



Office of the City Clerk

The City of Morgantown

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llittle@cityofmorgantown.org

AGENDA MORGANTOWN CITY COUNCIL REGULAR MEETING APRIL 21, 2015 7:00 p.m.

1. **CALL TO ORDER**

2. **ROLL CALL**

3. **PLEDGE TO THE FLAG**

4. **APPROVAL OF MINUTES:** Regular Meeting Minutes for April 7, 2015.

5. **CORRESPONDENCE:**

According to State Law a live Presentation by Casto – Harris will be displaying the voting system for the upcoming City Election.

6. **PUBLIC HEARINGS:**

A. PROPOSED AMENDMENT TO THE CITY OF MORGANTOWN HOME RULE APPLICATION.

B. AN ORDINANCE AMENDING SECTIONS 1505.01 AND 1511.02 OF THE MORGANTOWN CITY CODE TO GRANT CITY FIRE MARSHALS AND DEPUTY FIRE MARSHALS ARREST AUTHORITY AT FIRE SCENES AND FOR CERTAIN VIOLATIONS OF THE FIRE PREVENTION CODE.

C. AN ORDINANCE PROVIDING FOR EXECUTION OF A RIGHT-OF-WAY AND EASEMENT AGREEMENT WITH THE MORGANTOWN UTILITY BOARD FOR CONSTRUCTION OF A SANITARY SEWER LINE ON A PORTION OF PROPERTY IDENTIFIED ON UNION DISTRICT TAX MAP 23, PARCEL 44, AND DECLARING THE ATTACHED EASEMENT AS A PART THEREOF.

D. AN ORDINANCE PROVIDING FOR EXECUTION OF A RIGHT-OF-WAY AND EASEMENT AGREEMENT WITH THE MORGANTOWN UTILITY BOARD FOR

CONSTRUCTION OF A FENCE ON A PORTION OF PROPERTY IDENTIFIED ON UNION DISTRICT TAX MAP 28, PARCEL 134, AND DECLARING THE ATTACHED EASEMENT AS A PART THEREOF.

E. AN ORDINANCE AMENDING CITY CODE SECTION 747.02 PRESCRIBING A FIRE SERVICE FEE.

F. AN ORDINANCE AMENDING CITY CODE SECTION 735.24 SETTING THE BUSINESS AND OCCUPATION TAX RATE FOR SERVICE BUSINESSES.

7. UNFINISHED BUSINESS:

A. Consideration of APPROVAL of (SECOND READING) and (ADOPTION) of AN ORDINANCE PROVIDING FOR EXECUTIVE OF A RIGHT-OF-WAY AND EASEMENT AGREEMENT WITH THE MORGANTOWN UTILITY BOARD FOR CONSTRUCTION OF A SANITARY SEWER LINE ON A PORTION OF PROPERTY IDENTIFIED ON UNION DISTRICT TAX MAP 23, PARCEL 44, AND DECLARING THE ATTACHED EASEMENT AS A PART THEREOF. (FIRST READING: APRIL 7, 2015)

B. Consideration of APPROVAL of (SECOND READING) and (ADOPTION) of AN ORDINANCE PROVIDING FOR EXECUTION OF A RIGH-OF-WAY AND EASEMENT AGREEMENT WITH THE MORGANTOWN UTILITY BOARD FOR CONSTRUCTION OF A FENCE ON A PORTION OF PROPERTY IDENTIFIED ON UNION DISTRICT TAX MAP 28, PARCEL 134, AND DECLARING THE ATTACHED EASEMENT AS A PART THEREOF. (FIRST READING: APRIL 7, 2015)

C. Consideration of APPROVAL of (SECOND READING) and (ADOPTION) of AN ORDINANCE AMENDING CITY CODE SECTION 747.02 PRESCRIBING A FIRE SERVICE FEE. (FIRST READING: APRIL 7, 2015)

D. Consideration of APPROVAL of (SECOND READING) and (ADOPTION) of AN ORDINANCE AMENDING CITY CODE SECTION 735.24 SETTING THE BUSINESS AND OCCUPATION TAX RATE FOR SERVICE BUSINESSES. (FIRST READING: APRIL 7, 2015)

E. BOARDS AND COMMISSIONS

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

9. **SPECIAL COMMITTEE REPORTS:**

10. **NEW BUSINESS:**

- A. Consideration of **APPROVAL** of **(FIRST READING)** of **AN ORDANCE AMENDING CITY CHARTER SECTION 2.12 AND ADDING A NEW SECTION 2.17 PERMITTING AUTHORIZATION OF INTERGOVERNMENTAL AGREEMENTS BY RESOLUTION RATHER THAN ORDINANCE.**
- B. Consideration of **APPROVAL** of **(FIRST READING)** of **AN ORDANCE AMENDING ARTICLE 1149 OF THE CITY CODE RELATING TO PUBLIC NUISANCE TO PROVIDE FOR PLACING OF PUBLIC NUISANCE REMOVAL LIENS WITHOUT A COURT ORDER.**
- C. Consideration of **APPROVAL** of **(FIRST READING)** of **AN ORDANCE AUTHORIZING THE PURCHASE OF REAL ESTATE AT 2183 UNIVERSITY AVENUE AND DECLARING THE REAL ESTATE PURCHASE AGREEMENT HERETO ATTACHED AS A PART THEREOF.**
- D. Consideration of **APPROVAL** of **(FRIST READING)** of **AN ORDINANCE AUTHORIZING EXECUTION OF A CONTRACT FOR HISTORIC PRESERVATION FEDERAL GRANT BY AND BETWEEN THE WEST VIRGINIA DIVISION OF FINANCE AND ADMINSTRATION FOR AND ON BEHALF OF THE DIVISION OF CULTURE AND HISTORY AND THE CITY OF MORGANTOWN FOR THE CITY OF MORGANTOWN HISTORIC LANDMARKS COMMISSION.**
- E. Consideration of the **APPROVAL OF THE RATES OF LEVY LAID BY THE CITY OF MORGANTOWN AND APPROVED BY THE STATE AUDITOR FOR THE FISCAL YEAR BEGINNING JULY 1, 2015 IN ACCORDANCE WITH CHAPTER 11 ARTICLE 8 OF THE WEST VIRGINIA CODE.**

11. **CITY MANAGER'S REPORT:**

NEW BUSINESS:

1. Street Paving Bids
2. Landfill Laboratory Service Bids
3. Demolition Bids
4. Brownfield Environmental Services

12. **REPORT FROM CITY CLERK:**

1. Liquor License application - Pre-Gamers, LLC.
2. City election update.

13. **REPORT FROM CITY ATTORNEY:**

14. **REPORT FROM COUNCIL MEMBERS:**

15. **ADJOURNMENT:**

If you need an accommodation contact us at (304) 284-7439

REGULAR MEETING April 7, 2015: The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers of City Hall on Tuesday, April 7, 2015 at 7:00 p.m.

PRESENT: City Manager Jeff Mikorski, City Clerk Linda Tucker, Mayor Selin, and Council Members: Ron Bane, Bill Kawecki, Wes Nugent, Mike Fike, Nancy Ganz and City Attorney Ryan Simonton. Assistant City Manager Glen Kelly and Deputy Mayor Marti Shamberger were absent.

The Meeting was called to order by Mayor Selin.

APPROVAL OF MINUTES: The minutes of the March 17, 2015 meeting were approved as printed.

CORRESPONDENCE: Mayor Selin acknowledged and welcomed City Manager, Travis Blosser from Shinnston, and WVU Political Science 220 class. And then she presented a Proclamation to Nathaniel Collins for National Service Recognition Day.

PUBLIC HEARING - AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF ONE (1) PARCEL OF REAL ESTATE IN THE FIRST WARD OF THE CITY OF MORGANTOWN FROM B-1, NEIGHBORHOOD BUSINESS DISTRICT TO B-2, SERVICE BUSINESS DISTRICT BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH HEREIN.

Garrett Richards, from GlenMark Holding, noted that he is in favor of the Zoning Reclassification Ordinance. There being no more appearances, Mayor Selin declared the Public Hearing closed.

PUBLIC HEARING - AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF EIGHTEEN (18) PARCELS OF REAL ESTATE IN THE THIRD WARD OF THE CITY OF MORGANTOWN FROM R-2, SINGLE- AND TWO-FAMILY RESIDENTIAL DISTRICT TO R-3, MULTI- FAMILY RESIDENTIAL DISTRICT BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH HEREIN.

There being no appearances, Mayor Selin declared the Public Hearing closed.

PUBLIC HEARING - AN ORDINANCE AMENDING SECTION 129.05 OF THE CITY CODE PRESCRIBING RULES FOR PURCHASING, CONTRACTS, AND PUBLIC BIDDING.

There being no appearances, Mayor Selin declared the Public Hearing closed.

PUBLIC HEARING AN ORDINANCE BY THE CITY OF MORGANTOWN AND PURSUANT TO AUTHORITY GRANTED TO IT AS A HOME RULE MUNICIPALITY, CREATING A NEW SECTION 181.22 WITHIN ITS ADMINISTRATIVE CODE, AS THE SAME APPLIES TO A COURT TECHNOLOGY/MAINTENANCE FEE WHICH IS TO BE ASSESSED AGAINST MUNICIPAL COURT DEFENDANTS.

There being no appearances, Mayor Selin declared the Public Hearing closed.

PUBLIC HEARING - AN ORDINANCE BY THE CITY OF MORGANTOWN AND PURSUANT TO AUTHORITY GRANTED TO IT AS A HOME RULE MUNICIPALITY, CREATING A NEW SECTION 1713.04 WITHIN ITS BUILDING AND HOUSING CODE, AS THE SAME APPLIES TO PROPERTY MAINTENANCE REQUIREMENTS AND ITEMS FALLING WITHIN THE DEFINITION OF UPHOLSTERED FURNITURE.

There being no appearances, Mayor Selin declared the Public Hearing closed.

UNFINISHED BUSINESS:

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF ONE (1) PARCEL OF REAL ESTATE IN THE FIRST WARD: The below entitled Ordinance was presented for second reading.

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF ONE (1) PARCEL OF REAL ESTATE IN THE FIRST WARD OF THE CITY OF MORGANTOWN FROM B-1, NEIGHBORHOOD BUSINESS DISTRICT TO B-2, SERVICE BUSINESS DISTRICT BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH HEREIN.

After City Manager's explanation of the zoning amendment and reclassification, motion by Kawecki, second by Fike, to adopt the above entitled Ordinance. Motion carried 6-0.

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF EIGHTEEN (18) PARCELS OF REAL ESTATE IN THE THIRD WARD: The below entitled Ordinance was presented for second reading.

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF EIGHTEEN (18) PARCELS OF REAL ESTATE IN THE THIRD WARD OF THE CITY OF MORGANTOWN FROM R-2, SINGLE- AND TWO-FAMILY RESIDENTIAL DISTRICT TO R-3, MULTI- FAMILY RESIDENTIAL DISTRICT BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH HEREIN.

After City Manager's explanation of the Zoning Amendment and Reclassification, Councilor Nugent presented information (Exhibit A) to Council on different zoning options that stake holders in his neighborhood had mentioned to him in reference to the Zoning. After discussion, Council requested to suspend the rules to have Chris Fletcher, Director of Development Services, to answer questions. By unanimous consent rules were suspended. After discussion with Fletcher and Council, motion by Nugent, second by Kawecki to postpone Zoning Ordinance. Motion carried 6-0.

AN ORDINANCE AMENDING SECTION 129.05 OF THE CITY CODE PRESCRIBING RULES FOR PURCHASING, CONTRACTS, AND PUBLIC BIDDING: The below entitled Ordinance was presented for second reading.

AN ORDINANCE AMENDING SECTION 129.05 OF THE CITY CODE PRESCRIBING RULES FOR PURCHASING, CONTRACTS, AND PUBLIC BIDDING.

After City Manager's explanation, motion by Nugent, second by Fike to adopt the above entitled Ordinance. Motion carried 6-0.

AN ORDINANCE BY THE CITY OF MORGANTOWN AND PURSUANT TO AUTHORITY GRANTED TO IT AS A HOME RULE MUNICIPALITY, CREATING a NEW SECTION 181.22: The below entitled Ordinance was presented for second reading.

AN ORDINANCE BY THE CITY OF MORGANTOWN AND PURSUANT TO AUTHORITY GRANTED TO IT AS A HOME RULE MUNICIPALITY, CREATING A NEW SECTION 181.22 WITHIN ITS ADMINISTRATIVE CODE, AS THE SAME APPLIES TO A COURT TECHNOLOGY/MAINTENANCE FEE WHICH IS TO BE ASSESSED AGAINST MUNICIPAL COURT DEFENDANTS.

After City Manager's explanation, motion by Bane, second by Ganz to adopt the above entitled Ordinance. Motion carried 6-0.

AN ORDINANCE BY THE CITY OF MORGANTOWN AND PURSUANT TO AUTHORITY GRANTED TO IT AS A HOME RULE MUNICIPALITY, CREATING A NEW SECTION 1713.04 WITHIN ITS BUILDING AND HOUSING CODE: The below entitled Ordinance was presented for second reading.

AN ORDINANCE BY THE CITY OF MORGANTOWN AND PURSUANT TO AUTHORITY GRANTED TO IT AS A HOME RULE MUNICIPALITY, CREATING A NEW SECTION 1713.04 WITHIN ITS BUILDING AND HOUSING CODE, AS THE SAME APPLIES TO PROPERTY MAINTENANCE REQUIREMENTS AND ITEMS FALLING WITHIN THE DEFINITION OF UPHOLSTERED FURNITURE.

After City Manager's explanation, motion by Kawecki, second by Fike to adopt the above entitled Ordinance. Motion carried 6-0.

BOARDS AND COMMISSIONS: The City Clerk, Linda Tucker, informed Council that Diane DeMedici, Administrator for the County Commissioner, emailed the Clerk that Ed Hawkins will be the new appointment for the Met Theatre. By acclamation, Council approved the appointment.

PUBLIC PORTION:

Mayor Selin noted the time for the public portion is four minutes.

Guy Panrell, 763 South Hills Drive, read the oath of office to Council and explained that the City Charter is essentially a set of rules defining how a city governs itself. He noted that members of this Council are in violation of this charter. This Charter, which defines the Mayor for ceremonial purposes, but no administrative duties. Also the Charter states, that any Council member who conceals or violates the requirements, Section 2.05B shall forfeit his office. Council members have violated City Charter 2.05B by manipulating ward lines 2.05D by ignoring the legitimate command structure within the City and have not acted as a body in all matters. Mr. Panrell has noted that this Council has demonstrated that they are not people of principle that can be trusted to do anything but look out for their political interests at the expense of the City. (Mr. Panrell read the full document Exhibit B attached).

Mayor Selin warned Guy Panrell that his four minutes were up and he continued on reading and then requested to the Mayor to hand out his presentation to the Clerk. The Mayor responded to Mr. Panrell that he could hand the Clerk the correspondence.

Billie Murray, 250 Second Street, introduced herself as the City's Liaison from the Student Board of Governors. She then reminded Council about the clean up on Saturday, April 11th from 11 am to 1 pm.

Randy Jones, Board of Governors thanked the City Manager's Office for helping with the coordination with the clean up on April 11th and that he would send out flyers to all of Council.

SPECIAL COMMITTEE REPORTS: No reports.

NEW BUSINESS:

AN ORDINANCE PROVIDING A RIGHT-OF-WAY AND EASEMENT WITH MUB FOR CONSTRUCTION OF SEWER LINE: The below was presented for first reading.

AN ORDINANCE PROVIDING FOR EXECUTION OF A RIGHT-OF-WAY AND EASEMENT AGREEMENT WITH THE MORGANTOWN UTILITY BOARD FOR CONSTRUCTION OF A SANITARY SEWER LINE ON A PORTION OF PROPERTY IDENTIFIED ON UNION DISTRICT TAX MAP 23, PARCEL 44, AND DECLARING THE ATTACHED EASEMENT AS A PART THEREOF.

After City Manager's explanation, motion by Nugent, second by Kawecki, to pass the above entitled ordinance to the second reading. Motion carried 6-0.

AN ORDINANCE PROVIDING THE RIGHT-OF-WAY FOR CONSTRUCTION OF A FENCE: The below entitled Ordinance was presented for first reading.

