



Office of the City Clerk

The City of Morgantown

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**AGENDA
MORGANTOWN CITY COUNCIL
REGULAR MEETING
May 17, 2016
7:00 p.m.**

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **PLEDGE TO THE FLAG**
4. **APPROVAL OF MINUTES: COW Meeting April 26, 2016 and Regular Meeting May 3, 2016**
5. **CORRESPONDENCE:**
6. **PUBLIC HEARINGS:**
 - A. **AN ORDINANCE VACATING, ABANDONING, AND ANNULLING A PORTION OF FIFTH STREET MEASURING APPROXIMATELY FORTY (40) FEET IN WIDTH AND APPROXIMATELY ONE HUNDRED (100) FEET IN LENGTH LOCATED AND SITUATE IN THE FOURTH WARD OF THE CITY OF MORGANTOWN, MONONGALIA COUNTY, WEST VIRGINIA.**
 - B. **AN ORDINANCE AUTHORIZING A LEASE AGREEMENT WITH M.T. POCKETS THEATRE, INC. FOR SPACE AT THE WOODBURN SCHOOL SITE.**
 - C. **AN ORDINANCE DESIGNATING A STREET IN THIRD WARD AS JUNCTION STREET.**
7. **UNFINISHED BUSINESS:**
 - A. **Consideration of APPROVAL of (SECOND READING) and (ADOPTION) of AN ORDINANCE VACATING, ABANDONING, AND ANNULLING A PORTION OF FIFTH STREET MEASURING APPROXIMATELY FORTY (40) FEET IN WIDTH AND APPROXIMATELY ONE HUNDRED (100) FEET**

IN LENGTH LOCATED AND SITUATE IN THE FOURTH WARD OF THE CITY OF MORGANTOWN, MONONGALIA COUNTY, WEST VIRGINIA. (First reading May 3, 2016)

- B. Consideration of APPROVAL of (SECOND READING) and (ADOPTION) of AN ORDINANCE AUTHORIZING A LEASE AGREEMENT WITH M.T. POCKETS THEATRE, INC. FOR SPACE AT THE WOODBURN SCHOOL SITE. (First reading May 3, 2016)**
- C. Consideration of APPROVAL of (SECOND READING) and (ADOPTION) of AN ORDINANCE DESIGNATING A STREET IN THIRD WARD AS JUNCTION STREET. (First reading May 3, 2016)**
- D. Consideration of AN ORDINANCE AMENDING ARTICLE 145 AND SECTIONS 1387.01 AND 1387.02 OF THE CITY CODE RELATING TO THE MORGANTOWN PLANNING COMMISSION. (Tabled May 3, 2016)**

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 ORDINANCE AMENDING THE FY 2015-2016 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE COAL SEVERANCE FUND.**
 - B. Consideration of APPROVAL of (FIRST READING) of AN ORDINANCE AMENDING THE FY 2015-2016 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND.**
 - C. Consideration of APPROVAL of A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACT ON ITS BEHALF TO ENTER INTO AN AGREEMENT WITH THE WEST VIRGINIA DIVISION OF MOTOR VEHICLES TO APPLY,**

RECEIVE, AND ADMINISTER GRANT FUNDS PURSUANT TO PROVISIONS OF THE WEST VIRGINIA GOVERNOR'S HIGHWAY SAFETY PROGRAM.

D. Consideration of APPROVAL of A RESOLUTION ESTABLISHING GARRETT STREET AS THE HONORARY GENE ARDEN VANCE JR. MEMORIAL DRIVE.

11. CITY MANAGER'S REPORT:

New Business:

- 1. 2016 Bid Approval for Paving City Streets**
- 2. Honorary City Street Naming Protocol**

12. REPORT FROM CITY CLERK:

13. REPORT FROM CITY ATTORNEY:

14. REPORT FROM COUNCIL MEMBERS:

16. ADJOURNMENT:

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



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

Thursday, May 12, 2016

City Manager's Report for City Council Meeting on May 17, 2016

New Business:

1. 2016 Bid Approval for Paving City Streets

As seen in the attached memo from Damien Davis, Public Works Director and City Engineer, advertisements for the installation of asphalt bids received three bidders. I agree with the City Engineer's analysis and recommend approving the low bidder, Parrotta Paving Co. for \$675,743.00. The Total cost with Greer's bid on the asphalt (\$792,800) is \$1,468,543. Additional streets on the contingency list will be added to the paving contract as funding is available.

2. Honorary City Street Naming Protocol

With the request for an honorary City street name for Sgt. Gene Vance, City Council wanted to have a protocol for the honorary naming of City Streets. Attached is a draft protocol that City Council can modify and/or approve for the procedure for establishing an honorary street name.

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 – Bid Call 2016-06
Date: May 12, 2016

Bids were opened at 10:00am on May 12, 2016. The results are as follows:

CONTRACTOR	COST
Parrotta Paving Co.	\$675,743.00
Dodd General Contractors	\$1,117,530.66
Mountaineer Contractors, Inc.	\$1,366,640.00

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

Morgantown City Council Honorary Street Naming Protocol

Council Policy:

The City of Morgantown will take applications for naming City Streets in honor of individuals that either had a significant lineage to the City or had a significant cultural, historical, or humanitarian impact on the City. The requested location for the honorary street designation should have a geographical relationship to the honoree (i.e. honoree lived or worked at the location requested for recognition). A maximum of two honorary street names will be designated each year.

Protocol:

- Individuals or groups wishing to propose honorary street name designation will complete the application form and sign fee, and submit it to the City Manager's Office for review. Individual letters of support are encouraged and should be attached to the application.
- If the application is complete, City Manager will include application on a City Council Committee of the Whole meeting agenda for Council for review.
- If there is unanimous support within Council for the request, the request will be forwarded to an upcoming Regular City Council meeting as a resolution.
- Upon approval by City Council, the Public Works Department will be tasked with creating an honorary Street Sign that will be placed along the designated City Street.
- Signs will be double-sided, brown with white lettering identifying the honoree and year of designation.
- Designation signage will be limited to one sign. In addition to the signs required at the designation location, up to four commemorative signs can be provided to applicant.
- Honorary street designation ceremonies can be planned by the requestor by obtaining a Special Event Permit from the City Manager's Office.
- City will maintain a map of honorary streets on the City's web page with information about the honoree.



The City of Morgantown

Jeff Mikorski, ICMA-CM
City Manager

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Office of the City Manager

Honorary Street Naming Application

Applicant Information:

Date of submission: _____

Applicant's Name: _____

Organization/Company: _____

Street Address: _____

Telephone Number: _____

E-mail Address: _____

4. Honorary Street Name Request:

Name of Honoree: _____

Location: _____

Intersecting streets at each end of the one-block length:

5. Criteria (additional pages, and letters of support must be attached):

Please provide a detailed explanation of the criteria that applies to the honoree.

- Cultural Impact on the City:

- Historical Impact on the City:

- Humanitarian Impact on the City:

- Significant Lineage to the City:

6. Geographic Location:

Please provide a detailed explanation of the relationship between the requested honorary street location and the honoree's impact on the City.

7. Signature of Applicant:

Signature

Date

Submit application to:
Morgantown City Manager
389 Spruce Street
Morgantown, WV 26505

COMMITTEE OF THE WHOLE MEETING April 26, 2016:

The Committee of the Whole meeting of the Common Council of the City of Morgantown was held in the Council Chambers of City Hall on Tuesday April 26, 2016 at 7:00 p.m.

PRESENT: Mayor Marti Shamberger, Deputy Mayor Kawecki and Council Members, Ron Bane, Wes Nugent, Jenny Selin, Jay Redmond and Nancy Ganz, City Manager Jeff Mikorski, Assistant City Manager Glen Kelly and City Attorney Ryan Simonton.

Deputy Mayor Kawecki called the meeting to order.

PRESENTATIONS:

1. Woodburn Commission Annual Report.

Chris Haddox, stated he is the Chair of the Commission which meets every fourth Thursday at Woodburn. He updated Council that the members of the Commission discuss lease opportunities, on-going events and activities. He reported that Woodburn School tenants are Boys & Girls Club, Friends of Decker's Creek, PopShop WV and a new tenant being presented tonight. He stated that the commission continues to work with WV Collaborative to facilitate the partnership with PopShop WV. He noted that the commission's focus would now turn to playground renovation with a themed walkable accessible playground, outdoor performance space, gardening and art. He reported that the Commission is working with Spark Play on a fundraising in the summer of 2016 for development in 2017. He announced an event ripple effect mapping being held on May 19th and May 20th 2016 to help the commission identify the collective impacts of projects in our community. He stated that he forgot to tell Council that the Commission is also working with the Board of Education for summer enrichment classes to work with the PopShop and Boys & Club.

City Council asked questions. No action was taken.

2. Parking Authority Presentation:

Charles McEwuen, Chair of the Parking Authority, spoke of three components on the issue of parking in downtown: 1. Food delivery drivers; 2. People parking all day on High Street; 3. No turn over due to rate on High Street. Chair McEwuen, noted as business owner of Tanner Alley that I have lost merchants and other merchant have too due to lack of parking. **(Exhibit A)**

City Council asked questions.

Tom Arnold, Parking Authority Director, said that customer parking downtown is a big problem and he presented to Council a solution on how to establish parking convenience to the customer, and meet the needs of the downtown merchant. He stated there would be different zones, enforcement and other items that would require changes to the City Code. **(Exhibit B)**

City Council asked questions. City Manager, Jeff Mikorski, asked Council what the recommendation was for the Parking Authority Presentation. After discussion, Council requested the City Manager, Jeff Mikorski meet with Tom Arnold, Parking Authority Director on refining the parking in downtown.

PUBLIC PORTION:

Deputy Mayor Kaweck asked if there was anyone to speak during the Public Portion.

James Giuliani, 256 Prairie Avenue, commended Woodburn Redevelopment Commission on all the work they have done at Woodburn Elementary. He suggested to Woodburn Redevelopment Commission that he has a building they can use for First Fridays. He noted various properties in Morgantown for sale and mentioned that parking in should be no longer than a half-hour. He commented that he is concerned with City Administration with their lack of transparency and truth of the appointment to the Planning Commission.

There being no other presenters, Deputy Mayor Kaweck closed the public portion.

ITEMS FOR DISCUSSION:

1. Boards and Commissions Progress Report:

Deputy Mayor Kaweck asked if Council had any questions for the Special Committee on the report that was handed out. **(Exhibit C)**

City Council asked questions. Boards and Commission Committee will report on findings at a Regular Meeting under Special Committee Reports.

2. Gene Vance Memorial Designation:

Deputy Mayor Kaweck requested City Managers, Jeff Mikorski to explain:

Mr. Mikorski stated that he was aware of the Vance Foundation requesting an Honorary Street to be named in honor of Gene Vance. He suggested instead of having to change a Street and postal information that that Council review has a Policy for Gifts and Memorials as an alternative. **(Exhibit D)**

City Council asked questions. Council by consensus suggested City Manager Jeff Mikorski amend the policy to add Streets. Mayor Shamberger stated she would talk with Mike Minc on what the Gene Vance Family wishes are in the naming of a street in Morgantown. No action was taken.

3. Ordinance annulling a portion of 5th street approximately 40 feet wide and 100 feet long in the 4th ward:

Deputy Mayor Kaweck requested that City Manager, Jeff Mikorski, explain the project.

City Manager, Jeff Mikorski, updated Council about the annulment and referenced a survey map of the area as part of his explanation to Council. **(Exhibit E)**

City Council asked questions. Council referred the Ordinance to the Regular Agenda by consensus.

4. Ordinance creating article 951 regulating taxicabs and taxi stands: (Exhibit F)

Deputy Mayor Kaweck requested that City Manager, Jeff Mikorski, explain the project.

City Manager, Jeff Mikorski, explained the State code that gives the City authority to regulate taxicab and taxicab stands and referenced the map with various taxi locations. **(Exhibit G)**

City Council asked questions. Council referred the Ordinance to the Regular Agenda by consensus.

5. M.T. Pockets Lease Woodburn multi-use building:

Deputy Mayor Kawecky requested that City Manager, Jeff Mikorski, explain the project.

City Manager, Jeff Mikorski explained the lease agreement.

City Council asked questions. Council referred the Ordinance to the Regular Agenda by consensus.

Council adjourned the Committee of the Whole meeting at 9:30 pm.

City Clerk

Mayor

A COMPREHENSIVE DVD IS AVAILABLE OF ALL COUNCIL MEETINGS ON DVD AT THE MORGANTOWN CITY LIBRARY.

Woodburn School Redevelopment Commission

Report to the Committee of the Whole

Prepared and presented by Chris Haddox, Chair

April 26, 2016

1. On-going meetings/cleanups/events: Each 4th Thursday with Commissioners:
Tim Mashburn
Marti Shamberger, Morgantown City Council Representative
Mark Furfari
Maryangel Blount
Bonnie Wittmer
Nikki Byrne-Hoffman
Kerry Lilly
Chris Haddox
Jeff Mikorski, City Manager
2. Tenants: Boys and Girls Club; Girls on the Run; Friends of Deckers Creek, PopShop, new tenant
3. Worked with WV Redevelopment Collaborative to facilitate the partnership with PopShop WV
4. Focus will turn to playground renovation:
 - A themed, walkable accessible playground that incorporates a mix of traditional playground equipment with a splash feature, outdoor performance space and local foods/gardening, local public art installations opportunities.
 - Working with Sparks Play to develop concept plans with a goal of beginning fundraising summer 2016 for summer 2017 development
5. Ripple Effect Mapping: 5/19/16 event with 5/20/16 training event. Help us better identify the collective impacts of the entire "Woodburn Redevelopment" project in our community.

Respectfully submitted,

J. Christopher Haddox, Chair
Woodburn School Redevelopment Commission

Customer Parking Zone April 2016

Purpose

The Morgantown Parking Authority wants to establish an instrument that gives any and all visitors to the Downtown the opportunity to park at the most convenient and accessible spaces to their destinations. It is well recognized how parking availability influences the daily commerce in Downtowns, shopping centers, malls, and large box stores, etc. All retail centers (everywhere) recognize that the paying customer should always have the advantage to the convenience of the closest parking spaces to their destination and regulate their employees to park away from the “front door” to give the customer this very important benefit.

Definitions

Customer Parking Zone – This program would provide visitors to the Downtown the opportunity to park at any on-street parking spaces on High Street, Fayette Street, Walnut Street, Chancery Row, Chestnut Street, and Foundry Street.

Restaurant Food Delivery Drivers – Vehicle operators that deliver food orders (for local restaurants) throughout the area. They should not be permitted to park in Customer Parking Zone if a separate parking zone is designated for delivery drivers.

Zone Designation – All parking spaces on High Street, Fayette Street, Walnut Street, Foundry Street, and Chestnut Street.

Zone Hourly Parking Rate – The hourly rate will be \$1/hr

Maximum Time – The maximum time a vehicle can park in the Customer Parking Zone shall not exceed 2 hours each day.

Enforcement

1. No vehicle may park more than 2 hours in the Customer Zone.
2. Enforcement Officer will time park any vehicle parked in the Zone for more than 2 hours.
3. Citations would be \$20 for the 1st offense and \$100 for each subsequent offense for the calendar year. Officer may issue a warning on the initial citation.

