade three and one-half inches or less in length, a hunting or fishing knife carried for hunting, fishing, sports, or other recreational uses, or a knife designed for use as a tool or household implement is not included within the term “knife” as defined in this subsection unless the knife is knowingly used or intended to be used to produce serious bodily injury or death.

(4) Switchblade knife – any knife having a spring-operated blade which opens automatically upon pressure being applied to a button, catch, or other releasing device in its handle.

(5) Nunchaku – a flailing instrument consisting of two or more rigid parts, connected by a chain, cable, rope, or other nonrigid, flexible, or springy material, constructed in such a manner as to allow the rigid parts to swing freely so that one rigid part may be used as a handle and the other rigid part may be used as the striking end.

(6) Metallic or false knuckles – a set of finger rings attached to a transverse piece to be worn over the front of the hand for use as a weapon and constructed in such a manner that, when striking another person with the fist or closed hand, considerable physical damage may be inflicted upon the person struck. The

terms “metallic or false knuckles” includes any such instrument without reference to the metal or other substance or substances from which the metallic or false knuckles are made.

(7) Pistol – means a short firearm having a chamber which is integral with the barrel, designed to be aimed and fired by the use of a single hand.

(8) Revolver – means a short firearm having a cylinder of several chambers that are brought successively into line with the barrel to be discharged, designed to be aimed and fired by the use of a single hand.

(c) Drug – (1) Substances recognized as drugs in the official “United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary”, or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; (3) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of any article specified in subdivision (1), (2) or (3) of this subdivision. It does not include devices or their components, parts or accessories.

(d) Firearm – any weapon which will expel a projectile by action of an explosion.

(e) Pepper Spray - a temporarily disabling aerosol that is composed partly of capsicum oleoresin and causes irritation, blinding of the eyes, and inflammation of the nose, throat, and skin that is intended for self-defense use.

545.02 CARRYING CONCEALED DEADLY WEAPONS WITHOUT LICENSE.

(a) No person shall carry a concealed deadly weapon, without a State license or as authorized by the provisions of West Virginia Code 61-7-1 et seq.

(b) Whoever violates this section shall, for a first offense, be guilty of a misdemeanor.

545.03 EXCEPTIONS AS TO PROHIBITIONS AGAINST CARRYING CONCEALED DEADLY WEAPONS.

(a) The prohibitions against carrying concealed handguns set forth in West Virginia Code 61-7-3 do not apply to:

(1) Any person at least eighteen years of age and fewer than twenty-one years of age who is:

A. Carrying a deadly weapon upon his or her own premises;

B. Carrying a firearm, unloaded, from the place of purchase to his or her home, residence or place of business or to a place of repair and back to his or her home, residence or place of business; or

C. Possessing a firearm while hunting in a lawful manner or while traveling from his or her home, residence or place of business to a hunting site and returning to his or her home, residence or place of business;

D. A member of a properly organized target-shooting club authorized by law to obtain firearms by purchase or requisition from this State or from the United States for the purpose of target practice from carrying any pistol, as defined in this

article, unloaded, from his or her home, residence or place of business to a place of target practice and from any place of target practice back to his or her home, residence or place of business, for using any such weapon at a place of target practice in training and improving his or her skill in the use of the weapons;

- E. A law-enforcement officer or law-enforcement official or chief executive as defined in West Virginia Code 30-29-1;
- F. An employee of the West Virginia Division of Corrections, duly appointed pursuant to the provisions of West Virginia Code 25-1- 11c while the employee is on duty;
- G. A member of the United States armed forces, reserve or National Guard;
- H. A resident of another state who holds a valid permit or license to possess or carry a handgun issued by a state or a political subdivision subject to the provisions and limitations set forth in West Virginia Code 61-7-6a;
- I. A federal law-enforcement officer or federal police officer authorized to carry a weapon in the performance of the officer's duty;
- J. A parole officer appointed pursuant to West Virginia Code 62-12- 14 in the performance of his or her duties.

(b) The following judicial officers and prosecutors are exempt from paying any application fees or licensure fees required under West Virginia Code Article 61-7. However, they shall make application and satisfy all licensure and handgun safety and training requirements to obtain a license as set forth in West Virginia Code 61-7-4:

- (1) Any justice of the Supreme Court of Appeals of West Virginia;
- (2) Any circuit judge;
- (3) Any retired justice or retired circuit judge designated senior status by the Supreme Court of Appeals of West Virginia;
- (4) Any family court judge;
- (5) Any magistrate;
- (6) Any prosecuting attorney;
- (7) Any assistant prosecuting attorney; and
- (8) Any duly appointed investigator employed by a prosecuting attorney.

545.04 PERSONS PROHIBITED FROM POSSESSION OF FIREARMS.

(a) Except as provided in this section, no person shall possess a firearm, as such is defined in Section 545.01, who:

- (1) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
- (2) Is habitually addicted to alcohol;
- (3) Is an unlawful user of or habitually addicted to any controlled substance;
- (4) Has been adjudicated to be mentally incompetent or who has been involuntarily committed to a mental institution pursuant to the provisions of West Virginia Code Chapter twenty-seven or in similar law of another jurisdiction: provided, that once an individual has been adjudicated as a mental defective or involuntarily committed to a mental institution, he or

she shall be duly notified that they are to immediately surrender any firearms in their ownership or possession; provided, however, that the Mental Hygiene Commissioner or Circuit Judge shall first make a determination of the appropriate public or private individual or entity to act as conservator for the surrendered property;

- (5) Is an alien illegally or unlawfully in the United States;
 - (6) Has been discharged from the armed forces under dishonorable conditions;
 - (7) Is subject to a domestic violence protective order that:
 - A. Was issued after a hearing of which such person received actual notice and at which such person had an opportunity to participate;
 - B. Restrains such person from harassing, stalking or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
 - C.
 1. Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
 2. By its terms explicitly prohibits the use, attempted use or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
 - (8) Has been convicted of a misdemeanor offense of assault or battery either under the provisions of West Virginia Code 61-2-28, or the provisions of West Virginia Code 61-2-9(a) or (b), or a federal or state statute with the same essential elements in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense or has been convicted in any court of any jurisdiction of a comparable misdemeanor crime of domestic violence.
- (b) Any person may carry a concealed deadly weapon without a license therefor who is:
- (1) At least twenty-one years of age;
 - (2) A United States citizen or legal resident thereof;
 - (3) Not prohibited from possessing a firearm under the provisions of this Article 545 or West Virginia Code 61-7-7; and
 - (4) Not prohibited from possessing a firearm under the provisions of 18 U.S.C. § 922(g) or (n).
- (c) Any person prohibited from possessing a firearm by the provisions of subsection (a) of this section may petition the circuit court of the county in which he or she resides to regain the ability to possess a firearm and if the court finds by clear and convincing evidence that the person is competent and capable of exercising the responsibility concomitant with the possession of a firearm, the court may enter an order allowing the person to possess a firearm if such possession would not violate any federal law: provided, that a person prohibited from possessing a firearm by the provisions of subsection (a)(4) of this section may petition to regain the ability to possess a firearm in accordance with West Virginia Code 61-7A-5.
- (d) Any person who has been convicted of an offense which disqualifies him or her from possessing a firearm by virtue of a criminal conviction whose conviction was expunged or set

aside or who subsequent thereto receives an unconditional pardon for said offense shall not be prohibited from possessing a firearm by the provisions of the section.

545.05 POSSESSION OF DEADLY WEAPONS BY MINORS PROHIBITED.

(a) Notwithstanding any other provision of this article to the contrary, a person under the age of eighteen years who is not married or otherwise emancipated shall not possess or carry concealed or openly any deadly weapon: provided, that a minor may possess a firearm upon premises owned by such minor or his family or on the premises of another with the permission of his or her parent or guardian and in the case of property other than his or her own or that of his family, with the permission of the owner or lessee of such property. Nothing in this section shall prohibit a minor from possessing a firearm while hunting in a lawful manner or while traveling from a place where he or she may lawfully possess a deadly weapon, to a hunting site, and returning to a place where he or she may lawfully possess such weapon.

(b) A violation of this section by a person under the age of eighteen years shall subject the child to the jurisdiction of the circuit court under the provisions of West Virginia Code 49-5-1 et seq., and such minor may be proceeded against in the same manner as if he or she had committed an act which if committed by an adult would be a crime, and may be adjudicated delinquent.

545.06 POSSESSION OF MACHINE GUNS.

No person shall carry, transport or have in his possession, any machine gun, submachine gun or any other fully automatic weapon unless he or she has fully complied with applicable Federal statutes and all applicable rules and regulations of the Secretary of the Treasury of the United States relating to such firearms.

545.07 DISPLAY OR SALE OF DEADLY WEAPONS.

~~No person shall publicly display and offer for rent or sale, or, where the person is other than a natural person, knowingly permit an employee thereof to publicly display and offer for rent or sale, to any passersby on any street, road or alley, any deadly weapon, machine gun, submachine gun or other fully automatic weapon, any rifle, shotgun or ammunition for same.~~

A person may not knowingly sell, rent, give or lend, or, where the person is other than a natural person, knowingly permit an employee thereof to knowingly sell, rent, give or lend, any deadly weapon other than a firearm to a person prohibited from possessing a deadly weapon other than a firearm by any provision of West Virginia Code Chapter 61, Article 7.

545.08 BRANDISHING DEADLY WEAPONS.

No person armed with a firearm or other deadly weapon, whether licensed to carry the same or not, shall carry, brandish or use such weapon in a way or manner to cause, or threaten, a breach of the peace.

545.09 POSSESSING DEADLY WEAPONS ON PREMISES OF EDUCATIONAL FACILITIES.

(EDITOR'S NOTE: Former Section 545.09 which was derived from West Virginia Code 61-7-11a is no longer included in the Codified Ordinances. By Acts 1995 Chapter 90, the West Virginia Legislature reclassified such offense as a felony. Charges for possessing deadly weapons on premises of educational facilities should now be filed under state law.)

545.10 FIREWORKS.

(a) Unlawful Acts. It is unlawful for a person to manufacture, wholesale, distribute, import, sell or store for the purpose of resale, consumer fireworks without a license, registration, certificate or permit from the State Fire Marshal and a valid business license issued by the City of Morgantown.

(b) Definitions. As used in this section:

- (1) "Agricultural and wildlife fireworks" means fireworks devices distributed to farmers, ranchers and growers through a wildlife management program administered by the United States Department of the Interior or the Division of Natural Resources of this state;
- (2) "Amusement park" means any person or organization which holds a permit for the operation of an amusement ride or amusement attraction under article ten, chapter twenty-one of the West Virginia Code;
- (3) "APA Standard 87-1" means the APA Standard 87-1 published by the American Pyrotechnics Association, as amended, and incorporated by reference into Title 49 of the Code of Federal Regulations;
- (4) "Articles pyrotechnic" means pyrotechnic devices for professional use that are similar to consumer fireworks in chemical composition and construction but not intended for consumer use, that meet the weight limits for consumer fireworks but are not labeled as such, and that are classified as UN0431 or UN0432 under 49 C.F.R. §172.101 (2014);
- (5) "Consumer fireworks" means small fireworks devices that are designed to produce visible effects by combustion that are required to comply with the construction, chemical composition and labeling regulations promulgated by the United State Consumer Product Safety Commission under 16 C.F.R. Parts 1500 and 1507 (2014). and that are listed in APA Standard 87-1. Consumer fireworks do not include sparkling devices, novelties, toy caps or model rockets;
- (6) "Consumer fireworks certificate" means a certificate issued under section four of West Virginia Code Chapter 29, Article 3E;
- (7) "Display fireworks" means large fireworks to be used solely by professional pyrotechnicians licensed by the State Fire Marshal and designed primarily to produce visible or audible effects by combustion, deflagration or detonation and includes, but is not limited to, salutes containing more than two grains (one hundred thirty milligrams) of explosive materials, aerial shells containing more than forty grams of pyrotechnic composition and other display pieces that exceed the limits of explosive materials for classification as consumer fireworks and are classified as fireworks UN0333, UN0334, or UN0335 under 49 C.F.R. §172.101 (2014);
- (8) "Distributor" means a person who sells fireworks to wholesalers and

- retailers for resale;
- (9) "Division 1.3 explosive" mean lhat term as defined in 49 C.F.R. § 173.50 (2014):
 - (10) "Division 1.4 explosive" means that term as defined in 49 C.F.R. § 173.50 (2014):
 - (11) "Explosive composition" means a chemical or mixture of chemicals that produces an audible effect by deflagration or detonation when ignited:
 - (12) "Fire Marshal" means the State Fire Marshal;
 - (13) "Firework" or "fireworks" means any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration or detonation. Fireworks include consumer fireworks, display fireworks and special effects. Fireworks does not include sparkling devices, novelties, toy caps or model rockets;
 - (14) "Interstate wholesaler" means a person who is engaged in interstate commerce selling fireworks;
 - (15) "Model rocket" means that term as defined in National Fire Protection Association Standard 1122, "Code for Model Rocketry";
 - (16) "New explosive" means that term as defined in 49 C.F.R. §173.56 (2014);
 - (17) "NFPA 1123" means National Fire Protection Association Standard 1123, "Code for Fireworks Display."
 - (18) "NFPA 1124" means National Fire Protection Association Standard 1124, "Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles," 2006 Edition.
 - (19) "NFPA 1126" means that term as defined in National Fire Protection Association Standard 1126, "Standard for the Use of Pyrotechnic Before a Proximate Audience."
 - (20) "Novelties" means that term as defined under APA standard 87-1, section 3.2; but shall not include toy pistols, toy caps, toy canes, toy guns or other similar devices:
 - (21) "Permanent" means that term as defined in NFPA 1124;
 - (22) "Person" means an individual or the responsible person for an association, an organization, a partnership, a limited partnership, a limited liability company, a corporation or any other group or combination acting as a unit;
 - (22) "Public display of fireworks" means a public entertainment feature that is advertised to the general public or is on public property that includes the display or discharge of fireworks;
 - (23) "Pyrotechnic composition" means a mixture of chemicals that produces a visible or audible effect by combustion rather than deflagration or detonation. A pyrotechnic composition will not explode upon ignition unless severely confined;
 - (24) "Retailer" means a person who purchases consumer fireworks for resale to consumers;
 - (25) "Sparkling devices" means "ground or handheld sparkling devices" as that phrase is defined under APA 87-1, sections 3.1.1 and 3.5;
 - (26) "Special effects" means a combination of chemical elements or chemical

compounds capable of burning independently of the oxygen of the atmosphere and designed and intended to produce an audible, visual, mechanical or thermal effect as an integral part of a motion picture, radio, television, theatrical or opera production or live entertainment;

(27) "Temporary" means that term as defined in NFPA 1124;

(28) "Toy caps" means that term as defined under APA 87-L section 3.3: and

(29) "Wholesaler" means any person who sells consumer fireworks to a retailer or any other person for resale and any person who sells articles of pyrotechnics, display fireworks, and special effects to a person licensed to possess and use those devices.

(c) Production or Transportation of Fireworks. A person may produce or transport a firework within the City that is a new explosive and that is either a division 1.3 explosive or division 1.4 explosive if the person first meets the requirements of 49 C.F.R. §173.56 (2014).

(d) Requirements for a Retailer of Consumer Fireworks.

(1) A retailer may not sell consumer fireworks in the City unless the retailer is certified under West Virginia Code Chapter 29, Article 3E and possesses a valid business license issued by the City of Morgantown.

(2) To be certified to sell consumer fireworks a retailer shall:

A. Submit an application to the State Fire Marshal;

B. Submit with the application a copy of his or her current business registration certificate;

C. Pay a fee of \$500.00 for each temporary retail sales location and \$1,000.00 for each permanent retail sales location to the State Fire Marshal;

D. Provide the State Fire Marshal proof that the retailer maintains at all times public liability and product liability insurance with minimum coverage limits of \$1 million dollars per location to cover losses, damages or injuries that might result from selling consumer fireworks; and

E. Provide other information as the State Fire Marshal may require by legislative rule.

(3) A consumer fireworks certificate is valid from April 1 through March 31 of the next calendar year or any fraction thereof.

(4) A consumer fireworks certificate is not transferable.

(5) A retailer shall post the certificate in a conspicuous place at the location of the business.

(6) A separate copy of an issued certificate is required for each retail sale location of the retailer.

(7) A retailer who sells consumer fireworks shall comply with all regulations provided in NFPA 1124. The State Fire Marshal may by legislative rule, promulgate rules to supplement those rules established in NFPA 1124.