AN ORDINANCE PROVIDING FOR EXECUTION OF A RIGHT-OF-WAY AND EASEMENT AGREEMENT WITH THE MORGANTOWN UTILITY BOARD FOR CONSTRUCTION OF A FENCE ON A PORTION OF PROPERTY IDENTIFIED ON UNION DISTRICT TAX MAP 28, PARCEL 134, AND DECLARING THE ATTACHED EASEMENT AS A PART THEREOF.

After the City Manager's explanation, motion by Bane, second by Nugent to pass the above entitled ordinance to second reading. Motion carried 6-0.

AN ORDINANCE AMENDING 347.02 SETTING THE FIRE FEE:
The above entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING CITY CODE SECTION 347.02 PRESCRIBING A FIRE SERVICE FEE.

City Manager explained where the Fire Fee will be utilized. After discussion, motion by Kawecki, second by Ganz to approve the above entitled Ordinance to second reading. Motion carried 4-2. (Counselor Bane and Nugent voted no)

AN ORDINANCE AMENDING CITY CODE SECTION 735.24 SETTING THE BUSINESS AND OCCUPATION TAX RATE FOR SERVICE BUSINESSES: The above entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING CITY CODE 735.24 TO SET THE B & O TAX RATE FOR SERVICE BUSINESSES.

City Manager explained specifics on how the funds would be used and how the monies would be generated. Questions and discussions from Council, motion by Kawecki, second by Ganz to approve the above entitled Ordinance to second reading. Motion carried 4-2. (Bane and Nugent voting no)

CITY MANAGERS REPORT:

New Business:

1. Planning Commission Annual Report

As prescribed by State Law, the Morgantown Planning Commission is required to provide an annual update to City Council. I recommend City Council accept the attached 2014 Planning Commission Annual Report.

After discussion, motion by Nugent, second by Kawecki, to approve the Planning Commission annual report. Motion carried 6-0.

2. Woodburn School Grants

The Woodburn School Redevelopment Commission presented a three phased approach to redeveloping the lower portion (playground area) of property. Before moving ahead by working with the City on grant opportunities, the Commission would like City Council to show support for the proposed project by approving the plan to move forward. The Manager's office will work with the Commission to apply for grants through the City, as property owner, and bring grant agreements forward for Council's action and possible matching fund requirements.

After discussion, motion by Ganz, second by Kawecki, to approve the Woodburn School Grants. Motion carried 6-0.

Information:

1. City Manager, Jeff Mikorski announced that Republic Services will be setup in City Hall lobby the week of April 6th through the 10th to sign up new customers and also to answer questions.

REPORT FROM CITY CLERK: Mrs. Tucker updated Council about the 2015 City Election.

REPORT FROM CITY ATTORNEY: No Report

REPORT FROM COUNCIL MEMBERS:

Councilor Bane:

Councilor Bane announced that he will not be here for the upcoming Council Meeting April 21st, 2015. Councilor Bane also announced that the patch work has begun. City Manager, Jeff

Mikorski responded that the street department is repairing pot holes with 2 crews daily.

Councilor Kawecki:

Councilor Kawecki announced in regards to the new microphones and would like the Citizens to drop a note stating how they were at the time of the meeting.

Councilor Nugent:

Councilor Nugent announced that there will be a neighborhood clean-up in Wiles Hill Highland Park area on Saturday, April 11, 2015, at 11:00 am with the Student Government Association and neighbors.

Councilor Nugent stated that he was wondering if there have been studies done about the cold patching and other alternatives to patching the roads. Councilor Nugent did state that Beechurst was one of the worst roads and that he felt the patch work that was done will not hold.

Councilor Shamberger

Absent

Councilor Fike:

Councilor Fike stated that he is glad that Wiles Hill Highland Park Neighborhood Association is having a clean-up day the same day as the South Hill Neighborhood Association clean-up which will be from 10 am – 2 pm.

Councilor Ganz:

Councilor Ganz noted the advisory opinion from the Ethics Commission from February 12, 2014, and that they can answer back to our City Clerk that a member of City Council who represents that same ward may vote on that same adjustment. She also mentioned the letter from City Attorney Steve Fanok. She stated where he reviewed the State of West Virginia Exrel Thornton Cooper vs. Natalie Tennant, as a result of that case noted that it has an impact on the City of Morgantown. Regardless, I have reviewed the case and, as a result, do not believe that it has an impact upon the City of Morgantown's Charter language and method of establishing wards. The

basis for my opinion is that the case concentrates on the proposed statewide redistricting plan, its impact upon equal representation, and gerrymandering – none of which are at issue in Morgantown due to the City’s at large/non-partisan method of holding Council elections. She stated that we take our votes very seriously, and then she referenced a State Legislature Magazine where it states: West Virginia restricts the Ethics Commission from accepting or initiating complaints against candidates who are public officials or public employees 60 days before a primary or general election. She then stated that in this magazine, it says preventing frivolous, unfounded ethics complaints, especially during an election season, helps keep politics out of the process. Councilor Ganz reported that the request partner is up and running again. She also thanked the City Manager for his update and answers on the City Budget.

Mayor Selin:

Mayor Selin requested a letter be sent to the Governor or Legislature in reference to a bill on strangulation that was vetoed to show this Council’s support for the next Legislative Session. She then thanked Counselor Ganz on her stand in reference to voting and the allegations that are happening over and over again in hoping that we all can move forward. She then announced some events, Snow White at the Met Theatre April 11th and 12th; Green House Fair: Morgantown Market Place April 18th and Chocolate Lovers Day Downtown Morgantown also April 18th.

ADJOURNMENT: There being no further items of business or discussion, the meeting adjourned by unanimous consent at 9:50 p.m.

City Clerk

Mayor

*A FULL TRANSCRIPT OF ALL COUNCIL MEETINGS ARE AVAILABLE ON DVD AT THE MORGANTOWN CITY LIBRARY.

Exhibit A

Zimbra

llittle@cityofmorgantown.org

Council Journal Attachments

From : Wesley Nugent <wes@wnugent.com>

Thu, Apr 09, 2015 08:38 PM

Subject : Council Journal Attachments 2 attachments**To :** Linda Little <llittle@cityofmorgantown.org>**Cc :** City Council <CityCouncil@cityofmorgantown.org>, Jeff Mikorski <jmikorski@cityofmorgantown.org>

Madam Clerk,

I'm sending information provided to Council on April 7, 2015, however please note this version correctly indicates four parcels formerly zoned as PUD (an update to the City's official map available online), reclassified by action of Council on February 3, 2015. I've also outlined the 18 parcels under consideration for reclassification from R-2 to R-3 for clarity.

This information may be attached to the Council Journal as exhibits, as may be appropriate.

Respectfully,
Wes

--

Wesley "Wes" Nugent
Third Ward City Councilor, Morgantown, W.Va.
[Connect online @ WNugent.com](#)
[Facebook](#) | [LinkedIn](#) | [Twitter](#)

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Proposed Zoning Change Exhibits.pdf
1,011 KB



Proposed Zoning Change Exhibits.pdf
1,011 KB

Zimbra

llittle@cityofmorgantown.org

Re: Council Journal Attachments

From : Jennifer <jselin@hotmail.com>

Fri, Apr 10, 2015 07:54 AM

Subject : Re: Council Journal Attachments**To :** Wesley Nugent <wes@wnugent.com>**Cc :** Linda Little <llittle@cityofmorgantown.org>, City Council
<CityCouncil@cityofmorgantown.org>, Jeff Mikorski <jmikorski@cityofmorgantown.org>

I would ask the clerk to consider attaching councilor Nugents statement to the record as well to delineate any changes to the original document.

Jenny Selin
Cell 304-685-6569

On Apr 9, 2015, at 8:39 PM, "Wesley Nugent" <wes@wnugent.com> wrote:

Madam Clerk,

I'm sending information provided to Council on April 7, 2015, however please note this version correctly indicates four parcels formerly zoned as PUD (an update to the City's official map available online), reclassified by action of Council on February 3, 2015. I've also outlined the 18 parcels under consideration for reclassification from R-2 to R-3 for clarity.

This information may be attached to the Council Journal as exhibits, as may be appropriate.

Respectfully,
Wes

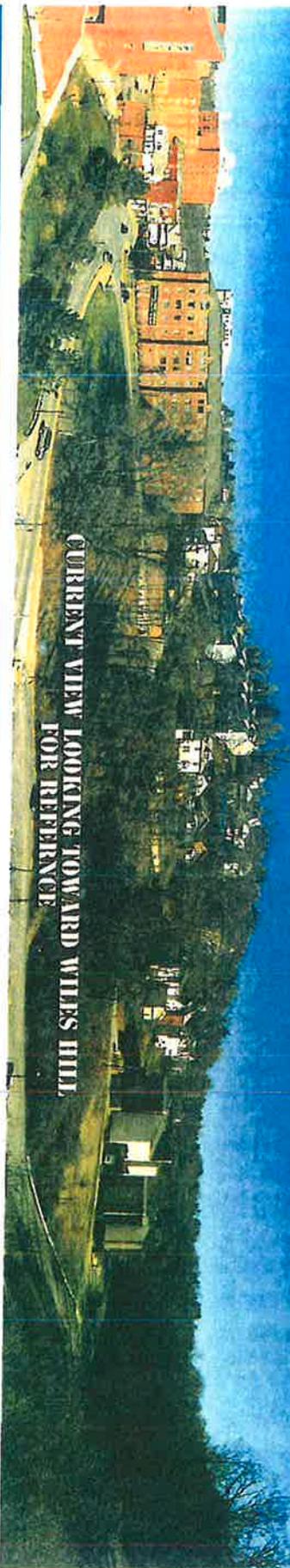
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Wesley "Wes" Nugent
Third Ward City Councilor, Morgantown, W.Va.
Connect online @ WNugent.com <<http://wnugent.com>>
Facebook <<http://www.facebook.com/wbnugent>> | LinkedIn
<<http://www.linkedin.com/in/wbnugent>> | Twitter
<<http://twitter.com/wbnugent>>

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<Proposed Zoning Change Exhibits.pdf>

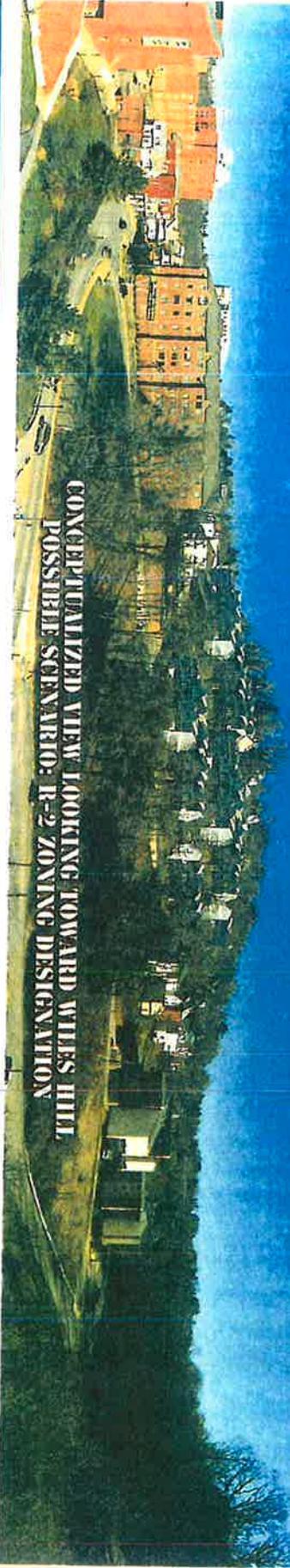
**HYPOTHESIZED VIEWS OF POSSIBLE FUTURE ZONING SCENARIOS
FOR REPRESENTATIVE DISPLAY PURPOSES ONLY
NOT SHOWN TO ANY MEASURED SCALE**



**CURRENT VIEW LOOKING TOWARD WILES HILL
FOR REFERENCE**

EXAMPLE A

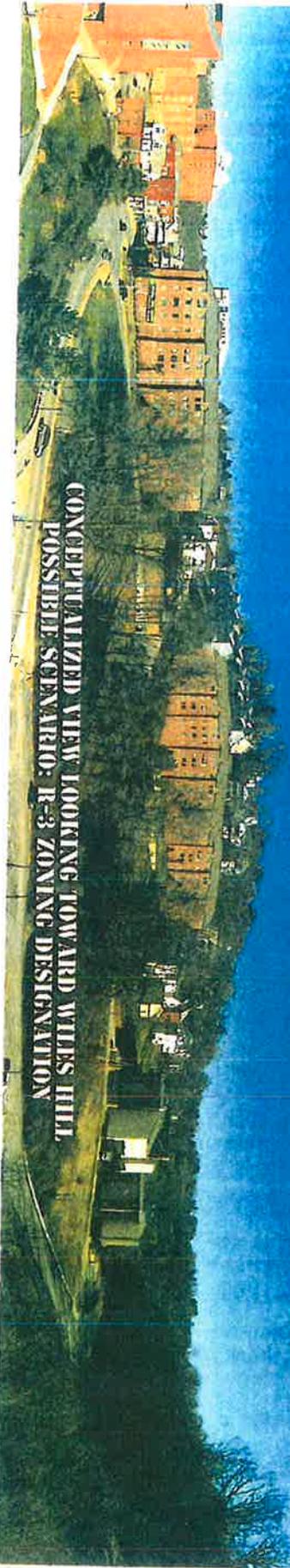
**HYPOTHESIZED VIEWS OF POSSIBLE FUTURE ZONING SCENARIOS
FOR REPRESENTATIVE DISPLAY PURPOSES ONLY
NOT SHOWN TO ANY MEASURED SCALE**



**CONCEPTUALIZED VIEW LOOKING TOWARD WILES HILL
POSSIBLE SCENARIO: R-2 ZONING DESIGNATION**

EXAMPLE B

**HYPOTHESIZED VIEWS OF POSSIBLE FUTURE ZONING SCENARIOS
FOR REPRESENTATIVE DISPLAY PURPOSES ONLY
NOT SHOWN TO ANY MEASURED SCALE**



**CONCEPTUALIZED VIEW LOOKING TOWARD WILES HILL
POSSIBLE SCENARIO: R-3 ZONING DESIGNATION**

EXAMPLE C

ISSUE R-2 ZONING

Purpose

1337.01 PURPOSE.

The purpose of the Single and Two-Family Residential (R-2) District is to:

- (A) Provide for two-family housing development and customary accessory uses at a density slightly higher than in single family neighborhoods, and
- (B) Preserve the desirable character of existing medium density family neighborhoods, and
- (C) Protect the medium density residential areas from change and intrusion that may cause deterioration, and
- (D) Provide for adequate light, ventilation, quiet, and privacy for neighborhood residents.

Height

1337.06 BUILDING HEIGHT.

- (A) The maximum height of a principal structure shall not exceed two and one-half (2.5) stories or thirty-five (35) feet, whichever is less, except as provided in Section 1363.02(A), Height Exceptions.
- (B) The maximum height of an accessory structure shall not exceed eighteen (18) feet.
- (C) Minimum building height for a two-family dwelling should be two (2) stories.
(Ord. 06-40. Passed 11-21-06.)

