



Office of the City Clerk

The City of Morgantown

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AGENDA MORGANTOWN CITY COUNCIL REGULAR MEETING

June 21, 2016

7:00 p.m.

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **PLEDGE TO THE FLAG**
4. **APPROVAL OF MINUTES:** COW Meeting Minutes May 31, 2016, and Regular Meeting Minutes June 7, 2016.
5. **CORRESPONDENCE:** Proclamation-CTA Highflyers
6. **PUBLIC HEARINGS:**
 - A. AN ORDINANCE ESTABLISHING THE RATES OF COMPENSATION FOR THE CITY OF MORGANTOWN EMPLOYEES FOR THE FISCAL YEAR 2016-2017.
 - B. AN ORDINANCE AMENDING SECTIONS III-1(B) (LONGEVITY PAY), III-3(B) (SHIFT DIFFERENTIAL), III-4 (HAZARDOUS DUTY PAY), AND III-5 (SPECIAL SUPERVISION DIFFERENTIAL) OF THE PERSONNEL RULES OF THE CITY OF MORGANTOWN BY INCREASING THE MONETARY AMOUNTS WITHIN EACH.
 - C. AN ORDINANCE AUTHORIZING AN AGREEMENT WITH KLM PROPERTIES, INC. TO LIST RENTAL SPACE AT THE MORGANTOWN MUNICIPAL AIRPORT.
 - D. AN ORDINANCE AMENDING CITY CODE SECTION 155.03 PROVIDING FOR THE COMPOSITION AND MEMBERSHIP OF THE PARKING AUTHORITY.
 - E. 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.

7. UNFINISHED BUSINESS:

- A. Consideration of APPROVAL of (SECOND READING) and (ADOPTION) of AN ORDINANCE ESTABLISHING THE RATES OF COMPENSATION FOR THE CITY OF MORGANTOWN EMPLOYEES FOR THE FISCAL YEAR 2016-2017. (First reading June 7, 2016)**
- B. Consideration of APPROVAL of (SECOND READING) and (ADOPTION) of AN ORDINANCE AMENDING SECTIONS III-1(B) (LONGEVITY PAY), III-3(B) (SHIFT DIFFERENTIAL), III-4 (HAZARDOUS DUTY PAY), AND III-5 (SPECIAL SUPERVISION DIFFERENTIAL) OF THE PERSONNEL RULES OF THE CITY OF MORGANTOWN BY INCREASING THE MONETARY AMOUNTS WITHIN EACH. (First reading June 7, 2016)**
- C. Consideration of APPROVAL of (SECOND READING) and (ADOPTION) of AN ORDINANCE AUTHORIZING AN AGREEMENT WITH KLM PROPERTIES, INC. TO LIST RENTAL SPACE AT THE MORGANTOWN MUNICIPAL AIRPORT. (First reading June 7, 2016)**
- D. Consideration of APPROVAL of (SECOND READING) and (ADOPTION) of AN ORDINANCE AMENDING CITY CODE SECTION 155.03 PROVIDING FOR THE COMPOSITION AND MEMBERSHIP OF THE PARKING AUTHORITY. (First reading June 7, 2016)**
- E. Consideration 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 and Adopted May 3, 2016) (Public Hearing, second reading and Tabled May 17, 2016) (Placed on agenda for discussion on June 7, 2016 take off of the table and stays on the table for June 7, 2016)**
- F. 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 **A RESOLUTION AUTHORIZING AN AGREEMENT WITH WEST VIRGINIA UNIVERSITY FOR PARTNERSHIP IN OPERATION OF THE METROPOLITAN THEATRE.**
11. **CITY MANAGER'S REPORT:**
 - New Business:**
 1. State Contract purchase for Public Works Department
 2. 2016 Urban Deer Archery Hunt Requirements and Rules
12. **REPORT FROM CITY CLERK:**
13. **REPORT FROM CITY ATTORNEY:**
14. **REPORT FROM COUNCIL MEMBERS:**
15. **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
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MORGANTOWN, WEST VIRGINIA 26505
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Wednesday, June 15, 2016

City Manager's Report for City Council Meeting on June 21, 2016

New Business:

1. State Contract purchase for Public Works Department

In order to improve the equipment and services to the residents in the summer and winter, funds from the Safe Streets and Safe Community will be used to purchase two Public Works vehicles. Pursuant to City Code, State contract purchases require City Council approval. As seen on the attached memo from Damien Davis, City Engineer and Public Works Director, the City is interested in purchasing two dump trucks with snow plows for a total cost of \$111,193.12 from Matheny Motors in Parkersburg, WV.

I recommend the purchase by State contract utilizing the Safe Streets and Safe Community Municipal Fee proceeds.

2. 2016 Urban Deer Archery Hunt Requirements and Rules

Attached are the proposed 2016 Urban Deer Archery Hunt hunter requirements and rules. This year the Archery Hunt will take place from September 3 to December 31, 2016. Listed are the locations that hunters will be positioned, which includes the change that hunters will not be located in the City parks. New hunter enrollment will not take place this year due to the amount of hunters already signed up and a reduction in the number of locations. I recommend City Council approve the proposed hunter requirements for the 2016 Urban Deer Archery Hunt.

Jeff Mikorski ICMA-CM,
Morgantown City Manager

Memo

City of Morgantown Department of Public Works and Engineering

To: Jeff Mikorski, City Manager
From: Damien Davis, Public Works Director 
Subject: Vehicle Purchase
Date: June 2, 2016

Mr. Mikorski,

Per City Ordinance 129.05(e) I am requesting Council approval to forgo the competitive bidding process and purchase the below vehicles from Matheny Motors through the Statewide Contract. The Statewide contract is a competitively bid contract between the state and a vendor which is used by all state agencies and some political subdivisions, such as municipalities, counties, boards of education, to purchase frequently-used commodities and services.