4. Restaurant Food Delivery Drivers would be cited for parking in the Customer Zone at \$20 for each citation.

Other Items that Require Attention by City Code

Improper Use of Blue Curb Permit including fake permits – Presently, we have to call a police officer to write this citation because it is not in the city code that parking enforcement can issue this citation. Fine - \$50

Improper Display of Permit – We often have problems with permit holders not wanting to follow the guidelines on how and where a permit is to be displayed. Fine \$20

Over 24 hours in parking lot – Increasingly, we have students that live in the Downtown that will park their vehicles for several days in a surface lot. Some do pay the meters and some have permits for the garages. Fine - \$20

365.11 Booting only in parking lots – We need to clean up the language on this code to allow our officers to boot on the street without a police officer. We still will not be able to tow a vehicle because State Code requires a duly sworn police officer to execute a vehicle being removed.

Boards and Commissions Volunteers

- All volunteers that serve at the will and pleasure of City Council should be interviewed by City Council.
- City Council should consider a volunteer with the same consideration as any city employee.

From the Morgantown code:

1155.03 DEFINITIONS.

(d) Employee* means any person employed by an employer for direct or indirect monetary wages or anything of value, or any person who volunteers for a non-profit entity. (e) Employer* means any entity or person who employs the paid or volunteer services of one or more persons

- When a volunteer resigns or finished their term City Council should conduct an exit interview.

Possible additional information for our Volunteer Application:

- Are you a registered voter? NO
- Occupational status and background
- What skills would you contribute to the committee or commission?
- Why are you seeking appointment?
- Do you, or does your firm or place of employment do business with the City of Morgantown? If yes, please describe
- Organizational affiliations
- Additional documents, a resume, cover letter, or other information
- Personal references
- Would you be interested in being contacted about other opportunities to serve the City (e.g. focus groups, ad hoc committees etc.)? *Place at the end of the application form with a yes/no check box.*

Vancouver Web Application,

<http://www.cityofvancouver.us/cmo/webform/boards-and-commissions-application-form>

Portland Web Site, <https://www.portlandoregon.gov/oni/37423> download a PDF

Lynchburg Web Site, <http://www.lyncburgva.gov/boards-commissions>

MEETING NOTES: April 14 2016

We determined to address Volunteerism in the following way:

- Recruitment
- Selection
- Orientation/Service
- Recognition

Recruitment:

- Application (see Draft)
 - Better, shorter, more concise, abbreviated, description of Boards, Commissions and/or Committees (see Lynchburgh example) with meeting times, frequency and location.
 - Web application (see Vancouver site) plus a Word (text) and PDF Version
 - Limit the selection to three Boards Commissions and/or Committees.
 - Establish a minimum attendance requirement of 75%
- We encourage Volunteer vacancies to be recruited by and referred from but not selected by the Board, Commission or Committee with the vacancy.
- When possible a Volunteer's application should be reviewed by the Board, Commission or Committee on which they will serve prior to Council's interview.
- Acknowledge receipt of a Volunteer's interest or application and suggest that they attend the Board, Commission or Committee meeting to which they are applying before the interview. Provide the location and time.
- Notify Volunteers of the interview outcome, send a Thank You Note or e-mail. If they were not selected, ask if they would like to be notified of future opportunities. Referrer them to the City Volunteer Page.
- Advertising:
 - Our advertising for vacancy should be more descriptive as to duties and responsibilities.
 - Use General (Generic) PSA Announcements once a month to increase Volunteerism. Your City depends on...Do your part!
 - Forms of advertisement: Newspaper, DA, DP; Radio; Newsletters, Chamber, Main street; Social Media; City Web, link to Volunteer Page from Quick Links; Word-of-Mouth.
 - Create a Volunteer Web Page, highlight openings, activities, Volunteer of the Month or some other form of recognition

**POLICY FOR APPROVAL OF GIFTS AND MEMORIALS
CITY OF MORGANTOWN**

Adopted: 10/5/04

I - Purpose

From time to time organizations, groups and individuals may offer to the City donations of money, land, services, vegetation, public art, equipment, or other items of value or request that monuments, memorials, plantings, plaques or art work be placed on municipal property to express public support, to honor individuals, or to commemorate specific events. The City of Morgantown is committed to enhancing and maintaining aesthetic and other public environment standards which nurture the human spirit as well as celebrate the heritage of the city and its citizens.

The statements which follow delineate the City's policy for processing such offers and requests in a manner which is consistent with the assigned purposes and responsibilities of the City's Urban Landscape Commission, the Board of Park and Recreation Commissioners, the Department of Public Works, the City Library and an inter-arts council. This policy does not pertain to naming structures established by utilization of public or private funds.

II - Definitions

1. Contribution. A "contribution" to the City of Morgantown may consist of a donation or a sponsorship.
2. Donation. A "donation" may consist of monetary donations in the form of cash or stock gift, grant, bequest, or sponsorship or take the form of non-monetary donations in the form of real property (land) or in-kind donation. Donations may be unrestricted for unlimited use or restricted to specific uses by the donor.
3. Sponsorship. A "sponsorship" includes both a sponsor's financial contribution and involvement in a specific activity, event, program or endowment based on a negotiated agreement the City enables the sponsor to receive recognition related to the sponsorship in exchange for agreed upon financial support and participation.
4. Donor. An organization, group or individual who provides to the City, or to one of its departments or affiliated organizations, a contribution or service without expectation of significant return.
5. Sponsor. An organization, group or individual who provides to the City, or to one of its departments or affiliated organizations, funding support for a specific activity, event, program or endowment.

III - Standards

1. The standards for the City of Morgantown's policy on gifts and memorials have been developed based on best practice research from information received from the experience of numerous resources. Of special assistance has been information from Oglebay Park in Wheeling, WV, several communities, and the United States Forest Service.
2. Gifts and memorials of all types can be tangible ways of making a public improvement and/or making the importance of special life events for individuals, groups of individuals, or an entire community. Proposals for a gift or memorial for public benefit in a public location need to consider the broad community needs and interests with respect to project viability, durability, size, aesthetics, proportion, continuity, future development, and environmental impact. Such considerations must be weighed in planning community parks, landscaped green spaces and planted areas, trails, works of art, library improvements, interpretive historical plaques, fountains, benchers, site furnishings, trees - and all elements of an effective community environment.
3. Each plan for establishing a gift or memorial shall address concerns of maintenance and protection in as much as municipal resources for such responsibilities cannot be committed in the future without planned assistance.
4. Proposals for gifts or memorials shall not duplicate other contributions made to honor the same individual or events within the City unless special circumstances are judged to warrant exception by the City department accepting the donation subject to the review by City Council.
5. All gifts or memorials and improvements become the property of the City of Morgantown.

IV - City Departmental Procedures

1. Monetary Donations. Restricted and unrestricted monetary donations may be received by City departments in compliance with these policies and all pertinent City financial policies and with the concurrence of the City Manager.
2. Stock Donations. Stocks are the proprietary element in a corporation usually divided into shares and represented by transferable stock certificates. In the event of stock donation, since a government entity is not legally able to own stock, such a donation shall be liquidated and turned into cash or another liquid asset and treated as a monetary donation.
3. In-Kind Contributions. Proposed gifts other than monetary donations, land, or specific elements identified in these policies shall be reviewed by the City department intended to utilize the gift to enhance the provision of City services. Approval of in-kind gifts of equipment, materials or services may be given by the City department benefitting from the in-kind contribution.

4. Sponsor Contributions. Corporate or business organizations offering a sponsor's financial contribution for a City department activity, event, program or endowment shall be subject to all applicable laws and City ordinances, plans and policies. An appropriate City department may make the determination to accept differing forms of sponsorship contributions subject to the oversight of the City Manager and City Council. No policy can cover all types of contributor activities and associations, and therefore it will be incumbent for each City department to seek consultation and concurrence when sensitive social or behavioral issues place public service utilization or acceptance at risk.
5. Grants. A donation typically awarded as a subsidy for a specific use and/or program purpose usually after an application has been submitted and approved. Grants are typically made to the City of Morgantown by the federal and state governments, private and community foundations, corporations or businesses. Unless otherwise specified, grant funds are administered by the designated City department under the direction of the City Financial Officer and the City Manager.
6. Land. Offered land or interest in land intended for a designated use or for ecological or other public value will be considered by City Council.
7. Parks. Land or resources intended as a public park will be assigned to BOPARC which shall be responsible for creating a usage plan for the park in collaboration with the donor. The Urban Landscape Commission shall review the plan and may offer recommendations to assure conformance of landscape, signage, plaques, works of art and accessories with aesthetic standards and maintenance services utilized throughout the City.
8. Landscaping. Resources intended for landscaping shall be contributed in accordance with the approval process in Section VII to assure compliance with the donor's intention and with the installation and maintenance requirements involved. The Urban Landscape Commission will assist BOPARC and the Public Works Department in the approval process for all gift and memorial landscaping contributions.
9. Trees or Other Vegetation. Upon receipt of a request and contribution, BOPARC, the Public Works Department or other appropriate department of the City of Morgantown will select and purchase a tree and all associated items in consultation with the Morgantown Tree Board.
10. Stand Alone Plaques. Individual freestanding plaques shall be mounted flush with the ground. The size of the plaque should be appropriately sized, consistent with the setting, and designed in consultation with BOPARC or the Department of Public Works with the concurrence of the Beautification Commission.
11. Installed Plaques. Installed or mounted plaques are those which are placed on a pedestal or boulder and are part of a larger setting or display. Responsibility for the design and placement of such memorials shall be the responsibility of the accepting City department with the concurrence of the Urban Landscape Commission.

12. Historical Plaques. The responsibility for display of historical interpretive information shall be the responsibility of the Historic Landmarks Commission working in collaboration with the Urban Landscape Commission.
13. Contributions to Library. Proposed contributions made to the Morgantown City Library to enhance property and buildings, fund approved projects, support undesignated disbursement, add to the library collection, or provide special equipment to support patron access to information shall be received by the library board and staff in accordance with library donation policies.
14. Works of Art. Proposals for sculpture and other works of art presented in various mediums and which meet the standards of an inter-arts council shall be reviewed by the City department responsible for the site of installation assisted by the Urban Landscape Commission and an inter-arts council.
15. Park/Street Accessories. Proposals for fountains, landscaping, plantings, picnic tables, kiosks, banner poles, historic lighting, seating and benches, drinking fountains, trails and signage shall be reviewed by the Board of Parks and Recreation Commissioners assisted by the Urban Landscape Commission.
16. Wayfinding Signage. Any signage providing site identification or giving directions to visitors, pedestrians, park users, and theater or transit users must be planned to conform with City wayfinding signage design standards as managed by an inter-commission design committee and staffed by the City Planning Department.
17. Roadside Memorials. The City of Morgantown allows roadside memorials which include flowers, pictures, crosses and other commemorative property to be displayed seven (7) days. Thereafter the display must be removed by the Department of Public Works or the Department of Highways.
18. Decorations. Temporary displays of flowers, ornaments, silk or plastic flowers, seasonal ornaments shall be permitted to be displayed on city property for fourteen (14) days. Thereafter the display will be removed by the City.

V - Criteria for Approval

1. Each proposed gift or memorial shall meet standards as identified in Section III.
2. If a gift is offered to honor deceased individuals, the memorial shall include recognition of deceased individuals only. It shall not include recognition of persons who are living.
3. The location of a gift or memorial shall be aesthetically integrated within a setting. It shall not block circulation nor preempt established plans for future development.
4. Qualified professionals shall design and install all gifts and memorials in consultation with the City department involved and advised by the Urban Landscape Commission.

- a. All wording on memorial plaques must be approved by the appropriate City department with the concurrence of the Urban Landscape Commission prior to fabrication of the plaque.
- b. No stand alone plaques will be installed unless installed at ground level.
- c. The City recommends that multiple plaques be installed in a collective display area for increased security and public appreciation.

VI - Placement, Construction, and Maintenance Requirements

1. Placement and construction of gifts or memorials may be completed by a City Department or by an independent contractor as per arrangements between the donor and the City. Any party hired or employed by the applicant must provide proof of insurance approved by the City of Morgantown that may include and not be limited to: general liability, automobile insurance, professional liability insurance, performance insurance bonds, workmen's compensation coverage and others as may be required by the City of Morgantown.
2. Provision of maintenance for the gift or memorial shall be the responsibility of the City of Morgantown departments responsible for the memorial or gift. Complex or large gifts or memorials
3. The City of Morgantown shall have the flexibility to move, remove or replace donations if necessary. A reasonable effort shall be made to notify the donor if a major change in the gift or memorial is affected.

VII - Costs

1. The costs for the gift or memorial shall include the cost of purchase, installation, design, fabrication, transportation, site preparation, foundation, lighting, electrical, permits, etc. as required. The gift or memorial proposal shall include all-inclusive costs and any exclusion shall be stated clearly in the proposal.
2. Maintenance, restoration and possible replacement costs shall also be included in the arrangements made with the City. Public and park revenues simply cannot fully support the maintenance requirement needed. Because of this reality, funds will be set aside to provide for continuing responsible ongoing care both as necessary and as possible.
3. As permitted by tax legislation, the City department or affiliated organization receiving the gift or memorial will issue a tax receipt for each donation.

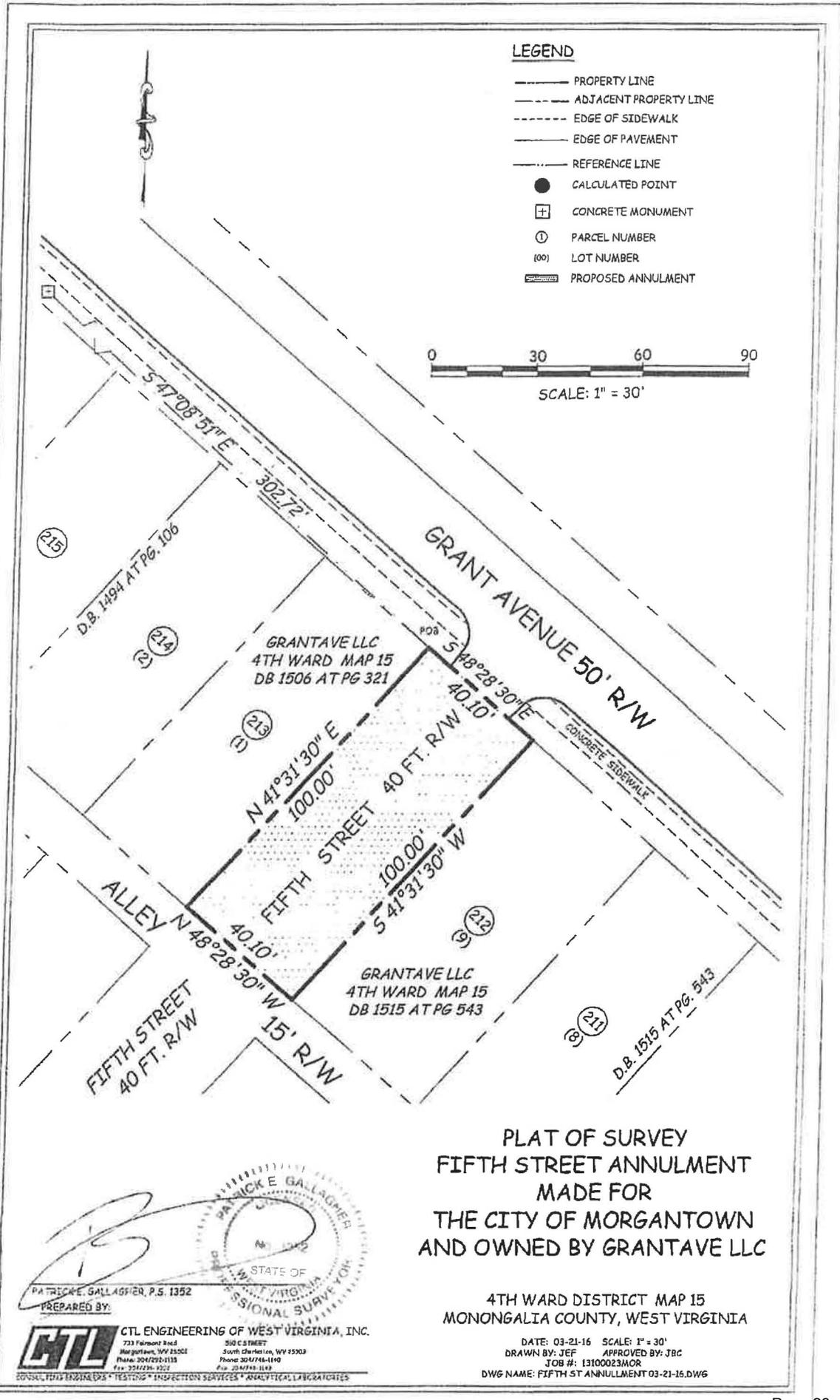
VIII - Approval Process and Procedure

1. Initial Feasibility Consultation. Applicants interested in the possibility of making a gift or establishing a memorial shall submit a letter request to the City Manager who shall refer the request to an appropriate staff member. The staff member shall interview the

applicant and provide information on the City's Policies on Memorials and assist the applicant in preparing an initial proposal. When the initial proposal is received by the staff person, the proposal shall be referred to the appropriate City department for review assisted by the Urban Landscape Commission.