R-3 ZONING

1339.01 PURPOSE.

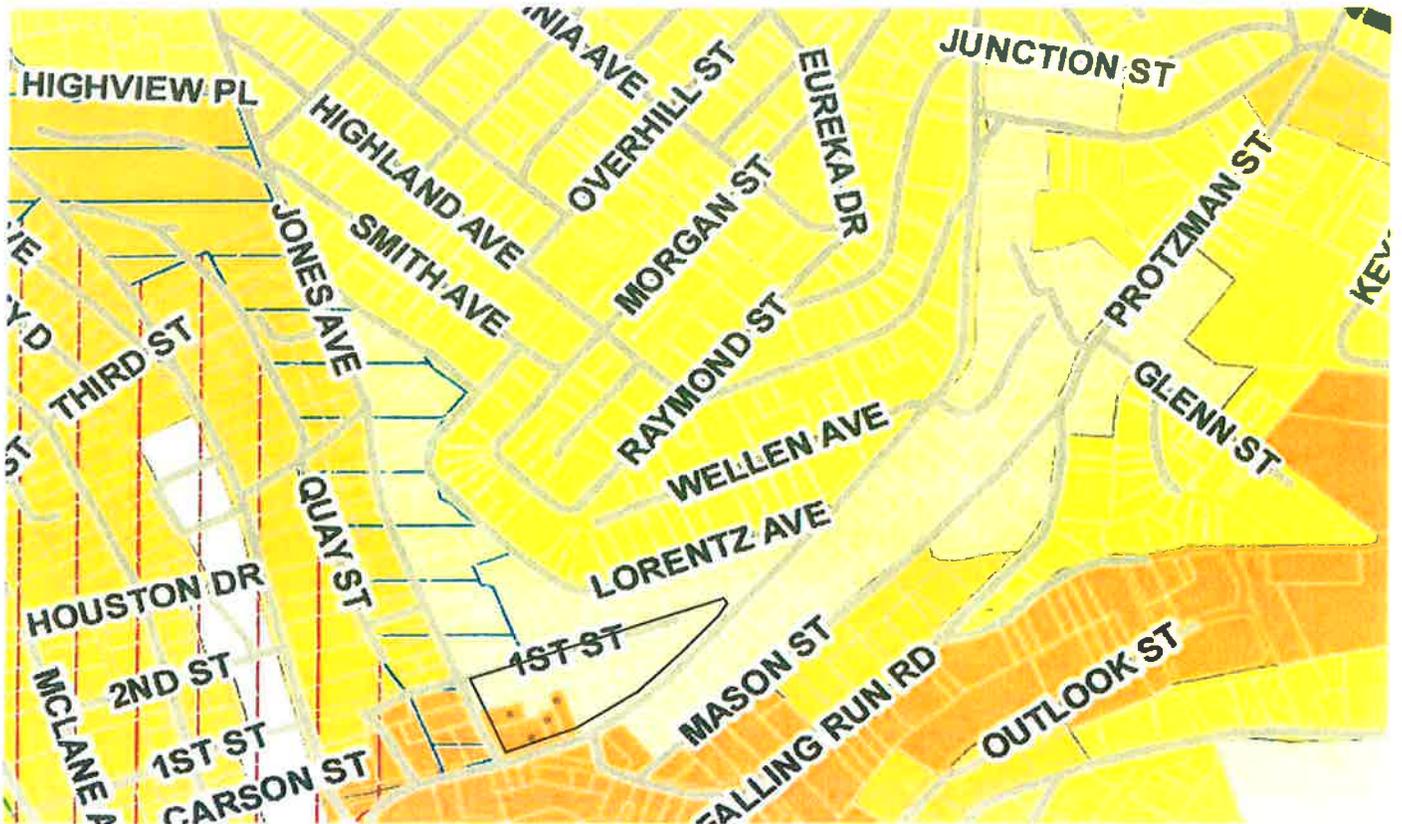
The purpose of the Multi-Family Residential (R-3) District is to:

- (A) Provide for a variety of housing density and types, and customary accessory uses at a density higher than in other city neighborhoods, and
- (B) Preserve the desirable character of existing high density residential neighborhoods, and
- (C) Provide for adequate light, ventilation, quiet, and privacy for neighborhood residents.

1339.06 BUILDING HEIGHT.

- (A) The permitted maximum height shall be four (4) stories or fifty-five (55) feet, whichever is less, except as provided in Section 1363.02(A), Height Exceptions. A conditional use permit shall be required for buildings in excess of fifty-five (55) feet but less than eighty (80) feet.
- (B) The maximum height of an accessory structure shall not exceed eighteen (18) feet.
- (C) Minimum building height for a two-family or multifamily dwelling should be two (2) stories.
(Ord. 06-40. Passed 11-21-06.)

Current Zoning (Clipped from the City's map online) Asterisks (*) indicate parcels formerly zoned as PUD, reclassified as R-2 zoning by action of City Council on February 3, 2015.



"I do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia and the Charter of the City of Morgantown, and that I will faithfully and impartially perform the duties of the office of City Council for the City of Morgantown so long as I shall continue therein to the best of my skill and judgment."

When I read the oath of office for Morgantown City Council, and I look in front of me, I have to wonder:

Is this council even a legitimate city government? The answer, I think, is most likely

"No." For this council, it's all about their ability to maintain power, exert influence, and eliminate opposition.

A city charter is essentially a set of rules defining how a city governs itself.

With all of the misinformation coming out of this council, you might think, "if only the city charter was just 30 pages, written in plain English, even *A* would be able to understand it." *H.S. CIVICS CLASS*

Well, the city charter IS just 30 pages of plain English, and apparently not one of you understands it.

Members of this council are in clear violation of some or all of the following provisions of the Morgantown City Charter:

Section 2.03 clearly defines the position of the Mayor:

"The Mayor shall be the presiding officer of the Council and shall be recognized as the head of the City government for all ceremonial purposes, but shall have no administrative duties."

Section 2.05b clearly explains the acts prohibited by councilmembers:

(b) "Conflicts of Interest, Penalties:

No member of Council shall vote upon or participate in the furtherance of any matter in which that Councilmember has, either directly or indirectly, a substantial financial or other substantial personal interest". It goes on to say, "Any Councilmember who willfully conceals such interest or willfully violates the requirements of this section shall be guilty of malfeasance in office and shall forfeit his office. Violation of this section with the knowledge express or implied of the person....shall render voidable by action of the City Council, any transaction prohibited by the preceding paragraph."

Section 2.05d addresses this councils blatant ignorance of the legitimate chain of command within the city:

(d) Interference with Administration:

Council or its members shall deal with City officers and employees who are subject to the direction and supervision of the City Manager solely through the Manager, and neither the Council nor its members shall give orders to any such officers or employees, either publicly or privately. Violation of this provision shall constitute ground for removal from office.

For those of you that made it clear in the Dominion Post that you have difficulty understanding that simple sentence, the Charter clarifies: "It is the intention of this subsection (d) that the Council shall act in all matters as a body, and it is contrary to the spirit of this section for any of its members to seek individually to influence the official acts of the Manager, or any other officer, or employee...or to interfere in any way with the performance by such officers or employees of their duties."

Section 2.06b(2) is crystal clear:

(b) Forfeiture of Office. A Councilmember shall forfeit his office if he

(2) violates any express prohibition of this Charter.

>>>2 Members of council have violated City Charter (2.05b) by manipulating ward lines for personal and financial gain, others may have conspired to do the same.

>>>Members of council have violated City Charter (2.05d) by ignoring the legitimate command structure within the city, exerted individual influence on the manager as well

as other employees, and have not acted as a body in all matters.

The Charter is quite specific about the duties of the city manager as well:

SECTION 3.04(4) POWERS AND DUTIES OF THE CITY MANAGER.

(4) He shall see that all laws, ordinances and provisions of this Charter and acts of the Council, subject to enforcement by him or by officers subject to his direction and supervision, are faithfully executed and enforced.

This council has demonstrated that they are not people of principle that can be trusted to do anything but look out for their political interests at the expense of the city.

Mr Mikorski, it is your professional duty to purge this council of these individuals.

We know they will not do their sworn duty.

The question now is, will you do your job?

Sent from my iPad



Office of the City Manager

The City of Morgantown

City Manager

Jeff Mikorski, ICMA-CM

389 SPRUCE STREET

MORGANTOWN, WEST VIRGINIA 26505

(304) 284-7405 FAX: (304) 284-7430

www.morgantownwv.gov

City Manager's Report for City Council Meeting on April 21, 2015

New Business:

1. Street Paving Bids

First two memos attached from Public Works Director Damien Davis are bid results for the street paving material and labor to pave City streets in 2015.

On April 2, bids were opened for the advertised purchase of hot laid bituminous asphaltic cement. One company provided a bid for the material, Greer Industries, for a price of \$253,520. I recommend Council approve the purchase of asphalt for paving to the lowest bidder, Greer Industries, for \$253,520.00.

On April 7, bids were opened for the advertised purchase of contract services of milling and paving City streets. One contractor submitted a price for paving services, Parrotta Paving, for \$292,395.30. I recommend City Council approve the contract for Parrotta Paving in the amount of \$292,395.30.

2. Landfill Laboratory Service Bids

As seen in attached memo from Public Works Director Damien Davis, bids for laboratory services for the closed Municipal Landfill were opened on February 26, with one company submitting a cost for the advertised services. I recommend City Council approve the contract with Reliance Laboratories in the amount of \$9,914.00 for services to be provided.

3. Demolition Bids

As seen in the attached memo from Public Works Director Damien Davis, bids were requested for the demolition of the condemned building at 645 Brockway Avenue. Anderson Excavating, LLC submitted the lowest bid. I recommend City Council approve the contract for demolition services to Anderson Excavating, LLC in the amount of \$29,994.00.

4. Brownfield Environmental Services

As a part of the Environmental Protection Agency (EPA) grant awarded to the City of Morgantown, environmental services are required to accomplish the Phase I, Phase II, Site Remediation and associated tasks needed on selected properties in Morgantown for potential redevelopment. Core Environmental Services, Inc was selected out of a field of five companies that that submitted qualifications. I recommend City Council approve the contract and authorize the City Manager to sign the contract for services outlined in the attached scope of work.



Jeff Mikorski ICMA-CM,
Morgantown City Manager

Memo

City of Morgantown

Public Works Department

To: Jeff Mikorski, City Manager

From: J. Damien Davis, Public Works Director and City Engineer

Subject: Street Paving Project Hot Laid Bituminous Asphaltic Cement
– Bid Call 2015-09

Date: April 2, 2015

Bids were opened at 10:30am on April 2, 2015. The results are as follows:

CONTRACTOR	COST
Greer Industries	\$253,520.00

Engineering has reviewed the submitted bid for completeness and adherence to the Bid Call requirement. I recommend award to Greer Industries.

Memo

City of Morgantown

Public Works Department

To: Jeff Mikorski, City Manager

From: J. Damien Davis, Public Works Director and City Engineer *JDD*

Subject: Street Paving Project – Bid Call 2015-10

Date: April 7, 2015

Bids were opened at 9:00am on April 7, 2015. The results are as follows:

CONTRACTOR	COST
Parrotta Paving	\$292,395.30

Engineering has reviewed the submitted bid for completeness and adherence to the Bid Call requirement. I recommend award to Parrotta Paving.

Memo

City of Morgantown

Public Works Department

To: Jeff Mikorski, City Manager
From: Damien Davis, Director of Public Works and Engineering
Subject: Laboratory Services for Municipal Landfill – Bid Call 2015-07
Date: February 26, 2015

Bids were opened at 10:30am on February 26, 2015. The results are as follows:

CONTRACTOR	COST
Reliance Laboratories	\$9,914.00

Reliance Laboratories has the current contract with the City to provide laboratory services for the municipal landfill. This contract was awarded in 2012 and was renewed in 2013 and 2014. Their current contract will end in July of this year. I recommend award to Reliance Laboratories.

Memo

City of Morgantown

Public Works Department

To: Jeff Mikorski, City Manager

From: J. Damien Davis, Public Works Director and City Engineer

Subject: Demolition of 645 Brockway Avenue Award – Bid Call 2015-12

Date: April 2, 2015

Background

645 Brockway was first condemned by Code Enforcement on March 29th 1996, since then there have been numerous citations for failure to raise and remove or make repairs. Code Enforcement issued citations on: May 27th 1997, Feb. 16th 2000, Sept. 9th 2002 and in recent years there are too many complaints to list. On Oct. 16, 2014 Code Enforcement had Berry Dickson, P.E. inspect and prepare a report of what was needed in order to save this structure and provided it to the owner of the property, Mr. Harold Bearthy. Mr. Bearthy has failed to make any of those repairs.

On Feb. 11, 2015 Code Enforcement hired Cira and Associates Consulting to inspect and collect samples to be tested for asbestos. The Engineering Dept. prepared the bid package and bids were opened at 2:30pm on April 2, 2015. The results are as follows:

<u>CONTRACTOR</u>	<u>COST</u>
1. Anderson Excavating, LLC	\$29,994.00
2. Parotta Paving Co. Inc.	\$48,170.00
3. Green River Group	\$61,000.00

Engineering and Code Enforcement have reviewed the submitted bids for completeness and adherence to the Bid Call requirements. Anderson Excavating has previously performed work for the City to the City's satisfaction. I recommend awarding the contract for the demolition of 645 Brockway Ave. to Anderson Excavating, LLC.

CORE ENVIRONMENTAL SERVICES, INC.
CONTINUING SERVICES AGREEMENT

THIS AGREEMENT is effective on the 25th day of March, 2015, by and between **City of Morgantown** ("Client") and **CORE ENVIRONMENTAL SERVICES, INC.** ("CORE") for environmental consulting services that CORE will perform from time to time at Client's written request.

SCOPE OF SERVICES

CORE will provide environmental support services to Client on a non-exclusive basis on the terms and conditions provided in this Agreement and as specifically described in Client's written request for environmental consulting services ("Work"). Client may request Work under this Agreement only in writing, through an activating letter/purchase order signed by one of the following people:

City Manager

City Council

CORE will begin the Work on the date specified in the activating letter / purchase order unless otherwise mutually agreed.

COMPENSATION

Client agrees to pay CORE for the Work pursuant to Attachment I. Client agrees to pay for any services that are (a) required because of a material increase in the scope of the Work or (b) requested in addition to the Work as provided in Attachment I. Attachment I will continue to be effective until the 31st day of December, 2017. Thereafter, CORE may increase its fees, provided that increases may not be made more frequently than once each year. CORE will notify Client of any increase in fees 30 days prior to its effective date.

This Agreement is subject to the following General Conditions:

SECTION 1: FEE PAYMENT

1.1 CORE will submit invoices to Client monthly with a final invoice on completion of the Work.

1.2 Payment is due upon receipt of invoice. If the invoice is not paid within thirty (30) days after invoice date, Client will also pay a finance charge thereon of 1.5 percent or the maximum rate allowed by law, whichever is less, for each month thereafter or portion thereof that an invoice remains unpaid.

1.3 If Client fails to pay CORE within sixty (60) days after invoice date, CORE may deem failure to pay a breach of this Agreement, terminate the same, and be relieved of any and all duties under this Agreement.

SECTION 2: PROJECT INFORMATION

2.1 Client will provide to CORE in writing information known to Client regarding existing and proposed conditions of the Site. The information will include, but only as appropriate to the work, reproducible drawings, construction

specifications, site plans, topographic and property line surveys, hydrologic data, subsurface conditions at the Site, previous soil data including borings, field or laboratory tests, material safety data sheets for any chemical or material which CORE may encounter on site if that chemical or material is one for which the Client or its vendors are required by law to supply a material safety data sheet, and notice of all known hazardous, toxic, radioactive, pollutant, or irritant conditions at the Site ("Project Information").

2.2 Client will transmit to CORE any updates, revisions, or additions to the Project Information as they become available.

SECTION 3: OWNERSHIP OF DOCUMENTS CONFIDENTIALITY, AND PATENTS AND COPYRIGHTS

3.1 CORE will prepare and deliver to Client certain field notes, reports or drawings as instruments of the professional services performed ("Reports"). All Reports delivered to Client will become the property of Client upon final payment due CORE for the Work. CORE will retain copies of the Reports for its files.

3.2 Client agrees that all Reports furnished to the Client that are not paid for will be returned to CORE upon written demand by CORE and will not be used by Client for any purpose.

3.3 CORE will retain reports and all pertinent records ("Records") relating to the Work for a period of three (3) years after the Report is delivered. During that time, the Reports and Records will be made available to Client during CORE's normal business hours.

3.4 All Reports, Records, and Project Information disclosed or delivered to CORE, or information that CORE uncovers, acquires, or generates in the

course of performing the Work will be treated by CORE as confidential information and will not be disclosed or made available to others by CORE without prior consent of Client. The foregoing obligation will not apply to any information that CORE establishes: (a) is already known to CORE at the time of its receipt from Client as shown by CORE's records, (b) is or subsequently becomes available and accessible to the public through no fault of CORE, (c) is disclosed to CORE by a third party on a non-confidential basis, (d) is deemed necessary by CORE to warn of an imminent danger to life or property, or (e) is required to be disclosed pursuant to legal process, subpoena, court order, applicable law, or agency regulation.