(8) A retailer shall sell the consumer fireworks only from a permanent building or structure that meets the specifications in NFPA 1124 or a temporary facility or structure that meets the specifications of NFPA 1124.7.3.5.

(e) Requirements for a Public Fireworks Display.

(1) Any municipality, county, fair association, amusement park or other

organization shall have a permit to present a public display of fireworks from the State Fire Marshall.

- (2) To receive a permit, a municipality, fair association, amusement park, and other organization shall:
 - A. Submit an application to the State Fire Marshal;
 - B. Pay the required fee, not to exceed \$50.00;
 - C. Furnish proof of financial responsibility to satisfy claims for damages to property or personal injuries arising out of any act or omission on the part of the party seeking the permit or an employee thereof, in the amount, character and form as the State Fire Marshal determines to be necessary for the protection of the public; and
 - D. Provide any other information a the State Fire Marshal may require by legislative rule.
- (3) The State Fire Marshal shall require the municipality, county, fair association, amusement park and other organizations to give written notice to the local police and fire authorities at least five days prior to the display for which the permit is sought.
- (4) A permit is not transferable.
- (5) The display shall be operated by a competent operator licensed or certified as to competency by the State Fire Marshal and shall be of such composition, character, and so located, discharged or fired so as to be safe in the opinion of the Chief of the Morgantown Fire Department.
- (6) The permittee shall require a bond from the licensee in a sum not less than \$1,000 conditioned on compliance with the provision of the West Virginia Code Chapter 29, Article 3E and the rules of the State Fire Marshal except where the licensee is an insured government entity.

(f) Exemptions. Except as otherwise provided by Paragraph (g) below, this section does not prohibit any of the following:

- (1) The use of fireworks by railroads or other transportation agencies for signaling purposes or illumination;
- (2) The use of agricultural and wildlife fireworks;
- (3) The sale or use of blank cartridges for a theatrical performance, use by military organization or signal or ceremonial purposes in athletics or sports; or
- (4) The possession, sale or disposal of fireworks incidental to the public display of fireworks by wholesalers or other persons who have a permit to possess, store and sell explosives from the Bureau of Alcohol, Tobacco, Firearms, and Explosives of the United States Department of Justice and the State Fire Marshal.

(g) Regulation of Consumer Fireworks. The use of consumer fireworks is prohibited within the City.

(h) Violations of this Section; Penalties. In addition to the regulations provided in subsection (g) above, the following acts constitute a violation of this section:

- (1) A person may not intentionally ignite, discharge or use consumer fireworks on public property or private property without the express permission of the owner to do so.

- (2) A person may not intentionally ignite or discharge any consumer fireworks or sparkling devices within or throw the same from a motor vehicle or building.
- (3) A person may not intentionally ignite or discharge any consumer firework or sparkling devices into or at a motor vehicle or building, or at any person or group of people.
- (4) A person may not intentionally ignite or discharge any consumer fireworks or sparkling devices while the person:
 - A. Is under the influence of alcohol;
 - B. Is under the influence of any controlled substance;
 - C. Is under the influence of any other drug; or
 - D. Is under the combined influence of alcohol and any controlled substance or any other drug.
- (5) A person who is less than sixteen years of age may not purchase, nor offer for sale, consumer fireworks.

(i) Miscellaneous Offenses; Penalties. Any person who violates a provision of this section for which a penalty is not expressly set forth is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100.00 nor more than \$500.00.

545.11 DISCHARGING FIREARMS.

(a) No person shall discharge any air gun, rifle, shotgun, revolver, pistol or other firearm within the corporate limits of the Municipality.

(b) This section does not apply when firearms are used in self-defense, in the discharge of official duty, which shall include wildlife management control at the Morgantown Municipal Airport as mandated by the Federal Aviation Administration, or when otherwise lawfully authorized.

545.12 THROWING OR SHOOTING MISSILES.

No person shall throw, shoot or propel an arrow, missile, pellet, stone, metal or other similar substance capable of causing physical harm to persons or property, in or on any public place, in or on the property of another, or from any private property into or onto any public place or the property of another. This section does not apply to supervised archery ranges or instruction nor when otherwise lawfully authorized.

~~545.13 AIR GUNS AND SPRING GUNS.~~

~~—(a) Definitions; Declared Illegal. "Air rifle", "air pistol" or "air gun" as mentioned in this section shall include any instrument or device for impelling with force any pellet, shell, ball or cartridge which will eject the same from such rifle, pistol or gun with sufficient force to carry the same for a distance of at least ten feet. The terms "similar instrument", "weapon" or "device", as used herein means any spring, rubber or mechanical device which creates sufficient force to carry any pellet, shell, ball or cartridge for a distance of at least ten feet. Any of the above instruments, weapons, rifles, pistols, guns or devices shall be illegal whether such force is produced by spring, air, rubber mechanism, mechanical devices or other means or methods producing sufficient pressure or force to eject any pellet, shell, ball or cartridge for a distance of ten feet from any such air rifle, air pistol, air gun or any other instrument, weapon or device.~~

~~—(b) Possession, Sale or Discharge. No person shall sell, offer for sale, display for sale or give to any other person any air rifle, air pistol, air gun, spring gun or similar instrument, weapon or device, or any other implement, instrument or device in which the propelling force is spring or air, or likewise any BB shots or other ammunition used, or intended to be used, therein or therefor. No person shall have any such instrument, weapon or device or BB shots in his possession or to use, discharge, shoot or fire the same within the City.—~~

~~—(c) Seizure. Any police officer of the City is hereby authorized to seize, remove and destroy any air rifle, air pistol, air gun or any other instrument, weapon or device, not a firearm, which impels with force a pellet of any kind, and which may be used, discharged, shot or fired within the City, or which may be sold, offered or exposed for sale therein, or which may be found to be in the possession of any person within the City. Likewise, any police officer is hereby authorized to remove any BB shots or ammunition for such instrument, weapon or device sold, offered or exposed for sale, or found or kept, within the City.—~~

~~545.14 SALE OF DANGEROUS WEAPONS.~~

~~—(a) License Required. No person shall sell, offer for sale, display, rent or exchange any dangerous or deadly weapons, including but not by way of limitation, any revolver, pistol, dirk, bowie knife, sling shot, billies, metallic or false knuckles or other weapons of like kind within the City without first obtaining a license to engage in any such business.
(1967 Code Sec. 31-8.)~~

~~—(b) Application. Any person desiring to obtain a license as required by subsection (a) hereof, shall apply to the Finance Director for such license upon an application form provided by the Finance Director, which form shall provide the following information:~~

- ~~—(1) Name of business;~~
- ~~—(2) Location of business;~~
- ~~—(3) Ownership of business;~~
- ~~—(4) Types of weapons to be sold;~~
- ~~—(5) Convictions of any felony or misdemeanor;~~
- ~~—(6) Such other information as the Finance Director may reasonably require.~~

~~—(c) Fee; License Year. The annual license fee for the license required by subsection (a) hereof shall be one dollar (\$1.00) and the license year shall begin on July 1 of each year.~~

~~—(d) Transferability. No license as required by subsection (a) hereof shall be transferable from one person to another or from one business location to another.~~

~~—(e) Display. The license required by subsection (a) hereof shall be prominently displayed at all times within the business location for which it was issued.~~

~~—(f) Records and Reports. Every person licensed under this section and engaged in the sale, rental or exchange of any weapon described in this section shall keep a record of each such weapon purchased, sold, rented or exchanged at retail. The record so required shall be made at the time of the transaction in a book kept for that purpose and shall include the name of the person to whom such weapon is sold or from whom such weapon is purchased; his age, physical~~

~~description, occupation and address; the make, caliber and finish of the firearm, together with the serial number thereof; or other appropriate description of the weapon; the date of the purchase, sale, rental or exchange of such weapon; and name of the employee or person making such sale, rental or exchange.~~

~~In addition to the foregoing record every such licensed person or dealer shall deliver daily reports to the Chief of Police of the City of every such purchase, sale, loan or exchange. Such report shall be on forms provided by the Police Department and shall set forth the name, age, address, physical description and occupation of the person to whom or from whom such gun, pistol, firearm or other deadly weapon has been purchased, sold, loaned or given and together therewith the make of such weapon, caliber, manufacturer's serial number or other appropriate description of such weapon.~~

~~545.15 SALE TO INTOXICATED PERSONS; MINORS.~~

~~No person or dealer licensed under this article shall sell, loan or furnish any of the dangerous or deadly weapons mentioned and described in this article to any person under the influence of alcohol, or any narcotic drug, stimulant or depressant, or to any person in a condition of agitation and excitability, or to a minor under the age of eighteen years or to an unnaturalized person.~~

~~545.16 SWITCH-BLADE KNIVES.~~

~~No person shall have in his possession, wear under his clothing or conceal about his person, or display in a threatening manner any knife commonly called "switchblade" having the appearance of a pocket knife, the blade of which can be opened by a flick of a button, pressure on the handle or other mechanical device. Such knife is hereby declared to be a dangerous and deadly weapon and shall be subject to forfeiture to the City as provided by Section 545.17.~~

~~545.17 FORFEITURE OF WEAPONS INVOLVED IN VIOLATION OF ARTICLE.~~

~~Whoever is convicted of violating this article shall forfeit to the City any dangerous or deadly weapon involved in or constituting such violation. Every police officer, upon making any arrest and taking a weapon used in a violation of this article, shall deliver the same to the Police Judge of the City to be held by him until the final determination of the prosecution for such offense, and upon a finding of guilt it shall then be the duty of the Police Judge to deliver such weapon forthwith to the Chief of Police of the City, who shall make proper disposition of the same by destruction or otherwise.~~

545.18 LIMITATIONS ON POSSESSING OR CARRYING FIREARM, DEADLY WEAPON, OR PEPPER SPRAY ON MUNICIPAL PROPERTY.

(a) Definitions. For the purposes of this section:

- (1) "Municipally owned or operated building" means any building that is used for the business of the municipality, such as a city hall, convention center, administrative building or other similar municipal building used for a municipal purpose permitted by State law: Provided, that "municipally owned or operated building" does not include a building owned by a municipality that is leased to a private entity where the municipality primarily serves as a property owner receiving rental payments, nor any

“Municipally owned recreation facility” as defined by West Virginia Code section 8-12-5a;

- (2) “Municipally owned recreation facility” means any municipal swimming pool, recreation center, sports facility, facility housing an after-school program or other similar facility where children are regularly present.
- (3) “Qualified retired law enforcement officer” means an individual who:
 - (A) Separated from service in good standing from service with a public agency as a law enforcement officer; and
 - (B) Before such separation, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest or apprehension under section 807(b) of title 10, United States Code; and
 - (C) Either:
 - (i) before such separation, served as a law enforcement officer for an aggregate of 10 years or more; or
 - (ii) separated from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency; and
 - (D) During the most recent 12-month period, has met, at the expense of the individual, the standards for qualification in firearms training for active law enforcement officers, as determined by the former agency of the individual, the State in which the individual resides, or, if the state has not established such standards, either a law enforcement agency within the State in which the individual resides or the standards used by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State; and
 - (E) Has neither been officially found by a qualified medical professional employed by the applicable agency to be unqualified for reasons relating to mental health nor entered into an agreement with the agency from which the individual is separating from service in which that individual acknowledges he or she is not qualified for reasons relating to mental health; and
 - (F) Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
 - (G) Is not prohibited by federal law from receiving a firearm; and
 - (H) Is in possession of the photographic identification required by United States Code Title 18, section 926C.

Provided, that this Paragraph (3) is intended to permit Qualified Retired Law Enforcement Officers as defined by United States Code Title 18, section 926C to carry a concealed firearm in the areas defined in this section, and in the case of a conflict between the definition used in said United States Code section and the definition in this section, the United States Code definition shall control.

(b) No person may carry or possess a firearm, deadly weapon, or pepper spray in a municipally owned or operated building; provided, that this prohibition shall not apply to the following persons:

- (1) Any law-enforcement officer or law-enforcement official or chief executive as defined in West Virginia Code 30-29-1;
- (2) Any qualified retired law enforcement officer;
- (3) Any person lawfully engaged in authorized wildlife management activities at the Morgantown Municipal Airport, including the storage or supervision of weapons incidental thereto.

(c) Carrying or possessing a firearm, deadly weapon, or pepper spray either openly, or not lawfully concealed, is prohibited in municipally owned recreation facilities, with the following exceptions:

- (1) This provision shall not prohibit a person with a valid concealed handgun permit from carrying an otherwise lawfully possessed firearm into a municipally owned recreation facility and securely storing the firearm out of view and access to others during the person's time at the municipally owned recreation facility;
- (2) This restriction shall not apply to any law enforcement officer or law enforcement official or chief executive as defined in West Virginia Code 30-29-1;
- (3) This restriction shall not apply to any qualified retired law enforcement officer.

(d) No person may carry or possess a firearm on municipally owned or operated property other than municipal public parking facilities regulated by paragraph (e) of this section; provided, that this prohibition shall not apply to the following persons:

- (1) Any law enforcement officer or law enforcement official or chief executive as defined in West Virginia Code 30-29-1;
- (2) Any qualified retired law enforcement officer;
- (3) Any person holding a valid concealed handgun license pursuant to West Virginia state law;
- (4) Any person lawfully engaged in authorized wildlife management activities at the Morgantown Municipal Airport, including the storage or supervision of weapons incidental thereto.

~~(e) Any person lawfully authorized may carry a concealed firearm in a municipal public parking facility; provided that a person may only leave an otherwise lawfully possessed firearm in a motor vehicle in municipal public parking facilities if the vehicle is locked and the firearm is out of view. A person may not keep a deadly weapon, firearm, or pepper spray in municipal public parking facilities unless (1) the deadly weapon, firearm, or pepper spray is lawfully possessed; (2) the vehicle is locked; and (3) the deadly weapon, firearm, or pepper spray is out of view.~~

~~(f) This section does not restrict the carrying or possessing of firearms, which are otherwise lawfully possessed, on public streets and sidewalks of the City; provided, that whenever pedestrian or vehicular traffic is prohibited in an area of the City for the purpose of a temporary event of any time up to but not in excess of fourteen days, which is authorized by the City, no person may possess a firearm in the area where the event is held except those persons exempt by the provisions of subsection (b) or (d) above.~~

~~(g)~~ (f) This section does not restrict the carrying or possessing of firearms at the Morgantown Municipal Airport by any person who is not otherwise prohibited by Title 18, Chapter 44, of the

United States Code, as amended, from transporting, shipping or receiving a firearm and who is transporting a firearm for any lawful purpose from any place where he or she may lawfully possess and carry such firearm to any other place where he or she may lawfully possess and carry such firearm if, during such transportation the firearm is unloaded, and neither the firearm nor any ammunition being transported is readily accessible or is directly accessible from the passenger compartment of such transporting vehicle; provided, that in the case of a vehicle without a compartment separate from the driver's compartment the firearm or ammunition shall be contained in a locked container other than the glove compartment or console. The exception provided by this subsection (g) applied to transportation of an unloaded firearm outside a transporting vehicle.

~~(h)~~ (g) It shall be an absolute defense to an action for an alleged violation of an ordinance authorized by this section prohibiting or regulating the possession of a firearm deadly weapon, or pepper spray that the person: (1) Upon being requested to do so, left the premises with the firearm, deadly weapon, or pepper spray or temporarily relinquished the firearm, deadly weapon, or pepper spray in response to being informed that his or her possession of the firearm, deadly weapon, or pepper spray was contrary to municipal ordinance; and (2) but for the municipal ordinance the person was lawfully in possession of the firearm, deadly weapon, or pepper spray.

~~(i)~~ (h) The City Manager shall cause to be prominently posted a clear statement at each entrance to all applicable municipally owned or operated buildings and municipal recreation facilities regulated by this section setting forth the terms of the regulation or prohibition.

545.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99(a) for general Code penalty if no specific penalty is provided.)

- (a) Whoever violates Section 545.02 shall be fined not more than two hundred dollars (\$200.00) or imprisoned not more than thirty days, or both.
- (b) Whoever violates Section 545.05 to 545.09 shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both.
- (c) Whoever violates Section 545.04 shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than thirty days, or both.
- (d) Notwithstanding the provisions of subsection (c) of this section, any person:
 - (1) Who has been convicted in this State or any other jurisdiction of a felony crime of violence against the person of another or of a felony sexual offense; or
 - (2) Who has been convicted in this State or any other jurisdiction of a felony controlled substance offense involving a Schedule I controlled substance other than marijuana, a Schedule II or a Schedule III controlled substance as such are defined in West Virginia Code 60A-2- 204, 60A-2-205 and 60A-2-206, and who possesses a firearm as such is defined in Section 545.01 shall be guilty of a felony and shall be prosecuted under appropriate State law. The provisions of Section 545.04(b) shall not apply to persons convicted of offenses referred to in this subsection or to persons convicted of a violation of this subsection.