These vehicles will be used for plowing and maintaining roads in the winter and roadway maintenance projects during the summer construction season.

2 – 2016 GMC 3500 w/stainless steel dump bed and Meyer Snow Plow - \$ 55,596.56
Total - \$ 111,193.12

129.05 PURCHASES AND CONTRACTS; PUBLIC BIDDING.

(e) Any materials, supplies, or equipment - including motor vehicles, - may be purchased pursuant to an agreement with the Director of the West Virginia Department of Finance and Administration, Division of Purchases or pursuant to an agreement with one or more other municipalities, counties or county boards of education, or any combination thereof, for centralized purchasing for all governmental units which are parties to such agreement. Purchases made under any of these agreements are not subject to the City's competitive bidding requirements provided in this section, but such purchases shall be approved by Council.

MORGANTOWN CITY MANAGER'S HUNTER REQUIREMENTS AND RULES PERTAINING TO THE CITY OF MORGANTOWN'S URBAN DEER ARCHERY HUNT

September 3 - December 31, 2016

Hunter Requirements

1. Hunters must have a valid West Virginia hunting license.
2. Hunters must complete all parts of the hunt application.
3. Hunters must successfully complete the Bowhunter Education Course.
4. Hunters must successfully complete an archery proficiency test.

Rules

1. Hunters shall park only in designated parking areas.
2. Hunters shall treat everyone they meet with courtesy and respect.
3. Hunters shall not litter.
4. Hunters shall obey all West Virginia game laws.
5. Hunters will be selected and assigned locations by the City Manager or his designee. A completed application is not a guarantee that a hunter will be selected. The City Manager or his designee will attempt to assign all qualified hunters, but there may be more qualified applicants than hunting locations.
6. Locations for the hunt include, but are not exclusive to:
 - a. Chalfant Avenue properties (2)
 - b. Conrad Place/White Avenue adjacent properties (3)
 - c. Sheldon Avenue woodlot
 - d. Green Bag Road hillside
 - e. Harner Street
 - f. Koontz Avenue
 - g. Liberty Street
 - h. Logan Avenue
 - i. Norwood neighborhood (surrounding woodlots)
 - j. Penninsula Avenue
 - k. Sheldon Avenue
 - l. Southpoint Circle (4 parcels)
 - m. West Virginia University properties
 - i. Core Arboretum
 - ii. Dairy Farm
 - iii. Farm woodlot

- iv. Falling Run hollow
- v. Monongahela Boulevard hillside
- vi. Motor Pool woodlot
- vii. Organic Farm
- viii. Van Voorhis woodlot

7. All hunters, prior to receiving a permit authorizing him or her to participate in the hunt, must agree to hold harmless the City of Morgantown, City of Morgantown employees and officials, and the owner of the realty upon which they will be hunting from any and all claims for personal injury, death, or property damage arising as a result of the hunter participating in the hunt.
8. No person, without first receiving written permission from the City Manager or his designee, may accompany a hunter while he or she is participating in this hunt.
9. Permits must be on a hunter at all times while hunting.
10. Portable, ladder or climbing stands are required for all hunters except for those who are physically disabled and have been issued a valid Class Y hunting license by the State of West Virginia or for sites where a ground blind has been approved.
11. Stalking deer on the ground is prohibited. This includes walking to and from designated hunting sites.
12. Those hunting from an elevated tree stands must use a full-body safety harness while in the tree.
13. The hunter's name and sequential numbers must be on all arrows used while hunting, i.e. J. Miller #1, J. Miller #2, J. Miller #3.
14. Shots of 25 yards or more shall not be taken.
15. A maximum of 7 deer can be taken by each hunter on their urban season tags (5 antlerless deer, 2 bucks). Additional deer can be taken on a hunter's regular West Virginia license providing they have the correct stamps for the corresponding seasons.
16. In pursuance of the City of Morgantown's deer management goals and the West Virginia DNR regulations, an antlerless deer is required to be taken first. After that, 2 bucks can be taken as long as the second buck is preceded by an antlerless harvest.
17. Two deer may be taken per day and can be checked-in at the same time. While two does or a buck and a doe can be taken in the same day, two bucks cannot be taken in the same day.
18. If a wounded deer leaves the boundary of the designated hunting area, the hunter shall not pursue the deer onto another's realty without first obtaining the permission of the owner of the realty upon which the hunter wishes to enter. The hunter shall not fire his/her bow once he/she leaves the designated hunt area assigned to him or her. If the wounded deer is located, while alive, on another's property, the hunter must contact the Morgantown Police Department at (304) 284-7522. The hunter shall identify himself/herself as a participant in the Morgantown Urban Deer Archery Hunt, and request assistance from the Police Department in retrieving the deer.
19. If a property owner does not give the hunter permission to enter his or her property to search for a wounded deer, the hunter shall inform the property owner that he or she can call (304) 284-7522 to have the deer removed from his or her property.