SECTION 4: INSURANCE

CORE will carry: (a) workers' compensation and employer's liability insurance to comply with laws of the state in which any project is undertaken by CORE under this Agreement and applicable Federal laws, (b) comprehensive general liability insurance with a combined limit for bodily injury and property damage in an amount not less than \$2 million per occurrence and \$11 million aggregate and with completed operations coverage having a \$2 million aggregate limit, (c) comprehensive automobile liability insurance, covering all automobiles, trucks, and miscellaneous powered and automotive equipment owned or used by CORE, with a combined limit for bodily injury and property damage in an amount not less than \$1 million per occurrence, and (d) professional/pollution liability and pollution liability coverage in an amount not less than \$2 million per occurrence. Certificates for insurance will be provided to Client upon request. CORE's liability for damages arising from occurrences covered by these policies of insurance will not exceed the coverage provided therein.

SECTION 5: SITE LOCATION / ACCESS / PERMITS AND APPROVALS

5.1 Client will delineate to CORE the property lines of the Site.

5.2 Client will provide access to the Site for CORE personnel and equipment as CORE may deem necessary to complete the Work.

5.3 As requested by client, CORE will apply for and obtain permits and approvals necessary for CORE to perform the work; provided, however, nothing herein will be construed or interpreted as requiring CORE to (a) assume the status of generator, storer, treater, or disposal facility as those terms appear within the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*, as amended, or within any state statute governing the treatment, storage, or disposal of waste, or (b) enter into contracts of indemnity or provide any guaranty or warranty to any federal, state, or local government or regulatory agency, or any other third party, with respect to obtaining permits and approvals. Any failure to obtain any permit or approval because CORE elects not to assume such status or enter into such contracts or because any agency refuses to issue any permit or approval properly applied for will not be a breach of this Agreement, but such failure shall allow Client to terminate the Agreement and pay only for work performed up to the date of the failure to obtain the permit or approval. Any action or omission by Client not to so terminate shall not be a waiver of any future right to terminate the Agreement.

5.4 CORE will take reasonable precautions to minimize damage to property on which it performs Work. Client agrees, however, that some damages may occur to property in the normal course of work absent negligence by CORE and that the correction of any damage to

property will either: 1) be undertaken by CORE and billed to Client; or, 2) be undertaken by Client. In the event of negligence by CORE or its subcontractors resulting in damage to property, CORE will bear the cost of correcting the damage in proportion to its own or its subcontractor's negligence. "Client agrees, however, that some damages may occur to property in the normal course of work absent negligence by CORE and that the correction of any damage to property will, in the discretion of Client, either: 1) be undertaken by CORE and billed to Client; or, 2) be undertaken by Client."

SECTION 6: RIGHT OF ENTRY

In order to permit timely access to properties owned by third parties, Client will obtain and provide written right of entry agreements to CORE.

SECTION 7: UTILITIES

CORE will take reasonable precautions in locating and identifying all subterranean structures or utilities and to avoid damage or injury to subterranean structures or utilities. However, CORE may reasonably rely on Project Information and information provided by local utilities related to structures or utilities and will not be liable for damages incurred where CORE has proceeded with reasonable precautions and in reliance on that information. For purposes to this paragraph, reasonable precautions shall include compliance by CORE with West Virginia Code Chapter 24C, providing for a one-call system for location of underground utilities.

SECTION 8: DISPOSAL OF MATERIALS

The Work may include coordination by CORE for the lawful disposal of materials such as, but not limited to, samples, drilling cuttings, purge water resulting in the course of the Work, or other materials excavated or otherwise to be removed

from the Site. CORE will bill disposal to Client. Client agrees, however, that CORE will not be obligated to execute any documents identifying CORE as the owner or generator of these materials, which status will continue to be held by Client, and Client will cooperate with CORE and execute documents necessary to permit the disposal of the materials.

SECTION 9: FORCE MAJEURE

If completion of any portion of the Work is delayed for causes beyond the control of or without the fault of CORE including Force Majeure, the time of performance of the Work will be extended for a period equal to the delay. Force Majeure includes, without limitation, acts of God; acts of the public enemy; acts of federal, state, local, or foreign governments; acts of Client's subcontractors or agents; fires; floods; epidemics; strikes; riots; freight embargoes; and unusually severe weather.

SECTION 10: TERMINATION

10.1 This Agreement may be terminated by either party upon seven (7) calendar days written notice. Unless specifically instructed otherwise, upon termination by Client, CORE will continue work under any outstanding activating letters / purchaser orders through completion. If the Work is suspended by Client for more than three (3) months, or if this Agreement is terminated by Client, and CORE is directed to stop Work on an outstanding purchase order, CORE may complete analyses that are in progress, and may also complete a summary report on the Work done prior to termination.

10.2 Upon termination, CORE will be paid for services, the completion of any outstanding activating letter / purchase orders, plus reasonable termination expenses, which expenses will

include direct costs of completing the analyses, and summary report referred to above.

SECTION 11: ASSIGNMENT

Neither party may delegate duties or assign interest in this Agreement without obtaining the prior written consent of the other party, which consent will not be unreasonably withheld, except CORE may use the services of persons and entities not in its employ when it is customary for CORE to do so. These may include, without limitation, surveyors, specialized consultants, drilling contractors, testing laboratories, and construction contractors.

SECTION 12: MISCELLANEOUS

12.1 The parties acknowledge that this Agreement supersedes all written and oral agreements, if any, between the parties, and that this Agreement constitutes the entire and only agreement pertaining to the Work.

12.2 Any of the terms or conditions of this Agreement may be waived at any time by the party that is entitled to benefit therefrom, but no waiver will affect or impair the right of the waiving party to require observance, performance, or satisfaction of any other term or condition hereof. Any of the terms or provisions of this Agreement may be amended or modified at any time by agreement in writing executed by each party hereto.

12.3 All provisions of this Agreement allocating responsibility between Client and CORE will survive the completion of the Work or termination of this Agreement.

12.4 Any provision or part of this Agreement adjudicated to be void or unenforceable under any law will be deemed deleted, such deletion to apply only with respect to the jurisdiction in

which such adjudication is made, and all remaining provisions will continue to be valid and binding upon the parties. The parties agree that this Agreement will be reformed to replace the deleted provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the deleted provision.

12.5 Client has authority to enter into this Agreement and any person signing it on Client's behalf has been duly authorized to sign.

WHEREUPON, the parties caused this Agreement to be duly executed and to be effective on the date first above written.

SIGNATURES

CORE Environmental Services, Inc.

City of Morgantown

By _____
Signature

By _____
Signature

Typed Name

Typed Name

Its _____
Title

Its _____
Title

Date

Date

ATTACHMENT I

Fee Schedule

BOARDS AND COMMISSIONS - TERMS EXPIRED AND CURRENT VACANCIES

ICC BOARD OF APPEALS:

J Vincent Barling, Master Electrician, position on this board's term expires on 4/30/15. He wishes to continue to serve. Council can vote on that appointment at the Regular Council Meeting on April 21, 2015. Qualified by experience and training appointed by Council- 5 members.

FIRE CIVIL SERVICE:

Dan Hursh e-mailed that he must resign due to personal reasons. We are looking for a new Commissioner administratively. This is a City Manager appointment.

METROPOLITAN THEATRE COMMISSION:

Connie Merandi has resigned. Will advertise for candidates to replace vacancy. 7 members to be City residents, 1 member from Council, 1 member from County Commission.

MORGANTOWN HOUSING ADVISORY COMMISSION:

Chelsi Baker has done a press release for members. Council will be notified when the Clerk gets applications and will keep Council updated. Attached is press release.

URBAN LANDSCAPE:

Cindy Fike the 6th ward member is resigning. Nicole Panaccione, Fourth Ward resigned on 7/1/2014. Councilor Selin is looking for a replacement for that position on that commission. Nominated by CM, one from each WD, 13 members with staggered terms and 1 Councilor. City Manager and Clerk will be meeting to discuss appointments.

TREE BOARD:

Kara Hurst also resigned from the Tree Board. City Clerk advertised for new members. Residents appt. not ward specific; one member must have knowledge of tree management and care.

***POLICE & FIRE CIVIL SERVICE COMMISSIONS:** NEW PRESIDENTS APPOINTED IN JANUARY.

****Information for Boards and Commissions vacancies are placed in the Dominion Post, are advertised on the City's Government Station Channel 15, and are posted at the Library and also information is on the City's Web Page.***

****Council decided on 3-21-06 by unanimous consent that if there is only one candidate for Boards & Commissions, that they will not interview; the City Clerk will check with Council before scheduling a Special Meeting.***

****BZA and Planning Commission term expirations are advertised in October and interviews must be completed by December per State Law.***

4/15/15

Press Release
Volunteers Needed for Housing Advisory Commission

The Housing Advisory Commission has opening for two volunteers in their membership. The first opening must be filled by a licensed real estate representative, the second, for one at large member who shall be a resident of the city of Morgantown.

All members of the commission except for WVU student government representatives serve a 3 year term; all members serve without compensation.

The function of the Housing Advisory Commission is to:

1. Serve as the medium for citizen advice and comment on housing issues.
2. Provide advocacy for establishing and maintaining diversity in housing types and opportunities.
3. Encourage and strengthen collaborative planning and communications between public and private housing sectors.
4. Review, consider, and make recommendations to the City Manager and City Council on all aspects that affect public and private housing.
5. Research and discuss housing trends and ideas and make recommendations to the City Manager and City Council regarding housing policy and ordinances.
6. Sponsor educational programs on owner and non-owner occupied housing.

If you are interested in serving please contact city clerk Ms. Linda Little Tucker at llittle@cityofmorgantown.org or apply on our website at... www.morgantownwv.gov. Or call the clerk at 304-284-7434. Thank you Volunteers 😊

Proposed Amendment to the City of Morgantown Home Rule Application

I. Introduction

The City of Morgantown (the “City”) has been approved to participate in West Virginia’s Municipal Home Rule Pilot Program, Phase II (“Home Rule Program”) and its initial written plan has been approved by the Municipal Home Rule Board (the “Board”).

Pursuant to *W. Va. Code* § 8-1-5a(l), “[a] municipality selected to participate in the Municipal Home Rule Pilot Program may amend its written plan at any time.” The Board has provided guidance for municipalities proposing plan amendments, which require a public hearing and statement of the reasons for amendment similar to those required in an initial plan under *W. Va. Code* § 8-1-5a(f) and (g).¹

The City seeks to amend its written plan to propose ordinances granting its fire marshals additional authority – including the authority to make arrests for certain specific violations of the Fire Prevention Code – to effectively address ongoing problems with fire prevention. The applicable laws and reasons for amendment are set out below.

II. Specific Laws Applicable

West Virginia Code sections 8-15-1, 29-3A-1 to -3, and 8-14-3.

III. Limitations Presented by Applicable Law

The City’s large population of university students – equivalent in number to full-time residents - creates increased difficulties enforcing the Fire Prevention Code provisions prohibiting overcrowding of structures; fire marshals are faced with numerous bars and house parties that create unsafe structural loads, and the occupants are often combative and unwilling to obey orders to restore proper occupancy levels. In addition, the City suffers incidents of street and dumpster fires on par with large cities such as Columbus and Los Angeles.² These problems require enforcement measures that demand the fire prevention expertise of the City’s Fire Marshals and more enforcement officers than are available in a police force in a city the size of Morgantown.

The City’s power to extinguish and prevent fire is created by *W. Va. Code* § 8-15-1, which states, “The governing body of every municipality shall have plenary power and authority to provide for the prevention and extinguishment of fires[.]” The section provides a

¹

http://www.wvcommerce.org/App_Media/assets/images/commerce/wvhomerule/forms/2014_MHR_Amend_Plan_Procedure091714.pdf

² See National Fire Incident Reporting System summary and Morgantown Fire Department statistics, attached as Exhibit 1.

nonexclusive list of actions the City may take in pursuit of the power but contains no specific statement that fire marshals may make arrests.³ In response to a State Fire Commission inquiry, the West Virginia Attorney General's office construed *W. Va. Code* § 8-15-1, standing alone, to permit the City to grant fire marshals limited law enforcement authority.⁴ However, the opinion is limited to consideration of *W. Va. Code* § 8-15-1 and expressly does not address the impact of other statutory or constitutional provisions.

Other statutory provisions provide specific powers to local firefighters, *W. Va. Code* § 29-3A-1 to -3, and allow the State Fire Marshal the authority to grant certain arrest powers to deputized fire marshals, *W. Va. Code* § 29-3-12, but neither specifies that local firefighters may arrest based upon municipal authorization.⁵ In addition, *W. Va. Code* § 8-14-3 may be construed to vest all municipal arrest powers in the police department. It provides as follows:

The chief and any member of the police force or department of a municipality and any municipal sergeant shall have all of the powers, authority, rights and privileges within the corporate limits of the municipality with regard to the arrest of persons, the collection of claims, and the execution and return of any search warrant, warrant of arrest or other process, which can legally be exercised or discharged by a deputy sheriff of a county.

Id. The City recognizes that where a reasonable doubt exists as to the City's authority, the courts will find the authority does not exist. *Hyre v. Brown*, 102 W. Va. 505, 135 S.E. 656 (1926). Because the statutory provisions granting the City's power to prevent and extinguish fire and the firefighters' powers and duties do not specifically grant arrest powers, and because other statutory provisions do specifically grant police arrest powers, the City could be found not to have the authority to grant fire marshals arrest powers under current law. The City wishes to avoid the threat of litigation and assure its fire marshals can act with sound authority by seeking approval of the Board.

³ The full text of *W. Va. Code* § 8-15-1 is as follows:

The governing body of every municipality shall have plenary power and authority to provide for the prevention and extinguishment of fires, and, for this purpose, it may, among other things, regulate how buildings shall be constructed, procure proper engines and implements, provide for the organization, equipment and government of volunteer fire companies or of a paid fire department, prescribe the powers and duties of such companies or department and of the several officers, provide for the appointment of officers to have command of fire fighting, prescribe what their powers and duties shall be, and impose on those who fail or refuse to obey any lawful command of such officers any penalty which the governing body is authorized by law to impose for the violation of an ordinance. It may give authority to any such officer or officers to direct the pulling down or destroying of any fence, house, building or other thing, if deemed necessary to prevent the spreading of a fire.

Id.

⁴ See West Virginia Attorney General Opinion dated December 5, 2014, attached as Exhibit 2.

⁵ Copies of these provisions are attached as Exhibits 3 and 4, respectively.

IV. Proposed solution

Upon approval of the Board, the City will adopt an ordinance permitting fire marshals to arrest any individual disobeying lawful orders at the scene of a fire and any individual who the Fire Prevention Code provisions prohibiting malicious burning, obstructing a fire marshal, or failure to obey orders. Incident to the arrest powers, the fire marshals would have authority to obtain and serve warrants for violations of these provisions. A copy of the proposed ordinance is attached as Exhibit 5. The Morgantown Fire Department and Morgantown Police Department have made arrangements for the fire marshals to be given initial and annual training that will comply with *W. Va. Code* §§ 30-29-1 *et seq.*, if the written plan amendment and ordinance are approved by the Board.

Adoption of the ordinance is expected to allow the City's Fire Marshals to better prevent chronic overcrowding conditions that endanger individuals' safety and to enforce Fire Prevention Code provisions designed to inhibit furniture and street fires. Limiting these fires and overcrowding will prevent property damage suffered by City residents and preserve City resources for other important municipal services.

AN ORDINANCE AMENDING SECTIONS 1505.01 AND 1511.02 OF THE MORGANTOWN CITY CODE TO GRANT CITY FIRE MARSHALS AND DEPUTY FIRE MARSHALS ARREST AUTHORITY AT FIRE SCENES AND FOR CERTAIN VIOLATIONS OF THE FIRE PREVENTION CODE.