This ordinance is effective June 2, 2020.

FIRST READING: _____

SECOND READING: _____

ADOPTED: _____

FILED: _____

Mayor

City Clerk

AN ORDINANCE AMENDING ARTICLE 747 ESTABLISHING FIRE PROTECTION SERVICE CHARGES

WHEREAS, the City of Morgantown has increased fire protection capabilities by adding twelve firefighters with funding assistance from the Federal Emergency Management Agency under a Staffing for Adequate Fire & Emergency Response Grant; and

WHEREAS, the grant funding period expires in the forthcoming fiscal year and maintenance of these additional firefighter positions requires increased funding to pay for the firefighters' services; and

WHEREAS, the Chief of the Fire Department has proposed establishment of fire fees with respect to hazard classifications to ensure the fire protection service charges imposed upon users adequately fund the particular response obligations of the Fire Department with respect to activities that create greater community danger and demand additional capabilities and resources; and

WHEREAS, the City Council intends to establish the required funding to pay for continued firefighters' services and to establish a timeline for the provision of a proposal necessary to evaluate the establishment of a hazard classification program;

NOW, THEREFORE, The City of Morgantown hereby ordains that Article 747 is amended as follows:

747.01 DEFINITIONS.

(a) "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.

(b) "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.

(c) "Gross square footage" 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.

(d) "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.

747.02 LEVY AND IMPOSITION OF FEE.

(a) Gross floor 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 ~~7.66~~ 9.42 cents per square foot of space within each structure, per annum. Structures exceeding three floors shall be charged an additional ~~4.84~~ 5.95 cents per square foot of space for each additional space above the third floor.

(b) 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 747.02, 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:

- (i) the manner in which a hazard classification is established and the various hazard classifications that may apply to properties within the City;
- (ii) 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
- (iii) a count or estimate of the number of properties within the City to which a hazard classification would apply
- (iv) a summary of the additional costs imposed upon the Fire Department by the maintenance of such property uses within the City
- (v) 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
- (vi) 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 Measure and to assign Hazard Classifications. The gross square footage of each structure shall be determined by the Fire Chief ~~duly authorized and designated agents of the City~~ 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 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. 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 gross square footage thereof determined in accordance with this Article.

~~(b)~~ (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 8760 hours. Additional charges for expendable materials not otherwise contracted for by the City shall also be levied.

~~(e)~~ (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.

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. ~~For the period October 1, 1983 through June 30, 1984, the first installment shall be due on November 1, 1983, and the second installment shall be due April 1, 1984. Thereafter, the installments~~ Installment payments shall be due on August 15 and February 15 of each succeeding City fiscal year. Users who pay the entire annual fee prior to the due date of the first installment shall receive a five percent (5%) discount. There shall be a late payment penalty in the amount of five percent (5%) of all amounts remaining unpaid as of February 15 of each City fiscal year.

747.04 FEE LIST; PUBLICATION OF NOTICE OF AVAILABILITY.

The Finance Director is hereby directed to prepare, no later than July 1 of each year, ~~except for the period October 1, 1983, through June 30, 1984, no later than October 1, 1983,~~ an alphabetical listing of the names of the users of the fire protection service, a description, to include the 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 is further directed, upon completion of the preparation of the list, to publish a notice, not less often than once each week for two consecutive weeks, in a newspaper of general circulation in the City, informing the public that the list has been prepared and that interested persons may view the list during regular office hours at the Finance Director's office.~~

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 thirty 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 thirty 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 sixty days after being served with the notice of Council's order.

747.06 CREATION OF APPEAL BOARD.

(EDITOR'S NOTE: Former Section 747.06 was repealed by Ordinance 96-32, passed November 19, 1996.)

747.07 RULES AND REGULATIONS.

~~Council~~ The Finance Director shall have the right to make and promulgate ~~from time to time as it deems necessary suitable~~ regulations governing the implementation of this Article, services herein and hereby provided, 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.

747.08 USE OF FUNDS.

The funds, moneys and revenues received from the collection of the fees levied and imposed in 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.

747.09 FEE IS SUPPLEMENTARY; DEBT TO CITY.

The fee levied and imposed in 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 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.

747.10 NO USER OF SERVICE EXEMPT FROM FEE.

No person or organization defined in 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.

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 ninety days from the date the notice is mailed. Any requests for adjustments or corrections to the assessment ~~must be appealed~~ may be submitted pursuant to Municipal Code Section 747.05, except that the request for review may be submitted at any time within ninety days from the date the notice was mailed.

747.99 PENALTY.

(EDITOR'S NOTE: See Section 701.99 for general Code penalty.)

This ordinance is effective July 1, 2020.

FIRST READING: _____

SECOND READING: _____

ADOPTED: _____

FILED: _____

Mayor

City Clerk

AN ORDINANCE AMENDING THE FY 2019-2020 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 2019-2020 Annual Budget of the General Fund of the City of Morgantown is amended as shown in the revised budget (Revision 04) attached hereto and made a part of this ordinance.

First Reading:

Adopted:

Mayor

Filed:

Recorded:

City Clerk

REQUEST FOR REVISION TO APPROVED BUDGET

Ora Ash, Deputy State Auditor
 West Virginia State Auditor's Office
153 West Main Street, Suite C
 Clarksburg, WV 26301
 Phone: 627-2415 ext. 5114
 Fax: 627-2417

Subject to approval of the state auditor, the governing body requests that the budget be revised prior to the expenditure or obligation of funds for which no appropriation or insufficient appropriation currently exists. (§ 11-8-26a)

CONTROL NUMBER
 Fiscal Year Ending: **2019-2020**
 Fund: **General**
 Revision Number: **4**
 Pages: **1 of 3**

City of Morgantown
 GOVERNMENT ENTITY

Person To Contact Regarding Request:
 Name: **James M. Goff**
 Phone: **304-284-7407**
 Fax: **304-284-7418**

389 Spruce Street
 STREET OR PO BOX

Municipality
 Government Type

Morgantown 26508
 CITY ZIP CODE

REVENUES: (net each acct.)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
301-01	Property Taxes - Current Expense (Page 3-Net)	4,345,398		75,000	4,270,398
304	Excise Tax on Utilities	1,195,000		55,000	1,140,000
305	Business and Occupation Tax	15,600,000	775,000		16,375,000
306	Wine & Liquor Tax	606,000	54,000		660,000
308	Hotel Occupancy Tax	850,000		50,000	800,000
309	Amusement Tax	10,000		5,000	5,000
NET INCREASE/(DECREASE) Revenues (ALL PAGES)			428,000		

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

EXPENDITURES: (net each account category)

(WV CODE 7-1-9)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
409	Mayor's Office	11,488		1,500	9,988
410	City Council	68,518		1,000	67,518
412	City Manager's Office	942,928		12,000	930,928
414	Finance Office	1,092,586	38,900		1,131,486
415	City Clerk	185,999	22,500		208,499
420	Engineering	548,204		88,500	459,704
422	Personnel Office	446,710		30,400	416,310
436	Building Inspection	1,226,609	29,000		1,255,609
437	Planning & Zoning	417,800		92,500	325,300
439	Data Processing	365,010		21,000	344,010
444	Contributions / Transfers to Other Funds	5,760,440	175,000		5,935,440
NET INCREASE/(DECREASE) Expenditures			428,000		

APPROVED BY THE STATE AUDITOR

BY: Deputy State Auditor, Local Government Services Division Date

AUTHORIZED SIGNATURE OF ENTITY

APPROVAL DATE

EXPENDITURES (CONT'D)

LGSD: BR City of Morgantown

City of Morgantown

CONTROL NUMBER:

2019-2020

General

4

BUDGET REVISION REQUEST-SUPPLEMENT

FY

FUND

REV#

ACCOUNT NUMBER	ACCOUNT CATEGORY	PREVIOUSLY APPROVED AMOUNT	INCREASE	DECREASE	REVISED AMOUNT
699	Contingencies*	272,884	16,000		288,884
700	Police Department	9,190,187	36,000		9,226,187
706	Fire Department	6,562,007	120,000		6,682,007
750	Streets and Highways	2,857,090	12,000		2,869,090
800	Garbage Department	1,287,000	263,000		1,550,000
900	Parks & Recreation	1,618,400		12,500	1,605,900
901	Visitors Bureau	425,000		25,000	400,000
	#N/A				
NET INCREASE/(DECREASE) Expenditures (this page)					409,500

CITY OF MORGANTOWN					
GENERAL FUND - REVISION 04					
FY 2019-2020					
ACCT		BUDGET	PROPOSED	PROPOSED	
NO	REVENUES	FY20	REV 04	AMENDED	EXPLANATION OF PROPOSED ADJUSTMENTS
				BUDGET	
301	Property Taxes	4,345,398	(75,000)	4,270,398	Based on collections of current and prior year taxes
304	Utility Excise Taxes	1,195,000	(55,000)	1,140,000	Mainly from reductions in electric and telephone taxes
305	B&O Taxes	13,300,000	500,000	13,800,000	Increased revenues up through COVID-19 closures - retail, service & contracting
305.01	B&O Construction Taxes	2,300,000	275,000	2,575,000	Continued large construction projects - Children's Hospital and Reynolds Hall
306	Wine & Liquor Taxes	606,000	54,000	660,000	Actual revenue is down 21% from 2018
308	Hotel Occupancy Taxes	850,000	(50,000)	800,000	COVID-19 travel limitations
309	Amusement Taxes	10,000	(5,000)	5,000	COVID-19 closures
320	Fines, Fees & Court Costs	500,000	(100,000)	400,000	COVID-19 court closure
328	Franchise Fees	352,500	(48,000)	304,500	Reduction in cable payments - declining subscribers
341	Municipal Service Fees	4,500,000	(100,000)	4,400,000	COVID-19 furloughs, layoffs and closures
345	Rents	83,000	(72,000)	11,000	Lack of 3rd party tenants on 2nd floor of 430 Spruce Annex
352	Fire Protection Fees	3,371,100	(30,000)	3,341,100	Based on collections for the year
350	Refuse Collection Fees	1,300,000	175,000	1,475,000	Based on MUB remitted collections for the year
365	Federal Grants	939,000	(95,000)	844,000	Police and Fire equipment grants not awarded
380	Interest Earned	80,000	(10,000)	70,000	Federal Reserve interest rate cuts
382	P-Card Rebates	36,000	36,000	72,000	Increased P-Card usage for purchasing - rebate based on total spend
383	Sale of Assets	10,000	28,000	38,000	Retired vehicles sold at auction
			428,000		
ACCT		BUDGET	PROPOSED	PROPOSED	
NO	EXPENDITURES	FY20	REV 04	AMENDED	EXPLANATION OF PROPOSED ADJUSTMENTS
				BUDGET	
699	Contingency	272,884	16,000	288,884	Excess of total revenues to total expenses, up to 10% of General Fund budget allowed to be carried as Contingency amount.
409	Mayor	11,488	(1,500)	9,988	Voluntary reduction in salary
410	City Council	68,518	(1,000)	67,518	Voluntary reductions in salaries
412	City Manager	942,928	(12,000)	930,928	Voluntary reductions in salaries and City Manager vacancy offset by increase in contracted services
414	Finance	1,092,586	38,900	1,131,486	Increase in salaries & benefits for the Financial Reporting Manager partially funded by an increase in MPA admin fees offset by voluntary reductions in salaries
415	City Clerk	185,999	22,500	208,499	Group health insurance changes during open enrollment
420	Engineering	548,204	(88,500)	459,704	Voluntary reduction in salary and savings from vacant positions
422	Human Resources	446,710	(30,400)	416,310	Voluntary reduction in salary and reduction in wellness program for clinic savings
436	Code Enforcement	1,226,609	29,000	1,255,609	Salary cost and increase in group health
437	Planning & Zoning	417,800	(92,500)	325,300	Voluntary reduction in salary, savings from vacant position, and professional service decrease
439	IT	365,010	(21,000)	344,010	Reduction in contract services offset by increases in salaries and OT
444	Capital Escrow - Construction	2,300,000	275,000	2,575,000	B&O Construction tax increase
444	Capital Escrow - MSF	2,385,000	(100,000)	2,285,000	MSF revenue decrease
901	Contribution - CVB	425,000	(25,000)	400,000	50% of Hotel Occupancy Tax reduction
900	Contribution - BOPARC Hotel Tax	170,400	(12,500)	157,900	25% of Hotel Occupancy Tax reduction
700	Police	9,190,187	36,000	9,226,187	Increase in overtime and property & liability insurance offset by savings from vacant officer positions
706	Fire	6,562,007	120,000	6,682,007	Increases in overtime from holiday pay change and property & liability insurance
750	Street	2,857,090	12,000	2,869,090	Increase in property & liability insurance
800	Refuse Collection	1,287,000	263,000	1,550,000	Based on Republic and MUB monthly charges
			428,000		

AN ORDINANCE AMENDING THE FY 2019-2020 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE COAL SEVERANCE FUND.

The City of Morgantown hereby ordains:

That the FY 2019-2020 Annual Budget of the Coal Severance Fund of the City of Morgantown is amended as shown in the revised budget (Revision 02) attached hereto and made a part of this ordinance.

First Reading:

Adopted:

Mayor

Filed:

Recorded:

City Clerk

REQUEST FOR REVISION TO APPROVED BUDGET

Ora Ash, Deputy State Auditor
 West Virginia State Auditor's Office
153 West Main Street, Suite C
 Clarksburg, WV 26301
 Phone: 627-2415 ext. 5114
 Fax: 627-2417

Subject to approval of the state auditor, the governing body requests that the budget be revised prior to the expenditure or obligation of funds for which no appropriation or insufficient appropriation currently exists. (§ 11-8-26a)

CONTROL NUMBER
 Fiscal Year Ending: **2019-2020**
 Fund: **002**
 Revision Number: **2**
 Pages: **1 of 1**

City of Morgantown
 GOVERNMENT ENTITY

Person To Contact Regarding Request:
 Name: **James M. Goff**
 Phone: **304-284-7407**
 Fax: **304-284-7418**

389 Spruce Street
 STREET OR PO BOX

Municipality
 Government Type

Morgantown 26508
 CITY ZIP CODE

REVENUES: (net each acct.)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
310	Coal Severance Tax	80,000		2,500	77,500
	#N/A				
NET INCREASE/(DECREASE) Revenues (ALL PAGES)			-2,500		

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

EXPENDITURES: (net each account category)

(WV CODE 7-1-9)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
900	Parks & Recreation	80,500		2,500	78,000
	#N/A				
NET INCREASE/(DECREASE) Expenditures			-2,500		

APPROVED BY THE STATE AUDITOR
 BY: _____ Date _____
 Deputy State Auditor, Local Government Services Division

AUTHORIZED SIGNATURE
 OF ENTITY

APPROVAL
 DATE

**AN EMERGENCY ORDINANCE CONTINUING THE STATE OF EMERGENCY AND
AUTHORIZING ADDITIONAL OUTDOOR COMMERCIAL USES TO HELP
PREVENT HARM TO THE PUBLIC DURING THE COVID-19 PANDEMIC**

WHEREAS, the City Council has authority to address threats to the public health and safety in accordance with West Virginia Code sections 8-12-5 paragraphs 23, 40, and 44; and

WHEREAS, the ongoing COVID-19 Pandemic threatens public health in the City; and

WHEREAS, effective March 16, 2020, the Governor of the State of West Virginia has declared a state of emergency in all fifty-five West Virginia counties as a result of the COVID-19 pandemic; and

WHEREAS, on March 23, 2020, the Governor of the State of West Virginia issued Executive Order 9-20, denominated the “Stay at Home” Order, ordering citizens to stay at their residences unless an exception permitted travel; and

WHEREAS, avoiding large gatherings and limiting close interactions with others outside our homes, in compliance with guidelines from public health officials and as directed by Executive Order 9-20 issued by the Governor of the State of West Virginia, have been effective to limit the spread of disease and conserve essential medical resources; and

WHEREAS, on April 4, 2020, the Governor of the State of West Virginia issued Executive order 21-20, expanding the restrictions in the Stay at Home Order in Harrison, Kanawha, and Monongalia Counties and granting additional authorities to the Health Departments in these counties to impose measures restricting gatherings and travel to respond to the COVID-19 pandemic; and