20. Under no situation will entrails be left on any property. A carcass is to be removed in its entirety or have entrails placed in plastic bags, removed from the property and properly discarded. (Please provide your own bags for this purpose.)
21. All deer must be checked-in using West Virginia DNR's new check-in system by either:
 - a. Calling **1-844-WVCheck** or
 - b. Logging in to **<https://wvhunt.com/>**
22. Once the deer is checked-in, hunters must report their harvest(s) to Rick Bebout by phone or text at 304-290-7205. This is mandatory for internal record-keeping.
23. Hunters shall be required to comply with any additional restrictions set by the hunting realty owner which do not conflict with the City Manager's Rules, the Morgantown City Code, the general statutory laws of the State of West Virginia, and the Rules and Regulations of the West Virginia DNR.
24. At the request of an owner of realty upon which the hunt will be conducted, the City Manager may set specific timed periods of the day in which hunting will be allowed on a specific property.
25. Failure to comply with any of the above requirements may result in a hunter's removal from participating in the City of Morgantown's archery hunt.
26. Before being issued a permit to participate in the hunt, all selected hunters must agree in writing to the foregoing rules.



Jeff Mikorski, ICMA_CM
City Manager

6/15/16
Date

COMMITTEE OF THE WHOLE MEETING May 31, 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 May 31, 2016 at 7:00 p.m.

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

Deputy Mayor Kawecki called the meeting to order.

PRESENTATIONS:

1. Metropolitan Theatre Management Agreement Proposal. (Exhibit A)

Ron Justice, WVU State Corporate & Local Specialist and Paul Krieder Dean of WVU College of Creative Arts introduced themselves to Council and noted they are here this evening to discuss the future management of the Met.

Mr. Justice noted that he is excited about the collaboration and the management of the MET and the future development of the Arts in Morgantown. Mr. Justice mentioned to Council that WVU's priority is maintaining the theatres community aspect, rental rates will remain low, but also the theatres current clients will continue to receive priority scheduling.

Mr. Krieder explained that Joe Kachler will oversee the technical part of theater and the new person will take over the management of the theater. He stated that there would be two graduate assistants, student workers and undergraduates will work in the theatre. He noted that this would offer the students a hands-on environment studying creative arts. He reminded Council that this agreement is a one-year pilot program and he will meet with the City Manager, Jeff Mikorski as needed to help it survive and drive its success.

City Council noted their concerns and asked questions. City Manager, Jeff Mikorski stated that the agreement presented this evening is a draft version and once a final agreement is ready it will come back to Council for action at a Regular Meeting.

2. 2016 Morgantown Marathon:

Jamie Summerlin, Race Organizer, thanked the City for their support for last year's marathon and updated Council on this year's event. He stated that the marathon brings visitors to the community for other events happening for example Wine and Jazz Festival is the same weekend, which gives, family members staying at hotels something to do and display Morgantown. Mr. Summerlin thanked Council for letting him speak to them and presented an updated flyer for each Councilor.

City Council had no questions at this time. No action on this item.

3. Children's Discovery Museum

Julie Bryan, Director of WV Children's Discovery Museum, which name changed to

SPARK, presented a power point about their educational programs. She commented she loves designing hands-on exhibits that encourage children and adults to explore science and engineering. She is passionate about ensuring people of all socio-economic backgrounds have the opportunity to use the outstanding exhibits. She is hoping the program mission will inspire children and grown-ups to explore, discover, and grow together.

Mayor Shamberger complemented Ms. Bryan on her educational programing for children and families. She then asked her if she thought about when they would be considering being open longer hours.

Ms. Bryan stated that they are hoping to not only be open more but also have their own building soon.

No action on this item.

4. Upper Falling Run TIF District (Exhibit B)

John Marty's, Director Morgantown Housing Authority, explained that this project would be able to house to persons with a moderate income, adults only (55 and older), 242 residential units (48 assisted living units), affordable rates and amenities included.

Attorney Brian Helmick, Thomas and Battle, explained that TIF projects will capture property tax revenues gained by developing a discrete geographic area and uses that increase to assist in paying for approved TIF project Plans. He stated that TIF funding makes it possible to help fund economic development and public infrastructure projects. He commented that Upper Falling Run Project would generate approximately \$5 to \$6 million dollars.

City Council noted their concerns and asked questions. Resolution for TIF District will be on the June 7th, 2016 Agenda for Council consideration.

5. Stewart and University Avenue Greenspace (Exhibit C)

Phil Cole, Wallace Pacher Group, presented a power point on the University & Stewart Street explaining the site issues, proposed plan and design to Council.

City Council noted their concerns and asked questions. No action at this time.

PUBLIC PORTION:

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

Wesley Nugent, 126 Willowdale Road, stated that he is addressing City Council tonight as a citizen, because the chair gave the indication beyond inciting controversy in permitting me to speak at the end of the meeting about pending litigation. He said that the removal petition and subsequent hearing pointed out violations of the city's charter for which removal is mandated. He commented that this controversy has damaged council's integrity and compromised city administration operations, and should not continue. He is urging Councilors Redmond and Bane to join him in resolving this issue and abide by the charter for removal action. He suggested that the issue be reviewed and be placed on the June 21, 2016

Regular Meeting or at a Special Meeting for action.

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

ITEMS FOR DISCUSSION:

1. Planning and Zoning Code Text Amendment protocol:

Deputy Mayor Kawecki requested City Managers, Jeff Mikorski to explain: City Manager Jeff Mikorski explained text amendment. Council referred the Ordinance to the Regular Agenda by consensus.

2. Agreement with KLM Properties for space at Airport:

Deputy Mayor Kawecki requested City Managers, Jeff Mikorski to explain: City Manager Jeff Mikorski explained text amendment. Council referred the Ordinance to the Regular Agenda by consensus.

3. Parking Authority Amendment on Membership:

Deputy Mayor Kawecki requested that City Manager, Jeff Mikorski, explain: 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.
Council referred the Ordinance to the Regular Agenda by consensus.