WHEREAS, the Common Council of the City of Morgantown intends to protect residents and visitors from the dangers created by uncontrolled fires and to prevent the creation of unnecessary dangerous situations in violation of the City's Fire Prevention Code; and

WHEREAS, the City has created a Bureau of Fire Prevention and a Bureau of Fire Investigation in the Fire Department which employ Fire Marshals and Deputy Fire Marshals to enforce the Fire Prevention Code; and

WHEREAS, the prevention and extinguishing of fires and dangerous conditions related to fire within the City will be promoted by granting limited powers of arrest to Fire Marshals and Deputy Fire Marshals to ensure those who are responsible for such fires and conditions or who are preventing effective extinguishing and prevention of fires are apprehended; and

WHEREAS, the powers to be exercised by Fire Marshals and Deputy Fire Marshals pursuant to this ordinance are similar to those exercised by the State Fire Marshal's office pursuant to *W. Va. Code* § 29-3-12 and are limited to enforcement of laws relating to preventing and extinguishing fire, specifically regulating the scene of a fire and certain violations of Morgantown's Fire Prevention Code;

WHEREAS, pursuant to *W. Va. Code* § 8-15-1, the City has "plenary power and authority to provide for the prevention and extinguishment of fires," but is not specifically granted by the text of West Virginia Code Chapter 8, Article 15, the authority to grant firefighters arrest powers when exercising its authority to prevent and extinguish fires; and

WHEREAS, pursuant to the authority granted to the City of Morgantown as a Home Rule Municipality under West Virginia Code § 8-1-5a, City Council is authorized to grant limited arrest powers to Fire Marshals and Deputy Fire Marshals at the scene of fires and to promote effective enforcement of specific provisions of the Fire Prevention Code;

NOW THEREFORE, the City of Morgantown hereby ordains that Sections 1505.01 and 1511.02 of the City Code be amended as follows:

1505.01 OBEDIENCE TO ORDERS AT FIRES.

Whoever shall be present at a fire shall be subject and obedient to the orders of the Chief of the Fire Department, the Captain or to the orders of any ~~fireman~~ firefighter, Fire Marshal, Deputy Fire Marshal, or police officer in any matter relating to the extinguishing of fire and the removal and protection of property and maintenance of order. Whoever neglects or refuses to obey such orders, shall be guilty of a violation of this section. All police officers, Fire Marshals, and

Deputy Fire Marshals shall have the power to arrest any person so neglecting or refusing to obey any such lawful orders, to hold him in custody until after the fire shall have been extinguished, and then to take the person before the ~~Police Judge~~ Municipal Court Judge or appropriate municipal court officer of the City to be dealt with according to law.

1511.02 CODE ENFORCEMENT.

(a) The Fire Chief shall be responsible for the enforcement of the City of Morgantown Fire Prevention Code. To assist in the performance of the responsibilities and duties placed upon the Fire Chief, a Bureau of Fire Prevention and a Bureau of Fire Investigation in the Fire Department are hereby created. Both Bureaus shall operate under the supervision of the Fire Chief, who shall designate fire officials of the Fire Department as Fire Marshals for each. The Fire Marshals shall report to the Fire Chief, shall be the administrators of the Bureau of Fire Prevention and Bureau of Fire Investigation and shall be responsible for administration and enforcement of the Fire Prevention Code. The Fire Chief may also designate members of the Fire Department, who have met the qualifications and training as set forth in ~~either Morgantown Fire Department Code enforcement S.O.P. #6 or Fire Investigation S.O.P. #8~~ S.O.G. 308.01 as Deputy Fire Marshals. The Fire Chief is authorized, if he/she deems it necessary, to create additional bureaus and appoint additional Fire Marshals. The Fire Marshals and Deputy Fire Marshals are hereby empowered to enforce the Fire Prevention Code and to cite for any Fire Code violations upon observation of each such offense. Violations for which citations may be issued by the Fire Marshals and Deputy Fire Marshals include, but are not limited to:

- (1) Locked or blocked fire exits.
- (2) Overcrowding in violation of posted occupant loads.
- (3) Failure to maintain occupant load posting.
- (4) Blocking or obstructing designated fire lanes.
- (5) Outdoor burning without a State forester permit, when such a permit is required.
- (6) Burning of materials not authorized in the State burning permit.
- (7) Having a bonfire or other similar fire without approval of the Morgantown Fire Department.
- (8) Refusing to cease burning of materials when ordered to do so by proper authority.
- (9) Tampering with any portable or fixed fire extinguishing system or device or any fire warning system.
- (10) Illegal burning.
- (11) Malicious burning.
- (12) Obstructing a Fire Marshal.
- (13) Failure to Comply with Orders.
- (14) Any violation of the Morgantown Fire Prevention Code, West Virginia State Fire Code, or any other fire codes or standards adopted by specific reference by the State of West Virginia.

(b) Fire Marshals and Deputy Fire Marshals are hereby empowered to make arrests anywhere within the City of Morgantown of any person charged with the violations of Malicious Burning, Obstructing a Fire Marshal, or Failure to Comply with Orders; and when a witness to

the perpetrations of these offenses, to make arrests without warrant; or to detain any persons suspected of the commission of these offenses for investigatory purposes.

(c) Fire Marshals and Deputy Fire Marshals are hereby empowered to make complaint in writing before the Municipal Judge or appropriate municipal court officer and procure a warrant for the arrest of any offender of the violations of Malicious Burning, Obstructing a Fire Marshal, or Failure to Comply with Orders. Fire Marshals and Deputy Fire Marshals may execute any summons or warrant issued by the Municipal Judge or appropriate municipal court officer for the offenses of Malicious Burning, Obstructing a Fire Marshal, or Failure to Comply with Orders upon the offender within the City of Morgantown. Any return by a Fire Marshal or Deputy Fire Marshal showing the manner of executing the warrant or summons has the same force and effect as if made by a police officer.

(d) The Fire Chief, who is responsible for the enforcement of the Fire Prevention Code, may revoke or rescind, at any time, any Fire Department member's enforcement powers when, in the opinion of the Fire Chief, these powers have been abused or improperly enforced.

(e) Nothing within this article shall prevent a Fire Marshal or an Assistant Fire Marshal from seeking injunctive relief against the responsible party at any time once any Code violation is noted.

(b) (f) There is hereby established a Morgantown Fire Prevention Board which shall ultimately be responsible for the orderly enforcement of the Fire Prevention Code. The membership of the Board shall be composed of the City Manager, who shall be its permanent chairperson, the Chief of the Fire Department and the City Engineer. All actions contemplated by the City's Fire Marshal or Deputy Fire Marshals shall first be reviewed by the Fire Chief who at his discretion may delay any such action until such time as the matter has been presented to the Board for deliberation and recommendation. The Board shall prescribe its own rules and regulations governing its meetings and proceedings, and may, from time to time promulgate appropriate rules and regulations, not otherwise inconsistent with the ordinances of the City or the statutes of the State, which the Board may deem necessary for the orderly enforcement of the Fire Prevention Code. The Board shall have the right to conduct appeal hearings pursuant to Section 1511.05.

This ordinance shall be effective upon the date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

RECORDED:

AN ORDINANCE PROVIDING FOR EXECUTION OF A RIGHT-OF-WAY AND EASEMENT AGREEMENT WITH THE MORGANTOWN UTILITY BOARD FOR CONSTRUCTION OF A SANITARY SEWER LINE ON A PORTION OF PROPERTY IDENTIFIED ON UNION DISTRICT TAX MAP 23, PARCEL 44, AND DECLARING THE ATTACHED EASEMENT AS A PART THEREOF.

The City of Morgantown Hereby Ordains:

That the City Manager is hereby authorized to execute, on behalf of the City of Morgantown, the Right-of-Way and Easement Agreement attached to, and made a part of, this ordinance.

This Ordinance shall be effective from the date of its adoption.

First Reading:

Adopted:

Mayor

Filed:

Recorded:

City Clerk

RIGHT-OF-WAY AND EASEMENT AGREEMENT

THIS RIGHT-OF-WAY AND EASEMENT AGREEMENT, made and executed this _____ day of _____, 2015, by and between the City of Morgantown, West Virginia, a political subdivision of the State of West Virginia, party of the first part, Grantor, and the City of Morgantown, West Virginia, a political subdivision of the State of West Virginia, acting by and through the Morgantown Utility Board, a municipal corporation and a political subdivision of the State of West Virginia hereinafter sometimes referred to as the "Board," party of the second part, Grantee,

WITNESSETH: That for and in consideration of the sum of \$1.00 and other good and valuable consideration, the receipt of all of which is hereby acknowledged, the said party of the first part, Grantor, does hereby grant and convey, with covenants of General Warranty, unto the said party of the second part, Grantee, and to its successors or assigns, a right-of-way and easement to construct, lay, operate, maintain, remove, reconstruct, replace, or repair pipelines for the carrying and transporting of sanitary sewage in, on, under, over, and through a certain tract and parcel of land situate in Union Taxing District, Tax Map 23, Parcel 44, Monongalia County, West Virginia, and which said tract and parcel of land is further described in a deed recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 454 at Page 410, to which said deed reference is hereby made for all pertinent purposes.

The location of said right-of-way and easement proposed upon said property is as follows:

±1,905-foot sanitary sewer line easement; all as depicted and further described in Exhibit "A," attached and incorporated herein.

It is covenanted and agreed between the parties hereto that the Board shall have a centerline right-of-way and easement on said property 20 feet in width, as constructed, and an easement(s) approximately perpendicular to the installed main line in order to emplace necessary service line(s) between the main and the served parcel, in order to facilitate sewer service. It is further covenanted and agreed that the Board shall properly backfill and restore to ground level, insofar as is practicable, any ditch opened on said right-of-way and easement upon the completion of any construction work performed thereon.

The said Grantor further grants and conveys unto said Grantee, its successors or assigns, the right of ingress, egress, and regress, to and from said right-of-way and easement for all proper

purposes and at all reasonable times and a temporary construction right-of-way and easement of such width as is reasonable and necessary to carry out the construction, repair, or replacement of all or part of the above-described sewer lines. The said Grantor does also grant and convey unto the said Grantee, its successors or assigns, the right to use said right-of-way and easement herein granted, along the course of the proposed sanitary sewer line, for the further purpose of transporting pipe, fittings, machinery, and equipment to and from neighboring lands, in and about the construction, operation, maintenance, removal, and replacement of the sanitary sewer pipeline or lines proposed to be laid on said right-of-way and easement.

The said Grantor, its successors or assigns, shall use and enjoy the premises of said right-of-way and easement, except for the purposes hereinabove granted to the said Grantee, its successors or assigns, except that the said Grantor covenants and agrees not to erect any structure or place any object upon the right-of-way and easement hereby conveyed which would in any way interfere with the use and occupancy of said right-of-way and easement by the said Grantee, its successors or assigns, for the purposes hereinabove stated. Grantor further covenants and agrees not to change the contour or grade of the surface of the land upon which the above-described right-of-way and easement is located without first obtaining written permission to do so from Grantee, its successors or assigns.

The Grantor does grant and convey said right-of-way and easement to the Grantee, its successors or assigns, upon the following terms and conditions: **NONE**.

This Agreement shall be binding upon the parties hereto, their successors or assigns.

DECLARATION OF CONSIDERATION OR VALUE

The undersigned hereby declare:

That the conveyance made in the document to which this declaration is appended is exempt from taxation under the provisions of Chapter 11, Article 22, of the Code of West Virginia, for the reason that it is a conveyance made to a political subdivision of the State of West Virginia. *(Without Consideration).*

IN WITNESS WHEREOF, the said the City of Morgantown, West Virginia, a political subdivision of the State of West Virginia, has caused by ordinance its name to be hereunto subscribed by its City Manager, by authority duly given, and the said Morgantown Utility Board, a municipal corporation, has caused its name to be hereunto subscribed by Timothy L. Ball, P.E., General Manager, by authority duly given.

WITNESS the following signatures:

MORGANTOWN UTILITY BOARD

By: _____
Timothy L. Ball, P.E.
General Manager

CITY OF MORGANTOWN

By: _____
Jeff Mikorski
City Manager

ATTEST:

City Clerk
City of Morgantown

[SEAL]

STATE OF WEST VIRGINIA,

COUNTY OF MONONGALIA, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Jeff Mikorski, City Manager, who is duly authorized to act for and on behalf of said City of Morgantown.

My commission expires: _____.

Notary Public in and for the
State of West Virginia

STATE OF WEST VIRGINIA,

COUNTY OF MONONGALIA, to-wit:

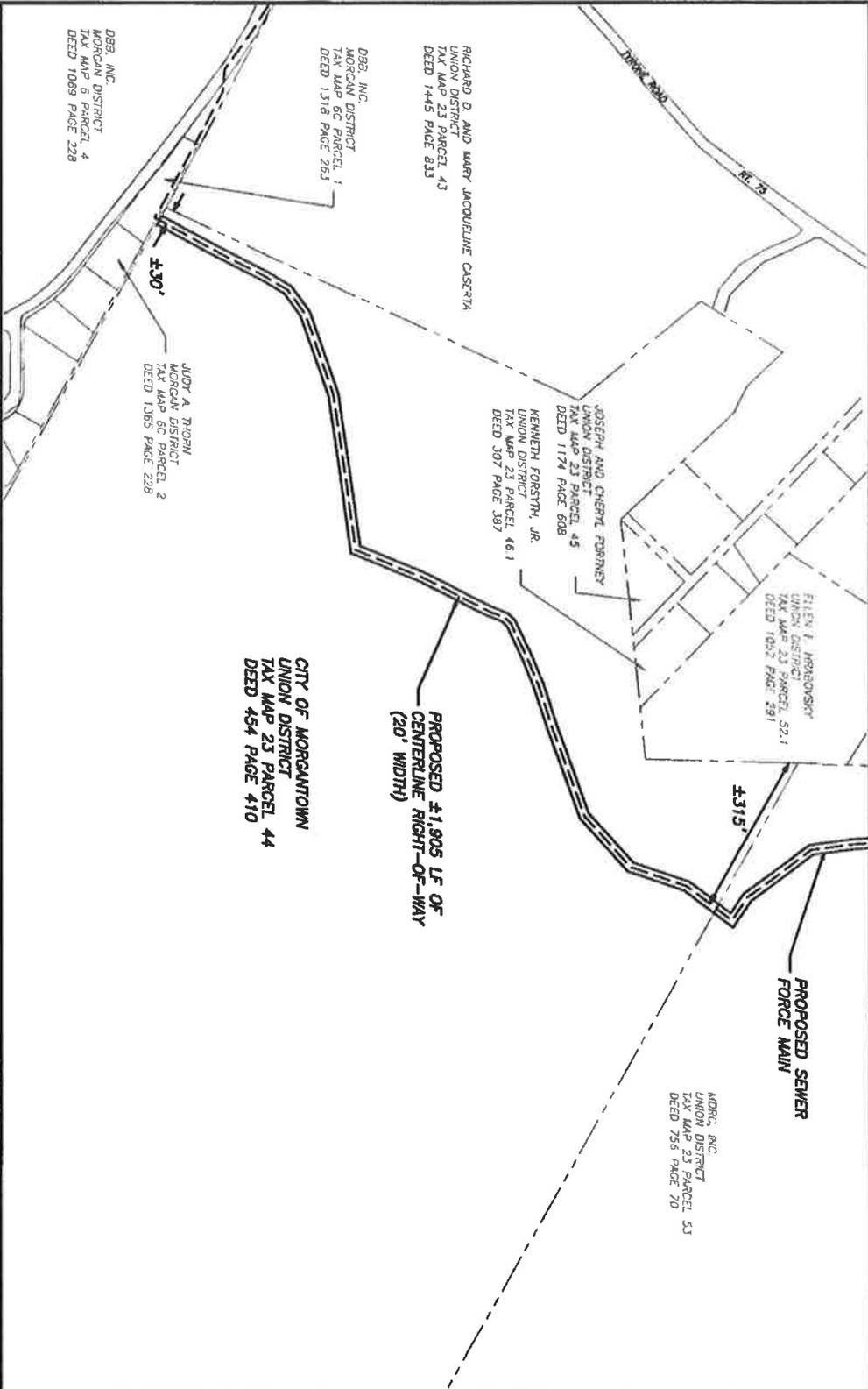
The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Timothy L. Ball, P.E., General Manager of the Morgantown Utility Board, acting for and on behalf of the City of Morgantown, a municipal corporation.

My commission expires: _____.