WHEREAS, Executive Order 21-20 designates Monongalia County as a “hot spot” due to the prevalence of COVID-19 infections relative to other areas of the state and imposes restrictions limiting outdoor gatherings to no more than five people and requiring essential businesses to have employees work remotely to the maximum extent possible; and

WHEREAS, taking these steps to limit interpersonal interaction has been determined by public health experts to be essential to avoiding a rapid increase in the spread of COVID-19 infections that would be likely to overwhelm available health care resources and limit the ability of the health care system to not only treat victims of COVID-19 but also to treat others with emergent medical needs; and

WHEREAS, on April 30, 2020, the Governor of the State of West Virginia issued Executive Order 34-20, denominated the “Safer at Home” Order, lifting many of the mandatory restrictions

on travel and gatherings in the Stay at Home Order and providing relaxed restrictions for business occupancies and the size of social gatherings;

WHEREAS, the Governor of the State of West Virginia has issued guidelines and schedules for the resumption of businesses and other facilities welcoming the public, together with measures intended to limit the further spread of COVID-19 infections as members of the public enter and gather at such businesses and facilities; and

WHEREAS, City Council finds and determines that renewed gathering and travel should promote outdoor activity, rather than indoor gatherings, to the greatest extent possible to promote physical distancing and limit the spread of COVID-19 infections; and

WHEREAS, one method available to the City to promote outdoor activity rather than indoor activity, along with physical distancing practices, is to relax enforcement of laws regulating the use of outdoor spaces at businesses and requiring the use of those spaces for parking; and

WHEREAS, City Council finds and determines that these measures are effective and necessary means to ensure that all members of the public are protected to the greatest extent practicable from the effects of the ongoing COVID-19 pandemic; and

WHEREAS, West Virginia Code Chapter 8, Article 11, Section 3(d) provides that City Council may enact an emergency ordinance without following the ordinary procedures prescribed by law in the case of a pressing public emergency making action under the ordinary procedure dangerous to the public health, safety or morals, and by affirmative vote of two thirds of the members of Council; and

WHEREAS, the nature of any emergency justifying adoption of an emergency ordinance must be set out in full in the ordinance; and

WHEREAS, the ongoing spread of the COVID-19 pandemic and the state and federal guidelines providing for the resumption of public gatherings and reopening of businesses and facilities welcoming the public create a pressing public need to respond to renewed activity by altering local laws and regulations to promote outdoor activity and physical distancing to limit the further spread of COVID-19 infections, and this pressing public need justifies adoption of this emergency ordinance; and

WHEREAS, West Virginia Code Chapter 8, Article 11, Section 2 authorizes delegation of duties by Council to an officer when it would be impracticable to lay down by ordinance for all cases a uniform guide for exercising such discretion; and

WHEREAS, the nature of the COVID-19 pandemic requires discretion to respond to the developing spread of the disease such that discretion to employ the specific emergency measures authorized by this Ordinance must be delegated to an officer of the City;

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

Article I. Continuation of Declaration of Emergency; Authority of City Manager;
Implementation of Authority

SECTION 1. The Governor of the State of West Virginia declared a state of emergency in all fifty-five counties in West Virginia effective March 16, 2020 due to the ongoing COVID-19 pandemic. The state of emergency remains in effect as of the date of adoption of this ordinance.

SECTION 2. The City of Morgantown recognizes the declared state of emergency as effective within the City and hereby declares that such state of emergency shall continue within the City until the declaration of a state of emergency is terminated by the Governor. The City of Morgantown recognized and declared the state of emergency in the City under Emergency Ordinance 2020-1, which ordinance was made effective for a period of ninety (90) days and the provisions of which would expire without further action. The state of emergency in the City and the authorities enacted within Emergency Ordinance 2020-1 are hereby continued in effect until they expire pursuant to the terms of this Ordinance.

SECTION 3. In accordance with West Virginia Code Chapter 15, Article 5, Section 8, each political subdivision in which any disaster as described in *W. Va. Code* § 15-5-1 occurs shall have the power to enter into contracts and incur obligations necessary to combat such disaster, protect the health and safety of persons and property and provide emergency assistance to the victims of such disaster. Each political subdivision is authorized to exercise its powers under this section in light of the exigencies of extreme emergency situations without regard to time-consuming procedures and formalities prescribed by law (excepting mandatory constitutional requirements) pertaining to the performance of public work, entry into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, levying of taxes and appropriation and expenditure of public funds.

SECTION 4. The City Manager is hereby authorized and directed to exercise these authorities, with the advice and direction of Council, to combat the COVID-19 pandemic giving rise to the above-referenced declaration of a state of emergency by the Governor.

SECTION 5. During the effective period of this Ordinance, the City Manager is authorized and directed to implement all appropriate and necessary measures authorized by this Ordinance to address the COVID-19 pandemic, consistent with the advice and direction of City Council.

SECTION 6. Prior to implementing any such authority or authorities, the City Manager shall adopt a written order identifying the authority to be employed and the means to be used in employing the authority, and the written order shall be delivered to each member of City Council, to the City Clerk, who shall keep a record of such order, and shall be made available to the public.

SECTION 7. The restrictions established by this Ordinance shall apply only upon issuance of a written order of the City Manager pursuant to Section 2 of this Article, and only to the extent stated therein.

Article II. Suspending enforcement of certain Minimum Parking Requirements and Temporary Sign Regulations

SECTION 1. To help businesses reopening meet physical distancing and related rules or guidelines under emergency orders of the State of West Virginia or the Monongalia County Health Department, the City Manager is hereby authorized and directed to temporarily suspend the enforcement and administration of certain Planning and Zoning Code provisions identified in this Article II. Suspending enforcement will allow businesses to use additional outdoor space, otherwise used for parking, to expand dining or sales operations. Suspending enforcement will also allow businesses taking advantage of these opportunities to indicate their services to the public with appropriate signs.

SECTION 2. The enforcement activities to be suspended are as follows:

- a. Minimum Parking Requirements. Existing off-street parking spaces serving existing nonresidential uses located in nonresidential zoning districts (exclusive of the R-1, R-1A, R-2, and R-3 zoning districts, but including established commercial uses that are open to the public and which constitute a lawful nonconforming use) may be used during this temporary enforcement suspension period by restaurant, retail sales and like nonresidential uses for dining, seating, and/or the display of merchandise, products, produce, plants, materials, equipment, appliances, etc. under the following conditions:
 - (i) Existing accessible parking spaces, access points, and routes must remain open and accessible.
 - (ii) Existing off-street parking spaces used for dining, seating, and/or display should be protected from adjoining parked vehicles and drive aisles.
 - (iii) Freestanding canopies, awnings and the like used to temporarily cover and/or enclose dining, seating, and/or display areas within existing off-street parking spaces must be secured appropriately and shall obtain related building permits if required.
- b. Temporary Signage. The following provisions are set forth for temporary signs erected between April 1, 2020 and the end of this temporary enforcement suspension period.
 - (i) Temporary sign permits will not be required.
 - (ii) Temporary signs erected during this period will not be counted toward the maximum number of temporary signs erected within a 12-month period as set forth in Section 1369.07 (H)(3) of the Planning and Zoning Code.
 - (iii) Temporary signs erected during this period and without a temporary sign permit shall be removed within thirty (30) days following the end of enforcement suspension. Temporary signs erected during this period may

continue if a permit for the sign is obtained in compliance with Section 1369.07 (H) of the Planning and Zoning Code.

- (iv) Temporary signs erected during this period may not exceed 32 square feet in surface area and may not obstruct a clear sight triangle nor present a hazard to the general public.

This ordinance shall be effective upon adoption and shall lapse without further action on September 25, 2020.

ADOPTED: _____

Mayor

FILED: _____

City Clerk



The City of Morgantown

389 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505
OFFICE: (304) 284-7405 FAX: (304) 284-7430
www.morgantownwv.gov

Office of the City Manager

City Manager's Report for City Council Meeting on March 19, 2020

Information:

A. City's Update on 2020 Census

We continue to work with our Census Partner, Carol Bush, to make sure everyone is counted in the 2020 Census. Morgantown's overall response rate (as of May 10, 2020) is only 44.6%, which is lower than the county, state and national averages. The City continues to promote the Census through social media and our local broadcast on Channel 15. Additionally, the City is going to be including Census information in paper mailings that will be going out to over 5,000 businesses over the next month in business license renewals, Municipal Service Fee returns, and Business and Occupation returns.

While the City continues to push out messaging, we need everyone's help to make sure each and every resident of Morgantown and Mon County is counted. Our community depends on the funding that is governed by results of the Census. Please make sure your neighbors, friends, and families all complete the Census. It is quick and easy to complete and can even now be done online.

B. City's Update about the Coronavirus (COVID-19) in West Virginia

As Governor Justice continues to lift restrictions across the state, it is important to know that this pandemic is far from over. We must continue to proceed cautiously. The City is preparing to slowly reopen facilities to employees and the public while still maintaining social distancing and promoting public safety. We all want things to return to normal, but I feel more confident that we will be returning to a "new normal" in the coming months.

For staff who will be returning to work, some will be relocating their office to promote social distancing. Various administrative staff have moved into 430 Spruce Street first floor offices, and others will move into those vacated offices in City Hall. Others will continue to work remotely for a time. It is important to know that management has been working with all staff to address any concerns or childcare issues.

The tentative planned date for reopening City buildings to the public is Tuesday, May 26, 2020. It is crucial that we begin to reopen to ensure the City can provide

services to all residents and businesses. Staff will be provided personal protective equipment and visitor access will be limited in number and certain areas or by appointment only.

Additionally, City staff continue to look for ways to minimize contact and enhance public safety. Temporary programs are being put in place to allow businesses to expand their opportunities to serve customers safely. We also continue to provide ways for our customers to complete applications, forms, payments, etc. through online platforms or over the phone.

C. Temporary Outdoor Dining Program

In an effort to promote safe public access to restaurants and businesses following the “Safer-at-Home” Order by Governor Justice, the City of Morgantown is expanding use of public space for outdoor dining. While the City has a permanent outdoor dining program, it is limited to the downtown area only, includes a fee, and has a somewhat lengthy application process.

By using this temporary program, the City is able to extend the outdoor dining to include any area of the City, shorten the application and review process, and provide these permits free of charge. This temporary outdoor dining program will be offered from May 12 to August 31.

Restaurants can complete an application and provide a simple drawing of where they intend to have tables and chairs. These applications will be reviewed by City staff, and the City will issue temporary permits. There are several restaurants who have already taken advantage of outdoor dining within the City. For more information or to obtain a copy of the application, visit Morgantown’s COVID-19 website.

New Business:

A. Award of contract for City Manager Recruitment Firm

After City Council’s interviews of the top three recruitment firms and indication of the Novak Consulting Group as their preferred firm, City Administration has worked with the Novak Consulting Group to develop a contract for services for the executive recruitment for the next City Manager. The services covered in the contract include a turn key approach, in which the consultant will assist in all parts of the recruitment process, including gathering information, preparing brochures, recruiting and vetting candidates, and helping to coordinate interviews. The cost of the contract is \$24,300 plus direct expenses such as ads and background checks.

Staff recommends to City Council that they authorize the Interim City Manager to execute the agreement with the Novak Consulting Group.

B. Acceptance of Morgantown Grant from FAA

The City has received a CARES Act Grant Offer from the Federal Aviation Administration (FAA), Grant No. 3-54-0015-043-2020, in the amount of \$69,000 for the Airport Improvement Program. The FAA offer includes an agreement to pay 100% percent of the allowable costs incurred as a result of and in accordance with this Grant Agreement. This grant is set up to cover operational costs (such as payroll) at the Morgantown Municipal Airport during the current COVID-19 pandemic.

City Council must provide authority to execute and accept the grant

C. Bid award – 8th Street Trailhead Project

The City has sought bids for the construction of the 8th Street Trailhead, providing access to the Caperton Trail. The project includes concrete stairs, bike runnels, signage, and bicycle shelter. This project will utilize funding from the Sunnyside TIF to complete the project.

Attached, you will find a memorandum from City Engineer, Damien Davis, PE, detailing the responding contractors and tabulation of the bids. The Department is recommending MonCo Constructors be awarded the contract for the bid amount of \$92,333.00. Although this bid was significantly lower than others received, the contractor is confident in their pricing and the Engineering Department confirmed their submission is complete and adhered to the Bid Call.

Council action is needed in awarding the bid to the recommended contractor.

Emily Muzzarelli, PE
Interim City Manager, Morgantown, WV

Self-Response by Census Tract

Click icon to open or close the share menu

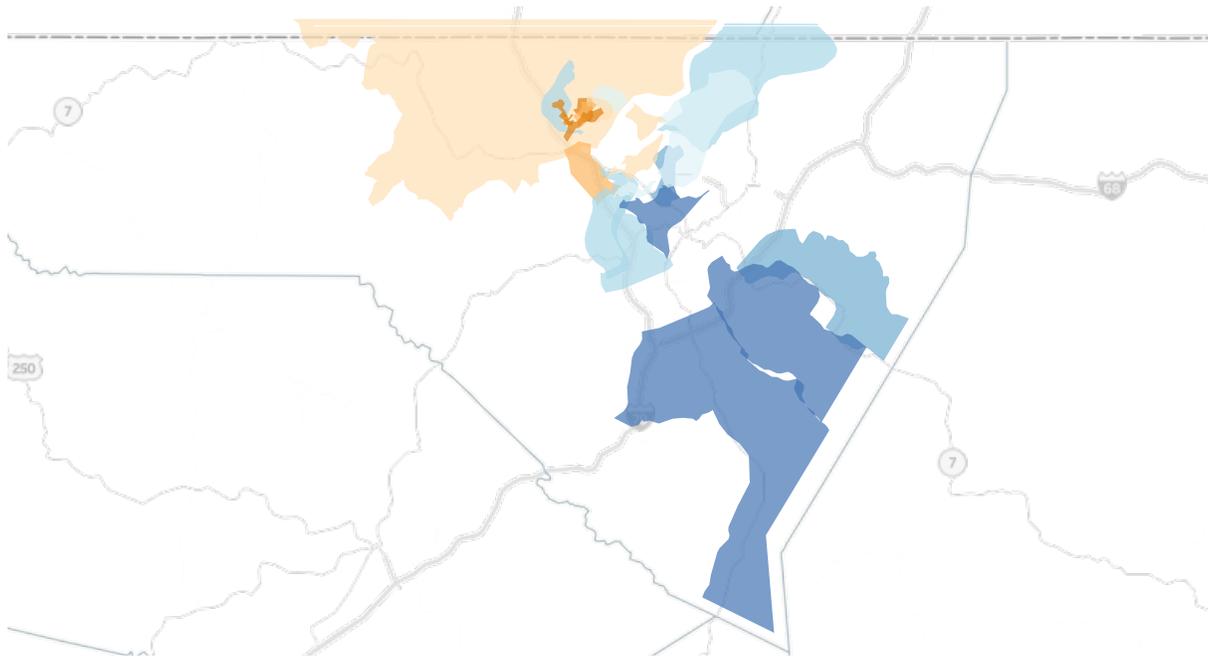
This map features self-response rates from households that responded to the 2020 Census online, by mail, or by phone. Rates can be viewed in [rankings here](#).