2. Written Proposal. After meeting with the appropriate City department, the applicant shall submit a written proposal with specific information on the nature of the memorial and a map of the site being requested. The written application shall include details on size, wording, sketches, models or renderings as well as the information on installation and costs involved. Included with the proposal will be a maintenance plan prepared in consultation with a person experienced in the type of maintenance required.
3. Proposal Review. The appropriate City department shall review the proposal assisted by the Urban Landscape Commission concerning the location, design, installation or maintenance of the memorial. The City department shall also consider the relationship of the review criteria to the proposal and the sufficiency of the maintenance plan as proposed.
4. Decision Making. The appropriate City department shall complete a review of the proposal and make a recommendation to approve, modify, or disapprove the proposal. Applicants whose proposals are disapproved will receive recommendations for other options by the City department and/or the Urban Landscape Commission. Applicants of approved or modified proposals must provide evidence of financial commitment to the gift or memorial, proof of insurance as required by the City, and negotiate a schedule for completion with appropriate City Department.
5. Donor Recognition. Contributions shall be acknowledged in a timely manner after formal acceptance of the donation has taken place. The City department receiving the benefit of the contribution shall review and approve any public recognition for the contribution. Recognition shall be consistent with all City policies and State ethics and tax requirements. All accepted donations shall also be reported to City Council so that the donor's generosity can be officially acknowledged and recorded.

Exhibit E



**PLAT OF SURVEY
FIFTH STREET ANNULMENT
MADE FOR
THE CITY OF MORGANTOWN
AND OWNED BY GRANTAVE LLC**

4TH WARD DISTRICT MAP 15
MONONGALIA COUNTY, WEST VIRGINIA

PATRICK E. GALLAGHER, P.S. 1352
PREPARED BY:

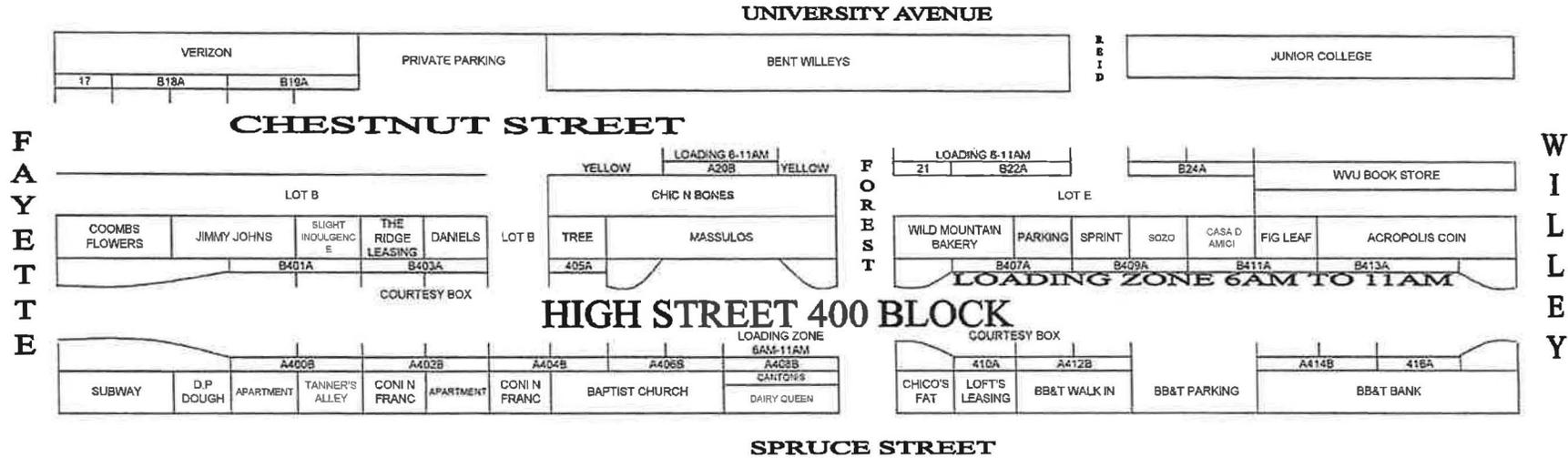
CTL CTL ENGINEERING OF WEST VIRGINIA, INC.
733 Fairmont Road Morgantown, WV 25001
Phone: 204/270-1133 Fax: 204/270-1133

310 C STREET South Charleston, WV 25303
Phone: 204/344-1140 Fax: 204/344-1140

CONSULTING ENGINEERS • TESTING • INSPECTION SERVICES • ANALYTICAL LABORATORIES

DATE: 03-21-16 SCALE: 1" = 30'
DRAWN BY: JEF APPROVED BY: JBC
JOB #: 13100023MOR
DWG NAME: FIFTH ST ANNULMENT 03-21-16.DWG

TABLE 951.2.1. Taxi Stand Locations



REGULAR MEETING May 3, 2016: The Regular Meeting of the Common Council of the City of Morgantown was held in the Council Chambers of City Hall on Tuesday, May 3, 2016 at 7:00 p.m.

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

The meeting was called to order by Mayor Shamberger.

APPROVAL OF MINUTES: The following minutes were approved by acclamation: Special Meetings March 15, 2016, April 19, 2016 and April 26, 2016, Regular Meetings April 5, 2016 and April 19, 2016.

CORRESPONDENCE: Mayor Shamberger presented a proclamation to Police Chief Ed Preston urging all citizens to honor fallen officers and recognized the members of the Morgantown Police Department and Law Enforcement Community. She proclaimed Sunday, May 15, 2016 as Law Enforcement Memorial Day, and Chief Preston announced that there would be a wreath laying ceremony on the 18th of May at the Public Safety Building. Mayor Shamberger read a proclamation celebrating Building Safety Month in the City and asked citizens to consider projects to improve building safety and sustainability. Mayor Shamberger presented a proclamation to City Clerk Linda Tucker in recognition of the week of May 1st as Municipal Clerk Week for her dedication and exemplary work.

PUBLIC HEARING - NONE

UNFINISHED BUSINESS:

BOARDS AND COMMISSIONS: Council by acclamation approved the following appointments: Katherine Hanko to Historic Landmarks Commission, Barry Dixon to ICC Board of Appeals and Josh White to Morgantown Housing. After discussion, City Clerk Linda Tucker informed Council that there would be a Special Meeting at 6 p.m. to interview Boards and Commission candidates before the Regular Meeting.

PUBLIC PORTION:

Mayor Shamberger declared the Public Portion open.

There being no appearances, Mayor Shamberger declared the Public Portion closed.

SPECIAL COMMITTEE REPORTS: Deputy Mayor Kawecki presented a photo (**Exhibit A**) as a suggestion from the Historic Landmarks Commission for a Street Sign that would illuminate the idea of the Coca-Cola mural on High Street. He noted that the sign that is on the building now looks more like advertising than like a refurbished sign. City Manager, Jeff Mikorski commented that the cost for the sign would be different based on whether it is historical or not. He stated he would report to Council with options for the sign. He updated Council on Indian Park in Suncrest that a Historical plaque application is being submitted to the State. He reported the Commission is working on WPA Walls report for downtown, Sunnyside District, Suncrest and many other projects coming forth. Mayor Shamberger requested information on the survey of the Woodburn Area. Deputy Mayor Kawecki stated that the survey was completed on the Woodburn Area and he will send a copy to the Mayor after the meeting.

NEW BUSINESS:

AN ORDINANCE AMENDING ARTICLE 145, 1387.01 & 02: The below entitled Ordinance

was presented for first reading.

AN ORDINANCE AMENDING ARTICLE 145 AND SECTIONS 1387.01 AND 1387.02 OF THE CITY CODE RELATING TO THE MORGANTOWN PLANNING COMMISSION.

City Manager explained amendment. After discussion, motion by Selin, second by Ganz, to table above entitled ordinance. Motion carried 7-0.

AN ORDINANCE ANNULING A PORTION OF FIFTH STREET IN THE FOURTH WARD: The below entitled Ordinance was presented for first reading.

AN ORDINANCE VACATING, ABANDONING, AND ANNULING A PORTION OF FIFTH STREET MEASURING APPROXIMATELY FORTY (40) FEET IN WIDTH AND APPROXIMATELY ONE HUNDRED FEET IN LENGTH LOCATED AND SITUATE IN THE FOURTH WARD OF THE CITY OF MORGANTOWN, MONONGALIA COUNTY, WEST VIRGINIA.

After discussion, motion by Nugent, second by Redmond, to pass the above entitled ordinance to second reading. Motion carried (6-1) (Councilor Ganz voted no)

AN ORDINANCE AUTHORIZING A LEASE WITH M.T. POCKETS: The below entitled Ordinance was presented for first reading.

AN ORDINANCE AUTHORIZING A LEASE AGREEMENT WITH M.T. POCKETS THEATRE, INC. FOR SPACE AT THE WOODBURN SCHOOL SITE.

City Manager explained lease. Motion by Kawecki, second Selin, to pass the above entitled ordinance to second reading. Motion carried 7-0.

AN ORDINANCE DESIGNATING A STREET IN THIRD WARD AS JUNCTION STREET: The below entitled Ordinance was presented for first reading.

AN ORDINANCE DESIGNATING A STREET IN THIRD WARD AS JUNCTION STREET.

City Manager explained. After discussion, motion by Nugent, second by Ganz, to pass the above entitled ordinance to second reading. Motion carried 7-0.

A RESOLUTION APPROVING AND AUTHORIZING TO SUBMIT TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) THE 2016 COMMUNITY DEVELOPMENT BLOCK GRANT ACTION PLAN: The above entitled Resolution was presented for Council's approval.

City Manager explained. After discussion, motion by Ganz, second by Selin, to approve the above stated Resolution. Motion carried 7-0.

CITY MANAGERS REPORT:

New Business:

1. Bid for Hot Laid Bituminous Asphalt

City Manager Jeff Mikorski explained the memo from Damien Davis, City Engineer and

Public Works Director. In order to begin the City Street paving program this year, the City advertised for the purchase of Hot Laid Bituminous Asphalt. We received one bidder, Greer Industries, for an amount of \$792,800.00 for 12, 200 tons of asphalt. Council suspended the rules to ask questions about bid to Damien Davis. City Manager, Jeff Mikorski agreed with the City Engineer's recommendation of awarding the asphalt contract to Greer Industries for \$792,800.00.

Motion by Ganz, second by Nugent to award the bid for purchase of Asphalt to Greer Industries for \$792,800.00. Motion carried 7-0.

Information:

1. 2016 Deer Count and Five-Year Summary

City Manager Jeff Mikorski explained the 2016 thermal infrared whitetail deer survey (**Exhibit B**) The results show that the five years of Urban Archery Hunts have reduced the number and groups of deer in Morgantown.

Year	Number of Deer	Deer Groups
2011	689	296
2016	264	98

Mr. Mikorski explained a five-year summary on the Urban Deer Archery Hunt prepared by Rick Bebout, Volunteer Coordinator. The annual hunts have been successfully safe while removing 527 deer from the City and donating 5,542 pounds of venison to local shelters. He noted that he appreciates the work that Mr. Bebout has achieved and looks forward to working with him to examine the results of the study and modify the upcoming hunts.

REPORT FROM CITY CLERK: City Clerk Linda Tucker announced that the deadline for accepting applications for the Police test on May 21, 2016 has been extended until May 6, 2016.

REPORT FROM CITY ATTORNEY: Absent.

REPORT FROM COUNCIL MEMBERS:

Councilor Bane:

Councilor Bane urged all citizens to vote on May 10th. He stated that this is not a time to be apathetic, the Transit Authority needs help, so please vote.

Deputy Mayor Kawecki:

Deputy Mayor Kawecki stated that it is important to vote and noted the Levies are a quality of life issue. He agrees with Councilor Ganz, Nugent, and the connectability approach and that the City needs to set a standard that is consistent with anything it does.

Councilor Nugent:

Councilor Nugent mentioned to the City Manager, Jeff Mikorski about the construction at the Public Safety

Building the signage and safety. He noted that the sign entering the City is still defaced and asked the City Manager, Jeff Mikorski for an update. Mr. Mikorski stated that the work on the sign should be done within the month. He mentioned the need of public safety presence at night in downtown. He requested an update on the smooching issue from Mr. Mikorski. He mentioned the University Avenue Corridor study project that there is a possibility they will be closing Falling Run Road, and that is a quality of life issue.

Councilor Selin:

Councilor Selin mentioned when looking at right-of-way and annulments we need to properly identify them. She mentioned the trash buildup at the locks and requested the City Manager Jeff Mikorski speak with the Core of Engineers to get this issue resolved. She stated that the Levies are a quality of life issue and very practically speaking will increase properly values.

Councilor Redmond:

Councilor Redmond noted his support of connectability for the City and he also supports walkability. He asked about the lot on High Street across from Hotel Morgan that the city has liens on the lot and has been empty for a long time. Mr. Mikorski commented that the Main Street Committee tried to purchase the lot for a park property and the owner was not interested in selling. He stated that voting is the most sacred right we have as a democracy; it is important, easy, and go do it.

Councilor Ganz:

Councilor Ganz congratulated WVU Foundation State of Mind campaign for being very close to their billion-dollar goal. She noted that our City budget is 3 percent of their budget; and possibly WVU can work with the City to help fund some of our needs. She thanked citizens that come to the meetings; but wanted to thank Mr. Ornick this evening for he has been to several meetings. She

mentioned that she is pushing for a green space plan when it comes to our corridors in the City. She thanked the Police Chief and Police Officers and urged all citizens to pray for Police Officers on Sunday May 15th, 2016, which is Law Enforcement Memorial Day. She wished WVU graduates well, and hoped their stay was a good experience.