Notary Public in and for the
State of West Virginia

This instrument prepared by:

Morgantown Utility Board
278 Greenbag Road
P.O. Box 852
Morgantown, WV 26507-0852



DRAWN BY: JAMES W FETTY JR CHECKED BY: APPROVED BY: SCALE: 1" = 250'	DATE: 10/09/14 DATE: DATE:	REVISION: DATE:	EXHIBIT "A"	MORGANTOWN • UTILITY • BOARD 225 Craddock Road • First Floor Box 88 • Morgantown, WV 26507-0088 • 304-283-9448 	DRAWING TITLE: PROPOSED C/L RIGHT-OF-WAY FROM CITY OF MORGANTOWN TO THE MORGANTOWN UTILITY BOARD	PROJECT NUMBER: AS-1056	DRAWING NUMBER: SHT. 1 OF 1
---	----------------------------------	--------------------	-------------	---	---	----------------------------	--------------------------------

I certify that I am engaged in surveying exclusively for the Morgantown Utility Board, a political subdivision of the State of West Virginia, and believe I am exempt from regulations and licensing under West Virginia Code 30-13A-35.

James W. Fetty Jr.
 JAMES W FETTY JR.



This Exhibit is not intended to be a property survey. It is intended to be used for information purposes only.

COME GROW WITH US!

March 12, 2015

Douglas R. Smith, P.E.
Morgantown Utility Board
278 Greenbag Road
Morgantown, WV 26507-0852



RE: Sunshine Estates Sanitary Sewer Improvements Project
West Virginia Botanic Garden/Tibbs Run Easement

Dear Mr. Smith:

I write to certify that WVBG has no objection to the proposed sewer line easement described as Exhibit "A", attached. We understand that this easement is desirable and necessary to protect the water environment from damage caused by a nearby subdivision that is currently underserved by an obsolete package treatment plant.

I have inspected the easement route on site with your project engineer, Jim Fetty. We have agreed on the specific route of the easement that is depicted on the attached map, as well as both construction practices and recovery of the disturbed ground that he has supplied.

I am available at your convenience to discuss this matter, and I understand that this statement may be included in Council deliberations regarding the proposed easement.

Sincerely,

A handwritten signature in cursive script that reads "George W. Longenecker".

George W. Longenecker
Executive Director



March 17, 2015

Mr. George Longenecker
West Virginia Botanic Garden
714 Venture Drive, PMB #121
Morgantown, WV 26508-7306

**Re: Sunshine Estates Sanitary Sewer Improvement Project
West Virginia Botanic Garden/Tibbs Run Easement**

Dear George:

Thank you for your recent letters expressing your agreement with MUB's plans for a sanitary sewer line (and accompanying right of way and easement) through the WVBG at Tibbs Run.

This letter will confirm that MUB and WVBG have agreed that, as consideration for the disturbance and related inconvenience expected to be caused by the proposed construction, MUB will pay to WVBG:

- \$700 to offset the cost of a sewer tap upon the proposed line, and
- \$1,000 to offset initial sewer use charges.

The above payments may be used in any manner chosen by the WVBG; the descriptions included are provided merely to correlate to the original requests expressed by WVBG. WVGB will remain subject to all utility fees and charges of MUB, pursuant to applicable rate ordinances.

Please note, as has been discussed between you and our engineering staff that the subject proposed sewer line will be a pressurized force main, as will be the tap to be provided thereon. For the WVBG to be served by said force main and tap will require that the WVBG provide, install, operate and maintain its own private sewage pumping station and pressurized force main / service line. The private sewage pumping station must include one (or more) check valves to prevent reverse flow from the public force main into the private pumping station, and one (or more) isolation valves to allow maintenance of the check valve(s) while still preventing reverse flow into the pumping station.

Thank you for your cooperation.

Respectfully,

MORGANTOWN UTILITY BOARD

A handwritten signature in blue ink, appearing to read "Timothy L. Ball", is written over a white rectangular area.

Timothy L. Ball, P.E.
General Manager

AN ORDINANCE PROVIDING FOR EXECUTION OF A RIGHT-OF-WAY AND EASEMENT AGREEMENT WITH THE MORGANTOWN UTILITY BOARD FOR CONSTRUCTION OF A FENCE ON A PORTION OF PROPERTY IDENTIFIED ON UNION DISTRICT TAX MAP 28, PARCEL 134, AND DECLARING THE ATTACHED EASEMENT AS A PART THEREOF.

The City of Morgantown Hereby Ordains:

That the City Manager is hereby authorized to execute, on behalf of the City of Morgantown, the Right-of-Way and Easement Agreement attached to, and made a part of, this ordinance.

This Ordinance shall be effective from the date of its adoption.

First Reading:

Adopted:

Mayor

Filed:

Recorded:

City Clerk

RIGHT-OF-WAY AND EASEMENT AGREEMENT

THIS RIGHT-OF-WAY AND EASEMENT AGREEMENT, made and executed this _____ day of _____, 2015, by and between the City of Morgantown, party of the first part, Grantor, and the City of Morgantown, West Virginia, a municipal corporation, acting by and through the Morgantown Utility Board, hereinafter sometimes referred to as the "Board," party of the second part, Grantee,

WITNESSETH: That for and in consideration of the sum of \$1.00 and other good and valuable consideration, the receipt of all of which is hereby acknowledged, the said party of the first part, Grantor, does hereby grant and convey, with covenants of General Warranty, unto the said party of the second part, Grantee, and to its successors or assigns, a right-of-way and easement to construct, maintain, remove, reconstruct, replace, or repair fencing in, on, under, over, and through a certain tract and parcel of land situate in Morgantown Taxing District, Tax Map 28, Parcel 134, Monongalia County, West Virginia, and which said tract and parcel of land is further described in a deed recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 1161 at Page 375, to which said deed reference is hereby made for all pertinent purposes.

The location of said right-of-way and easement proposed upon said property is as follows:

±409' of fencing; all as depicted and further described in Exhibit "A," attached and incorporated herein.

The said Grantor further grants and conveys unto said Grantee, its successors or assigns, the right of ingress, egress, and regress, to and from said right-of-way and easement for all proper purposes and at all reasonable times and a temporary construction right-of-way and easement of such width as is reasonable and necessary to carry out the construction, repair, or replacement of all or part of the above-described fencing, provided, however, that Grantee may not prevent use of the rail trail within the property for nonmotorized recreational uses.

The said Grantor does also grant and convey unto the said Grantee, its successors or assigns, the right to use said right-of-way and easement herein granted, along the course of the proposed fencing, for the further purpose of transporting fencing, fittings, machinery, and equipment to and from neighboring lands, in and about the construction, operation, maintenance, removal, and replacement

of the fencing proposed to be installed on said right-of-way and easement, provided, however, that Grantee may not prevent use of the rail trail within the property for nonmotorized recreational uses.

The Grantor does grant and convey said right-of-way and easement to the Grantee, its successors or assigns, upon the following terms and conditions:

The right-of-way and easement is subject to all rights-of-way, easements, covenants, restrictions and/or exceptions as contained in prior recorded instruments in the chain of title to this real estate. Without limiting the foregoing, the right-of-way and easement granted to Grantee is specifically subject to the rights reserved to CSX and the State Rail Authority in that certain deed recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 1161 at Page 375 and is subject to the restrictions on use provided in *W. Va. Code* § 5B-1A-1 *et seq.* Grantee is not given any right in this Agreement to, and Grantee shall not, undertake any action that would trigger the right of reversion in the State Rail Authority or its predecessor in title contained in the above-referenced deed. All rights granted to Grantee in this Agreement will terminate upon the termination of Grantor's interest in the property made subject of the right-of-way and easement granted herein.

DECLARATION OF CONSIDERATION OR VALUE

The undersigned hereby declare:

That the conveyance made in the document to which this declaration is appended is exempt from taxation under the provisions of Chapter 11, Article 22, of the Code of West Virginia, for the reason that it is a conveyance made to a political subdivision of the State of West Virginia. (*Without Consideration*).

IN WITNESS WHEREOF, the City of Morgantown, has caused its name to be hereunto subscribed by Jeff Mikorski, its City Manager, by authority duly given, and the said Morgantown Utility Board, acting for and on behalf of the City of Morgantown, a municipal corporation, has caused its name to be hereunto subscribed by Timothy L. Ball, P.E., General Manager, by authority duly given.

WITNESS the following signatures:

MORGANTOWN UTILITY BOARD

On behalf of the
CITY OF MORGANTOWN

By: _____
Timothy L. Ball, P.E.
General Manager

By: _____
Jeff Mikorski
City Manager

STATE OF WEST VIRGINIA,

COUNTY OF MONONGALIA, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____,
2015, by Jeff Mikorski, City Manager, acting for and on behalf of the City of Morgantown.

My commission expires: _____.

Notary Public in and for the
State of West Virginia

STATE OF WEST VIRGINIA,

COUNTY OF MONONGALIA, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____,
2015, by Timothy L. Ball, P.E., General Manager of the Morgantown Utility Board, acting for and on
behalf of the City of Morgantown, a municipal corporation.

My commission expires: _____.

Notary Public in and for the
State of West Virginia

This instrument prepared by:

Morgantown Utility Board
278 Greenbag Road
P.O. Box 852
Morgantown, WV 26507-0852

AN ORDINANCE AMENDING CITY CODE SECTION 747.02 PRESCRIBING A FIRE SERVICE FEE

WHEREAS, the City is entitled to establish fees for the provision of services including fire protection pursuant to *W. Va. Code* § 8-13-13; and

WHEREAS, the fire service fee established in City Code section 747.02 is specifically limited to funding the continuance, maintenance or improvement of the fire protection service provided by the City pursuant to City Code section 747.08, and no part of the fire service fee revenues maybe used for any other purpose; and

WHEREAS, the City Council finds that the current fee for fire protection service does not adequately fund such service and should be increased to more closely relate to the reasonable cost of providing fire protection service;

NOW, THEREFORE, the City of Morgantown hereby ordains that City Code section 747.02 is amended as follows:

747.02 LEVY AND IMPOSITION OF FEE.

(a) 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 ~~6.38~~ 7.66 cents per square foot of space within each structure, per annum. Structures exceeding three floors shall be charged an additional ~~4.03~~ 4.84 cents per square foot of space for each additional space above the third floor.

The gross square footage of each structure shall be determined by the 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.

(b) 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.

(c) 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.

This ordinance shall be effective as of July 1, 2015.

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

RECORDED:

AN ORDINANCE AMENDING CITY CODE SECTION 735.24 SETTING THE BUSINESS AND OCCUPATION TAX RATE FOR SERVICE BUSINESSES

WHEREAS, the City is entitled to establish a business and occupation tax similar to the tax formerly imposed by the State pursuant to *W. Va. Code* § 8-13-5; and

WHEREAS, the allowable rates for service businesses or callings are established by *W. Va. Code* § 8-13-5; and

WHEREAS, the current rate imposed by the City on service businesses or callings is substantially below both the allowable rate and the rates imposed by other local municipalities; and

WHEREAS, the increasing demand for municipal services attendant to the growing Morgantown community require additional revenues; and

WHEREAS, the business and occupation tax is the primary funding mechanism for municipalities under the system established by West Virginia law;

NOW, THEREFORE, the City of Morgantown hereby ordains that City Code section 735.24 is amended as follows:

735.24 SERVICE BUSINESS OR CALLING NOT OTHERWISE SPECIFICALLY TAXED.

Upon every person engaging or continuing within this City in any service business or calling not otherwise specifically taxed under this article, there is likewise hereby levied and shall be collected a tax equal to ~~fifty-five cents (55¢)~~ one dollar (\$1.00) per one hundred dollars (\$100.00) of value or of the gross income of any such business service or calling.

This ordinance shall be effective as of July 1, 2015.

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

RECORDED:

AN ORDINANCE AMENDING CITY CHARTER SECTION 2.12 AND ADDING A NEW SECTION 2.17 PERMITTING AUTHORIZATION OF INTERGOVERNMENTAL AGREEMENTS BY RESOLUTION RATHER THAN ORDINANCE.

WHEREAS, pursuant to the authority granted to the City of Morgantown as a Home Rule Municipality under West Virginia Code § 8-1-5a, City Council is authorized to provide for the entry into agreements with other jurisdictions by resolution rather than by ordinance; and

WHEREAS, by authorizing the authority to enter agreements with other jurisdictions by resolution rather than by ordinance, the City shall be exempt from the provisions of West Virginia Code § 8-11-3(10); and

WHEREAS, West Virginia Code § 8-4-8 provides that whenever the governing body of a municipality shall deem it expedient to amend the charter of the City, it shall propose the amendment by ordinance; and

WHEREAS, City Council finds and determines that it would be in the best interest of the City to amend its Charter so that the City may enter agreements with other jurisdictions by resolution rather than by ordinance and thereby promote efficient governance;

NOW, THEREFORE, the City of Morgantown hereby ordains that the City Charter is amended as follows:

SECTION 2.12. ACTION REQUIRING AN ORDINANCE.

In addition to other acts required by law or by specific provision of this Charter to be done by ordinance, those acts of the City Council shall be by ordinance which:

- (1) Adopt or amend an administrative code or establish, alter or abolish any City department, office or agency;
- (2) Provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed;
- (3) Levy taxes, except as otherwise provided in Article V with respect to the property tax levied by adoption of the budget. Provide for the collection of fees of any lawful kind;
- (4) Grant, renew or extend a franchise;
- (5) Regulate the rate charged for its services by a public utility, to the extent permitted by law;
- (6) Authorize the borrowing of money;
- (7) Convey or lease or authorize the conveyance or lease of any lands from the City or to the City;
- (8) Require a license to do business;
- (9) Provide for a public improvement;
- (10) Lay out or vacate a public street, avenue, road, alley or way;
- (11) Relate to planning and zoning;
- ~~(12) Provide for a contractual or other agreement with another jurisdiction;~~
- (12 ~~3~~) Adopt with or without amendment ordinances proposed under the initiative power;
- (13 ~~4~~) Change ward boundaries;

(14 5) Amend or repeal any ordinance previously adopted, except as otherwise provided in Article VIII with respect to repeal of ordinances reconsidered under the referendum power.

SECTION 2.17. RESOLUTIONS FOR INTERGOVERNMENTAL AGREEMENTS.

The City Council is authorized to provide for a contractual or other agreement with another jurisdiction by resolution.

This ordinance shall become effective upon adoption, subject to the statutory requirements imposed by West Virginia Code section 8-4-8.

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

RECORDED:

AN ORDINANCE AMENDING ARTICLE 1149 OF THE CITY CODE RELATING TO PUBLIC NUISANCE TO PROVIDE FOR PLACING OF PUBLIC NUISANCE REMOVAL LIENS WITHOUT A COURT ORDER

WHEREAS, West Virginia Code § 8-12-5(23) permits the City to provide for the elimination of hazards to public health and safety and to abate or cause to be abated anything which in the opinion of a majority of the governing body is a public nuisance, but does not provide authority to recover the cost of eliminating such hazards by filing a lien against the property involved; and

WHEREAS, West Virginia Code § 8-12-16 permits the City to adopt ordinances regulating the repair, alteration or improvement, or the vacating and closing or removal or demolition of any buildings unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or any other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare but does not specify that such ordinances may be adopted, or liens placed on property, for public nuisances identified by the City that do not meet the specific statutory categories; and

WHEREAS, pursuant to the authority granted to the City of Morgantown as a Home Rule Municipality under West Virginia Code § 8-1-5a, City Council is authorized to provide for the authority to file liens against real property without a court order for the costs to the City of abating a public nuisance on such property;

NOW THEREFORE, the City of Morgantown hereby ordains that Article 1149 of the City Code is amended as follows:

1149.01 PURPOSE; PUBLIC NUISANCE ABATEMENT.

Council may, by resolution, abate anything which, in the opinion of a majority of Council, constitutes a public nuisance after due notice to all parties that could be affected and after such hearings as Council deems necessary to ascertain a factual and rational basis for the abatement of any such public nuisance.

1149.02 APPLICATION.

The provisions of this article shall apply to all public nuisances as hereinafter designated which are now in existence or which may hereafter exist in the City.

1149.03 DEFINITION; PUBLIC NUISANCE.

(a) A public nuisance is one which affects an indefinite number of persons, or the residents of a particular locality, or people coming within the extent of its range or operation, although the extent of the annoyance or damage inflicted upon individuals may be unequal. Such public nuisance endangers the health, safety and welfare of the community and is dangerous and detrimental to the public health, may violate the laws of the City and/or State as well as obstructs the community from reasonable and comfortable use of property.