Morgantown, West Virginia
Self-Response

44.6%

Tract 101.01
Self-Response

21.3%



- Select Mode
 - Total
- Select State
 - West Virginia
- Select City
 - Morgantown
- Geographies
 - Return to State
 - County
 - City
 - Census Tract
 - Congressional District
 - Town and Township
 - Tribal Area



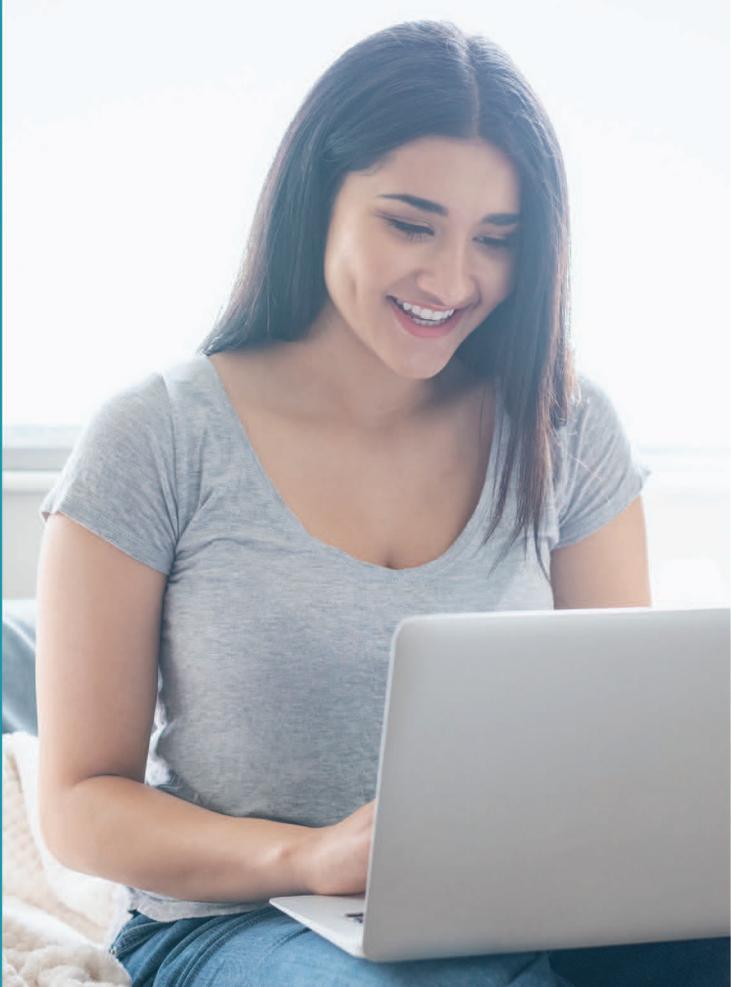
Tract 101.01, Morgantown Self-Response Rate

Total **21.3%**

Internet **16.7%**

For questions, email responseratemap@census.gov
 Responses received as of 5/10/2020.
[Click here for technical details](#)





Respond your way to the 2020 Census.

By April 1, 2020, every home will receive an invitation to participate in the 2020 Census. You will have three options for responding. All of them are easy!



Online



By Phone



By Mail

The 2020 Census marks the first time you will be invited to respond online—even on your mobile device. The online form is available in many different languages. Visit 2020CENSUS.GOV for more information about responding online.

2020CENSUS.GOV

D-HP-GP-EN-417

Shape
your future
START HERE >

United States[®]
Census
2020

Census data impacts funding for things like:

- > Education programs and grants
- > Public transportation
- > Medicare and Medicaid
- > Supplemental Nutrition Assistance Program
- > Libraries
- > Community centers
- > School meal programs
- > Parks, playgrounds, and recreational facilities

For more information, visit:
2020CENSUS.GOV

Shape
your future
START HERE > | United States[®]
Census
2020

Responding to the 2020 Census without a Census ID

How do I respond without an ID?

On the 2020 Census response website, select the link under the login button that says, “If you do not have a Census ID, click here.”

Can I respond online without an ID on any device or browser?

Yes. Responding online without an ID works on most modern devices. For best results use the two latest versions of the following browsers: Internet Explorer, Edge, Chrome, Safari, Firefox, Samsung Native.

Is my response affected if I don't use a Census ID?

Your Census ID allows us to immediately match your response to an address. If you respond without your Census ID, we'll ask you for your address when you respond so we can link your response to your address.

How do I provide my address?

When responding online without an ID, there are three options for entering an address:

1) STREET ADDRESS

For this option, you will be prompted to enter an address number, street name, and either the city and state or the ZIP Code. If a valid street address isn't available, check the box that says, “I do not have a street address” and you can proceed to enter a rural route address or other address/location (see options below).

2) RURAL ROUTE ADDRESS

A rural route address includes a rural route descriptor, rural route number, rural route box ID number, city and state or ZIP Code.

3) OTHER ADDRESS/PHYSICAL LOCATION

If you do not have a rural route address, the system will first ask if you are experiencing homelessness. Then, it will invite you to enter a city, state, ZIP Code, and description of the physical place where you live.

PROFESSIONAL SERVICES AGREEMENT

This Consulting Agreement (“Agreement”) is entered into this ___ day of _____, 2020 (hereinafter referred to as the effective date of the Agreement) by and between the City of Morgantown, 389 Spruce Street, Morgantown, WV 26505 (the “Client”) and Raftelis Financial Consultants, Inc., 227 W. Trade Street, Suite 1400, Charlotte, NC 28202 (“Raftelis”).

Witnesseth

WHEREAS, Raftelis has substantial skill and experience in public finance, management, and pricing, and service delivery, and

WHEREAS, The Client desires to hire Raftelis to perform executive search services for its city manager and Raftelis desires to provide such services to the Client,

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the terms and conditions set forth herein.

Article 1. Statement of Work

Raftelis shall provide professional consulting services for the the recruitment and placement of a City Manager for the Client. Raftelis will perform these services as set forth in its proposal/engagement letter sent to the Client dated April 17, 2020 and included herein as Attachment A.

Article 2. Time for Completion

This Agreement will commence upon approval by the Client. Further renewals of this Agreement are at the option of the Parties and shall be in writing.

Article 3. Compensation

Client shall pay to Raftelis the sum of \$24,300, which includes professional fees and travel expenses. The Client will also pay for the cost of direct expenses (ads and background checks) incurred in performing the scope of services. Any expansion of the scope of work by the Client shall involve the discussion of additional fees by both parties.

The fixed fee will be invoiced as follows:

1. Activity 1: \$7,813 – After delivery of the recruitment documents (recruitment plan, recruitment brochure, first-year goals)
2. Activity 2: \$10,455 – After the candidate review
3. Activity 3: \$6,032 – After the interviews are completed
4. Advertising and background checks will be invoiced as completed.

Raftelis shall email invoices to the Client to Interim City Manager Emily Muzzarelli at emuzzarelli@morgantownwv.gov, with a copy to Carol Allen, Executive Assistant, at callen@morgantownwv.gov. Upon receipt of monthly invoice, the Client will remit payment of same amount to the Raftelis within 30 days.

Article 4. Additional Services

At the Client's request, Raftelis may submit proposals for additional professional services. Each proposal submitted shall detail: (1) scope of work for the additional services, (2) period of services to be performed, and (3) method and amount of compensation. The Client shall provide written acceptance and authorization to Raftelis prior to the commencement of work on any proposed additional services. Each proposal for additional services accepted and approved by the Client shall become part of this Agreement and shall be governed by the terms and conditions contained herein.

Article 5. Place of Performance

Raftelis shall be responsible for maintaining its own office facilities and will not be provided with either office facilities or support by the Client.

Article 6. Defense and Indemnification

Raftelis hereby agrees to defend and indemnify the Client and to hold the Client harmless against any and all claims, action, or demands against the Client and against any and all damages for injury to or death of any person and for loss of or damage to any and all property caused by the negligent acts, errors, or omissions of Raftelis under this Agreement. Raftelis shall not be held responsible for any claims to the extent they are caused by the negligence of the Client.

Article 7. Insurance

In order to secure the obligations of Article 6, Raftelis shall maintain the types and levels of insurance during the life of this Agreement as specified below. The Client will be named as additional insured on Raftelis' policies providing such coverage, and Raftelis will provide the Client with these Certificates of Insurance. Raftelis' insurance will provide primary coverage for claims made under this Agreement.

Commercial general liability insurance - \$1,000,000 for each occurrence and \$2,000,000 in the aggregate

Comprehensive automobile liability insurance - \$1,000,000 combined single limit each occurrence-hired and non-owned only

Workers Compensation insurance – Statutory limits

Professional liability insurance - \$5,000,000 occurrence and \$5,000,000 in the aggregate

Excess or Umbrella Liability - \$5,000,000 occurrence and \$5,000,000 in the aggregate

Article 8. Confidential Information

Raftelis acknowledges and agrees that in the course of the performance of the services pursuant to this Agreement, Raftelis may be given access to, or come into possession of, confidential information from the Client, which information may contain privileged material or other confidential information. Raftelis acknowledges and agrees, except if required by judicial or administrative order, trial, or other governmental proceeding pertaining to this matter, that it will not use, duplicate, or divulge to others any such information belonging to or disclosed to Raftelis by the Client without first obtaining written permission from the Client. If Raftelis is notified of a judicial or administrative order, trial, or other governmental proceeding that may require disclosure of the confidential information, it shall provide notice to Client and, to the extent reasonably possible, permit Client the opportunity to intervene in such proceedings or otherwise challenge the disclosure of the confidential information. All tangible embodiments of such information shall be delivered to the Client by Raftelis upon termination hereof, or upon request by the Client, whichever occurs first. The Client acknowledges Raftelis has the right to maintain its own set of work papers which may contain confidential information.

Article 9. Independent Contractor Status

It is understood and agreed that Raftelis will provide the services under this Agreement on a professional basis as an independent contractor and that during the performance of the services under this Agreement, Raftelis' employees will not be considered employees of the Client within the meaning or the applications of any federal, state, or local laws or regulations including, but not limited to, laws or regulations covering unemployment insurance, old age benefits, worker's compensation, industrial accident, labor, or taxes of any kind. Raftelis' employees shall not be entitled to benefits that may be afforded from time to time to Client employees, including without limitation, vacation, holidays, sick leave, worker's compensation, and unemployment insurance. Further, the Client shall not be responsible for withholding or paying any taxes or social security on behalf of Raftelis' employees. Raftelis shall be fully responsible for any such withholding or paying of taxes or social security.

Article 10. Reliance on Data

In performance of the services, it is understood that the Client and/or others may supply Raftelis with certain information and/or data, and that Raftelis will rely on such information. It is agreed that the accuracy of such information is not within Raftelis' control and Raftelis shall not be liable for its accuracy, nor for its verification, except to the extent that such verification is expressly a part of Raftelis' scope of services.

Article 11. Opinions and Estimates; Representations and Warranties

- (a) Raftelis' opinions, estimates, projections, and forecasts of current and future costs, revenues, other levels of any sort, and events shall be made on the basis of available information and Raftelis' expertise and qualifications as a professional. Raftelis does not warrant or guarantee that its opinions, estimates, projections or forecasts of current and

future levels and events will not vary from the Clients's estimates or forecasts or from actual outcomes. Raftelis identifies costs, allocates costs to customer classes and provides rate models. It does not establish rates, which is the legislative responsibility of the Client.

(b) Raftelis represents and warrants the following with respect to its services:

- (1) If a candidate accepts the position of city manager with client as a result of the search but leaves the position within 2 years of the hire date, Raftelis will conduct another search for a city manager for Client upon substantially the same terms stated herein without cost to Client except for those services paid directly by Client such as background checks and advertising
- (2) If the initial search performed by Raftelis does not result in placement of a city manager with the Client, Raftelis will conduct another search for a city manager for Client upon substantially the same terms stated herein without cost to Client except for those services paid directly by Client such as background checks and advertising
- (3) If a candidate accepts the position of city manager with client as a result of the search, Raftelis will not, in the future, actively recruit that candidate for other positions. Raftelis, may, however, continue to perform services for other clients that may involve interviewing a candidate placed with the Client due to such candidate's own activity searching for other employment.

Article 12. No Consequential Damages

To the fullest extent permitted by law, neither party shall be liable to the other for any special, indirect, consequential, punitive or exemplary damages resulting from the performance or non-performance of this Agreement notwithstanding the fault, tort (including negligence), strict liability or other basis of legal liability of the party so released or whose liability is so limited and shall extend to the officers, directors, employees, licensors, agents, subcontractors, vendors and related entities of such party.

Article 13. Termination of Work

This Agreement may be terminated as follows:

1. **By Client** (a) for its convenience on 30 days' notice to Raftelis, or (b) for cause, if Raftelis materially breaches this Agreement through no fault of Client and Raftelis neither cures such material breach nor makes reasonable progress toward cure within 15 days after Client has given written notice of the alleged breach to Raftelis.
2. **By Raftelis** (a) for cause, if Client materially breaches this Agreement through no fault of Raftelis and Client neither cures such material breach nor makes reasonable progress toward cure within 15 days after Raftelis has given written notice of the alleged breach to Client, or (b) upon five days' notice if Work under this Agreement has been suspended by either Client or Raftelis in the aggregate for more than 30 days; provided that such termination shall not relieve Raftelis of any continuing obligation to perform additional services or to defend, indemnify, and hold harmless client under the terms of this Agreement.
3. **Payment upon Termination**. In the event of termination, Raftelis shall be compensated for all work performed prior to the effective date of termination.

Article 14. Notices

Except as otherwise specified for invoicing, above, all notices required or permitted under this Agreement shall be in writing and shall be deemed deliverable when delivered in person or deposited in the United States mail, postage prepaid, addressed as follows:

If for the Client:

Emily Muzzarelli
Interim City Manager
389 Spruce Street
Morgantown, WV 26505

If for Raftelis:

Julia D. Novak
Raftelis Financial Consultants, Inc.
227 W. Trade Street
Suite 1400
Charlotte, NC 28202

Article 15. Compliance with Applicable Laws

Raftelis agrees not to discriminate in its employment practices, and will render services under this Agreement without regard to race, religion, color, national origin, ancestry, sex, age, blindness, disability, sexual orientation, gender identity, familiar status, or veteran status and will comply with the provisions of Article 153 of the City Code of Morgantown in addition to other state and federal laws.

Any act of discrimination committed by Raftelis, or failure to comply with these statutory obligations when applicable, shall be grounds for termination of this Agreement.

Article 16. General Provisions

- A. Entire Agreement: This Agreement, and the proposal attached as Exhibit A, represents the entire and sole agreement between the Parties with respect to the subject matter hereof. To the extent that there is a conflict between the terms of the proposal and the text of this Agreement, the text of this Agreement shall control.
- B. Waiver: The failure of either Party to require performance by the other of any provision hereof shall in no way affect the right to require performance at any time thereafter, nor shall the waiver of a breach of any provision hereof be taken to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself. All remedies afforded in this Agreement shall be taken and construed as cumulative; that is, in addition to every other remedy available at law or in equity.
- C. Relationship: Nothing herein contained shall be construed to imply a joint venture, partnership, or principal-agent relationship between Raftelis and the Client; and neither Party shall have the right, power, or authority to obligate or bind the other in any manner whatsoever, except as otherwise agreed to in writing.
- D. Assignment and Delegation: Neither Party shall assign or delegate this Agreement or any rights, duties, or obligations hereunder without the express written consent of the other. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the successors, legal representatives, and assignees of the Parties hereto.
- E. Severability: If any provision of this Agreement is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of this Agreement, and this Agreement shall continue in force and effect, and be construed and enforced, as if such provision had not been included, or had been modified as above provided, as the case may be.
- F. Governing Law: This Agreement is executed in Morgantown, Monngalia County, West Virginia, and shall be governed by, and construed in accordance with, the laws of the State of West Virginia, without regard to its conflict of law provisions. Any legal proceeding arising out of this Agreement shall be conducted in the Circuit Court of Monongalia County, West Virginia.
- G. Paragraph Headings: The paragraph headings set forth in this Agreement are for the convenience of the Parties, and in no way define, limit, or describe the scope or intent of this Agreement and are to be given no legal effect.

H. Third Party Rights

Nothing in this Agreement shall be construed to create or confer any rights or interest to any third party or third party beneficiary. It is the intent of the parties that no other outside, non-party claimant shall have any legal right to enforce the terms of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives.

City of Morgantown, West Virginia

By: _____
Signature

Title

Date

Witness

Raftelis Financial Consultants, Inc.

By: _____
Signature
Executive Vice President

Title

Date

Witness

This is to certify that an appropriation in the amount of this contract is available therefore and that _____ has been authorized to execute the contract and approve all requisitions and change orders.

By _____

Title

Seal

Attachment A – Proposal/Engagement Letter

City of Morgantown, West Virginia

Executive Search Services City Manager

April 17, 2020



A PART OF





April 17, 2020

John D. Bihun
Director of Human Resources
City of Morgantown
389 Spruce Street
Morgantown, WV 26505

Dear Mr. Bihun:

The mission of The Novak Consulting Group, now part of Raftelis Financial Consultants, is to strengthen organizations, for those they serve and those who work in them. We are dedicated to providing management consulting services to local governments and nonprofit organizations across the country. Since 1993, we have been providing our clients with the best thinking and execution in organizational design, development, and improvement. Raftelis is incorporated in the state of North Carolina with offices across the US. The Novak Consulting Group is located in Cincinnati, Ohio.

We are pleased to submit this proposal for Executive Search Services for the City Manager recruitment. Our project team for the City of Morgantown comprises skilled professionals, seasoned in local government management with search experience across the country. In addition, we have direct experience with the City through our strategic planning work. Our team has completed over 160 searches, including several for communities with universities. We have had significant success in identifying and retaining ideal candidates who meet each organization's unique set of needs and expectations. We are confident our approach will result in a successful leader for the organization.