Mayor Shamberger:

Mayor Shamberger wished all mothers Happy Mother's Day. She announced that the Gene Vance Memorial would be held on May 22, 2016 at the Amphitheater at 1:30pm. She made the following community announcements: Bike to School Day, May 4, 2016; Bike to Work Week, May 16-20, 2016; Bike to Work Day, May 20, 2016; Bike Rodeo, May 22, 2016; Twelve Dumpsters will be available during student move-out on May 4&5, 2016; Primary Election, May 10, 2016; Blue and Gold Mine Sale at Mylan Park, May 14th, 2016; M.T. Pockets Theatre will show Secrets and Light on May 21&22, 2016 and Morgantown Farmers Market at the Pavilion on May 7, 2016.

City Manager, Jeff Mikorski updated Council that the Urban Landscape Commission will have a report and Master Plan to Council for their review.

EXECUTIVE SESSION: Motion by Selin, second by Ganz, to go into Executive Session per West Virginia Code Section 6-9A-4(2) (B) (9) in order to discuss transfer of property at the Airport. Present: Council, City Manager, Assistant City Manager and Attorney Shuman. Time 8:44pm

ADJOURNMENT: There being no further business, Council adjourned by unanimous consent at 9:50 p.m.

City Clerk

Mayor

A COMPREHENSIVE DVD IS AVAILABLE OF ALL COUNCIL MEETINGS AT THE MORGANTOWN CITY LIBRARY.

HIGH STREET COCA-COLA MURAL HISTORIC DOWNTOWN MORGANTOWN, WEST VIRGINIA



Above: High Street, circa 1965, looking south. Notice the Plaza Hotel on left.

The original mural in front of you was painted in 1953 by local Coca-Cola employee, John D. "Jack" Courtney, as part of an advertising campaign for Coca-Cola, Comuntzi's restaurants and the Plaza Hotel, which no longer exist in Morgantown.

Opened in 1911 at 368 High Street, the downtown Comuntzi's was a cherished local diner. The Plaza Hotel, as seen in the image to your left, was located in the building on which the mural was painted.

The mural was hidden and forgotten when the Farmers & Merchants Bank building was later erected in the adjoining lot. This "ghost-mural" was rediscovered when the bank building was demolished for new construction in early 2014. Coca-Cola Consolidated generously funded the mural's restoration in the fall of 2015.

As you contemplate this mural, imagine looking down a bustling High Street and seeing many more like it advertising all sorts of products and businesses. Does the street look similar or different today?



Above: High Street, 1967, looking north. Notice Comuntzi's Restaurant.

Exhibit A



**Thermal Infrared Imaging White-tailed Deer Survey
City of Morgantown, West Virginia**



Submitted to:

Jeff Mikorski, ICMA-CM, Morgantown City Manager
City of Morgantown, WV
389 Spruce Street
Morgantown, WV 26505
Via email: jmikorski@morgantownwv.gov

Submitted by:

Susan Bernatas, Certified Wildlife Biologist
Vision Air Research, Inc.
904 East Washington Street
Boise, Idaho 83712
208-841-9566
wildlife@visionairresearch.com

April 2016

Vision Air Research was retained to conduct an aerial survey for deer survey in the City of Morgantown, WV. The project goal was to provide information on distribution and abundance. The aerial infrared also commonly called forward-looking infrared (FLIR) survey provided deer group locations, and provides a tally of deer observed within each group. The study area encompassed the City of Morgantown which included suburban areas with lawns and ornamental shrubs and trees, golf course and larger areas of eastern deciduous forests with mixed deciduous and conifer forests as well as commercial and municipal buildings and roads and highways.

Methods

The survey was conducted February 18, 2016 between 1900 – 2300 hours. Winds were calm and the relative humidity was favorable for an infrared survey. The survey commenced on the northeast corner and proceeded west to completion. Transects were spaced 800 ft apart and flown at 1,000 ft above ground level. The north / south transects were oriented to minimize airport conflicts. We coordinated with Morgantown airport tower to maximize flight safety.

The sensor look angle was approximately 45° elevation. The sensor was moved to aim and focus as needed. The wide field of view (WFOV) was used to search for the deer while the narrow field of view (NFOV) was used to verify the object, as needed. Portion of the flight along transects were recorded to on onboard computer. The time "stamped" on the video is based on standard aviation time (GMT), not local time. The position is the airplane's GPS position not the location of the subject animals because we are looking in front of the airplane.

We used a forward – looking infrared (FLIR) by PolyTech Kelvin 350 II (Sweden) mounted on the left wing of a Cessna 206 "Stationair". The sensor gimbal allows 330° of azimuth and 90° of elevation allowing us to look in all directions except directly behind the airplane. The infrared sensor installed in the gimbal is the high resolution Agema Thermovision 1000, which is a long wave system (8-12 micron). It has 800 by 400 pixels providing good resolution with the ability to determine animals by their morphology or body shape. The thermal delta is less than 1° C, which means it can detect objects with less than 1° C different than the background. There are 2 fields of view (FOV): wide (20 °) and narrow (5°). At 1,000 ft. above ground level looking straight down using the wide FOV the footprint or area covered by the sensor is 360 ft. x 234 ft. while the narrow FOV provides a footprint 90 ft. x 59 ft. This information on the field of view footprint is for reference only since we use an oblique look angle allowing coverage of the entire transect. The sensor operator / wildlife biologist sat in the rear seat and watched a high resolution 15 in. monitor to aim and focus sensor.

The video was reviewed by playing the video backward and forward and in slow motion and frame by frame as needed to identify deer group and count within the group, and map group location. Deer were located by observing their level of emitted infrared energy versus

background levels. Video editing and image extraction was not conducted. The video was collected for use by a skilled thermographer not for entertainment or educational purposes.

Figure 1. Examples of wide and narrow fields of view (FOV). These images were extracted from video taken during the aerial infrared survey of the City of Morgantown, WV, on February 18, 2016 by Vision Air Research. Date and time recorded on the screen are GMT not local time. Figure 1a. Wide FOV was used to scan along transect for detect deer. The time "stamped" on the video is based on standard aviation time (Greenwich Mean Time - GMT), not local time.



Duplicates or repeat groups were identified. Groups were mapped at their approximate location not airplane position since the sensor looking position is in front of the airplane. I performed an additional check of the data through sampling the videotape for detection verification, and checking for duplicate groups. Orthophoto quadrangles were used as the base layer, which provided vegetation cover type to assist in mapping group locations.

Figure 1b. Narrow FOV was used to verify objects. No deer are found within this image but power lines are evident to show detection scale.



Results

The meteorological conditions were good for flight safety and infrared surveys. Image clarity was good. Locations of deer groups were plotted and the total number in each group was tallied. A total of 264 deer were found in 98 groups (Figure 2). This is a decrease the number of groups, total deer counted and group sizes were smaller. In 2011, a total of 689 deer located in 296 groups. As with found in 2011, most deer were found in forest settings. Deer group size ranged from 1 – 8 individuals. Higher group densities were found in the eastern half of Morgantown.

Detection Potential

Cover type influences the availability of the deer to be detected by the sensor. A dense canopy will make it more difficult to detect the deer since infrared, like human vision doesn't see through vegetation. It will detect through holes in the canopy. Research I've conducted to determine detection rates have been based on known target subjects. One or more individuals in a group had radio collars. The location of the target subject was monitored by a second aircrew in another airplane or via ground based crews to avoid any detection bias.

Figure 2. Deer group distributions of the City of Morgantown, WV found during the forward – looking infrared (FLIR) deer survey conducted by Vision Air Research. The aerial survey was conducted February 18, 2016 between 1900 – 2300 hours.



These controls allowed me to determine if the individual or groups were detected, were available to be detected and subsequently missed, or unavailable to be detected because they were no longer in the search area. In areas where no collared animals were available, previously detected animals were used as targets in subsequent replicates. This is similar to a mark – recapture method for determining detection. These efforts have revealed a consistency as to which variables influence detection. The vegetation cover type is the primary variable to confound detection rates. Infrared cannot detect or “see” through a canopy cover. As such, evergreen trees can thwart detection. But unlike with human vision,

IR is detecting a warmer object that will show up as “white hot” against the colder background as opposed to a brown animal against a brown or green background. Branches and tree boles can also influence detection based on the size of the animal. Cloud cover can enhance detection. Ambient temperatures do not influence detection unless it changes the subject animals habitat use or behavior. The multiple look angles provided by an oblique angle and the ability to aim and focus increases detection. Video capture instead of still images provides a dynamic view of the landscape.

Detection rates for open areas such as parks and meadow can be 100% (Figure 4), deciduous forests were roughly 86%, and conifer can range from 50 – 80% or less depending on the canopy closure. What was not obvious was the effect of bud break on detection. Although the deer, for example, could be seen visually through tree branches during bud break, the deer can be masked by the energy given off by the bud break. Buds effectively “glow” masking deer behind the canopy. Bud break may have diminished detection under some tree species and shrubs but it did not appear to be widespread during this survey.

All wildlife surveys are a snapshot in time whether they conducted from the air or ground. This survey can provide a good index or baseline for density and distribution of deer within the community.

Figure 4. Meadow or lawns provide easier detection than in the shrubs or trees.



Morgantown WW



AN ORDINANCE VACATING, ABANDONING, AND ANNULING A PORTION OF FIFTH STREET MEASURING APPROXIMATELY FORTY (40) FEET IN WIDTH AND APPROXIMATELY ONE HUNDRED (100) FEET IN LENGTH LOCATED AND SITUATE IN THE FOURTH WARD OF THE CITY OF MORGANTOWN, MONONGALIA COUNTY, WEST VIRGINIA

Whereas, the Common Council ("Council") of The City of Morgantown, West Virginia ("City"), finds and makes a legislative determination that Fifth Street ("Street") is a publicly dedicated and accepted easement and right of way for, among other purposes, street purposes, that is shown, illustrated, and depicted on, among other maps or plats of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia ("Clerk's Office"), the map or plat of Morgantown Building and Investment Company's Addition, commonly known as the Beechurst Addition, of record in the Clerk's Office in Envelope No. 233B of Map Cabinet No. 1; and

Whereas, the Council finds and makes a legislative determination that the Street is located and situate within the Fourth Ward of the municipal limits of the City, in Monongalia County, West Virginia; and

Whereas, the Street is adjoined on either side by property of Grantave LLC, a West Virginia limited liability company ("Grantave"); and

Whereas, Grantave has petitioned and/or made application to the City to vacate, abandon, and annul the part or portion of the Street which is adjoined on either side by property of Grantave; and

Whereas, a map or plat prepared by Patrick E. Gallagher, P.S. No. 1352, of CTL Engineering of West Virginia, Inc., dated March 21, 2016, designated as Job No. 13100023MOR, which is appended to this Ordinance as "Exhibit No. 1" and incorporated into this Ordinance by this reference ("Exhibit Plat"), shows, illustrates, and depicts the portion of the Street which is adjoined on either side by property of Grantave, and that Grantave has petitioned and requested be vacated, abandoned, and annulled by the City ("Vacated Street"); and

Whereas, the Vacated Street currently contains underground utility facilities of the Morgantown Utility Board and Hope Gas, Inc. and no other utilities; and

Whereas, the Council finds and makes a legislative determination that the Vacated Street is not presently used, useful, or needed for street purposes and, upon removal and relocation of existing underground utility facilities, is not needed for any other public uses or purposes; and

Whereas, the Council finds and makes a legislative determination that the Vacated Street shall not subsequently be used, useful, or needed for street purposes or, upon removal and relocation of existing underground utility facilities, any other public uses or purposes; and

Whereas, the Council finds and makes a legislative determination that no party nor any property of any party will be injured, damaged, or prejudiced by the vacation, abandonment, and annulment of the Vacated Street; and

Whereas, the Council finds and makes a legislative determination that it is in the best interests of the City and the public generally that the Vacated Street be vacated, abandoned, and annulled by the City for street purposes and, upon removal and relocation of existing underground utility facilities, any and all other public uses or purposes; and

Whereas, the Council finds and makes a legislative determination that the Vacated Street being vacated, abandoned, and annulled by the City for street purposes and, upon removal and relocation of existing underground utility facilities, for any and all other public uses or purposes will promote the public interest.

Now, therefore, the City of Morgantown hereby ordains as follows:

Section 1. The findings and legislative determinations of the Council set forth and contained in the above recitals are incorporated and integrated into this Ordinance by this reference and adopted, confirmed, and affirmed as findings and legislative determinations of the Council.

Section 2. The Exhibit Plat is incorporated and integrated into this Ordinance by this reference.

Section 3. The Vacated Street is described as follows:

Beginning at a calculated point along the southerly 50 foot right-of-way boundary of Grant Avenue and the northeast corner of GrantAve LLC (Deed Book 1506 at Page 321), such calculated point is situated S 47° 08' 51" E 302.72 feet from a concrete monument; thence along such right-of-way, S 48° 28' 30" E 40.10 feet to a calculated point in the northwest corner of GrantAve LLC (Deed Book 1515 at Page 543); thence leaving such right-of-way, S 41° 31' 30" W 100.00 feet to a calculated point in the northerly 15 foot right-of-way of an alley; thence along such alley right-of-way, N 48° 28' 30" W 40.10 feet to a calculated point; thence leaving such alley right-of-way, N 41° 31' 30" E 100.00 feet to the place of beginning.

Section 4. Upon the adoption of this Ordinance, for the reasons set forth and contained in the above recitals, the easement and right of way of the City for street purposes in, of, and to the Vacated Street is and shall be vacated, abandoned, and annulled by the City.

Section 5. Upon the adoption of this Ordinance, the easement and right of way of the City in, of, and to the Vacated Street for any and all public purposes other than street purposes shall also be vacated, abandoned, and annulled effective upon the subsequent occurrence of the following conditions:

- (A) The permanent removal and relocation of all utility facilities of the Morgantown Utility Board or its successor in interest from the Vacated Street; and
- (B) The permanent removal and relocation of all utility facilities of Hope Gas, Inc. or its successor in interest from the Vacated Street.

Section 6. Upon the permanent removal and relocation of the utility facilities described in Section 5 of this Ordinance, Morgantown Utility Board and Hope Gas, Inc. shall each provide written certification of such relocation to the City Clerk, evidencing the occurrence of the conditions subsequent to vacation, abandonment, and annulment of the Vacated Street for all public purposes other than street purposes. Upon receipt of both certifications, the Clerk shall cause to be recorded a document substantially in the form of "Exhibit 2", incorporated herein by reference, sufficient to evidence the occurrence of the conditions subsequent to vacation, abandonment, and annulment of the Vacated Street for all public purposes other than street purposes.

Section 7. Upon the adoption of this Ordinance, the City Clerk of the City of Morgantown shall cause a duly certified copy of this Ordinance to be recorded in the Clerk's Office as evidence of the vacating, abandoning and annulling of the Vacated Street as shown on the Exhibit Plat and said Clerk shall also file with said certified copy of this Ordinance the Exhibit Plat showing the location of said street so vacated, abandoned and annulled.

Section 8. This Ordinance shall be effective from the date of its adoption.

First Reading: _____, 2016
Adopted: _____, 2016
Filed: _____, 2016
Recorded: _____, 2016

Mayor

City Clerk

This document prepared by:
Ryan P. Simonton, Esq.
389 Spruce Street
Morgantown, WV 26505

STATE OF WEST VIRGINIA
COUNTY OF MONONALIA, to wit:

I, _____, a Notary Public of said County, do hereby certify that
_____, Clerk, and _____, on behalf of the City of
Morgantown, whose names are signed to the foregoing document dated as of the ____ day of
_____, 2016, have this day acknowledged the same before me in my said County.

Given under my hand this _____, day of _____, 2016.

My Commission expires _____.