(b) A public nuisance may arise from the unreasonable, unwarrantable or unlawful behavior associated with the property, either real or personal, which hinders the neighboring community and the general public from enjoying the common and public rights enjoyed by the general community in like areas where no such public nuisance exists.

(c) For purposes of this article a continuing public nuisance is an uninterrupted or periodically recurring public nuisance, not necessarily a constant or unceasing injury, but a nuisance which occurs so often and is so necessarily an incident of the use of property complained of that it can fairly be said to be continuous. Such a nuisance may be of such character that its continuance is necessarily an injury which will continue without change.

(d) A continuing public nuisance may be found to be a permanent public nuisance when its continuance is necessarily an injury which will continue without change, unless Council takes such action to cease any like nuisance from becoming established and re-occurring at the particular location. It is not enough to show a slight interference to the public welfare and such will not be restrained unless the type of business or manner of operation is injurious to the public health, safety and welfare of the community or has a tendency to promote unlawful behavior or behavior which is considered by the City Administration, including its health and/or safety officials, to be a menace to public order and safety.

(e) The procedure by which the City of Morgantown will address public nuisances is set forth in the remaining sections of this article.

1149.04 REPORT, RECOMMENDATIONS TO COUNCIL AND HEARING.

Public safety and law enforcement officers, as well as affected members of the community, shall report findings and recommendations to the City Manager, and if the City Manager ascertains from the report and findings that the condition presents a public nuisance, as defined within this Article, the City Manager shall make his recommendation to City Council that just cause exists to abate the nuisance. Whereupon by a majority vote of City Council, a hearing shall be held after at least ten days' notice is provided to the property owner, tenant, business manager and/or licensee of the time and place of such hearing, which notice shall contain a statement or specifications of the charges, grounds or reasons for such proposed contemplated action, and which shall be served upon the property owner, tenant, business manager and/or licensee as notices under the West Virginia Rules of Civil Procedure or by certified mail, return receipt requested, and shall, in addition, be posted in a conspicuous place on the premises as well as within 100 feet surrounding such premises affected by the recommendation. The term "cause" shall include the doing or omitting of any act or permitting any condition to exist which causes a public nuisance as defined in this article. At which time and place, so designated in the notice, City Administration shall put forth its evidence in support of the recommendation made to City Council as well as the property owner, tenant, business manager and/or licensee shall have the right to appear and produce evidence in his/her/its behalf, and to be represented by counsel. At the conclusion of the hearing, City Council shall render a decision.

1149.05 FINDINGS OF CITY COUNCIL.

(a) At the conclusion of the hearing described in Section 1149.04, City Council will issue its findings on the matter. In doing so, it may determine that a public nuisance does not exist, or that a public nuisance does exist and in such case, what corrective action the property owner, tenant, business manager and/or licensee must take to eliminate the public nuisance and the time

period in which such action must take place. Additionally, upon a showing that there has been a continuing nuisance of similar character and circumstances at a particular location which meets the criteria for a permanent nuisance as set forth in Section 1149.03 of this article, City Council may declare such a permanent public nuisance and prohibit similar acts, occupations, types of businesses or structures at such location. In determining whether or not a permanent public nuisance exists, City Council shall consider reports of City administration, safety, and law enforcement officials, as well as public comment and complaints of the community spanning, at a minimum, a three year period immediately preceding the date of the hearing.

(b) Should any property owner, tenant, business manager and/or licensee fail to take the corrective action prescribed by City Council in the time period allotted, the City employees and/or agents of the City necessary to abate the nuisance may enter upon the property constituting a public nuisance and abate the conditions creating the nuisance, regardless of whether such nuisance constitutes a threat to public safety.

(c) If the City abates a nuisance as permitted by Section 1149.05(b), the City shall be entitled to a lien against the real property on which such nuisance was abated for all costs incurred in abating the nuisance, including the actual value of labor expended to abate the nuisance, without the necessity of obtaining a court order for such lien. The City may collect on such lien in the same manner as provided for liens for taxes or paving assessments, or by an action at law, or in any other manner provided by law for the collection of debts due to a municipality.

1149.06 RECONSIDERATION OF PERMANENT PUBLIC NUISANCE.

Should City Council declare a location to be a permanent public nuisance, any further use of that same location for the same use shall not be allowed; however, reconsideration by City Council of its Declaration of Permanent Nuisance may occur if such reconsideration request is filed in writing with City Council within three (3) months of City Council's decision on the matter. The relief requested in the petition for reconsideration may be granted by City Council if, in its opinion, the petitioner has presented it with sufficient information demonstrating that, more likely than not, the elements making up and causing the nature of the permanent public nuisance in question will be eliminated. The order of City Council in granting any such petition shall indicate that the use of the premises/realty at issue will be considered probationary for a period of one year from the date the use commences, and that any reoccurrence of similar activity which lead to the prior declaration of a permanent public nuisance or would lead to a new nuisance violation shall automatically reactivate City Council's previous determination that the site is a permanent public nuisance. In that event, upon written notice by the City Manager to and received by the Petitioner, such usage of the site shall cease immediately.

1149.07 APPEALS AND ENFORCEMENT.

In the event that such property owner, tenant, business manager and/or licensee may be aggrieved by such decision of City Council, which may include and not be limited to revocation or suspension of any licensures and/or the restricted use of such property having been declared a nuisance, petition for such review must be filed with the circuit court within a period of thirty days from and after the date of final action by Council. Any person, firm, corporation, landowner, licensee so affected has the right to apply to the circuit court for a temporary

injunction pursuant to the provisions of the W. Va. Code. The Municipality is also entitled to any and all appropriate judicial relief against public nuisances.

1149.08 STATE BUILDING CODE AND FIRE CODE.

This article shall not supersede those requirements and procedures set forth in either the West Virginia State Building Code or the West Virginia State Fire Code.

1149.09 SEVERABILITY.

If any section, subsection, provision, clause or phrase of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, subsections, provisions, clauses or phrases or applications of this article and to this end each and every section, subsection, provision, clause and phrase of this article is declared to be severable. This article is in addition to and not dependent upon other articles of this Code.

This ordinance shall be effective upon date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

RECORDED:

AN ORDINANCE AUTHORIZING THE PURCHASE OF REAL ESTATE AT 2183 UNIVERSITY AVENUE AND DECLARING THE REAL ESTATE PURCHASE AGREEMENT HERETO ATTACHED AS A PART THEREOF.

The City of Morgantown hereby ordains:

That the City Manager is hereby authorized to execute, on behalf of the City of Morgantown, the Real Estate Purchase Agreement attached to, and made a part of, this ordinance, together with any other documents necessary to accomplish the transfer of the property as provided in the Real Estate Purchase Agreement.

This Ordinance shall be effective from the date of its adoption.

First Reading:

Adopted:

Mayor

Filed:

Recorded:

City Clerk

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement (“Agreement”) is entered into this ____ day of _____, 2015, by and between the City of Morgantown, a municipal corporation of the State of West Virginia (“City”); Campus Neighborhoods Revitalization Corporation, a West Virginia nonprofit corporation (“CNRC”); and Charles Terry Kisner and Victoria Kisner, husband and wife (“Sellers”).

WHEREAS, Sellers are the owners of real property located at 2183 University Avenue, Morgantown, West Virginia, and intend to convey the property to City upon the terms and conditions stated in this Agreement; and

WHEREAS, an appraisal of the property subject of this Agreement valued the property at Nine Hundred Thousand Dollars (\$900,000.00); and

WHEREAS, City intends to pay an amount equal to the fair market value of the property in exchange for conveyance of the property to City; and

WHEREAS, CNRC desires to assist in the transfer of the property to City by contributing the funds in excess of the property’s fair market value to meet Seller’s asking price because the transfer will promote CNRC’s mission and goals through City’s intended use of the property to redevelop infrastructure;

NOW, THEREFORE, the parties agree as follows:

1. Property: The property transferred pursuant to this Agreement is a multi-unit student rental property identified as 2183 University Avenue and located at the intersection of University Avenue, Beverly Avenue, and Third Street in Fourth Ward, Morgantown, Monongalia County, West Virginia valued at \$900,000.00 by that certain appraisal performed by J. Mark Day, Day-Warash Appraisal Services, LLC, as of December 30, 2014. Sellers agree to convey, and City agrees to accept, those certain parcels of real estate identified as Fourth Ward Tax Map 20, Parcels 3 and 4, Block 19 part of Lot #1 of the Peninsula Company Addition, Monongalia County, West Virginia, and as more particularly described on Exhibit A to this Agreement (the “Property”).

2. Earnest Money Deposit: The earnest money deposit shall be held by the Seller and held by it to apply to the purchase or to be returned to CNRC, as this Agreement provides. If the City fails or refuses to consummate the purchase of said property for any reason other than default upon the part of the Seller, the earnest deposit shall be retained by the Seller, and the Seller may then seek all other available remedies at law. In the event of default on the part of the Seller in complying with and performing the covenants and conditions herein imposed upon the Seller, the earnest money deposit shall, upon written request from City or CNRC, be returned to CNRC within ten (10) days from the Seller’s receipt of said request, unless within said ten (10) day period the Seller has corrected such default, and if such default has not been corrected, the City and/or CNRC may then seek all other available remedies at law.

3. Consideration:

- a. Funds Received by Sellers: The total consideration paid to Sellers in exchange for the Property shall be One Million One Hundred Thousand Dollars and Zero Cents (\$1,100,000.00). One Hundred Thirty-five Thousand Dollars and Zero Cents (\$135,000.00) of the consideration shall be paid to Sellers as the Earnest Money Deposit by CNRC, which shall be due and payable on the date of execution of this Agreement.
- b. Funds Paid by City: City shall contribute Nine Hundred Thousand Dollars and Zero Cents (\$900,000.00) to the consideration paid, payable at the time of closing.
- c. Funds Paid by CNRC: CNRC shall contribute Two Hundred Thousand Dollars and Zero Cents (\$200,000.00) to the consideration paid, payable at the time of closing. CNRC shall deposit with Sellers One Hundred Thirty-five Thousand Dollars and Zero Cents (\$135,000.00) as the Earnest Money Deposit by May 1, 2015.

4. Representations and Warranties:

- a. Sellers' represent and warrant to the best of their knowledge as follows:
 - i. Sellers represent and warrant that they have disclosed any and all latent defects of the Property on the attached Exhibit B.
 - ii. Sellers have received no notice from any governmental authority having jurisdiction over the Property that the Property is in violation of the Comprehensive Environmental Response, Compensation and Liability Act of 1989, as amended (CER-CLA(c)), the Resources Conservation and Recovery Act of 1976, as amended, the Toxic Substance Control Act, as amended, the Hazardous Materials Transportation Act, as amended, or any statute governing underground storage tanks or asbestos. Sellers have disclosed all known violations of such laws and presence of such equipment or material on the attached Exhibit B.
 - iii. Sellers have received no written notice or citation from any federal, state, county or municipal authority or any other party alleging any fire, health, safety, building pollution, environmental, zoning or other violation of any law, regulation, permit, order or directive in respect of the Property or any part thereof which violation remains outstanding.
 - iv. Seller has received no written notice of any actions, suits or proceedings, pending before any court, commission, agency or other administrative authority against, or affecting the Property which, if adversely determined, could individually or in the aggregate have a materially adverse effect on title to the Property or any portion thereof or which could in any material way interfere with the consummation by Seller of the transaction contemplated by this Agreement.
 - v. There are no other written agreements affecting the Property by which Purchaser would be bound other than any lease agreements to students.
 - vi. Sellers have sole and complete authority to convey the Property.

- b. City represents and warrants as follows:
 - i. City's authorized representative signing this Agreement has authority to bind City to its terms, and such authority has been granted by any required act of Council in compliance with the law.
 - ii. Funds to be delivered to Seller by City have been allocated for this purchase.
- c. CNRC represents and warrants as follows:
 - i. CNRC's authorized representative signing this Agreement has authority to bind CNRC, and CNRC has taken all required actions to grant such authority in accordance with the law.
 - ii. CNRC is a duly authorized nonprofit corporation in good standing under the laws of the state of West Virginia.
 - iii. CNRC's contribution of funds as described in this Agreements is authorized pursuant to its Articles of Incorporation and/or bylaws.
 - iv. CNRC understands that it will obtain no right or interest in the Property or the future use of the Property under this Agreement.
 - v. CNRC represents and warrants that the transfer of the Property to the City confers upon CNRC a benefit constituting sufficient consideration for its contribution under this Agreement because the City's intended use of the Property will promote CNRC's corporate purpose to revitalize the neighborhood in which the Property is located and such benefit would be difficult to realize without the participation of City in this Agreement.

5. Sellers' Obligations:

- a. Sellers shall convey good and marketable title to the Property by special warranty deed unencumbered by any lien, claim, or property interest of a third party.
- b. Sellers are solely responsible for canceling or transferring all lease agreements for the Property extending beyond the date of closing. Sellers represent and warrant that no leasehold interests for the Property will exist as of the date of closing.

6. City's Obligations: City will deliver to Sellers the payment described in this Agreement at the date of closing so long as all other parties to the Agreement have performed all of such party's obligations and City has determined that all of such other parties' representations and warranties are true and correct as of the date of closing; provided, that City's obligation to make payment shall be conditional upon City's inspection of the premises and determination that the Property is suitable for City's needs, which determination shall be reasonably made by City.

7. CNRC's Obligations: CNRC will deliver to Sellers the payment described in this Agreement at the date of closing; provided, however, that CNRC shall not be obligated to deliver payment if City declines to complete the transfer due to failure of a condition to the agreement or a determination after inspection that the Property is unsuitable for City's needs.

8. Deed: Upon the acceptance of this offer by the Sellers and the fulfillment of all conditions herein to be performed by the City and CNRC, the Sellers shall, by proper deed containing covenants of Special Warranty, convey good and marketable title to the property, free and clear of all liens and encumbrances, to the City, subject to prior reservations of minerals, if

any, and rights of way of record or visible by inspection, building restrictions, and such other matters hereinafter set forth.

9. Fees and Assessments:

a. **Taxes:** Real property taxes shall be prorated on a calendar year basis as of the date of closing; that is, taxes assessed as of the first day of July of the preceding year shall be prorated on a daily basis for the current calendar year in which this transaction is closed. If taxes for the current year vary from the amount prorated at closing, the parties shall, after closing, adjust the prorations when tax statements for the current year are available.

b. **Public and utility improvements:** All unpaid assessments or costs for improvements made for streets, sidewalks, sewers and utilities already assessed or completed or under construction on the date of execution hereof shall be paid by the Sellers.

All unpaid assessments or costs for improvements made for streets, sidewalks, sewers and utilities assessed or completed or under construction after closing shall be paid by the City.

c. **Fire Service Fee** shall be prorated as of the date of closing.

d. **Improvements for which Mechanic's Liens could be filed, utilities and other charges** incurred prior to the date of possession given to the City shall be paid by Sellers.

e. **Survey, Inspections, Appraisals, Title Insurance, Title Examination and Recording Fees** shall be paid by City.

f. **Preparation of the Deed of Conveyance** shall be paid by the Sellers.

g. Conveyance is exempt from documentary transfer stamps as a conveyance to a political subdivision pursuant to *W. Va. Code* § 11-22-1(4).

10. Risk of Loss: In the event of catastrophic destruction or substantial damage by fire or otherwise, the City shall have the option of electing to accept the damaged property and the proceeds of insurance carried thereon by the Sellers and crediting the same upon the purchase price and paying the balance of the purchase price as herein provided or terminating this Agreement, without any further liability on the part of Sellers or City or CNRC. The risk of any minor loss or damage to the property by fire or otherwise before the delivery of the executed deed to City is assumed by and is the responsibility of the Sellers.

11. Possession: The property as then occupied shall be delivered to the City on the date of the consummation of the sale as is with no tenants occupying said premises.

12. Date of Closing and Possession: The closing shall be at the Council Chambers at City Hall, 389 Spruce Street, Morgantown, West Virginia unless otherwise agreed by the parties. The closing of this transaction shall be on or before June 1, 2015, and possession will be delivered to City on the date of the consummation of said sale. The date of closing and possession may be extended or changed by agreement of the parties.

13. Representation: This Agreement contains all stipulations and agreements between the parties, and unless modified by subsequent writing no representations by any of the parties, other than contained in this agreement, shall be binding upon any party.