Our firm has the necessary staff, expertise, resources, and abilities to conduct this recruitment and provide exceptional service to the City. We are a national firm with employees who have served as leaders in some of the best local governments across the country. Our clients receive personal service from our consultants. Our mission is to strengthen communities, and we do this by helping them find the best leaders to help move their organizations forward.

We look forward to the opportunity to serve the City of Morgantown. Please contact Catherine Tuck Parrish, our executive search practice leader, at (240) 832-1778 or ctuckparrish@thenovakconsultinggroup.com if you have any questions.

Sincerely,

Julia D. Novak
Executive Vice President

Table of Contents

Cover Letter

Firm Narrative and Recruitment Approach	1
Executive Search Strategy	2
Work Plan.....	3
Recruitment Timeline	4
Cost for Services.....	6
Additional Services.....	6
Service Guarantee	6

Firm Experience and Personnel	7
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Remote Work	11
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Attachment A – Recruitment Timeline

Firm Narrative and Recruitment Approach

The Novak Consulting Group is composed of local government practitioners focused on strengthening organizations for the communities they serve and the people who work in them.

The Novak Consulting Group and Raftelis have always shared a focus on delivering lasting solutions for public sector agencies. In January 2020, The Novak Consulting Group joined Raftelis. Today we provide our clients with wide-ranging capabilities and resources in financial, management, technology, and communications consulting for all areas of government agencies. Our clients now have the expertise of nearly 120 of the country's leading public sector consultants. We know that our combined capabilities and resources will provide added value to our clients, and we're looking forward to what we can accomplish together. The Novak Consulting Group is located in Cincinnati, Ohio.

For more than ten years, The Novak Consulting Group, staffed by consultants with decades of local government experience, has built a reputation for innovation and results. We have partnered with more than 300 local governments in all areas, including public works, public safety, human resources, finance, planning, IT, and more. We provide our clients with the best thinking and execution in organizational design, development, and improvement through these services:

- Organizational Assessment
- Strategic Planning
- Executive Search

We provide unparalleled service to our clients. Leaders in local governments and nonprofit communities have come to rely on us for high caliber advice with the personal attention you expect.

- **Niche expertise.** Our expertise lies in strengthening two kinds of organizations: local governments and nonprofits. We're consulting specialists rather than generalists, focusing our strengths to do a highly effective job for a specific group of clients.
- **Flexibility to serve you better.** We employ a core staff of senior-level consultants and draw from our pool of subject matter experts when their expertise can help us serve you better. The result? A highly nimble, efficient approach to giving you the services you need when you need them.
- **Decades of collective experience.** Our associates and subject matter experts have decades of experience in strengthening local municipalities and nonprofit organizations. They've served in a wide range of positions, from city manager to public works director to chief of police.
- **Personal service from senior-level consultants.** You appreciate it when deadlines are met, phone calls are returned, and your challenges are given in-depth, out-of-the-box thinking. While some firms may assign your business to junior-level people, our approach provides exceptional service from senior-level consultants.

Executive Search Strategy

When organizations need to fill key positions, they turn to The Novak Consulting Group and benefit from this guiding principle: meaningful hiring involves finding the right employee and preparing them for ongoing success. Our approach to executive search services comprises three key phases.

Inquiring, Understanding, and Defining

Each of our clients has a unique culture and set of objectives. Because selecting the right individual is critical to success, we begin our relationship by conducting a needs assessment to identify the specific benchmarks the search must accomplish. We will identify qualifications and requirements, as well as map out the new hire's first-year goals, so both our client and the employee remain on the same track for success. We will build an accurate position profile, thus ensuring we attract the right people for the position.

Candidate Search and Evaluation

To reach the right candidates, The Novak Consulting Group customizes each search process to fit the client's needs. Often, the professionals who best fit an open position are already employed and not searching for a traditional job posting. So, we leverage our extensive, diverse professional network to attract the best talent nationwide. We have been successful in identifying a candidate pool that is racially, ethnically, and gender diverse. We are committed to helping local government leadership positions reflect the communities they serve. We work closely with several organizations that support this goal, and we advertise in national publications that target minorities and women, including the National Forum of Black Public Administrators (NFBPA) and the League of Women in Government. We intentionally seek well-qualified women and people of color, so our clients have excellent choices. Once the right candidates are found, we help manage the hiring process from interviews to background checks. Our in-depth service empowers clients to achieve their goals at every step.

**37% of our recruitments
result in female hires.**

**21% of our recruitments
result in minority hires.**

Supporting Success

We support the top candidate's long-term success by creating a goals-driven work plan actionable from day one. Many firms focus solely on finding qualified applicants, leaving the client on their own once the position is filled. Our team, however, uses the objectives gathered during the inquiry stage to prepare new hires for their first year. We follow up to ensure continued progress, productivity, and satisfaction for the employee and our client.

We take a tailored, goals-based approach to each recruitment. By looking beyond the hiring process, our holistic view ensures that each candidate will fit the role, as well as the organization. In the end, we are not just looking for a successful professional; we are finding the right employee to be successful in their new position long after they are hired.

Work Plan

The following provides a detailed description of our work plan for the City Manager recruitment.

Activity 1 – Develop Candidate Profile

The Novak Consulting Group will begin this engagement by developing a clear picture of the ideal candidate for City Manager. We will begin by speaking with the City Council. We will also talk to department directors and any other key stakeholders. We will discuss not just the technical skills needed for the position, but what makes for the right organizational fit in terms of traits and experiences.

Based on the information learned from our meetings, we will develop a recruitment plan that includes West Virginia and the nation. We will prepare a position profile that is unique to the City of Morgantown. The profile will identify the organization's needs, the strategic challenges of the position, and the personal and professional characteristics of the ideal candidate. This document drives the recruitment. It focuses our efforts on the most capable candidates, and it helps us to persuade candidates to pursue the position.

We will also develop first-year organizational goals for the successful candidate. These goals will ensure that the applicants know what will be expected of them should they be hired, the City has thought about what they want the person to accomplish in the first year, and the successful candidate can hit the ground running with a work plan as soon as he or she starts. Once drafted, we will review the recruitment plan, position profile, and first-year goals with the City Council. Modifications will be made as necessary before recruitment begins.

Activity 1 Deliverables: Detailed recruitment process documents, including recruitment plan, position profile, and first-year goals.

Activity 2 – Conduct Active Recruitment and Screening

As part of the recruitment plan, we will identify key states and metro areas to focus our targeted recruitment. The Novak Consulting Group will prepare and place advertisements in state and national publications and online sites to attract candidates from throughout the United States. While this will be a national search, we will target our efforts to those key areas identified in the recruitment plan.

We will place job postings with networks such as the International City/County Management Association (ICMA), National Forum for Black Public Administrators (NFBPA), League of Women in Government, West Virginia Municipal League, state and regional organizations, and other places as identified in the recruitment plan.

As soon as the advertisements are completed, we will begin the process of actively and aggressively marketing the position and identifying qualified candidates for assessment. We will pinpoint individuals and jurisdictions to reach out to directly through phone and email. We will also utilize social media (LinkedIn, Twitter, and Facebook) to broaden our reach. We have found that this combination of outreach is an effective way to reach top applicants, especially those who are not currently in the job market but may be willing to consider a move to an excellent organization like the City of Morgantown.

We will reach out to the applicants in our extensive database, as well as the prospective candidates we have targeted in previous recruitments for similar jurisdictions. We will also develop a list of additional candidates to pursue based on the City's unique needs. We will conduct

targeted outreach to towns with universities as well as targeted outreach in Pennsylvania, Virginia, Ohio, and West Virginia. Our outreach includes seeking well-qualified women and minorities and encouraging them to apply.

As applications are received, we will acknowledge each one and keep applicants aware of the status of the process. The Novak Consulting Group will screen each applicant against the position profile and first-year goals. We will conduct interviews via phone or Skype with those who most closely meet the profile to learn more about their interest, qualifications, and experience for this position. A written summary of these candidates will be prepared and shared with the City. We will then meet with the City Council to review the entire list (if desired), as well as the most qualified candidates who have the requisite skills, experiences, and traits needed for success in the position. Based on the City Council's direction, we will finalize a list of four to six candidates to invite for interviews with the City Council.

Activity 2 Deliverables: Placement of ads and job postings, targeted outreach to passive candidates, and candidate review materials including screening results and internet search

Activity 3 – Support Interviews and Selection

Each person you wish to interview will then be contacted again by The Novak Consulting Group. We will plan and facilitate a multi-step interview process specific to the City Manager position. The process could include writing exercises, presentations, panel interviews, tours, department director or key staff meet-and-greet, and/or a community reception. A book that contains customized interview questions and information about each of the candidates invited to interview will be provided to those involved in the interview process. We will also facilitate pre- and post-interview briefings with the City Council and collect real-time feedback from all who participate and provide that to the City Council.

We will coordinate the logistics of the process and provide the candidates with the details along with any travel policy requirements or other information. We will also work with a City contact to ensure a suitable venue is arranged for the interviews. Expenses for the candidates will be borne and reimbursed directly by the City.

The City will select the top candidate. The Novak Consulting Group can help make a well-informed choice by framing what we have learned about the candidates in the context of the position and its requirements. We will speak with candidates' references to confirm the strength of their credentials. We will also review published information found in search engines, online publications, and social media. Reference and background checks will be performed on the top candidates, including but not limited to education, credentials, employment history, criminal background check, civil litigation check, and credit history.

The Novak Consulting Group also can assist in negotiating the employment offer. We will provide information about best practices in salary and total compensation, and we will have obtained information on the candidate's salary history. We will keep candidates apprised of their status and release them at the appropriate time.

Activity 3 Deliverables: Interview book materials including references and background checks

Recruitment Timeline

Included as Attachment A is a draft timeline. We expect to review this with the City Council during Activity 1 and adjust it as necessary as we develop the recruitment plan.

References

The Novak Consulting Group is uniquely positioned to perform this recruitment because of our knowledge of local government and extensive network across the nation. Included with this proposal is a list of all our executive recruitment clients. The following table lists a few comparable recruitments we have conducted and references for each of them.

Jurisdiction	Contact Information
<p>City of Harrisonburg, Virginia (Pop. 54,000)</p> <ul style="list-style-type: none"> • City Manager (2017) • Police Chief (2018) 	<p>Eric Campbell, City Manager Eric.campbell@harrisonburgva.gov</p> <p>Chris Brown, City Attorney Chris.Brown@harrisonburgva.gov</p> <p>409 South Main Street Harrisonburg, VA 22801 (540) 432-7701</p>
<p>City of Fairfax, Virginia (Pop. 24,097)</p> <ul style="list-style-type: none"> • City Manager (2018) • Police Chief (2018) 	<p>Robert Stalzer, City Manager City Hall, Room 316 (703) 385-7850 rob.stalzer@fairfaxva.gov</p> <p>Sara Greer, Director of Human Resources City Hall, Room 331 (703) 385-7835 Sara.greer@fairfaxva.gov</p> <p>10455 Armstrong Street Fairfax, VA 22030</p>
<p>City of Rockville, Maryland (Pop. 64,000)</p> <ul style="list-style-type: none"> • City Manager (2016) • Community Planning and Development Services Director (2018) 	<p>Bridget Donnell Newton, Mayor 111 Maryland Avenue Rockville, MD 20850 (240) 314-8291 bnewton@rockvillemd.gov</p>
<p>City of Hilliard, Ohio (Pop. 37,393)</p> <ul style="list-style-type: none"> • City Manager (2019) 	<p>Julia R. Baxter, Esq., Director of Human Resources 3800 Municipal Way Hilliard, OH 43026 (614) 334-2345 jbaxter@hilliardohio.gov</p>
<p>City of Keene, New Hampshire (Pop. 23,500)</p> <ul style="list-style-type: none"> • City Manager (2017) 	<p>Elizabeth A. Fox, ACM/Human Resources Director 3 Washington Street Keene, NH 03431 (603) 357-9858 efox@ci.keene.nh.us</p>

Firm Experience and Personnel

The Novak Consulting Group has served over 300 local government clients and completed more than 160 recruitments. Each member of our staff has direct local government experience, which informs our executive recruitment work.

Senior Manager - Executive Search Catherine Tuck Parrish – Catherine has 30 years of experience serving local governments, in direct service and as a consultant. Catherine leads our search practice and has conducted over 160 searches for city manager/administrator; police chief; fire chief; directors of public works, planning, economic development, finance, human resources, and human services; and many other key positions in local governments across the country. Catherine was the deputy city manager in Rockville, Maryland, where she oversaw approximately half of the City's 500+ employees. She is also familiar with large organizations since she worked in the County Executive's Office in Fairfax County, Virginia, and previously served as ICMA's Ethics Advisor.

Manager Jenn Reichelt – Jenn joined The Novak Consulting Group in 2016 following 16 years of direct service to local governments in Glendale, Arizona, and Great Falls, Montana. Jenn brings extensive experience in the areas of human resources management, employee and community engagement, tourism and branding, and public information. In her roles, she has overseen several municipal operations, including a human resources department, City Clerk's Office, Civic Center, performing arts center, visitor center, Convention and Visitors Bureau, and animal shelter. As deputy city manager, she was directly involved in the selecting, hiring, and onboarding of key personnel, including department directors and also oversaw collective bargaining, mediation, conflict resolution, employee counseling, and discipline issues. Jenn assists with both the organizational assessment and executive search practice areas of the firm. She has supported or led national searches for city managers, fire and police chiefs, and department directors.

Associate Consultant Morgan Daniel – Morgan serves The Novak Consulting Group as a Recruitment Specialist. In this role, she develops content for recruitment materials, strategizes targeted outreach, conducts research, and analyzes data. Before coming to The Novak Consulting Group, she was an intern to the assistant city manager in Miamisburg, Ohio, where she had the opportunity to work directly with several city departments. Morgan has a bachelor's degree in crime and justice studies from Wright State University and is working on her master's in public administration.

Catherine Tuck Parrish, Senior Manager - Executive Search

Catherine has 30 years of management experience working for local governments of all sizes, nonprofit organizations, and associations. She leads our executive search practice. She has conducted over 160 searches for manager/ administrator; police chief; fire chief; directors of public works, planning, economic development, finance, human resources, and human services; and many other key positions in local governments across the country.

In addition to executive recruitment, she has facilitated numerous governing body workshops, staff retreats, and strategic planning sessions. Her work as a consultant includes project management and contributions to several local government projects such as process improvement studies, departmental assessments, planning and permitting process reviews, and policy development.

Catherine's most recent local government experience was as deputy city manager in Rockville, Maryland, where she oversaw parks and recreation, human resources, information technology, finance, neighborhood resources (citizen engagement), communications, customer service, and intergovernmental functions. She also served as acting city manager in Rockville for nearly a year. Prior to joining the City of Rockville, Catherine served as assistant to the county executive in Fairfax County, Virginia, working on change management issues, including a new pay system, employee surveys, implementation plans, and internal communication improvements. Catherine also served as ethics advisor at the International City/County Management Association (ICMA), counseling elected officials and citizen groups regarding employment agreements, form of government issues, and recruitment. Additionally, she worked for the cities of Denton and University Park, Texas.

She chaired the ICMA's Acting Manager Task Force, which produced a handbook for interim managers. She also led the Maryland City/County Management Association (MCCMA) as president and vice president. She served as president, vice president, and secretary of the Metropolitan Association of Local Government Assistants in the Washington, D.C. metro area. Catherine has spoken at national and state conferences on a variety of topics, including recruitment trends, civility, effective councils, ethics, forms of government, human resource topics, long-term financial planning, budget strategies, developing high performing organizations, and leadership. She has also spoken at the National League of Cities' Leadership Training Institute on recruiting and evaluating the CEO. She is a certified instructor of the Myers-Briggs Type Indicator instrument.

She has a bachelor's degree in personnel administration and communication studies from the University of Kansas and a master's degree in public administration from the University of Kansas. She is an active member of ICMA and the MCCMA.

EDUCATION

- Master of Public Administration, University of Kansas
- Bachelor of Arts, University of Kansas

INDUSTRY TENURE

- 30 years
- Consulting, 11 years
- Local Government, 19 years

Jenn Reichelt, Manager

Jenn has 20 years of management experience in local government. She joined the firm in 2016 and works in both the organizational assessment and executive search practice areas.

Jenn has assisted with 14 organizational and department reviews. While the assessments often examine all core services, Jenn's areas of expertise include analysis of organizational structure, human resources, tourism/special events, and community development. Notable projects include a GoTriangle organizational assessment; a feasibility study for DuPage County that looked at combining the Election Commission and County Clerk's Office; and a review of the Lee's Summit Human Resources Department.