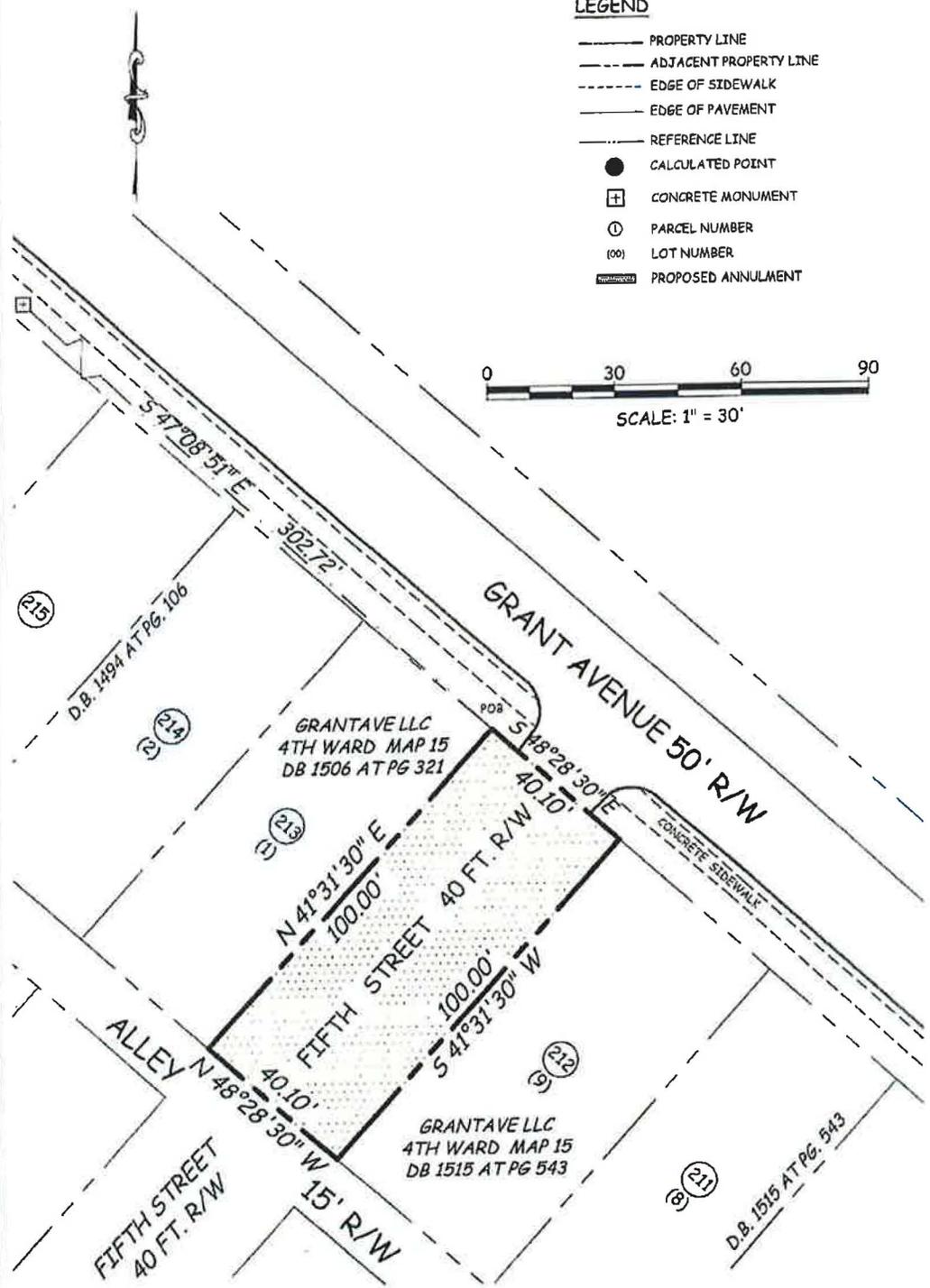
{SEAL}

Notary Public

EXHIBIT NO. 1 TO AN ORDINANCE VACATING, ABANDONING, AND ANNULLING A PORTION OF FIFTH STREET MEASURING APPROXIMATELY FORTY (40) FEET IN WIDTH AND APPROXIMATELY ONE HUNDRED (100) FEET IN LENGTH LOCATED AND SITUATE IN THE FOURTH WARD OF THE CITY OF MORGANTOWN, MONONGALIA COUNTY, WEST VIRGINIA

LEGEND

- PROPERTY LINE
- ADJACENT PROPERTY LINE
- - - EDGE OF SIDEWALK
- EDGE OF PAVEMENT
- REFERENCE LINE
- CALCULATED POINT
- ⊕ CONCRETE MONUMENT
- Ⓢ PARCEL NUMBER
- (00) LOT NUMBER
- ▭ PROPOSED ANNULMENT



**PLAT OF SURVEY
FIFTH STREET ANNULMENT
MADE FOR
THE CITY OF MORGANTOWN
AND OWNED BY GRANTAVE LLC**

4TH WARD DISTRICT MAP 15
MONONGALIA COUNTY, WEST VIRGINIA

DATE: 03-21-16 SCALE: 1" = 30'
DRAWN BY: JEF APPROVED BY: JBC
JOB #: 13100023MOR
DWG NAME: FIFTH ST ANNULMENT 03-21-16.DWG

PATRICK E. GALLAGHER, P.S. 13952
 PREPARED BY:
CTL CTL ENGINEERING OF WEST VIRGINIA, INC.
 733 Fairmont Road Morgantown, WV 25505 Phone: 304/298-1110 Fax: 304/294-9224
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 CONSULTING ENGINEERS • TESTING • INSPECTION SERVICES • ANALYTICAL LABORATORIES

EXHIBIT NO. 2 TO AN ORDINANCE VACATING, ABANDONING, AND ANNULING A PORTION OF FIFTH STREET MEASURING APPROXIMATELY FORTY (40) FEET IN WIDTH AND APPROXIMATELY ONE HUNDRED (100) FEET IN LENGTH LOCATED AND SITUATE IN THE FOURTH WARD OF THE CITY OF MORGANTOWN, MONONGALIA COUNTY, WEST VIRGINIA

This document was prepared by:
Ryan P. Simonton, Esq.
389 Spruce Street
Morgantown, West Virginia 26505

Affidavit of Satisfaction of Conditions Subsequent to Vacation, Abandonment, and Annulment
(Fifth Street)

State of West Virginia,
County of Monongalia, to-wit:

_____, in her capacity as City Clerk of The City of Morgantown, West Virginia, upon oath, attests and verifies as follows:

- (1) I am the incumbent City Clerk of The City of Morgantown, West Virginia ("City").
- (2) The Common Council of The City of Morgantown, West Virginia, adopted an ordinance styled "AN ORDINANCE VACATING, ABANDONING, AND ANNULING A PORTION OF FIFTH STREET MEASURING APPROXIMATELY FORTY (40) FEET IN WIDTH AND APPROXIMATELY ONE HUNDRED (100) FEET IN LENGTH LOCATED AND SITUATE IN THE FOURTH WARD OF THE CITY OF MORGANTOWN, MONONGALIA COUNTY, WEST VIRGINIA" on ____, 2016 ("Ordinance").
- (3) An accurate and true copy of the Ordinance is of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book ____, at Page ____.
- (4) Both Morgantown Utility Board and Hope Gas, Inc. have provided to the City the written certifications contemplated by Section 6 of the Ordinance, evidencing the permanent removal and relocation of the utility facilities described in Section 5 of the Ordinance and the occurrence of the conditions subsequent to vacation, abandonment, and annulment of the Vacated Street (as defined in the Ordinance) for all public purposes other than street purposes..
- (5) This affidavit has been prepared to evidence that the above-referenced conditions subsequent to vacation, abandonment, and annulment of the Vacated Street for all public purposes other than street purposes have occurred and that the easement and right of way of the City in, of, and to the Vacated Street for any and all public purposes, including street purposes, has been vacated, abandoned, and annulled by way of the Ordinance and the occurrence of such conditions subsequent.

_____, in her capacity as City Clerk of The City of Morgantown, West Virginia

Taken, subscribed, and sworn to this the ____ day of _____, 200 ____.

Notary Public
My commission expires: _____

AN ORDINANCE AUTHORIZING A LEASE AGREEMENT WITH M.T. POCKETS THEATRE, INC. FOR SPACE AT THE WOODBURN SCHOOL SITE

The City of Morgantown hereby ordains that the City Manager is authorized to execute the attached agreement, which is incorporated in this Ordinance by reference, leasing space at the former Woodburn School site to M.T. Pockets Theatre, Inc.

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

RECORDED:

LEASE AGREEMENT

This agreement is made this _____ day of _____, 2016 by and between **THE CITY OF MORGANTOWN**, a municipal corporation and political subdivision of the State of West Virginia ("Lessor"), and **M.T. POCKETS THEATRE, INC.**, a West Virginia non-profit corporation doing business as **M.T. Pockets Theatre Company** ("Lessee"), upon the following terms:

RECITALS

- A. Lessor is the sole owner of the premises described below.
- B. Lessee is a non-profit organization that was established to conduct arts, entertainment, and recreation services and a performing arts company; and desires to lease office space from lessor.
- C. The parties desire to enter a lease agreement defining their respective rights, duties, and liabilities relating to the premises.

In consideration of the matters described above and of the mutual benefits and obligations set forth in this lease agreement, the parties agree as follows:

SECTION ONE. DESCRIPTION OF PREMISES

- A. Lessor leases to lessee that certain space consisting of the **Activity Center modular building** located on the former Woodburn Elementary School, consisting of **2,667 square feet**, more or less, situated in Morgantown, Monongalia County, West Virginia, and shown on the attached "Exhibit 1," which is incorporated herein by reference (the "Premises").
- B. The premises shall be used for the purpose of office space and preparation, rehearsal, and conduct of performing arts and for no other purpose.
- C. In addition to the demised premises, the Lessee shall have the right to use all driveways, parking areas, and sidewalks (collectively, "Common Areas"), if any, in or about the Woodburn School building, jointly with other tenants and their respective representatives, agents, customers, guests and invitees. The Lessor will be responsible for routine maintenance of the Common Areas.

SECTION TWO. TERM OF LEASE

- A. This lease agreement shall cover a term commencing **May 18, 2016**, and extending until midnight on the day preceding the **fifth** anniversary of such date, provided that either of parties to this lease gives to the other, three months before the latter date, notice in writing of the party's intention to terminate this lease on that date. Otherwise this lease will continue in force for another term of one year, and in the same manner from year to year ("Term"), including all terms and conditions in this lease, until one of parties terminates this lease by notice in writing in some ensuing year in the manner described above, which notice terminates this lease at the end of year for which premises are then held.
- B. Lessee shall surrender the premises to lessor immediately on termination of the lease.

SECTION THREE. DELIVERY OF POSSESSION

If, for any reason, lessor cannot deliver possession of the demised premises at the commencement of the term, this lease agreement shall not be void or voidable, nor shall lessor be liable to lessee for any loss or damage resulting from the inability to deliver possession. However, there shall be a proportionate reduction in total rent, covering the period between the commencement of the term and actual delivery of the demised premises to lessee, in the event of a late delivery by lessor.

SECTION FOUR. RENTAL

A. Lessee shall pay a total of **\$9,126.00** per year, resulting in a monthly rate of **\$760.50** per month, due on the 1st day of each month for the succeeding month's rental. This sum reflects a monthly rate of **\$4.50** per square foot of space. Payments shall be made to lessor at the address specified herein, and a payment shall be delinquent if not paid by the fifth day after which it is due. In any month not entirely covered by the term of this lease, the monthly rental fee shall be prorated according to the number of days of that month covered by the lease term, resulting in a fee for that fractional month equal to (Number of days of month in lease term / number of days in calendar month) x \$760.50.

B. The annual rental payment for each year beyond the initial term shall increase by an amount equal to the proportional increase in the U.S. City Average of the Consumer Price Index for All Urban Consumers (CPI-U) for all items over the twelve-month period prior to the start of the new yearly term; provided, that in no event shall the annual rental payment increase by an amount less than One Percent (1%) of the prior year annual rental payment.

C. On lessee's failure to pay the rental on a timely basis, lessor shall have the right to terminate this lease agreement, and the lease agreement will then be forfeited.

SECTION FIVE. RESTRICTIONS ON USE

Lessee shall not use or permit the demised premises, or any part of the demised premises, to be used for any purposes other than those set forth in this lease agreement. Lessee shall neither permit on the demised premises any act, sale, or storage that may be prohibited under standard forms of fire insurance policies, nor use the premises for any such purpose. In addition, no use shall be made or permitted to be made that shall result in: (1) waste on the demised premises; (2) a public or private nuisance that may disturb the quiet enjoyment of other tenants in the building; (3) improper, unlawful, or objectionable use, including sale, storage, or preparation, of food, alcoholic beverages, or materials generating an odor on the premises; or (4) noises or vibrations that may disturb other tenants. Lessee shall comply with all governmental regulations and statutes affecting the demised premises either now or in the future.

SECTION SIX. ABANDONING PREMISES OR PERSONAL PROPERTY

Lessee shall not vacate or abandon the demised premises at any time during the term of this lease agreement. If lessee does vacate or abandon the demised premises or is dispossessed by process of law, any personal property belonging to lessee and left on the demised premises shall be deemed abandoned at the option of lessor and shall become the property of lessor.

SECTION SEVEN. UTILITIES AND SERVICES

A. Lessor shall furnish and timely pay when due and payable, at no additional cost to the Lessee, the following utilities and/or services:

- (i) Custodial services in the common areas used by other tenants.
- (ii) Ground maintenance, including mowing, landscaping, and parking lot maintenance.
- (iii) Snow removal in front of the Activity Center, including only the front of the modular building constituting the Leased Premises and the walkway adjacent thereto, to be paid by the Lessor if third-party services are required, who

shall be entitled to reimbursement as Additional Rent from the Lessee upon Lessor's delivery of a separate invoice, providing evidence of payment made.

B. The Lessee, at its expense, shall furnish and provide payment to the applicable company or vendor for the following utilities and/or services:

- (i) Utilities including natural gas, electric, water.
- (ii) Custodial Services in the demised premises.
- (iii) Trash services, for which the Lessee may choose to partner with the neighboring tenants.
- (iv) Telephone and internet connectivity services.
- (v) The Lessee shall have the right to rekey locks, install a key card access system, or provide any other security system for the demised premises, using such security services provider as the Lessee may choose in its sole discretion, provided that Lessee shall ensure Lessor is able to access the premises through such locks or system. The Lessee may remove said system at any time during the term of this lease, provided that Lessee, at its sole expense, shall repair any damage resulting from such removal and ensure that an adequate method for securing the demised premises is in place.

C. In the event that any utilities or services being provided by the Lessor are interrupted for reasons within the Lessor's control and as a result, suitability of the Premises is interrupted, the Lessee shall have the option to (i) cause the utilities or services to be reinstated and deduct the costs and expense thereof from the rents which may become due and payable thereafter to the Lessor until the Lessee is fully reimbursed for such expenditures; or (ii) terminate this Lease upon notice to Lessor and Lessor's failure to cure such default within three (3) business days.

SECTION EIGHT. ALTERATIONS AND MODIFICATION; REPAIRS

A. Lessee has inspected the demised premises, and they are now in a tenantable and good condition, except as specifically identified by Lessee on the attached "Schedule 1 – Lessee Identification of Defects."

B. Lessee shall take good care of the demised premises and shall not alter, repair, or change the demised premises without the prior, express, and written consent of lessor, which consent shall not be unreasonably withheld.