**THE METROPOLITAN THEATRE & AMPHITHEATRE
COLLABORATION AND MANAGEMENT AGREEMENT**

THIS AGREEMENT, made on this ____ day of ~~April~~ May, 2016, by and between the CITY OF MORGANTOWN (“CITY”), a municipal corporation organized and existing under the laws of the State of West Virginia, and West Virginia University Board of Governors on behalf of West Virginia University (“WVU”) by and through its College of Creative Arts (“CCA”), an institution of higher education and agency of the State of West Virginia.

WHEREAS, ~~Morgantown~~ the CITY is the owner of a theatre, known as the Metropolitan Theatre, and an amphitheater, known as the Amphitheatre in Hazel Ruby McQuain Riverfront Park in Morgantown (collectively referred to as the “~~Morgantown Theatres~~”);

WHEREAS, CCA offers extensive academic programs in art, music, theatre and dance;

WHEREAS, the CITY desires for CCA to manage and operate the ~~Morgantown Theatres~~ Theatre;

WHEREAS, WVU and CCA, desires to provide such services; and

THEREFORE, in furtherance of the above-referenced goals and objectives, CCA and the City agree to the following:

1. RATIONALE AND PURPOSE.

- a. By collaborating with CCA to make use of the variety of expertise among its staff and faculty the CITY is taking affirmative steps to increase the quantity and maintain the quality of productions at the ~~Morgantown Theatres~~ Theatre. Likewise, by collaborating with the CITY to manage the ~~Morgantown Theatres~~ Theatre, CCA can have access to additional local theatre opportunities for faculty, staff, and students. Further, ~~the~~ CCA in association with the CITY, can contribute to the economic and cultural development of the community and region.
- b. Notwithstanding the foregoing, CCA is first and foremost an academic entity that offers extensive academic programs in art, music, theatre and dance; therefore, in order to ensure a successful implementation of this Agreement, it is expected that the CITY in cooperation with the Metropolitan Theatre Commission will remain an active participant in funding certain aspects of the operation of the ~~Morgantown Theatres~~ Theatre.

2. EXCLUSIVE RIGHTS GRANTED.

- a. In furtherance of the rationale stated above and subject to the terms and conditions of this Agreement, the CITY grants to WVU and CCA the exclusive

right to provide the following services with respect to the Morgantown ~~Theatres~~Theatre (sometimes referred to as the "Premises"):

- (1) Promoting theater arts;
 - (2) Producing theatrical plays, improvisations and related performances arts;
 - (3) Scheduling events;
 - (4) Staffing the Morgantown ~~Theatres~~Theatre, including the box office ~~(upon its completion) with the agreed understanding that reserves the right to employ and evaluate all staff who are currently working in management and facilitation of the Premises;~~
 - (5) Conducting certain workshops and classes in theater and related performance arts.
- b. The CITY shall give CCA, its employees, agents, independent contractors, invitees, licensees, clients, patrons, students and attendees, access in and to the premises from available access ways and shall also give access to the loading dock area.
- c. Further, ~~it is expected and anticipated that~~ CCA desires to shall utilize the basement of the ~~Metropolitan~~Theatre for the following purposes:;
- (1) Training of student workers and student management staff to help run the ~~Metropolitan~~Theatre;
 - (2) Conduct classes and establish "lab space" for student to explore the music industry and arts management programs; and
 - (3) Establish a recording facility for academic and professional purposes.

To the extent that the basement is currently occupied, the CITY agrees to grant CCA the possession of the basement and, provided that the parties mutually agree upon the rental terms, make it available to CCA as soon as such space is available. Further, the CITY will cooperate with and support CCA's efforts to negotiate with the current occupants.

3. LICENSE GRANTED; NO LEASE. This Agreement is a license to the WVU and CCA to provide certain services on the terms and conditions provided herein and shall not be construed as a lease, sublease or rental agreement.
4. HOURS OF OPERATION; TICKET SALES. CCA shall establish reasonable hours of operation for the box office and for scheduling of events. For the avoidance of doubt, CCA commits to having staff present on the Premises before, during, and after each performance or scheduled use of the Morgantown ~~Theatres~~Theatre. With respect to ticket sales, the ~~Metropolitan~~Theatre box office will be open one hour prior to any event. The box office will also sell tickets for events that are scheduled at the Theatre; CCA events held at other venues, including the WVU Creative Arts Center; and other events that are

promoted by WVU Arts & Entertainment. Furthermore, all users/renters of the Morgantown Theatres Theatre may elect to sell tickets via Ticketmaster through WVU's current agreement and the WVU Box Office system; therefore, thereby making tickets available for sale online via Ticketmaster, by calling 304-293-SHOW, at the Creative Arts Center box office, and at the Mountainlair box office. Users/renters of the Theatre who choose to use the Ticketmaster and WVU Box Office, must opt in and pay the standard costs associated with the Ticketmaster system.