Jenn is actively involved in the firm's executive search practice area. She has conducted searches for city manager/administrator; police chief; directors of public works, finance, human resources, planning, economic development, and human services; and many other key positions in local governments across the country.

She has a background in community engagement, public outreach, and media relations, as well as crisis and emergency management. Jenn has experience working with diverse stakeholders and helping groups reach consensus. Throughout her career, she has developed and implemented successful citizen outreach and communication plans for several community-wide initiatives.

Jenn has a wealth of knowledge in the areas of human resources management, employee counseling, conflict resolution, and labor relations. She is adept in collective bargaining, mediation, fact-finding, and arbitration processes.

Before joining The Novak Consulting Group in 2016, she served as deputy city manager for the City of Great Falls, Montana, where she oversaw all human resources activities, including labor relations. She served as the City's primary public information officer and managed the City's five Tax Increment Financing Districts.

Prior to her tenure in Great Falls, she worked in Glendale, Arizona, where she served as the deputy marketing and communications director. She led the City's downtown redevelopment efforts, helped create the City's first Convention and Visitor's Bureau, and assisted in the development of Glendale's Sports and Entertainment District. Jenn served as a city spokesperson and oversaw the City's tourism, sports marketing, and branding campaigns.

Jenn earned a bachelor's degree in business administration and a master's degree in public administration from Northern Arizona University. She is an International City/County Management Association (ICMA) Credentialed Local Government Manager and a graduate of Leadership ICMA and the Weldon Cooper Center for Public Service Senior Executive Institute.

EDUCATION

- Master of Public Administration, Northern Arizona University
- Bachelor of Science, Northern Arizona University

PROFESSIONAL CERTIFICATIONS

- Certified Professional Manager, International City/County Management Association
- Lean Certification

INDUSTRY TENURE

- 20 years
- Consulting, 4 years
- Local Government, 16 years

Morgan Daniel, Associate Consultant

Morgan joined the firm as a Recruitment Specialist in 2018. In this role, she develops content for recruitment materials, strategizes targeted outreach, conducts research, and analyzes data. Morgan also interacts directly with potential candidates and reviews applications for minimum and preferred qualifications.

Before coming to The Novak Consulting Group, she was an intern to the assistant city manager in Miamisburg, Ohio, where she had the opportunity to work directly with several city departments.

In Miamisburg, one of her main projects was to update the city's website content to ensure that it was up-to-date and that citizens could easily find information. She also redesigned the city's volunteer application form and eliminated unnecessary questions. Morgan researched and organized information for the city's upcoming Charter Review Committee and helped prepare benefit materials for new employees.

Morgan has a bachelor's degree in crime and justice studies from Wright State University. She is pursuing a master's degree in public administration from the University of Nebraska and is an active member of ICMA.

EDUCATION

- Bachelor of Arts, Crime & Justice Studies, Wright State University
- Master of Public Administration, University of Nebraska (in progress)

INDUSTRY TENURE

- 3 years
- Consulting, 2 years
- Local Government, 1 year

Remote Work

Due to social distancing, we are working with many clients to support their recruitments remotely. This remote work has included the use of videoconferencing for meetings, calls, presentations, and interviews (which can be recorded), as well as online surveys for broader public input. We can provide the videoconferencing technology, or we can utilize the platform that the City prefers.

Attachment A – Recruitment Timeline

Schedule																
Morgantown, West Virginia																
City Manager Recruitment		start	2	3	4	5	6	7	8	9	10	11	12	13	14	15
		5/4	5/11	5/18	5/25	6/1	6/8	6/15	6/22	6/29	7/6	7/13	7/20	7/27	8/3	8/10
Activity 1 - Needs Assessment and Develop Candidate Profile																
1.1	Meet with City Council; discuss timeline and input process	█	█													
	Solicit input from department directors and other key	█	█													
1.2	stakeholders	█	█													
1.3	Develop recruitment materials		█													
1.4	Identify first-year goals for the position		█													
	Finalize recruitment plan, recruitment brochure, and first-year		█													
1.5	goals		█													
Activity 2 - Conduct Active Recruitment and Screening		5/4	5/11	5/18	5/25	6/1	6/8	6/15	6/22	6/29	7/6	7/13	7/20	7/27	8/3	8/10
2.1	Develop and place ads			█	█											
2.2	Conduct direct outreach to develop and cultivate candidates			█	█	█	█	█								
2.3	Receive application materials			█	█	█	█	█								
2.4	Communicate with candidates			█	█	█	█	█								
	Conduct pre-screening of candidates; screening interviews								█	█						
2.5	conducted by the consultant								█	█						
	Review applicant pool and most qualified candidates with City										█					
2.6	Council and aid in narrowing top applicant group										█					
Activity 3 - Support Interviews and Selection		5/4	5/11	5/18	5/25	6/1	6/8	6/15	6/22	6/29	7/6	7/13	7/20	7/27	8/3	8/10
3.1	Conduct reference and background checks												█	█		
3.2	Facilitate interview process														█	
3.3	Assist with negotiations, as desired															█
3.4	Inform all applicants of final outcome															█



U.S. Department
of Transportation
Federal Aviation
Administration

Airports Division
Eastern Region
West Virginia

3-54-0015-043-2020

FAA AEA-600
176 Airport Circle
Room 101
Beaver, WV 25813

CARES Act Grant Transmittal Letter

May 8, 2020

Mr. Paul Brake
889 Spruce Street
Morgantown, WV 26505

Dear Mr. Brake:

Please find the following electronic CARES Act Grant Offer, Grant No. 3-54-0015-043-2020 for Morgantown Municipal Walter L. Bill Hart Field. This letter outlines expectations for success. Please read and follow the instructions carefully.

To properly enter into this agreement, you must do the following:

- a. The governing body must provide authority to execute the grant to the individual signing the grant; i.e. the sponsor's authorized representative.
- b. The sponsor's authorized representative must execute the grant, followed by the attorney's certification, **no later than June 13, 2020** in order for the grant to be valid.
- c. You may not make any modification to the text, terms or conditions of the grant offer.
- d. The grant offer must be digitally signed by the sponsor's legal signatory authority and then the grant offer will be routed via email to the sponsor's attorney. Once the attorney has digitally attested to the grant, an email with the executed grant will be sent to all parties.

Subject to the requirements in 2 CFR § 200.305, each payment request for reimbursement under this grant must be made electronically via the Delphi Invoicing System. Please see the attached Grant Agreement for more information regarding the use of this System. The terms and conditions of this agreement require you drawdown and expend these funds within four years.

An airport sponsor may use these funds for any purpose for which airport revenues may be lawfully used. CARES grant recipients should follow the FAA's Policy and Procedures Concerning the Use of Airport Revenues ("Revenue Use Policy"), 64 Federal Register 7696 (64 FR 7696), as amended by 78 Federal Register 55330 (78 FR 55330). The Revenue Use Policy defines permitted uses of airport revenue. In addition to the detailed guidance in the Revenue Use Policy, the CARES Act states the funds may not be used for any purpose not related to the airport.

With each payment request you are required to upload directly to Delphi:

- An invoice summary, even if you only paid a single invoice, and
- The documentation in support of each invoice covered in the payment request.

For the final payment request, in addition to the requirement listed above for all payment requests, you are required to upload directly to Delphi:

- A final financial report summarizing all of the costs incurred and reimbursed, and
- An SF-425, and
- A narrative report.

The narrative report will summarize the expenses covered by the CARES Act funds and state that all expenses were in accordance with the FAA's Policy and Procedures Concerning the Use of Airport Revenues and incurred after January 20, 2020.

As a condition of receiving Federal assistance under this award, you must comply with audit requirements as established under 2 CFR part 200. Subpart F requires non-Federal entities that expend \$750,000 or more in Federal awards to conduct a single or program specific audit for that year. Note that this includes Federal expenditures made under other Federal-assistance programs. Please take appropriate and necessary action to assure your organization will comply with applicable audit requirements and standards.

Once you have drawn down all funds and uploaded the required documents to Delphi, notify our office by email that the grant is administratively and financially closed. Stewart Lewis, 304-252-6216, is readily available to assist you and your designated representative with the requirements stated herein. We sincerely value your cooperation in these efforts.

Sincerely,

Matthew Di Giulian

Matthew Di Giulian (May 8, 2020)

Matthew Di Giulian
Manager
Beckley ATO



U.S. Department
of Transportation
Federal Aviation
Administration

CARES ACT AIRPORT GRANTS AGREEMENT

Part I - Offer

Federal Award Offer Date May 8, 2020

Airport/Planning Area Morgantown Municipal Walter I. Bill Hart Field

CARES Grant Number 3-54-0015-043-2020

Unique Entity Identifier 177686867

TO: City of Morgantown

(herein called the "Sponsor")

FROM: **The United States of America** (acting through the Federal Aviation Administration, herein called the "FAA")

WHEREAS, the Sponsor has submitted to the FAA a Coronavirus Aid, Relief, and Economic Security Act (CARES Act or "the Act") Airports Grants Application (herein called the "Grant") dated April 20, 2020, for a grant of Federal funds at or associated with the Morgantown Municipal Walter I. Bill Hart Field, which is included as part of this Grant Agreement; and

WHEREAS, the Sponsor has accepted the terms of FAA's Grant offer;

WHEREAS, in consideration of the promises, representations and assurances provided by the Sponsor, the FAA has approved the Grant Application for the Morgantown Municipal Walter I. Bill Hart Field, (herein called the "Grant") consisting of the following:

This Grant is provided in accordance with the CARES Act, as described below, to provide eligible Sponsors with funding to help offset a decline in revenues arising from diminished airport operations and activities as a result of the COVID-19 Public Health Emergency. CARES Act Airport Grants amounts to specific airports are derived by legislative formula.

The purpose of this Grant is to maintain safe and efficient airport operations. Funds provided under this Grant Agreement must only be used for purposes directly related to the airport. Such purposes can include the reimbursement of an airport's operational and maintenance expenses or debt service payments. CARES Act Airport Grants may be used to reimburse airport operational and maintenance expenses directly related to Morgantown Municipal Walter I. Bill Hart Field incurred no earlier than January 20, 2020. CARES Act Airport Grants also may be used to reimburse a Sponsor's payment of debt service where such payments occur on or after April 14, 2020. Funds provided under the Grant will be governed by the same principles that govern "airport revenue." New airport development projects may

not be funded with this Grant unless and until the Grant Agreement is amended or superseded by a subsequent agreement that addresses and authorizes the use of funds for the airport development project.

NOW THEREFORE, in accordance with the applicable provisions of the CARES Act, Public Law 116-136, the representations contained in the Grant Application, and in consideration of, (a) the Sponsor's acceptance of this Offer; and, (b) the benefits to accrue to the United States and the public from the accomplishment of the Grant and in compliance with the conditions as herein provided,

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay 100% percent of the allowable costs incurred as a result of and in accordance with this Grant Agreement.

Assistance Listings Number (Formerly CFDA Number): 20.106

This Offer is made on and **SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

CONDITIONS

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is ~~\$69,000~~.
2. **Period of Performance.** The period of performance shall commence on the date the Sponsor formally accepts this agreement. The end date of the period of performance is 4 years (1,460 calendar days) from the date of acceptance.

The Sponsor may only charge allowable costs for obligations incurred prior to the end date of the period of performance (2 CFR § 200.309). Unless the FAA authorizes a written extension, the Sponsor must submit all Grant closeout documentation and liquidate (pay-off) all obligations incurred under this award no later than 90 calendar days after the end date of the period of performance (2 CFR § 200.343).

The period of performance end date shall not affect, relieve or reduce Sponsor obligations and assurances that extend beyond the closeout of this Grant Agreement.

3. **Unallowable Costs.** The Sponsor shall not seek reimbursement for any costs that the FAA has determined to be unallowable under the CARES Act.
4. **Indirect Costs - Sponsor.** The Sponsor may charge indirect costs under this award by applying the indirect cost rate identified in the Grant Application as accepted by the FAA, to allowable costs for Sponsor direct salaries and wages only.
5. **Final Federal Share of Costs.** The United States' share of allowable Grant costs will be 100%.
6. **Completing the Grant without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the Grant without undue delays and in accordance with this Grant Agreement, the CARES Act, and the regulations, policies, standards and procedures of the Secretary of Transportation ("Secretary"). Pursuant to 2 CFR § 200.308, the Sponsor agrees to report to the FAA any disengagement from funding eligible expenses under the Grant that exceeds three months and request prior approval from FAA. The report must include a reason for the stoppage. The Sponsor agrees to comply with the attached assurances, which are part of this agreement and any addendum that may be attached hereto at a later date by mutual consent.
7. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.

8. **Offer Expiration Date.** This offer will expire and the United States will not be obligated to pay any part of the costs unless this offer has been accepted by the Sponsor on or before ~~June 15, 2020~~, or such subsequent date as may be prescribed in writing by the FAA.
9. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner, including uses that violate this Grant Agreement, the CARES Act or other provision of applicable law. For the purposes of this Grant Agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor, that were originally paid pursuant to this or any other Federal grant agreement(s). The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.
10. **United States Not Liable for Damage or Injury.** The United States is not responsible or liable for damage to property or injury to persons which may arise from, or relate to this Grant Agreement, including, but not limited to, any action taken by a Sponsor related to or arising from, directly or indirectly, this Grant Agreement.
11. **System for Award Management (SAM) Registration And Universal Identifier.** Unless the Sponsor is exempted from this requirement under 2 CFR § 25.110, the Sponsor must maintain the currency of its information in the SAM until the Sponsor submits the final financial report required under this Grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at <http://www.sam.gov>).
12. **Electronic Grant Payment(s).** Unless otherwise directed by the FAA, the Sponsor must make each payment request under this agreement electronically via the Delphi eInvoicing System for Department of Transportation (DOT) Financial Assistance Awardees.
13. **Financial Reporting and Payment Requirements.** The Sponsor will comply with all Federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.
14. **Buy American.** Unless otherwise approved in advance by the FAA, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any expense for which funds are provided under this Grant. The Sponsor will include a provision implementing applicable Buy American statutory and regulatory requirements in all contracts related to this Grant Agreement.
15. **Audits for Private Sponsors.** When the period of performance has ended, the Sponsor must provide a copy of an audit of this Grant prepared in accordance with accepted standard audit practices, such audit to be submitted to the applicable Airports District Office.
16. **Audits for Public Sponsors.** The Sponsor must provide for a Single Audit or program-specific audit in accordance with 2 CFR Part 200. The Sponsor must submit the audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at <http://harvester.census.gov/facweb/>. Upon request of the FAA, the Sponsor shall provide one copy of the completed audit to the FAA.

17. Suspension or Debarment. When entering into a "covered transaction" as defined by 2 CFR § 180.200, the Sponsor must:

- A. Verify the non-federal entity is eligible to participate in this Federal program by:
 - 1. Checking the excluded parties list system (EPLS) as maintained within the System for Award Management (SAM) to determine if the non-federal entity is excluded or disqualified; or
 - 2. Collecting a certification statement from the non-federal entity attesting the entity is not excluded or disqualified from participating; or
 - 3. Adding a clause or condition to covered transactions attesting the individual or firm is not excluded or disqualified from participating.
- B. Require prime contractors to comply with 2 CFR § 180.330 when entering into lower-tier transactions (e.g. sub-contracts).
- C. Immediately disclose to the FAA whenever the Sponsor (1) learns the Sponsor has entered into a covered transaction with an ineligible entity, or (2) suspends or debar a contractor, person, or entity.

18. Ban on Texting While Driving.

- A. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:
 - 1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to this Grant or subgrant.
 - 2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
 - a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- B. The Sponsor must insert the substance of this clause on banning texting while driving in all subgrants, contracts and subcontracts.

19. Trafficking in Persons.

- A. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not –
 - 1. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - 2. Procure a commercial sex act during the period of time that the award is in effect; or
 - 3. Use forced labor in the performance of the award or subawards under the award.
- B. The FAA as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity –
 - 1. Is determined to have violated a prohibition in paragraph A of this award term; or

2. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph A.1 of this award term through conduct that is either –
 - a. Associated with performance under this award; or
 - b. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, “OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),” as implemented by the FAA at 2 CFR Part 1200.
3. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph A during this award term.
4. Our right to terminate unilaterally that is described in paragraph A of this section:
 - a. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. § 7104(g)), and
 - b. Is in addition to all other remedies for noncompliance that are available to the FAA under this award.