C. All alterations, improvements, and changes that lessor allows shall be done either by or under the direction of lessee and at the expense of lessee. Lessor shall not have the right to control the manner of performance or the selection of contractors, and it is the intent of the parties that no public funds be contributed either directly or indirectly to the payment for any alterations or improvements. Lessee shall be responsible for ensuring that any approved alterations or improvements are performed in compliance with applicable laws. All alterations and improvements shall become the property of lessor and remain on the demised premises, except that at the option of lessor, lessee shall, at its expense, remove from the demised premises all partitions, counters, railings, and similarly installed improvements when surrendering the demised premises.

D. All damage or injury done to the demised premises by lessee or any person who may be in or on the demised premises with the consent of lessee shall be paid for by lessee.

E. Lessee shall, at the termination of this lease agreement, surrender the demised premises to lessor in as good condition and repair as reasonable and proper use of the premises will permit.

F. Lessor shall be responsible for making all routine repairs and for performing routine maintenance in the demised premises except the services and maintenance for which Lessee is responsible pursuant to **Section 7.B.** of this Agreement. Lessee shall permit lessor and lessor's agents to enter the demised premises at all reasonable times to inspect them, clean windows, perform

other janitorial services, maintain the building and demised premises, make repairs, alterations, or additions to the demised premises, or any portion of the building, including the erection of scaffolding, props, or other mechanical devices, to post notices of nonliability for alterations, additions, or repairs, or to place on the premises any usual or ordinary "For Sale" signs, without any rebate of rent to lessee or damages for any loss of occupation or quiet enjoyment of the demised premises. Lessor may, at any time within ninety days prior to the expiration of this lease agreement, place on the windows and doors of the premises any usual or ordinary "To Let" or "To Lease" signs. Lessor and lessor's agents may, during the last-mentioned period, enter on the demised premises at reasonable hours and exhibit them to prospective tenants.

SECTION NINE. LIMITATION OF LIABILITY; INDEMNIFICATION

A. Lessee waives all claims against lessor for damages to goods or for injuries to persons on or about the demised premises from any cause arising at any time.

B. Lessee will indemnify lessor on account of any damage or injury to any person, or to the goods of any person, arising from the use of the demised premises by lessee, or arising from the failure of lessee to keep the demised premises in good condition as provided in this lease agreement.

C. Lessor shall not be liable to lessee for any damage by or from any act or negligence of any other occupant of the same building, or by any owner or occupant of adjoining or contiguous property.

D. Lessee agrees to pay for all damage to the building, as well as all damage or injury suffered by tenants or occupants of the building caused by the misuse or neglect of the demised premises by lessee.

E. Lessee shall defend, indemnify, and hold harmless the lessor and its representatives and employees from and against any and all liabilities, demands, suits, claims, losses, fines, or judgments arising by reason of the injury or death of any person or damage to or loss of any property, including all reasonable costs for investigation and defense thereof, (including, but not limited to, attorney fees, court costs, and expert fees), of any nature whatsoever arising out of, or incidental to, this Lease Agreement or Lessee's use or occupancy of the leased premises, or the acts or omissions of the Lessee, its officers, employees, agents, representatives, contractors, sub-contractors, licensees or invitees, regardless of where the injury, death, loss, or damage may occur unless such injury, death, loss, or damage is caused by the sole negligence of the Lessor, its employees, agents, officers, or representatives. The Lessor shall give Lessee reasonable notice of any such claims or actions. The provisions of this Article shall survive the expiration or earlier termination of this Lease Agreement.

F. In order to assure its ability to defend and hold harmless the lessor, lessee shall carry insurance in the following minimum amounts during the term of this lease, naming the lessor as an additional insured on the policy(ies):

Bodily Injury\$500,000 per occurrence
Property Damage.....\$ 50,000 per occurrence

G. Lessee shall provide the lessor with certification of insurance through the term of this Agreement, evidencing such coverage to be in force.

H. The Lessor agrees to notify the lessee in writing, as soon as practicable, of any claims, demands, or action arising out of an occurrence covered hereunder of which the lessor has knowledge, and to cooperate with the lessee in the investigation and defense thereof.

SECTION TEN. DESTRUCTION OF PREMISES

A. In the event of a partial destruction of the demised premises during the term of this lease agreement from any cause, lessor may, at its option, repair the demised premises.

B. Any partial destruction of the demised premises shall neither annul nor void this lease agreement, except that lessee shall be entitled to a proportionate reduction of rent while the repairs are being made, any proportionate reduction being based on the extent to which the making of repairs shall interfere with the business carried on by lessee on the demised premises. Lessor may, at lessor's option, make repairs within a reasonable time, this lease agreement continuing in full force and effect and the rent to be proportionately rebated as previously set forth in this section. If lessor elects not to make repairs, or if repairs cannot be made under the laws and regulations of the applicable governmental authorities, this lease agreement may be terminated at the option of either party.

C. In the event of any partial destruction of the demised premises which lessor may elect to repair under the terms of this section, the provisions of any statute or common law rule authorizing lessee to make the repairs and deduct the expenses from the rent are waived by lessee.

D. A total destruction of the building in which the demised premises are situated shall terminate this lease agreement.

SECTION ELEVEN. CONDEMNATION

A condemnation of the entire building or a condemnation of the portion of the demised premises occupied by lessee shall result in a termination of this lease agreement. Lessor shall receive the total of any consequential damages awarded as a result of condemnation proceedings. All future rent installments to be paid by lessee under this lease shall be terminated.

SECTION TWELVE. ASSIGNMENT AND SUBLEASE

A. Lessee shall not assign any rights or duties under this lease agreement nor sublet the demised premises or any part of the demised premises, nor allow any other person to occupy or use the demised premises without the prior, express, and written consent of lessor. A consent to one assignment, sublease, or occupation or use by any other person shall not be a consent to any subsequent assignment, sublease, or occupation or use by another person. Any assignment or subletting without consent shall be void.

B. This lease agreement shall not be assignable, as to the interest of lessee, by operation of law, without the written consent of lessor.

C. Lessor may withhold consent to an assignment or sublease of the demised premises in lessor's sole discretion.

SECTION THIRTEEN. BREACH OR DEFAULT

Lessee shall have breached this lease agreement and shall be considered in default under this lease agreement if: (1) lessee fails to pay any rent when due and does not make the delinquent payment within five days after receipt of notice from lessor; or (2) lessee fails to perform or comply with any of the covenants or conditions of this lease agreement and such failure continues for a period of ten days after receipt of notice from lessor in the fashion described in Section 21 below.

SECTION FOURTEEN. LESSOR'S REMEDIES

In the event of a breach of this lease agreement as set forth in SECTION THIRTEEN above, the rights of lessor shall be as follows:

A. Lessor shall have the right to cancel and terminate this lease agreement, as well as all of the right, title, and interest of lessee under this lease agreement, by giving to lessee not less than five days' notice of the cancellation and termination. On expiration of the time fixed in the notice, this lease agreement and the right, title, and interest of lessee under this lease agreement shall terminate in the same manner and with the same force and effect, except as to lessee's liability, as if the date fixed in the notice of cancellation and termination were the end of the lease term.

B. Lessor may elect but shall not be obligated to make any payment required of lessee in this lease agreement or comply with any agreement, term, or condition required by this lease agreement to be performed by lessee. Lessor shall have the right to enter the demised premises for the purpose of correcting or remedying any such default and to remain until the default has been corrected or remedied. However, any expenditure by lessor incurred in any such correction of a default shall not be deemed to waive or release lessee's default or lessor's right to take any action as may be otherwise permissible under this lease agreement in the case of any default.

C. Lessor may reenter the demised premises immediately and remove the property and personnel of lessee, and store the property in a public warehouse or at a place selected by lessor, at the expense of lessee. After reentry lessor may terminate this lease agreement on giving five days' written notice of termination to lessee. Without the notice, reentry will not terminate this lease agreement. On termination, lessor may recover from lessee all damages proximately resulting from the breach, including the cost of recovering the demised premises and the worth of the balance of this lease agreement over the reasonable rental value of the demised premises for the remainder of the lease term, which sum shall be immediately due lessor from lessee.

After reentry, lessor may relet the demised premises or any part of the demised premises for any term without terminating this lease agreement, at the rent and on the terms as lessor may choose. Lessor may make alterations and repairs to the demised premises. The duties and liabilities of the parties if the demised premises are relet as provided in this paragraph shall be as follows:

1. In addition to lessee's liability to lessor for breach of the lease agreement, lessee shall be liable for all expenses of the reletting, for the alterations and repairs made, and for the difference between the rent received by lessor under the new lease agreement and the rent installments that are due for the same period under this lease agreement.

2. Lessor shall have the right to apply the rent received from reletting the premises (a) to reduce lessee's indebtedness to lessor under this lease agreement, not including indebtedness for rent, (b) to expenses of the reletting and alterations and repairs made, (c) to rent due under this lease agreement, or (d) to payment of future rent under this lease agreement as it becomes due.

If the new lessee does not pay a rent installment promptly to lessor, and the rent installment has been credited in advance of payment to the indebtedness of lessee other than rent, or if rentals from the new lessee have been otherwise applied by lessor as provided for in this section, and during any rent installment period, are less than the rent payable for the corresponding installment period under this lease agreement, lessee shall pay lessor the deficiency, separately for each rent installment deficiency period and before the end of that period. Lessor may at any time after a reletting terminate this lease agreement for the breach on which lessor had based the reentry and subsequently relet the premises.

D. After reentry, lessor may procure the appointment of a receiver to take possession and collect rents and profits of the business of lessee, and, if necessary to collect the rents and profits the receiver may carry on the business of lessee and take possession

of the personal property used in the business of lessee, including inventory, trade fixtures, and furnishings, and use them in the business without compensating lessee.

SECTION FIFTEEN. UNLAWFUL DETAINER AND ATTORNEYS' FEES

In case suit shall be brought for an unlawful detainer of the demised premises, for the recovery of any rent due under the provisions of this lease agreement, or for lessee's breach of any other condition contained in this lease agreement, lessee shall pay to lessor reasonable attorneys' fees that shall be fixed by the court. Any such attorneys' fee shall be deemed to have accrued on the commencement of the action and shall be paid on the successful completion of the action by lessor. Lessee shall be entitled to attorneys' fees in the same manner if judgment is rendered for lessee.

SECTION SIXTEEN. REMEDIES OF LESSOR CUMULATIVE

The remedies given to lessor in this lease agreement shall be cumulative, and the exercise of any one remedy by lessor shall not be to the exclusion of any other remedy.

SECTION SEVENTEEN. GOVERNING LAW

This lease agreement shall be governed by, construed, and enforced in accordance with the laws of the State of West Virginia.

SECTION EIGHTEEN. NO WAIVER

Waiver by lessor of any breach of any covenant or duty of lessee under this lease is not a waiver of a breach of any other covenant or duty of lessee, or of any subsequent breach of the same covenant or duty.

SECTION NINETEEN. ENTIRE AGREEMENT

This lease agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this lease agreement shall not be binding upon either party except to the extent incorporated in this lease agreement.

SECTION TWENTY. MODIFICATION OF AGREEMENT

Any modification of this lease agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in a writing signed by each party or an authorized representative of each party.

SECTION TWENTY-ONE. NOTICES

A. All notices, demands, or other writings in this lease agreement provided to be given or made or sent, or which may be given or made or sent, by either party to the other, shall be deemed to have been fully given or made or sent when made in writing and deposited in the United States mail, registered and postage prepaid, and addressed as follows:

If to lessor: City of Morgantown
c/o City Manager
389 Spruce Street
Morgantown, WV 26505

With a copy to jeff.mikorski@morgantownwv.gov

If to lessee: M.T. Pockets Theatre, Inc.
c/o Vickie Trickett
722 Brookhaven Road
Morgantown WV 26508
With a copy to vickie.trickett@mail.wvu.edu

B. The address to which any notice, demand, or other writing may be given or made or sent to any party as above provided may be changed by written notice given by such party as above provided.

SECTION TWENTY-TWO. COUNTERPARTS

This lease agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

SECTION TWENTY-THREE. SECTION HEADINGS

The titles to the sections of this lease agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this lease agreement.

The parties have executed this lease agreement in Morgantown, Monongalia County, West Virginia the day and year first set forth above.

[Signature page follows]

LESSOR: City of Morgantown

By _____
Jeff Mikorski
City Manager

STATE OF WEST VIRGINIA,
COUNTY OF MONONGALIA, TO-WIT:

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by Jeff Mikorski, City Manager of the City of Morgantown, West Virginia.

My commission expires: _____.

Notary Public in and for
said State and County

LESSEE:

By _____

STATE OF WEST VIRGINIA,
COUNTY OF MONONGALIA, TO-WIT:

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by _____, member of _____.

My commission expires: _____.

Notary Public in and for
said State and County

Schedule 1 – Lessee Identification of Defects

AN ORDINANCE DESIGNATING A STREET IN THIRD WARD AS JUNCTION STREET

The City of Morgantown hereby ordains as follows:

- (a) The street located in the Third Ward of the City and bounded on the East by Raymond Street, on the West by Willowdale Road, on the North by Morgan Street, and on the South by Highland Avenue shall be named "Junction Street." A depiction of the street is shown on the attached "Exhibit A" to this Ordinance.
- (b) The City shall cause appropriate signage to be placed identifying Junction Street and take any necessary action within its power to notify all responsible entities of the street's identification as Junction Street. Such notification shall include the United States Postal Service and the Monongalia Emergency Centralized Communications Agency (MECCA-911), together with any other appropriate party pursuant to the Statewide Addressing and Mapping System.
- (c) The Clerk shall cause a copy of this ordinance to be mailed by first-class mail, postage prepaid, to each residential and business address on Junction Street as designated in this ordinance.

This ordinance shall be effective from the date of adoption.