5. TERM. The initial term of this Agreement shall be twelve (12) months; provided that by mutual agreement of the parties the term may be extended from time to time. Either party may initiate the termination of this Agreement upon thirty (30) days written notice to the other party. Following the delivery of such notice, the CITY and CCA will meet and confer to determine the most efficient means of winding down the agreement in light of previously scheduled events and/or performances.
6. FINANCIAL CONSIDERATION. In exchange for and as consideration of the rights granted to and the services to be provided by WVU and CCA pursuant to this Agreement, CCA shall collect all rental and box office revenues and, out of such revenues, CCA shall remit all applicable municipal amusement taxes. The remaining revenues shall be used to cover CCA's costs and expenses associated with the commitments stated in this Agreement; ~~thereafter, all remaining revenues shall be reinvested back into the Morgantown Theatres.~~
7. UTILITIES; SNOW REMOVAL; CUSTODIAL SERVICES; TRASH REMOVAL. CITY shall provide CCA with all utilities (electricity, water, and gas and sewer services); ice and snow removal from sidewalks, driveways and parking areas; and trash removal services. CCA agrees to provide all custodial services at the Theatre.
8. STAFFING TO BE PROVIDED BY CITY.
 - a. Except as otherwise noted in this Agreement, during the pilot year of this Agreement, CCA may call upon the CITY to provide its existing Theatre staff to assist with technical work within the Theatre. In exchange for the use of the CITY's existing Theatre staff, CCA shall remit to the CITY \$50,000 for one (1) FTE payable to the City in two equal payments. The City shall submit separate invoices to CCA in December 2016 and again in May 2017.
 - b. The CCA will provide to the City and its staff a list of duties and expectations upon which staff will be evaluated. In the performance of such duties, staff will report directly to the CCA and work according to a schedule determined by CCA. Representatives from CCA and CITY shall meet quarterly to discuss and evaluate the performance of CITY staff and to discuss changes (if any) to protocols related to the staffing provided by CITY.

- c. As the pilot year of this Agreement ends, the CCA and the CITY shall determine whether the staffing arrangement described above is to continue or modified in future years (in the event that the Agreement is extended).

8.9. RESERVED RESPONSIBILITIES AND OBLIGATIONS OF THE CITY.

- a. The CITY agrees to retain responsibility for all major structural repairs to the Premises, once it has been given written notice by CCA of the need for the repair to be made; accordingly, the CITY shall annually allocate funding to affect necessary repairs and replacements to the facilities and its equipment. Notwithstanding the foregoing, the CITY will also be responsible to remedy unforeseen major facility issues as they occur.
- b. The CITY agrees to receive and review any deferred maintenance plan prepared by, or on behalf of, CCA pursuant to Section 9.b. below; further, the CITY agrees to take affirmative steps to fund, where possible, such plan or, in the alternatives, work with CCA to identify funding sources for such plan.
- ~~e. The CITY shall cause BOPARC to be responsible for all maintenance of the Amphitheatre in Hazel Ruby McQuain Riverfront Park.~~
- c. The CITY agrees to provide to CCA leases or reservation agreements that are currently in effect for the upcoming year(s); and any and all documentation relating to, or identifying, events that were regularly scheduled to occur within the Premises; user names, passwords, or other information necessary to login and control social media accounts that are currently associated with the Theatre. The CITY also agrees that, to the extent necessary, CCA may create new social media accounts to be associated with the Theatre.
- d. The CITY reserves for the Metropolitan Theatre Commission the right to introduce and sell concessions at the Theatre; any and all proceeds will be used to fund a deferred maintenance fund.
- ~~d.e.~~ The CITY, with assistance from CCA, agrees to prepare an inventory of all existing equipment, including sound and stage, within the Theatre.

9.10. SPECIFIC ADDITIONAL RESPONSIBILITIES OF CCA.

- a. Upon execution of this Agreement, CCA will assist the City with the preparation of an inventory of all existing equipment, including sound and stage, within the Theatre.
- b. During the term of this Agreement, CCA will be responsible for repairing or holding users of the Theatre responsible for the repairs of the CITY's equipment that may become damaged or no longer in working order. Notwithstanding the

foregoing, all equipment that is currently in the Theatre or is repaired or replaced will remain the property of the CITY.

c. Within the first year of this Agreement, CCA, with cooperation from the Metropolitan Theatre Commission, will assess the Theatre and present the City with a reasonable deferred maintenance plan for the facility; thereafter, should this Agreement be extended and to the extent that the City does not provide funding for the plan, CCA will collectively work the City to identify funding sources for such plan.

a.d. CCA agrees to immediately notify the CITY in writing of any major structural repairs that must be performed on the Premises during the term of this Agreement and any extensions granted hereto. "Major structural repairs" shall include, but not be limited to: Boiler repair and or replacement; HVAC repair and or replacement; structural repairs to the buildings (including roof repair).

b. ~~Within the first year of this Agreement, CCA will assess the Metropolitan Theatre and present the City with a reasonable deferred maintenance plan for the facility; thereafter, should this Agreement be extended and to the extent that the City does not provide funding for the plan, CCA will collectively work the City to identify funding sources for such plan.~~

e.e. CCA agrees to obtain written permission from the CITY before changing or altering the premises or any part thereof. This shall include, but not be limited to painting of interior or exterior surfaces.

d.f. CCA agrees to work with the Morgantown Parking Authority in order to reserve metered spaces in front of and adjacent to the Premises.

e.g. The Premises shall at all times be open to inspection of the CITY and its agents. The Premises shall be open to the CITY and its agents to show for purchase, mortgage or lease.

f.h. CCA shall make a reasonable effort to establish a standard set of rates that apply to the price of admission for theatrical productions and the rates charged for the use of the Premises by third parties. ~~The foregoing established rates shall apply to Special Event Productions, including one-night concerts, short-term ventures of one weekend or less, parties and fund-raising events.~~ Discount performances shall be provided to senior citizens and students. The charges for fund-raising performances by non-profit organizations may be at rates decided between any such organization and CCA; provided that rates applicable to community organizations (i.e., organizations based out of Monongalia County) will be subject to review and approval by the Metropolitan Theatre Commission.

i. CCA will develop a marketing and advertising plan for the Metropolitan Theatre; such plan will include a social media campaign. When appropriate, CCA shall note the CITY's support of community based theater by using the phrase "In

cooperation with the City of Morgantown” in all of its advertising and notices concerning activities, workshops, and other functions at the Premises. Said notation shall be approved in advance by the CITY’s designee.

g.j. At least once per year, CCA will coordinate a fundraising event to benefit the Theatre.

h.k. CCA shall give reasonable advanced written notice to the CITY’s designee of all productions, shows, and other functions occurring at the Premises.

i.l. CCA shall give quarterly written evaluation reports on presented workshops, productions, classes, etc., to the CITY’s designee.