20. Employee Protection from Reprisal.

A. Prohibition of Reprisals —

1. In accordance with 41 U.S.C. § 4712, an employee of a grantee or subgrantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in sub-paragraph (A)(2), information that the employee reasonably believes is evidence of:
 - a. Gross mismanagement of a Federal grant;
 - b. Gross waste of Federal funds;
 - c. An abuse of authority relating to implementation or use of Federal funds;
 - d. A substantial and specific danger to public health or safety; or
 - e. A violation of law, rule, or regulation related to a Federal grant.
2. Persons and bodies covered: The persons and bodies to which a disclosure by an employee is covered are as follows:
 - a. A member of Congress or a representative of a committee of Congress;
 - b. An Inspector General;
 - c. The Government Accountability Office;
 - d. A Federal office or employee responsible for oversight of a grant program;
 - e. A court or grand jury;
 - f. A management office of the grantee or subgrantee; or
 - g. A Federal or State regulatory enforcement agency.
3. Submission of Complaint — A person who believes that they have been subjected to a reprisal prohibited by paragraph A of this grant term may submit a complaint regarding the reprisal to the Office of Inspector General (OIG) for the U.S. Department of Transportation.
4. Time Limitation for Submittal of a Complaint — A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.
5. Required Actions of the Inspector General — Actions, limitations, and exceptions of the Inspector General’s office are established under 41 U.S.C. § 4712(b).

6. Assumption of Rights to Civil Remedy — Upon receipt of an explanation of a decision not to conduct or continue an investigation by the Office of Inspector General, the person submitting a complaint assumes the right to a civil remedy under 41 U.S.C. § 4712(c).
21. **Limitations.** Nothing provided herein shall be construed to limit, cancel, annul, or modify the terms of any Federal grant agreement(s), including all terms and assurances related thereto, that have been entered into by the Sponsor and the FAA prior to the date of this Grant Agreement.

SPECIAL CONDITIONS

1. **ARFF and SRE Equipment and Vehicles.** The Sponsor agrees that it will:
 - A. House and maintain the equipment in a state of operational readiness on and for the airport;
 - B. Provide the necessary staffing and training to maintain and operate the vehicle and equipment;
 - C. Restrict the vehicle to on-airport use only;
 - D. Restrict the vehicle to the use for which it was intended; and
 - E. Amend the Airport Emergency Plan and/or Snow and Ice Control Plan to reflect the acquisition of a vehicle and equipment.
2. **Equipment or Vehicle Replacement.** The Sponsor agrees that it will treat the proceeds from the trade-in or sale of equipment being replaced with these funds as airport revenue.
3. **Off-Airport Storage of ARFF Vehicle.** The Sponsor agrees that it will:
 - A. House and maintain the vehicle in a state of operational readiness for the airport;
 - B. Provide the necessary staffing and training to maintain and operate the vehicle;
 - C. Restrict the vehicle to airport use only;
 - D. Amend the Airport Emergency Plan to reflect the acquisition of the vehicle;
 - E. Within 60 days, execute an agreement with local government including the above provisions and a provision that violation of said agreement could require repayment of Grant funding; and
 - F. Submit a copy of the executed agreement to the FAA.
4. **Equipment Acquisition.** The Sponsor agrees that it will maintain Sponsor-owned and -operated equipment and use for purposes directly related to the airport.
5. **Utilities Proration.** For purposes of computing the United States' share of the allowable airport operations and maintenance costs, the allowable cost of utilities incurred by the Sponsor to operate and maintain airport(s) included in the Grant must not exceed the percent attributable to the capital or operating costs of the airport.
6. **Utility Relocation in Grant.** The Sponsor understands and agrees that:
 - A. The United States will not participate in the cost of any utility relocation unless and until the Sponsor has submitted evidence satisfactory to the FAA that the Sponsor is legally responsible for payment of such costs;
 - B. FAA participation is limited to those utilities located on-airport or off-airport only where the Sponsor has an easement for the utility; and
 - C. The utilities must serve a purpose directly related to the Airport.

The Sponsor's acceptance of this Offer and ratification and adoption of the Grant Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, as provided by the CARES Act, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Grant and compliance with the assurances and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

**UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION**

Matthew Di Giulian

Matthew Di Giulian (May 8, 2020)

(Signature)

Matthew Di Giulian

(Typed Name)

Manager, Beckley AFO

(Title of FAA Official)

Part II - Acceptance

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Grant Application and incorporated materials referred to in the foregoing Offer under Part II of this Agreement, and does hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Grant Application.

I declare under penalty of perjury that the foregoing is true and correct.

Dated May 12, 2020

City of Morgantown

(Name of Sponsor)

Paul J. Brake

Paul J. Brake (May 12, 2020)

(Signature of Sponsor's Authorized Official)

By: Paul J. Brake

(Typed Name of Sponsor's Authorized Official)

Title: City Manager

(Title of Sponsor's Authorized Official)

CERTIFICATE OF SPONSOR'S ATTORNEY

I, _____, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of West Virginia. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the CARES Act. The Sponsor understands funding made available under this Grant Agreement may only be used to reimburse for airport operational and maintenance expenses, and debt service payments. The Sponsor further understands it may submit a separate request to use funds for new airport/project development purposes, subject to additional terms, conditions, and assurances. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at _____

By: _____

(Signature of Sponsor's Attorney)

CARES ACT ASSURANCES

AIRPORT SPONSORS

A. General.

1. These assurances are required to be submitted as part of the application by sponsors requesting funds under the provisions of the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act or "the Act"), Public Law 116-136. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
2. Upon acceptance of this Grant offer by the sponsor, these assurances are incorporated into and become part of this Grant Agreement.

B. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this Grant that:

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Grant including but not limited to the following:

FEDERAL LEGISLATION

- a. Federal Fair Labor Standards Act — 29 U.S.C. 201, et seq.
- b. Hatch Act — 5 U.S.C. 1501, et seq.
- c. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.
- d. National Historic Preservation Act of 1966 — Section 106 - 16 U.S.C. 470(f).
- e. Archeological and Historic Preservation Act of 1974 — 16 U.S.C. 469 through 469c.
- f. Native Americans Grave Repatriation Act — 25 U.S.C. Section 3001, et seq.
- g. Clean Air Act, P.L. 90-148, as amended.
- h. Coastal Zone Management Act, P.L. 93-205, as amended.
- i. Flood Disaster Protection Act of 1973 — Section 102(a) - 42 U.S.C. 4012a.
- j. Title 49, U.S.C., Section 303, (formerly known as Section 4(f)).
- k. Rehabilitation Act of 1973 — 29 U.S.C. 794.
- l. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin).
- m. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).
- n. Age Discrimination Act of 1975 — 42 U.S.C. 6101, et seq.
- o. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- p. Architectural Barriers Act of 1968 — 42 U.S.C. 4151, et seq.
- q. Power plant and Industrial Fuel Use Act of 1978 — Section 403- 2 U.S.C. 8373.

- r. Contract Work Hours and Safety Standards Act — 40 U.S.C. 327, et seq.
- s. Copeland Anti-kickback Act — 18 U.S.C. 874.1.
- t. National Environmental Policy Act of 1969 — 42 U.S.C. 4321, et seq.
- u. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- v. Single Audit Act of 1984 — 31 U.S.C. 7501, et seq.
- w. Drug-Free Workplace Act of 1988 — 41 U.S.C. 702 through 706.
- x. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

EXECUTIVE ORDERS

- a. Executive Order 11246 – Equal Employment Opportunity
- b. Executive Order 11990 – Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 – Intergovernmental Review of Federal Programs
- e. Executive Order 12699 – Seismic Safety of Federal and Federally Assisted New Building Construction
- f. Executive Order 12898 – Environmental Justice
- g. Executive Order 13788 – Buy American and Hire American
- h. Executive Order 13858 – Strengthening Buy-American Preferences for Infrastructure Projects

FEDERAL REGULATIONS

- a. 2 CFR Part 180 – OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment.
- d. 28 CFR Part 35 – Discrimination on the Basis of Disability in State and Local Government Services.
- e. 28 CFR § 50.3 – U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- f. 29 CFR Part 1 – Procedures for predetermination of wage rates.
- g. 29 CFR Part 3 – Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.
- h. 29 CFR Part 5 – Labor standards provisions applicable to contracts covering Federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).
- i. 41 CFR Part 60 – Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and Federally assisted contracting requirements).
- j. 49 CFR Part 20 – New restrictions on lobbying.

- k. 49 CFR Part 21 – Nondiscrimination in Federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- l. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Program .49 CFR Part 27 — Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.
- m. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- n. 49 CFR Part 30 – Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- o. 49 CFR Part 32 – Government-wide Requirements for Drug-Free Workplace (Financial Assistance).
- p. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
- q. 49 CFR Part 41 – Seismic safety of Federal and Federally assisted or regulated new building construction.

SPECIFIC ASSURANCES

Specific assurances required to be included in grant agreements by any of the above laws, regulations, or circulars are incorporated by reference in this Grant Agreement.

1. Purpose Directly Related to the Airport

It certifies that the reimbursement sought is for a purpose directly related to the airport.

2. Responsibility and Authority of the Sponsor.

a. Public Agency Sponsor:

It has legal authority to apply for this Grant, and to finance and carry out the proposed grant; that an official decision has been made by the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. Private Sponsor:

It has legal authority to apply for this Grant and to finance and carry out the proposed Grant and comply with all terms, conditions, and assurances of this Grant Agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. Good Title.

It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.

4. Preserving Rights and Powers.

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this Grant

Agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish, or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

- b. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with this Grant Agreement.
- c. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations, and the terms and conditions of this Grant Agreement.

5. Accounting System, Audit, and Record Keeping Requirements.

- a. It shall keep all Grant accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this Grant, the total cost of the Grant in connection with which this Grant is given or used, and the amount or nature of that portion of the cost of the Grant supplied by other sources, and such other financial records pertinent to the Grant. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this Grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a Grant or relating to the Grant in connection with which this Grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

6. Exclusive Rights.

The sponsor shall not grant an exclusive right to use an air navigation facility on which this Grant has been expended. However, providing services at an airport by only one fixed-based operator is not an exclusive right if—

- a. it is unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide the services; and
- b. allowing more than one fixed-based operator to provide the services requires a reduction in space leased under an agreement existing on September 3, 1982, between the operator and the airport.

7. Airport Revenues.

This Grant shall be available for any purpose for which airport revenues may lawfully be used. CARES Act Grant funds provided under this Grant Agreement will only be expended for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport(s) subject to this agreement and all applicable addendums.

8. Reports and Inspections.

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 1. all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
 2. all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

9. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this Grant.

- a. Using the definitions of activity, facility, and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR Part 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by or pursuant to these assurances.
- b. Applicability
 1. **Programs and Activities.** If the sponsor has received a grant (or other Federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
 2. **Facilities.** Where it receives a grant or other Federal financial assistance to construct, expand, renovate, remodel, alter, or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
 3. **Real Property.** Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of, real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.
- c. Duration

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

1. So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
2. So long as the sponsor retains ownership or possession of the property.

Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests for Proposals for work, or material under this Grant and in all proposals for agreements, including airport concessions, regardless of funding source:

"The City of Morgantown, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

d. Required Contract Provisions.

1. It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
2. It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
3. It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
4. It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:
 - A. For the subsequent transfer of real property acquired or improved under the applicable activity, grant, or program; and
 - B. For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, grant, or program.
- e. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
- f. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

10. Foreign Market Restrictions.

It will not allow funds provided under this Grant to be used to fund any activity that uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

11. Acquisition Thresholds.

The FAA deems equipment to mean tangible personal property having a useful life greater than one year and a per-unit acquisition cost equal to or greater than \$5,000. Procurements by micro-purchase means the acquisition of goods or services for which the aggregate dollar amount does not exceed \$10,000. Procurement by small purchase procedures means those relatively simple and informal procurement methods for securing goods or services that do not exceed the \$250,000 threshold for simplified acquisitions.

Application for Federal Assistance SF-424

*1. Type of Submission: <input type="checkbox"/> Preapplication <input checked="" type="checkbox"/> Application <input type="checkbox"/> Changed/Corrected Application	*2. Type of Application <input checked="" type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision	* If Revision, select appropriate letter(s): NA * Other (Specify) NA
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*3. Date Received: NA	4. Applicant Identifier: MGW
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5a. Federal Entity Identifier:	*5b. Federal Award Identifier:
--------------------------------	--------------------------------

State Use Only:

6. Date Received by State:	7. State Application Identifier:
----------------------------	----------------------------------

8. APPLICANT INFORMATION:

*a. Legal Name: City of Morgantown c/o Morgantown Municipal Airport	
*b. Employer/Taxpayer Identification Number (EIN/TIN): 55-6000215	*c. Organizational DUNS: 177686867

d. Address:

*Street 1:	City of Morgantown
Street 2:	389 Spruce Street
*City:	Morgantown
County:	Monongalia
*State:	WV
Province:	
*Country:	USA: United States
*Zip / Postal Code	26505

e. Organizational Unit:

Department Name: Morgantown Municipal Airport	Division Name:
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f. Name and contact information of person to be contacted on matters involving this application:

Prefix:	Mr.	*First Name:	Paul
Middle Name:			
*Last Name:	Brake		
Suffix:			

Title: City Manager

Organizational Affiliation:
City of Morgantown

*Telephone Number: (304) 284-7405	Fax Number:
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*Email: pbrake@morgantownwv.gov

Application for Federal Assistance SF-424

***9. Type of Applicant 1: Select Applicant Type:**

X. Airport Sponsor

Type of Applicant 2: Select Applicant Type:

NA

Type of Applicant 3: Select Applicant Type:

NA

*Other (Specify)

NA

***10. Name of Federal Agency:**

11. Catalog of Federal Domestic Assistance Number:

20.106

CFDA Title:

Airport Improvement Program

***12. Funding Opportunity Number:**

*Title:

NA

13. Competition Identification Number:

Title:

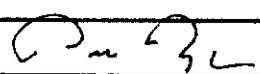
NA

14. Areas Affected by Project (Cities, Counties, States, etc.):

***15. Descriptive Title of Applicant's Project:**

Any purpose for which airport funds may be lawfully used, as found in the Office of Airports Revenue Use Policy, except airport development or land acquisition.

Attach supporting documents as specified in agency instructions.

Application for Federal Assistance SF-424	
16. Congressional Districts Of:	
*a. Applicant: 1st	*b. Program/Project: 1st
Attach an additional list of Program/Project Congressional Districts if needed.	
17. Proposed Project:	
*a. Start Date: NA	*b. End Date: NA
18. Estimated Funding (\$):	
*a. Federal	\$ 69,000
*b. Applicant	_____
*c. State	_____
*d. Local	_____
*e. Other	_____
*f. Program Income	_____
*g. TOTAL	\$ 69,000
*19. Is Application Subject to Review By State Under Executive Order 12372 Process?	
<input type="checkbox"/> a. This application was made available to the State under the Executive Order 12372 Process for review on _____.	
<input type="checkbox"/> b. Program is subject to E.O. 12372 but has not been selected by the State for review.	
<input checked="" type="checkbox"/> c. Program is not covered by E. O. 12372	
*20. Is the Applicant Delinquent On Any Federal Debt?	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If "Yes", explain:	
21. *By signing this application, I certify (1) to the statements contained in the list of certifications** and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U. S. Code, Title 218, Section 1001)	
<input checked="" type="checkbox"/> ** I AGREE	
** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.	
Authorized Representative:	
Prefix: Mr.	*First Name: Paul
Middle Name: _____	
*Last Name: Brake	
Suffix: _____	
*Title: City Manager	
*Telephone Number: (304) 284-7405	Fax Number: _____
* Email: pbrake@morgantownwv.gov	
*Signature of Authorized Representative: 	*Date Signed: 04/20/2020



The City of Morgantown
Office of the City Engineer

Memorandum

To: Emily Muzzarelli
Interim City Manager

From: J. Damien Davis
City Engineer

Date: May 13, 2020

Re: 8th Street Trailhead – Bid Call 2020-12

Bids were opened at 2:30pm on May 5, 2020. The results are as follows:

CONTRACTOR	COST
MonCo Constructors	\$92,333.00
Lytle Construction	\$144,532.00
Wolfe Landscapes Plus, LLC	\$179,400.00
Veritas Contracting, LLC	\$179,479.00
Peidmont Services	\$192,500.00
Green River Group	\$199,320.41
Bear Contracting	\$235,000.00

As you can see, there is a significant variation in the bid results. I have discussed our concerns with MonCo Constructors (the low bidder) and they have reviewed their submission and are confident they can complete the project for their submitted cost. Engineering has reviewed the submitted bid for completeness and adherence to the Bid Call requirement, contacted references and find no reason to disqualify them. Engineering recommends award to MonCo Constructors.