14. Choice of Law: This Agreement shall be construed and governed in accordance with the Laws of the State of West Virginia.

15. Binding Effect: Except as otherwise stated herein, all of the provisions of this Agreement shall be binding upon the parties, their respective heirs, successors and personal representatives.

16. Counterparts: This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

In witness whereof, this Agreement is executed by:

Charles Terry Kisner
Seller
Date: _____

Victoria Kisner
Seller
Date: _____

Campus Neighborhoods Revitalization
Corporation, Inc.,
By: _____
Its: _____
Date: _____

City of Morgantown
By: _____
Its: _____
Date: _____

EXHIBIT A

PROPERTY DESCRIPTION

All of the following described tract or parcel of real estate, situate, lying and being in the FOURTH WARD OF THE CITY OF MORGANTOWN, MORGAN DISTRICT MONONGALIA COUNTY, WEST VIRGINIA, and being more particularly bounded and described as follows:

FIRST PARCEL: BEGINNING at a stake in the eastern line of Beverly Avenue, which stake is located 200 feet from the intersection of Fourth Street with said Avenue, and running thence from said stake in an easterly direction and at right angles to said Avenue 44-1/2 feet, more or less, to a mark on the concrete in the western line of said University Avenue; thence with the western line of said University Avenue in a southerly direction 128.2 feet to a gas pipe; thence in a westerly direction with a line parallel with the first line and along the Second Parcel hereinafter described and conveyed, 16 feet to a gas pipe in the eastern line of said Beverly Avenue; thence with the eastern line of said Beverly Avenue in a northerly direction 125 feet to the beginning, and being a part of Block 19 of the Morgantown Building and Investment Company, as laid down and designated upon a plat thereof, duly recorded in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 38, at Page 186.

SECOND PARCEL: BEGINNING at the intersection of the Star City Road (now University Avenue) with Beverly Avenue, and running thence with said Star City Road 55.6 feet to a stake; thence 16 feet to said Beverly Avenue, and thence with said Beverly Avenue 53 feet to the intersection of said Beverly Avenue with said Star City Road, the point and place of beginning, as surveyed on the 2nd day of July, 1919, by T. J. Wotring, Engineer, and being part of Block 19 of the Morgantown Building and Investment Company Addition to said Fourth Ward of the City of Morgantown, a plat of which said Addition is recorded as aforesaid.

Being the same real estate conveyed by The First National Bank of Morgantown, N.A., Grantor, to Charles T. Kisner and Victoria E. Kisner, husband and wife, Grantees, by deed dated the 5th day of October, 1987, which deed is of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 967, at Page 421, to which reference is here made for all pertinent purposes.

EXHIBIT B

SELLERS' DISCLOSURES

AN ORDINANCE AUTHORIZING EXECUTION OF A CONTRACT FOR HISTORIC PRESERVATION FEDERAL GRANT BY AND BETWEEN THE WEST VIRGINIA DIVISION OF FINANCE AND ADMINISTRATION FOR AND ON BEHALF OF THE DIVISION OF CULTURE AND HISTORY AND THE CITY OF MORGANTOWN FOR THE CITY OF MORGANTOWN HISTORIC LANDMARKS COMMISSION.

The City of Morgantown hereby ordains that its City Manager is authorized to execute, by and on behalf of the City of Morgantown, the attached "Contract for Historic Preservation Federal Grant" which is made a part of this ordinance.

First Reading:

MAYOR

Adopted:

Filed:

City Clerk

Recorded:

**West Virginia
Division of Finance and Administration
For and on behalf of
The Division of Culture and History**

CONTRACT

For Historic Preservation Federal Grant

This AGREEMENT is made, this the ____ day of _____, 20__ by and between _____

CITY OF MORGANTOWN/ HISTORIC LANDMARK COMMISSION

Hercinafter referred to as the grantee, and the STATE OF WEST VIRGINIA, DEPARTMENT OF FINANCE AND ADMINISTRATION on behalf of the West Virginia Division of Culture and History.

WITNESSETH, THAT WHEREAS, the Division of Culture and History of the State of West Virginia is Expressly authorized by Article 1, Chapter 29 of the Code of West Virginia, one Thousand Nine Hundred Thirty-One, as amended, to carry out the duties of the National Historic Preservation Act of 1966, and

WHEREAS, the State of West Virginia has received funds from the United States Department of the Interior, National Park Service to be granted by the State Historic Preservation Office to organizations or individuals participating in activities authorized in the National Historic Preservation Act of 1966, and

WHEREAS, the grantee desires to sponsor a project to be known as New Deal Stone Resources Survey as described in the Attachment I, and

WHEREAS, the Archives and History Commission on January 23, 2015 approved a grant to the grantee for the project described above,

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

1. The Division of Culture and History hereby agrees to GRANT to the grantee the sum of \$ 7,000.00 toward the total estimated cost of \$ 10,000.00 or said project.

(a) To be eligible for payments, the grantee must maintain and submit documentation, as required in the Subgrant Management Manual, to the State Historic Preservation Office showing the amounts of payment requested and describing the portion of the project for which the funds are requested;

(b) The Division of Culture and History only agrees to transfer funds to the grantee for expenditures which are in compliance with the terms and conditions of this agreement and the National Register Programs Guideline, NPS-49, of the Department of the Interior, National Park Service.

2. The grantee certifies that it has matching capability and agrees:

(a) The requirements of the Historic Preservation Office Subgrant Management Manual shall apply to this award;

(b) That it will substantially comply with State competitive bidding and use acceptable procurement procedures as defined in the Subgrant Management Manual;

(c) That it will furnish its share of the total cost of the project;

(d) That it will execute the project in compliance with the established policies, procedures, and regulations of the Department of the Interior, National Park Service, including the National Register Programs Guidelines, NPS-49;

(e) That it will disburse such funds only for authorized purposes in connection with said project;

(f) That it will maintain accurate records in accordance with generally accepted accounting principles and procedures, in connection with the project;

(g) That it will not be reimbursed for any expenditure which does not conform to the terms and conditions of this agreement or the Final Products do not meet the Secretary of the Interior's Standards;

(h) The grantee must receive prior approval from the State Historic Preservation Office for all amendments to the scope of work, products, budget, or reporting requirements;

(i) That it will comply with either the Single Audit Act of 1984 for state or local governments or the audit requirements of OMB Circular A-110 for universities and non profit organizations;

(j) Publications or audio visual material must receive prior approval from the State Historic Preservation Office. Five copies of any publications that is a result of the grant must be submitted to the State Historic Preservation Office. Grantee agrees to credit the West Virginia Division of Culture and History and the Federal Preservation Grant Program by using the following wording:

"The activity that is the subject of this (type of publication) has been financed (in part/entirely) with Federal funds from the National Park Service, Department of the Interior, and administered by the West Virginia Division of Culture and History."

The publication or audio visual should also contain the Equal Opportunity statement as follows:

"The program receives Federal funds from the National Park Service. Regulations of the U.S. Department of the Interior strictly prohibit unlawful discrimination departmental Federally Assisted Programs on the basis of race, color, national origin, age or handicap. Any person who believes he or she has been discriminated against in any program, activity, or facility operated by a recipient of Federal assistance should write to: Office of Equal Opportunity, U.S. Department of the Interior, National Park Service, 1849 C Street, N.W., Washington, D.C. 20240.

(k) The grantee must submit progress reports and financial reports as required in the subgrant management manual;

(l) The grantee shall submit a final project report containing all information as required in the Subgrant Management Manual;

(m) That it will conform to provision of 18 USC 1913 regarding the use of Federal funds for lobbying activities;

(n) That it will comply with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act;

(o) That it will conform with Title VI of the Civil Rights Act of 1964, that strictly prohibits unlawful discrimination in federally-assisted programs on the basis of race, color, and/or national origin;

(p) That it will provide to the Division evidence of compliance with Federal Procurement Standards as enumerated in 43 CFR 12, Subpart C, Uniform Administrative Requirements for grants to state and local governments, effective October 1, 1988;

(q) That it will complete the project in accordance with Attachment I of the contract;

(r) That the project will be performed and products produced in compliance with the Secretary of the Interior's Standards for Identification and Evaluation;

(s) In addition to the terms detailed in this agreement, all Federal requirements governing grants (Office of Management and Budget Circulars A-87 or A-122, 43 CFR 12, Subpart C or A-110, and A-128 or A-133) are applicable.

3. It is the understanding of all parties to this contract, that the Division of Culture and History by joining in this contract, does not pledge or promise to pledge the assets of the State of West Virginia, does not promise to pay any part of the contract sum provided for in this agreement from monies of the Treasury of the State of West Virginia except such monies as shall be appropriated by the West Virginia Legislature.

4. This contract may be terminated with the consent of both parties or by either party because of non-performance by the other.

This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training including apprenticeship. The grantee shall insert a similar provision in all subcontracts for activities covered by this contract. Programs funded by the Division of Culture and History strictly prohibit unlawful discrimination in state-assisted programs on the basis of race, color and/or national origin.

IN WITNESS WHEREOF, City of Morgantown/ Historic Landmark Commission and the Division of Culture and History have caused this instrument to be executed by their duly authorized representatives.

GRANTEE: CITY OF MORGANTOWN/ HISTORIC LANDMARK COMMISSION

BY: _____

STATE OF WEST VIRGINIA

COUNTY OF _____; TO-WIT

I, _____, a Notary Public in and for said County and State hereto annexed, bearing date the _____ day of _____, 20____, has this day acknowledged the name before me in my said County, to be his act and deed.

Given under my hand this _____ day of _____, 20_____.

My Commission expires

Notary Public

The Division of Culture and History

BY: _____
Historic Preservation Office

DEPARTMENT OF ADMINISTRATION
STATE OF WEST VIRGINIA ACTING BY
AND THROUGH IT'S PURCHASING DIVISION

BY: _____
Commissioner

BY: _____
Purchasing Director

Approved as to form the _____ day of _____, 20_____.

BY: _____
Assistant Attorney General

ENVIRONMENTAL CERTIFICATION

Based upon a review of the application, proposal narrative, and the supporting documentation contained in the application, it has been determined that the proposed HPF project, New Deal Stone Resources Survey meets the criteria for categorical exclusion* under 516 DM 6.

GRANTEE OR APPLICANT

DATE

TITLE

I concur:

***(Indicate appropriate categorical exclusion from those listed in section A.4 of Chapter 11 of the Manual.)**

A.4 a.6

ATTACHMENT I

PROJECT NAME: **New Deal Stone Resources Survey**

SUBGRANTEE: City of Morgantown/Historic Landmark Commission
389 Spruce Street
Morgantown, WV 26505

BEGINNING DATE: March 18, 2015

ENDING DATE: June 30, 2016

DETAILED SCOPE OF WORK:

The Morgantown Historic Landmark Commission will hire a 36 CFR 61 qualified consultant to conduct an intensive survey of the 1930s era stone works constructed by New Deal Programs within the Morgan District of Monongalia County. Approximately Fifty (50) stone works will be documented for this project. The consultant will be required to follow the Secretary of the Interior’s Standards for Identification and additional requirements as set forth by the State Historic Preservation Office. The consultant will be responsible for conducting research and field work, completion of HPI forms, and preparing a final report that includes historic context for the stone works, recommendations for further work, and National Register of Historic Places eligibility recommendations.

NON-FEDERAL MATCHING SHARE:

Donor:	Subgrantee	Donor:	Subgrantee
Source:	Same	Source:	Same
Kind:	Cash	Kind:	In-Kind
Amount:	\$1,900	Amount:	\$1,100

BUDGET:	Consultant	\$8,900.00
	Personnel	\$1,100.00

TOTAL PROJECT COST \$10,000.00

FINAL PRODUCTS:

Printed copy of the final survey report (with required sections)
Printed copy of each WV HPI Form with photograph(s)
CD-R with PDFs for report and each individual HPI Form
CD-R with tiff photographs of each documented resource
USGS map(s) with resources mapped by SHPO survey number
Maps depicting any recommended historic district
One copy of all of the above to the City of Morgantown/HLC

City of Morgantown

Finance Department

389 Spruce Street

Morgantown, WV 26505

Phone (304) 284-7407/Fax 7418

dwhite@cityofmorgantown.org

MEMO

DATE: April 3, 2015
TO: Linda Little, City Clerk
FROM: J.R. Sabatelli, Finance Director 
RE: Agenda Item

Please include on the agenda for April 21, 2015 under New Business:

Consideration of the APPROVAL OF THE RATES OF LEVY LAID BY THE CITY OF MORGANTOWN AND APPROVED BY THE STATE AUDITOR FOR THE FISCAL YEAR BEGINNING JULY 1, 2015 IN ACCORDANCE WITH CHAPTER 11 ARTICLE 8 OF THE WEST VIRGINIA CODE.

Attached are the *Notice of Approval of the Levy Estimate (Budget)* and the *Levy Order and Rate Sheet* to be included in the Council packets.

After approval, please sign the *Levy Order and Rate Sheet* and return to me for submission to the State Auditor's Office.

Thank you.

MUNICIPALITY OF MORGANTOWN, WEST VIRGINIA
LEVY ORDER AND RATE SHEET
2015 - 2016

The following is a true copy from the record of orders entered by this entity on the 21 day of
 April, 2015

SIGNATURE: _____

Municipal Clerk or Recorder

	Column E	Levy	Taxes
Current Year	Certificate of Valuation	Rate/\$100	Levied
	Assessed Value for Tax Purposes	<u> </u>	<u> </u>
Class I			
Personal Property	\$ <u> 0</u>	12.50	\$ <u> 0</u>
Public Utility	<u> 0</u>		<u> 0</u>
Total Class I	\$ <u> 0</u>		\$ <u> 0</u>
Class II			
Real Estate	\$ <u> 415,767,720</u>	25.00	\$ <u> 1,039,419</u>
Personal Property	<u> 1,648,100</u>		<u> 4,120</u>
Total Class II	\$ <u> 417,415,820</u>		\$ <u> 1,043,539</u>
Class IV			
Real Estate	\$ <u> 524,488,880</u>	50.00	\$ <u> 2,622,444</u>
Personal Property	<u> 164,175,910</u>		<u> 820,880</u>
Public Utility	<u> 61,918,907</u>		<u> 309,595</u>
Total Class IV	\$ <u> 750,583,697</u>		\$ <u> 3,752,919</u>
Total Value & Projected Revenue	\$ <u> 1,167,999,517</u>		\$ <u> 4,796,458</u>
Less Delinquencies, Exonerations & Uncollectable Taxes		<u> 7.50%</u>	<u> 359,734</u>
Less Tax Discounts		<u> 1.00%</u>	<u> 44,367</u>
Less Allowance for Tax Increment Financing - see worksheet (Subtracted from regular current expense taxes levied only)			<u> 351,747</u>
Total Projected Property Tax Collection			<u> 4,040,610</u>
Less Assessor Valuation Fund (Subtracted from regular current expense taxes levied only)		<u> 2.00%</u>	<u> 80,812</u>
Net Amount to be Raised by Levy of Property Taxes For Budget Purposes			\$ <u> 3,959,798</u>

JR



RECEIVED
3-26-15

State of West Virginia

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Glen B. Gainer III
State Auditor
www.wvsao.gov

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March 23, 2015

NOTICE OF APPROVAL OF THE LEVY ESTIMATE (BUDGET)

To: Municipality of Morgantown

In accordance with the provisions of Chapter 11, Article 8, of the West Virginia Code, as amended, the State Auditor of West Virginia hereby approves your Levy Estimate (Budget) for the fiscal year beginning July 1, 2015.

With this written approval, the levying body shall meet on the third Tuesday in April (April 21) to hear and consider any objections and to officially adopt the levy rates for property taxation. The clerk/recording officer, within three days of such meeting, shall prepare and forward to the State Auditor the officially adopted levy rates and levy order.

If you have any questions, please do not hesitate to contact me at 304-627-2415 or 1-877-982-9148 extension 5114, Shellie Humphrey extension 5119, or Karen Drain extension 5101.

Sincerely,
Glen B. Gainer III
WV State Auditor

A handwritten signature in cursive script that reads "Ora L. Ash".

By: Ora L. Ash,
Deputy State Auditor
Local Government Services