10.11. IMPLEMENTATION, COOPERATION, AND COMMUNICATIONS.

- a. During the initial term of this Agreement, the existing per seat charge will remain unchanged; thereafter, should this Agreement be extended, representatives of the City and CCA will meet and agree on per seat charges that may be applied to some or all events that once collected will be allocated to specific expenses (such as necessary repairs and the replacements to the facilities and its of equipment).
- b. As appropriate, the CITY and CCA will work together to create and conduct special fund-raising events benefit the Premises Theatre each year.
- c. CCA and the CITY mutually agree and acknowledge that the implementation of this Agreement will likely impact other agencies or authorities within Monongalia County. Accordingly, this Agreement will be implemented as a pilot program during which time representatives of WVU, CCA, and the CITY shall meet and confer at least biannually to evaluate the continued benefit of the Agreement and determine whether any modifications should be considered.

11.12. MISCELLANEOUS PROVISIONS.

- a. The City and WVU will maintain appropriate liability insurance and take other prudent budgetary actions to foster this Agreement and maintain the Premises. For the avoidance of doubt, each party shall be solely responsible for any and all claims and liability for loss, damage or injury or death of third parties caused by or attributable to its own employees engaged in activities in support of this Agreement.
- b. The financial obligations outlined within this Agreement that are payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and or otherwise made available.

- c. WVU and CCA shall not assign this Agreement, nor lease, sublease or license the use of the Premises or any part thereof, nor make alterations therein, or use the same for any purpose but that hereinbefore authorize, without prior written permission from CITY, but will deliver up the same at the expiration or sooner termination of this Agreement in as good a condition as it is now, ordinary wear and tear expected.
- d. Any improvements or alterations to the Premises shall be considered a fixture when attached to the Premises and shall become the property of the CITY upon the termination of this Agreement unless CITY requires CCA to remove any fixture. All improvements or alterations, including but not limited to directional and advertising signs, must be approved by CITY in advance and in writing.
- e. The parties shall mutually discuss and agree upon the provision of any additional security that is above and beyond that which is currently being provided by the CITY for the Premises.

12.13. GOVERNING LAW. This Agreement shall be construed according to the laws of the State of West Virginia.

13.14. ENTIRE AGREEMENT AND MODIFICATION; NO WAIVER. This Agreement constitutes the entire agreement between the parties and may not be modified, altered, changed or extended unless made in writing and signed by all parties. The failure of the parties to insist upon a strict adherence to the covenants of this Agreement shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.

14.15. SUCCESSORS. This Agreement shall be a binding obligation upon and inure to the benefit of the respective parties, their successors and assigns, trustees and legal representatives.

IN WITNESS WHEREOF, the parties have caused this document to be executed as of the date of the signatures of their duly authorized representatives.

West Virginia University Board of
Governors, on behalf of West Virginia
University by and through its College
of Creative Arts

City of Morgantown

By _____
Its:

By _____
Its:

Date

Date

Upper Falling Run Project

Project Scope

THE PROJECT

The Project has the following objectives:

Develop a Class A mixed income leased independent living / adult-only / assisted living continuum of care residential community.

Providing housing for 55-plus residents who are of:

moderate-income and work force-income independent living housing* , specifically residential property that is leased to persons at or below 150% of the area median income, who may be retired and existing West Virginia University, Board of Education, fire, police, and mid-income employees.

Upper Falling Run will offer 55 and older adults;

- ◆ Independent living apartments
- ◆ Congregate Care Services- which represents an independent living option with specific amenities such as meals, housekeeping, and laundry services;
- ◆ Assisted living Units
- ◆ Memory Care Units

Concept Details:

Upper Falling Run is planned to consist of a total of **242** residential units. Initial unit mix includes:

- ◆ **118** Independent living units which include **38** units with higher-end finishes and rents.
- ◆ **60** Adult Only (Congregate Care) units
- ◆ **48** Assisted Living units (not income restricted)
- ◆ **16** Memory Care units (not income restricted)

Rents are projected using affordable rates;

- ◆ One bedroom apartments **\$700 - \$950/month**
- ◆ Two bedroom apartments **\$950 - \$1550/month**
- ◆ Assisted living estimated **\$4000-\$5000/month**
- ◆ Memory Care estimated **\$5000 and up/month**
- ◆

Amenities may include:

- ◆ Club house (possible pool)
- ◆ Covered parking

- ◆ Craft and recreational facilities
- ◆ Dining Facilities
- ◆ Barber/Hair dresser
- ◆ Convenience shops
- ◆ Health club
- ◆ Social activities
- ◆ Coordination with community and WVU health care, continuing education, and cultural programming/services.

*Independent living will adhere to the intended 150% median income restriction while assisted and memory care unit types were considered market rate.
150% median income equates to \$77,725 for a two wage earner family.

Use of TIF Funds:

Upper Falling Run will be a full taxable Class II development with a development value of between \$50 and \$55 million dollars. This project will generate approximately \$5 to \$6 million in TIF funds. **TIF funds are necessary to make the project feasible** due to the substantial infrastructure demands. The following uses of the TIF funds are planned;

- Construction of the entry road from WV Route 705 to the project site. The existing roads around the project site are grossly inadequate and in very poor condition to be considered as the proper entry and egress for the development nature and size. A right of way has been established through the adjoining WVU farm to WV Route 705 for access. The construction of this road will be approximately \$2.5 million dollars.
- Infrastructure extensions and improvements. It is estimated that infrastructure improvements for the project will be approximately \$1.5 million dollars.
- Improvements to existing surrounding roads. To assist providing and alternative emergency point of egress existing Liberty Street will be improved to Van Guilder at an estimated cost of \$1.5 million dollars.