FIRST READING:

Mayor

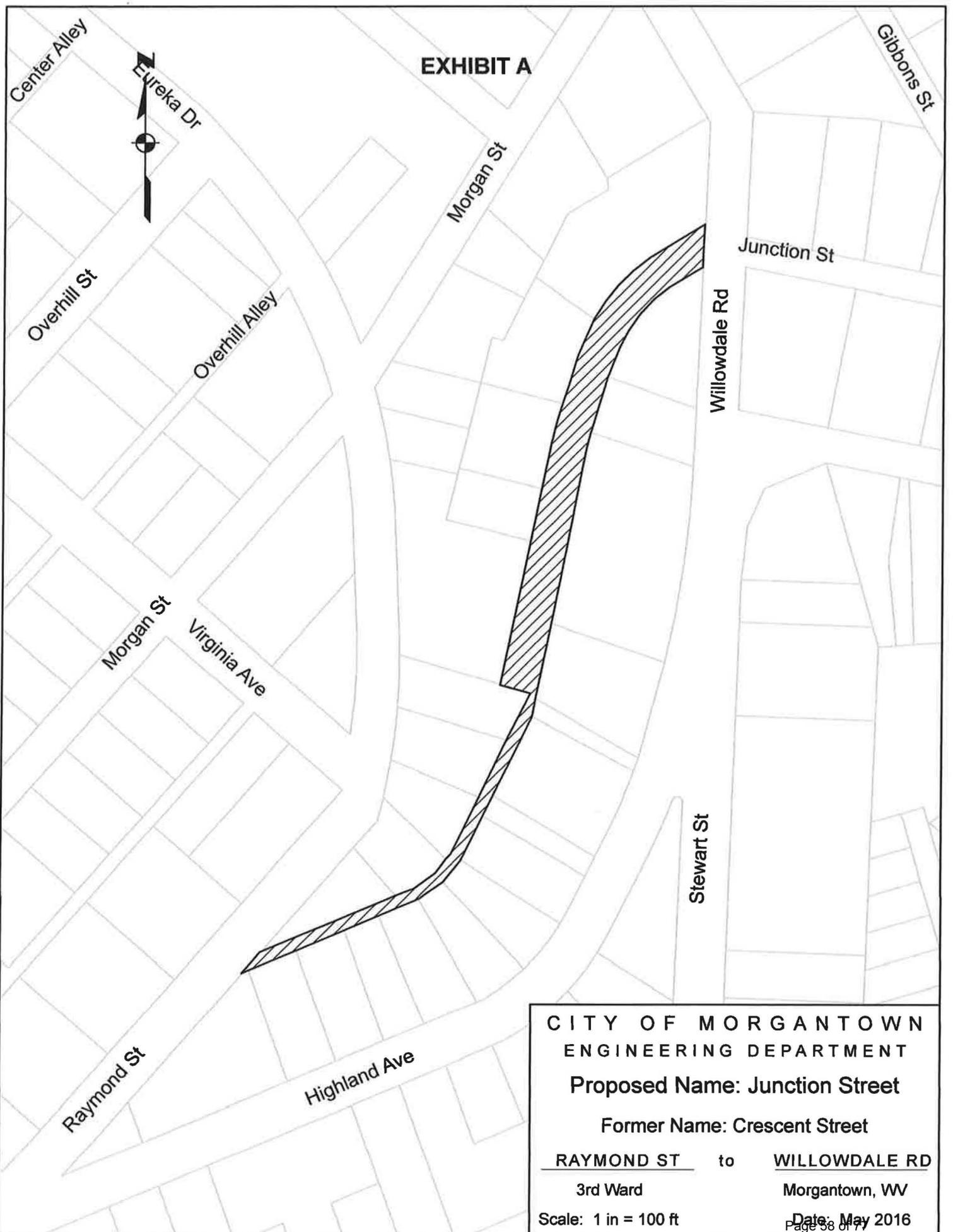
ADOPTED:

FILED:

City Clerk

RECORDED:

EXHIBIT A



**CITY OF MORGANTOWN
ENGINEERING DEPARTMENT**

Proposed Name: Junction Street

Former Name: Crescent Street

RAYMOND ST to WILLOWDALE RD

3rd Ward Morgantown, WV

Scale: 1 in = 100 ft

Date: May 2016

**AN ORDINANCE AMENDING ARTICLE 145 AND SECTIONS 1387.01 AND 1387.02
OF THE CITY CODE RELATING TO THE MORGANTOWN PLANNING
COMMISSION**

WHEREAS, the West Virginia Code provides mandatory requirements for the composition of Municipal Planning Commissions at Section 8A-2-3, which provides in part that one member must be a member of the municipal governing body or a designee and one member must be a member of the administrative department of the municipality or a designee, that all members must be residents of the city, and that three-fifths of the members must have been residents of the city for the past three years prior to appointment; and

WHEREAS, City Charter Article 6 provides that the Council may create a Planning Commission as it now is, or may hereafter be, authorized to create pursuant to the provisions of the Code of West Virginia, Chapter 8, Article 24, as amended; and

WHEREAS, City Charter Article 6 provides that “Any Planning Commission heretofore established shall continue to operate as though established under the provisions of the Code of West Virginia, Chapter 8, Article 24, as amended;” and

WHEREAS, former West Virginia Code Chapter 8, Article 24, was amended and replaced by current West Virginia Code Chapter 8A; and

WHEREAS, the City intends to conform its Code in all respects with the West Virginia Code requirements for composition of its Planning Commission, as instructed by the City Charter, and to avoid redundancy by prescribing those requirements only within the Planning and Zoning Code;

NOW, THEREFORE, the City of Morgantown hereby ordains that Article 145 of the City Code and Sections 1387.01 and 1387.02 of the City Code are amended as follows:

145.01 ESTABLISHED.

There is hereby created and established shall be a City-Planning Commission in accordance with the provisions of the City Planning and Zoning Code.

~~145.02 COMPOSITION AND MEMBERSHIP; VACANCIES.~~

~~—The Planning Commission of the City shall consist of nine members, all of whom shall be freeholders and residents of the City, who shall be qualified by knowledge and experience in matters pertaining to the development of the City and who shall include representatives of business, industry and labor. Three-fifths of all members shall have been residents of the Municipality for~~

~~at least one year prior to nomination and confirmation or appointment. All members shall be nominated by the City Manager and confirmed by Council.~~

~~—One member of the Commission shall also be a member of Council, and one member shall also be a member of the administrative department of the City. The term of these two members shall be coextensive with the term of office to which each has been elected or appointed, unless the City Manager and Council, at the first regular meeting each year, appoint others to serve as the City's representatives. The remaining seven members shall be appointed for terms of three years each, except those members first appointed, as provided in Section 145.03, one member being appointed from each ward of the City. Vacancies shall be filled by appointment in the same manner for the unexpired term only. Members of the Commission shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.~~

~~145.03 ORIGINAL APPOINTMENTS.~~

~~—For the original appointment of the seven members of the City Planning Commission provided for in Section 145.02, three members shall be appointed for one year, two members for two years and two members for three years.~~

~~145.04 OFFICERS.~~

~~—At its first regular meeting in each year, the City Planning Commission shall elect from its members a president and vice-president. It shall designate a member of the Commission to act as an advisory member of the County Planning Commission.~~

~~145.05 OFFICES, FACILITIES AND EXPENSES.~~

~~—Council shall provide the City Planning Commission with suitable offices and facilities and shall provide by appropriation a sum sufficient to defray the reasonable expenses of the Commission to enable it to carry out its duties.~~

~~145.06 MEETINGS; QUORUM.~~

~~—The City Planning Commission shall fix the time for holding regular meetings, but it shall meet at least once in the months of January, April, July and October.~~

~~—The provisions of West Virginia Code 8-24-8 and 8-24-9 shall govern special meetings and quorums.~~

~~145.07 POWERS AND DUTIES.~~

~~—The City Planning Commission shall have all powers and perform all duties provided for in West Virginia Code Art. 8-24 consistent with the provisions of Article VI of the City Charter.~~

~~145.08 PURPOSE OF ARTICLE.~~

~~—It is the object of this article to improve the present health, safety, convenience and welfare of the residents of the City and to plan for the future development of the City to the end that highway systems be carefully planned, that new community centers grow only with adequate highway, utility, health, educational and recreational facilities, that the needs of industry and business be recognized in future growth, that residential areas provide healthy surroundings for family life, and that the growth of the community is commensurate with and promotive of the efficient and economical use of public funds.~~

1387.01 ESTABLISHMENT.

A Planning Commission known as the Morgantown Planning Commission is hereby established under the provisions of the Code of the State of West Virginia, Chapter 8A, Article 2, et seq., as amended. The membership of said Planning Commission, the qualifications thereof, and the powers, privileges, duties and responsibilities of said Planning Commission shall be as hereinafter set forth:

(A) Membership. The following provisions govern the composition of the Morgantown Planning Commission:

(1) The Morgantown Planning Commission shall consist of nine (9) members, all of whom shall be residents of the City who shall be qualified by knowledge and experience in matters pertaining to the development of the City, and shall fairly represent different areas of interest, knowledge and expertise, including, but not limited to, business, industry, labor, government and other relevant disciplines. Three-fifths of all the members shall have been residents of the City for at least three years prior to nomination and confirmation or appointment. ~~No two (2) shall be residents of the same ward.~~

(2) All members shall be nominated by the City Manager and confirmed by Council. Vacancies shall be filled by appointment in the same manner for the unexpired term.

~~—(B) One member of the City Planning Commission shall also be a member of Council, and one member shall also be a member of the Administrative Department of the City. The term of these two members shall be co-extensive with the term of office to which each has been elected or appointed, unless the City Manager and Council at the first regular meeting of each year appoint others to serve as the City representatives.~~

(3) One member must be a member of City Council or a designee and one member must be a member of the administrative department of the City or a designee. The term of membership for these two members is the same as their term of office. The term of a designee of the governing body shall end at the conclusion of a term of City Council. The

term of a designee of the administrative department shall end at the conclusion of the City Manager's employment as City Manager. The remaining members of the Commission shall be appointed to terms of three (3) years and serve until their successors are appointed and qualify. Vacancies shall be filled by appointment in the same manner for the unexpired term only. Members shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

(4) The commission established prior to the effective date of this section and the members of the commission in office prior to the effective date of this section shall be continued in existence and in office and shall continue to operate thereafter as though established under the terms of this section.

(B) Removal. The City Council may remove a member of the Planning Commission for inactivity, neglect of duty or malfeasance. Removal proceedings for inactivity may only be commenced following a member's failure to attend three consecutive meetings. Removal proceedings may only be instituted by a majority vote of Council to provide a member with a written statement of the reasons for removal. Any member presented with a notice of removal shall have an opportunity to be heard on the matter before Council. The opportunity for a hearing must be exercised by delivering a written demand for such hearing to Council within five days of receiving the notice of removal. No removal shall be effective until the hearing before Council has been held or waived by failure to deliver a demand for hearing. Any member who waives a hearing shall be removed from office effective the day after his or her failure to deliver a demand for hearing as prescribed in this paragraph. Any member who demands a hearing may only be removed by a majority vote of Council at such hearing or subsequent to the hearing.

(C) Conduct of business. The Commission shall fix times for holding regular meetings and shall meet at least quarterly. Special meetings may be called by the President or upon the written request of any two members. The secretary shall give a-At least two (2) days' notice of any special meeting shall be provided unless the same is waived by the full membership of the Commission. Notice of all meetings shall be provided in accordance with the West Virginia Open Governmental Proceedings Act, as amended. A majority of members shall constitute a quorum for the transaction of business and no action of the Commission shall be official unless authorized by a majority of the membership present at a regular or properly called special meeting.

(D) Officers. At the first regular meeting in each year the Commission shall elect from its membership a President and Vice President and may appoint a secretary from within or without its membership. The vice president shall have the power and authority to act as president of the planning commission during the absence or disability of the president. The Commission may

~~appoint such employees as are necessary to discharge its duties, and compensation paid shall be in conformity with the budgetary powers of the City Council.~~

(E) The City Council shall provide the Planning Commission with: (1) Suitable offices for the holding of meetings and the preservation of plans, maps, documents and accounts; and (2) Appropriate money to defray the reasonable expenses of the planning commission.

(F) The Commission is authorized to accept gifts, funds and donations which will be deposited with the City in a special nonreverting planning commission fund to be available for expenditures by the planning commission for the purpose designated by the donor.

1387.02 POWERS AND DUTIES.

~~To effectuate the purposes of this ordinance the Commission shall have power and authority to~~
The Morgantown Planning Commission has the following powers and duties:

- (A) Exercise general supervision for the administration of the affairs of the Commission;
- (B) Prescribe uniform rules and regulations pertaining to administration, investigations and hearings, provided that the rules and regulations are adopted by City Council;
- (C) Supervise the fiscal affairs and responsibilities of the Commission;
- (D) With consent of Council, hire employees necessary to carry out the duties and responsibilities of the Planning Commission, provided that City Council sets the salaries;
- (E) Keep an accurate and complete record of all Planning Commission proceedings;
- (F) Record and file all bonds and contracts;
- (G) Take responsibility for the custody and preservation of all papers and documents of the Commission.
- (H) Make recommendations to City Council concerning planning.
- (I) Make an annual report to City Council concerning the operation of the Planning Commission and the status of planning within the City;
- (J) Prepare, publish and distribute reports, ordinances and other material relating to the activities authorized under the Code of the State of West Virginia Code, Chapter 8A, Article 2;
- (K) Adopt a seal and certify all official acts;
- (L) Invoke any legal, equitable or special remedy for the enforcement of the provisions of the Code of the State of West Virginia, Chapter 8A, Articles 1 through 12 or any ordinance, rule or regulation or any action taken thereunder;
- (M) Prepare and submit an annual budget in the same manner as other departments of the City government and shall be limited in all expenditures to the provisions made therefore by City Council;
- (N) If necessary, establish Advisory Committees;
- (O) Delegate limited powers to a committee composed of one or more members of the Planning Commission; and,
- (P) Contract for special or temporary services and professional counsel with the approval of City Council.

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

First Reading:

Adopted:

Mayor

Filed:

Recorded:

City Clerk

AN ORDINANCE AMENDING THE FY 2015-2016 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE COAL SEVERANCE FUND.

The City of Morgantown hereby ordains:

That the FY 2015-2016 Annual Budget of the Coal Severance Fund of the City of Morgantown is amended as shown in the Request for Revision to Approved Budget (Revision 02) attached hereto and made a part of this ordinance.

First Reading:

Adopted:

Mayor

Filed:

Recorded:

City Clerk

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

REQUEST FOR REVISION TO APPROVED BUDGET

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

CONTROL NUMBER
 FY: **2015-2016**
 Fund: **Coal Sev.**
 Rev No **2**
 Pg. of No. **1 of 1**

Person To Contact Regarding Request:

Name: **James M. Goff**
 Phone: **304-284-7407**
 Fax: **304-284-7430**

City of Morgantown
 GOVERNMENT ENTITY

389 Spruce Street
 STREET OR PO BOX

Morgantown 26505
 CITY ZIP CODE

Municipality
 Government Type

REVENUES: (net each acct.)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
310	Coal Severance Tax	100,000		30,000	70,000
	#N/A				

NET INCREASE/(DECREASE) Revenues (ALL PAGES) -30,000

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

EXPENDITURES: (net each account category)

(WV CODE 7-1-9)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
699	Contingencies*	12,329		2,500	9,829
444	Contributions / Transfers to Other Funds	120,000		27,500	92,500
	#N/A				

NET INCREASE/(DECREASE) Expenditures -30,000

APPROVED BY THE STATE AUDITOR

BY: Deputy State Auditor, Local Government Services Division Date

AUTHORIZED SIGNATURE OF ENTITY

APPROVAL DATE

AN ORDINANCE AMENDING THE FY 2015-2016 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND.

The City of Morgantown hereby ordains:

That the FY 2015-2016 Annual Budget of the General Fund of the City of Morgantown is amended as shown in the Request for Revision to Approved Budget (Revision 05) attached hereto and made a part of this ordinance.

First Reading:

Adopted:

Mayor

Filed:

Recorded:

City Clerk

City of Morgantown

Finance Department

389 Spruce Street

Morgantown, WV 26505

Phone (304) 284-7407/Fax 7418

jgoff@morgantownwv.gov

MEMO

DATE: May 16, 2016

TO: Jeff Mikorski, ICMA-CM, City Manager

FROM: James M. Goff, Finance Director

RE: General Fund Budget Revision 5

Included herewith you will find the proposed ordinance and "Request for Revision to Approved Budget" for the FY2016 General Fund Budget. An explanation of the proposed changes follows:

The adjustments to revenue reflect a net increase from the projected and approved budget through General Fund Budget Revision 4. The net changes are based on actual amounts received to date along with projections of the remaining 1 ½ months of the fiscal year. B&O taxes have increased due to one-time revenues from major construction projects and regular revenues due in large part to the increase in the service tax rate to 1% and due to good collections. Prior Year Taxes and Supplemental Taxes relate to Property Tax Levy collections from previous years. Fire Protection Fee collections have increased as a result of a good collection effort and as a result of reassessed values based on square footage audits. Gas and Oil Severance Tax, Wine and Liquor Tax, IRP Fees, Amusement Tax, Franchise Fees, and Building Permit Fees have all performed better than initially budgeted. Municipal Service Fee estimates have been lowered from \$1.17mm to \$1.09mm based on 1st quarter collections to date. Hotel Occupancy Tax is tracking slightly lower than projected and was decreased accordingly. And, Contributions from Other Funds was decreased primarily due to lower Coal Severance Taxes received.