Project site and Proposed Access route to WV Route 705.



Proposed Project Rendering



Exhibit C

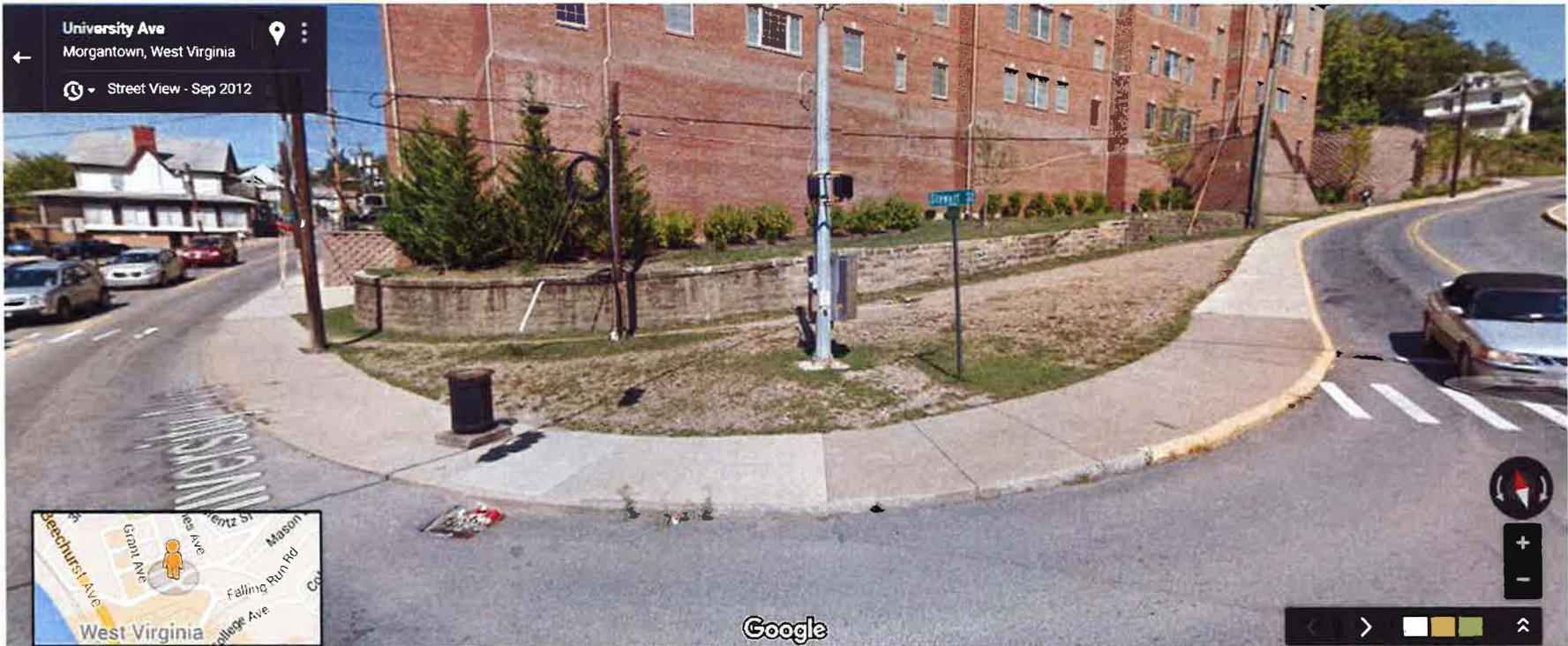


UNIVERSITY AND STEWART STREET
GREEN SPACE
Morgantown Council Meeting

5-31-16

WALLACEPANCHER
GROUP Engineering & Environmental

HAYS
LANDSCAPE ARCHITECTURE STUDIO, LTD.



SITE ISSUES

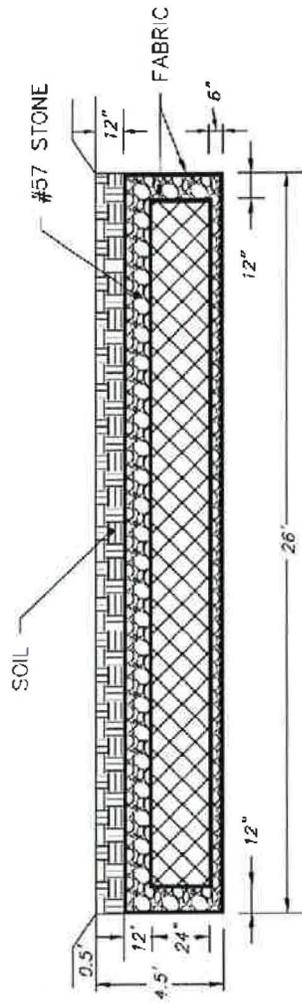
- DIRT PATHS (MUDDY)
- SAFETY
- LACK OF LIGHTING
- AESTHETIC
- STABLE AREA FOR POLICE AND MAINTENANCE VEHICLES

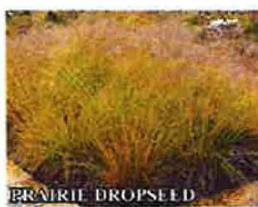
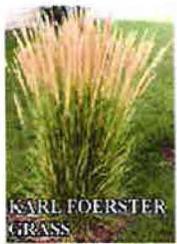
EXISTING CONDITIONS