The adjustments to expenditures include changes to the Contributions to the Greater Morgantown CVB and BOPARC as a result of expected changes in Hotel/Motel and Amusement Tax revenues specifically dedicated or required to be provided to these organizations. The Contribution to the Capital Escrow Fund has been increased primarily due to the expected increase in one-time B&O revenues. The increase in Police and Fire Department expenses are driven by a proposed 10% increase in the City's Fire and Police Pension contributions for 2016 and additional fire maintenance costs associated with the used fire truck added to the fleet offset by reductions in the police department wages and

capital outlays for equipment resulting from the change in Municipal Service Fee as noted above. Other increases for departments to complete the fiscal year include:

- City Manager Department increase for contract services related to the MET Theatre and application for the TIGER Grant.
- City Attorney Department increase for salaries, employment taxes, benefits and additional outside legal expenses.
- Data Processing (IT)-Department increase in the capital outlay for Business Analytics software and contract services for Microsoft 360 licensing.
- Signs and Signal Department increase in electric utilities.

Also proposed is an increase in contingency expense to cover unforeseen future expenses.

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

REQUEST FOR REVISION TO APPROVED BUDGET

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

CONTROL NUMBER
 FY: **2015-2016**
 Fund: **General**
 Rev No. **5**
 Pg. of No. **1 of 3**

City of Morgantown
 GOVERNMENT ENTITY

Person To Contact Regarding Request:

Name: **James M. Goff**

Phone: **304-284-7407**

Fax: **304-284-7418**

389 Spruce Street
 STREET OR PO BOX

Municipality
 Government Type

Morgantown 26505
 CITY ZIP CODE

REVENUES: (net each acct.)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
305	Business and Occupation Tax	14,266,000	2,900,000		17,166,000
304	Excise Tax on Utilities	990,000		12,000	978,000
301-02-05	Prior Year Taxes	196,000	59,000		255,000
301-06	Supplemental Taxes	35,000	6,000		41,000
303	Gas and Oil Severance Tax	27,000	36,000		63,000
306	Wine & Liquor Tax	800,000	171,000		971,000

NET INCREASE/(DECREASE) Revenues (ALL PAGES) 3,218,397

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

EXPENDITURES: (net each account category)

(WV CODE 7-1-9)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
901	Visitors Bureau	437,500		12,500	425,000
900	Parks & Recreation	1,271,059	750		1,271,809
444	Contributions / Transfers to Other Funds	3,078,100	1,964,800		5,042,900
700	Police Department	7,581,233	52,123		7,633,356
750	Streets and Highways	2,704,219		12,800	2,691,419
415	City Clerk	164,090	7,000		171,090
417	City Attorney	267,018	52,575		319,593
422	Personnel Office	75,658	13,000		88,658
438	Elections		1,005		1,005
439	Data Processing	191,654	52,000		243,654
706	Fire Department	4,766,343	81,213		4,847,556

NET INCREASE/(DECREASE) Expenditures 3,218,397

APPROVED BY THE STATE AUDITOR

BY: Deputy State Auditor, Local Government Services Division Date

AUTHORIZED SIGNATURE OF ENTITY

APPROVAL DATE

RESOLUTION

WHEREAS, *The City Council of Morgantown, West Virginia, met on May 17, 2016, and passed the following Resolution:*

BE IT RESOLVED THAT THE CITY OF MORGANTOWN *hereby authorizes City Manager, Jeff Mikorski, to act on its behalf to enter into an agreement with the West Virginia Division of Motor Vehicles to apply, receive, and administer grant funds pursuant to provisions of the West Virginia Governor's Highway Safety Program.*

MAYOR

CITY CLERK

CONDITIONS & ASSURANCES

The applicant hereby certifies and assures that it shall comply with the following regulations, policies, guidelines and requirements of the Governor's Highway Safety Program as further clarified in the Highway Safety Administrative Manual.

1. The applicant hereby certifies it has legal authority to apply for the grant: that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of this proposal/application, including all understandings and assurances contained therein, and directly authorizes the person identified as the authorized representative of the applicant to act in connection with the application and to provide such additional information as may be required.
2. **RELATIONSHIP.** The relationship of the Sub-Grantee to the Governor's Highway Safety Program shall be that of an independent contractor, not that of a joint enterprise. The Sub-Grantee shall have no authority to bind the Governor's Highway Safety Program for any obligation or expense without the express prior written approval of the Governor's Highway Safety Program.
3. **LAW OF WEST VIRGINIA.** The proposal/application/contract shall be governed in all respects by the laws of the State of West Virginia. State procedures and practices will apply to all funds disbursed by the Governor's Highway Safety Program.
4. **ACCESS TO RECORDS.** The Governor's Highway Safety Program through any authorized representative will have access to and the right to examine all records, books or documents related to the proposal/application/contract/grant, and to relevant books and records of contractors.
5. **USE OF FUNDS.** Funds awarded by the Governor's Highway Safety Program may be extended only for the purpose and activities specifically covered by the Sub-Grantee's approved project description and budget.
6. **ALLOWABLE/UNALLOWABLE COSTS.** The allowability/unallowability of costs incurred under this grant shall be determined in accordance with general principles and standards for selected cost items set forth in the Highway Safety Administrative Manual.
7. **REPORTS & SUSPENSIONS.** The Sub-Grantee shall submit, at such times and in such form as may be prescribed, such reports as the Governor's Highway Safety Program may reasonably require, including but not limited to fiscal and program progress reports. Failure to submit any required report (i.e. Progress, Fiscal, Activity, etc.) by close of business (C.O.B.) on the designated due date may result in suspension of the project. To reinstate the project, a letter of explanation signed by the Authorized Official, the Project Director, and the Fiscal Director must be submitted promptly to the Governor's Highway Safety Program. More than one suspension in any twelve (12) month project period will automatically terminate the project for the remainder of the project's funding period.
8. **SANCTIONS FOR NONCOMPLIANCE.** In the event of the Sub-Grantee's noncompliance with the terms, conditions, covenants, rules or regulations of this grant, the Governor's Highway Safety Program shall impose such contract sanctions as it may deem appropriate, including but not limited to:
 - a) Withholding of payments to the Sub-Grantee until the Sub-Grantee complies, or
 - b) Cancellation, termination or suspension of the contract in whole or in part, or
 - c) Refrain from extending any further assistance to the Sub-Grantee until satisfactory assurance of future compliance has been received from the Sub-Grantee.
9. **WRITTEN APPROVAL OF CHANGES.** The Sub-Grantee must obtain prior written approval from the Governor's Highway Safety Program for **all** changes relating to the scope of the project and for **all** financial adjustments between major budget categories.
10. **MATCHING CONTRIBUTION.** The Sub-Grantee will have available, and will expend as needed, adequate resources to defray that portion of the total costs as set forth in the proposal as "Local Funds" and as approved by the Governor's Highway Safety Program.

11. **PROJECT INCOME**. All income earned by the Sub-Grantee as a result of the conduct of this project, must be accounted for and included in the total budget.
12. **DISCRIMINATION PROHIBITED**. No person shall, on the grounds of race, color, sex or national origin, be excluded from participation in, be refused the benefits of, or to be otherwise subjected to discrimination under grants awarded by the Governor's Highway Safety Program.
13. **AUDIT**. It is the responsibility of the Sub-grantee to provide for the performance of an independent audit as detailed in the Highway Safety Administrative Manual. The Sub-Grantee further agrees to submit a copy of each audit to the Governor's Highway Safety Program, including a systematic statement for the timely and appropriate resolution of findings or recommendations.
14. **CONSULTANT/CONTRACTS**. No agreement or contract may be entered into by the Sub-Grantee for the execution of project activities or provisions of service which is not incorporated in the approved grant, and/or without the prior written permission of the Governor's Highway Safety Program. Grant approval does not constitute consultant/contract approval.
15. **PROPERTY ACCOUNTABILITY**. The Sub-Grantee shall establish and administer a system to control, protect, preserve, use, maintain, and dispose of any property or equipment furnished by the Governor's Highway Safety Program. The obligation continues as long as the property is retained by the Sub-Grantee notwithstanding the expiration of this agreement. Prior to the sale, trade-in, or disposal of property, disposition instructions will be obtained from the Governor's Highway Safety Program. The Sub-Grantee assures that all property shall be made available to the Governor's Highway Safety Program for inspection/inventory at the request of the Governor's Highway Safety Program.
16. **ACCOUNTING REQUIREMENTS**. Sub-Grantee agrees to record all project funds and costs following generally accepted accounting principles. A separate account number or cost recording must separate all project costs from the Sub-Grantee's other or general expenditures. Adequate documentation for all project costs and incomes must be maintained. Adequate documentation of financial and supporting materials, as defined in the Highway Safety Administrative Manual, must be retained and be available for audit purposes.
17. **OBLIGATION OF PROJECT FUNDS**. Funds may not, without prior written approval from the Governor's Highway Safety Program, be obligated prior to the effective date or subsequent to the termination date of the project period. Obligations outstanding as of the termination date shall be liquidated within thirty days.
18. **ASSUMPTION OF FUNDING**. The Sub-Grantee will assume the funding of improvements after a reasonable period of assistance.
19. **REPORTING OF IRREGULARITIES**. Sub-Grantees are responsible for reporting promptly to the Governor's Highway Safety Program the nature and circumstances surrounding any fiscal irregularities discovered. Failure to report known irregularities may result in suspension of the grant or other remedial action determined by the Governor's Highway Safety Program.
20. **PUBLIC AVAILABILITY OF INFORMATION**. The Sub-Grantee agrees to comply with the terms and conditions of pertinent Federal and State Freedom of Information Acts, and to require its contractors to comply with these requirements.
21. **CONFLICT OF INTEREST**. No public official or employee of the State of West Virginia, who performs any duties under the project, may participate in any administrative decision with respect to this project, if such a decision can be expected to result in any benefit or remuneration to him or his or his immediate family.
22. **CANCELLATION PROVISION**. If this project is not started within thirty days of the grant award, the Sub-Grantee will report to the Governor's Highway Safety Program by letter the steps taken to initiate the project. If after sixty days from the date of the grant award the project is still not operational, a further statement explaining the delay will be submitted by the Sub-Grantee to the Governor's Highway Safety Program. Upon receipt of the sixty-day letter, and unless warranted by extenuating circumstances, the Governor's Highway Safety Program will cancel the project and redistribute the funds to other projects.
23. **CRIMINAL PENALTIES**. Whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property which are the subject of this grant, or whoever knowingly and willingly falsifies, conceals or covers up by trick, scheme, or device any material fact in any application/contract for assistance submitted to the Governor's Highway Safety Program shall be subject to prosecution.

24. **MEETINGS.** Sub-Grantee assures that the Project Director, Fiscal Officer (or designee), and/or the Authorized Official (or designee) will attend any meeting, conference, workshop, or other similar function as deemed necessary by the Governor's Highway Safety Program for administration of this project. Additionally, the Sub-Grantee assures that the Project Director will cooperate and fully participate with staff of the Governor's Highway Safety Program and Law Enforcement Liaisons during statewide initiatives and campaigns.
25. **TRAVEL.** All out of state travel to be reimbursed under any Highway Safety grant must receive written approval in advance from the Governor's Highway Safety Program. All estimated travel expenses (per diem, registration, transportation, etc.) must be included with the request for out of state travel. All Requests for Reimbursements for travel expenses must be submitted to the Governor's Highway Safety Program within 2 months of the travel dates.
26. **PARTICIPATION.** Law enforcement agencies/officers must be an active participant in Highway Safety/NHTSA funded initiatives in order to receive any Highway Safety Program/NHTSA funded benefit, such as highway safety related equipment, training, conference attendance, reimbursement for enforcement (not to exceed the officer's time and one half rate of pay), etc.
27. **STATEWIDE MEDIA.** Statewide media costs incurred by the GHSP are accepted and recognized by the Grantee as a supplemental benefit to complement their local and regional law enforcement efforts.
28. **SEAT BELT POLICY.** Any law enforcement agency receiving Highway Safety funds must have a written seat belt use policy in place for their agency. A copy of this policy, which must outline sanctions for non-compliance with the policy, must be on file with their respective Regional Coordinator.
29. **REGIONAL COORDINATOR.** In the event that the position of Regional Coordinator becomes available, the Governor's Highway Safety Program must be involved in the selection process of filling the position, and must give final approval of hiring the individual selected.
30. **REQUIRED ACTIVITIES.** Failure to complete the "Coordinator's Required Activities" may result in temporary or permanent suspension of the program. It is imperative to the success of the Highway Safety Program that these activities be implemented. If a particular activity cannot be completed, a written detailed explanation must be submitted to the Program Manager as to why it cannot be completed.
31. **FINAL REQUEST FOR REIMBURSEMENT.** Sub-grantees must submit a Final Request for Reimbursement to the Governor's Highway Safety Program no later than November 15 for the preceding fiscal year, and must include **all** expenditures made prior to October 1. Any Request for Reimbursement submitted after November 15 for funds expended prior to October 1 of the preceding fiscal year will be denied.
32. **EQUIPMENT.** Computers/laptops/tablets may not be purchased by any sub-grantee without prior written approval by the Director, Federal Programs Administrator, or State Programs Administrator of the GHSP. Any equipment with a total cost of \$5,000 or more per item must receive written prior approval from the NHTSA Region 3 office (and submitted by the GHSP). Additionally, any individual item costing \$5,000 or more must meet the **BUY AMERICA** guidelines set forth by NHTSA.

In accordance with the Conditions and Assurance Pages 5 - 7, and without limiting same, we certify this application is an accurate and complete description of the project to be considered for receiving Highway Safety funds. We further agree this application shall be binding upon the applicant, assignees, transferees, lessees, and successors in interest. These assurances shall also be binding through every modification or amendment to the project.

Signature of Authorized Official
(Required)

Date

Lt. M.D. Solomon

Signature of Project Director
(Required)

05-06-2017

Date

**A RESOLUTION ESTABLISHING GARRETT STREET AS THE
HONORARY GENE ARDEN VANCE JR MEMORIAL DRIVE**

Whereas, the City of Morgantown wishes to honor the memory of Sgt. Gene Vance, from a request by The Gene Vance Jr. Foundation, a West Virginia and Morgantown resident and soldier that made the ultimate sacrifice for the United State of America ; and

Whereas, In December, 2001, after the terrible events of September 11, 2001, Support Company 2nd Battalion, 19th Special Forces of Kenova was activated and SSG Gene Arden Vance, Jr., became a part of Operation Enduring Freedom; and

Whereas, On May 19, 2002, SSG Gene Arden Vance, Jr., was on a mission in Afghanistan to extract Taliban and al-Qaida forces when his group was ambushed. Sadly, SSG Gene Arden Vance, Jr., was killed in action. He was the first West Virginia National Guardsman to be killed in action since World War II.

Now, Therefore, Be It Resolved, the City Council of Morgantown, West Virginia, honors the memory of Sgt. Gene Vance by establishing Garrett Street, from University Avenue north to the Moore Street, as the Honorary Gene Arden Vance Jr Memorial Drive. The City of Morgantown will install appropriate signage to designate the honorary designation.

Adopted this 17st day of May, 2016.

MAYOR

CITY CLERK