GRASSpave 2



MUJB MORGANTOWN UTILITY BOARD





SITE CONDITIONS
 -POOR COMPACTED SOILS
 -FULL SUN
 -URBAN CONDITIONS
 -ROCK SALT
 -HEIGHT RESTRICTIONS

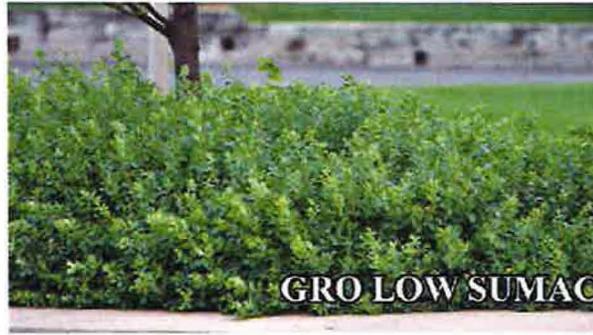


PROPOSED PLAN





BEARBERRY



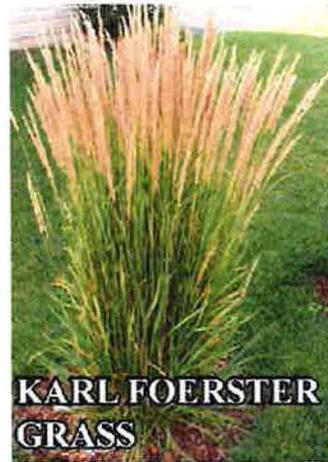
GRO LOW SUMAC



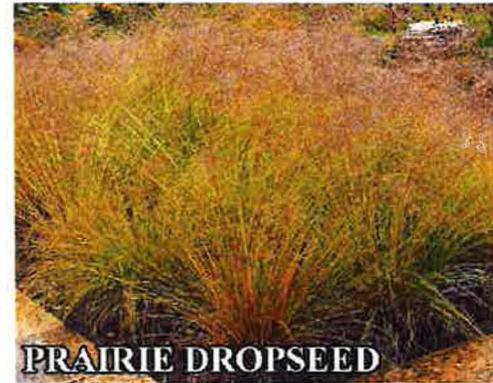
**LITTLE SPIRE
RUSSIAN SAGE**



**MOOR DENSE
JUNIPER**



**KARL FOERSTER
GRASS**



PRAIRIE DROPSEED

- SITE CONDITIONS**
- POOR COMPACTED SOILS
 - FULL SUN
 - URBAN CONDITIONS
 - ROCK SALT
 - HEIGHT RESTRICTIONS



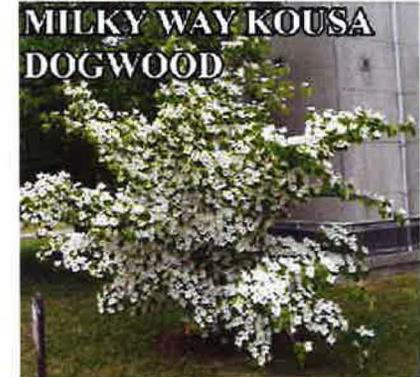
RUSSIAN ARB/ CYPRESS



CATMINT



**BLUE OAT
GRASS**



**MILKY WAY KOUSA
DOGWOOD**

**UNIVERSITY & STEWART
STREET GREENSPACE**



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

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

The meeting was called to order by Mayor Shamberger.

APPROVAL OF MINUTES: The following minutes were approved by acclamation: Special Meeting and Regular Meeting May 17, 2016.

CORRESPONDENCE: Mayor Shamberger presented a Proclamation to Tim Cotter for High Point Motocross National Weekend. Tim Cotter invited all Council and Grand Marshalls to the event at High Point Raceway on Saturday, June 18th, 2016 in Mount Morris, PA. Cotter thanked Council for doing a Proclamation to promote this year's 40th year of hosting the High Point AMA Pro National. Mayor Shamberger received an email from Michael Minc from the Gene Vance Day thanking us for all of our hard work and making the day wonderful.

The Mayor declared this Public Hearing open.

PUBLIC HEARING - 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.

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

James Giuliani, 256 Prairie Avenue, asked Council about the Volunteer Fire levy that was passed in May, and asked why City Fire Fighters do not join the Volunteers because both have to have the same training and it would be so beneficial to our community.

PUBLIC HEARING - 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.

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

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

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

James Giuliani, 256 Prairie Avenue, stated that the city is not following the City & State Laws. He also stated that when the City Manager filled the position, he did not follow the protocol in how it was to be done.

UNFINISHED BUSINESS:

AN ORDINANCE AMENDING THE FY 2015-2016 COAL SEVERANCE FUND: The below entitled Ordinance was presented for second reading.

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.

City Manager explained, motion by Selin, second by Ganz, to adopt the above entitled Ordinance. Motion carried 7-0.

AN ORDINANCE AMENDING THE FY 2015-2016 GENERAL FUND: The below entitled Ordinance was presented for second reading.

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.

City Manager explained, after explanation, motion by Selin, second by Kawecki, to adopt the above entitled Ordinance. Motion carried 7-0.

AN ORDINANCE AMENDING CITY CODE RELATING TO THE MORGANTOWN PLANNING COMMISSION: The below entitled Ordinance was presented for second 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, after discussion, motion by Selin, second by Kawecki, to adopt the above entitled Ordinance. Motion carried 5-2 with Ron Bane and Jay Redmond voting no.

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

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.

Motion by Selin, second by Kawecki, to bring it off the table for discussion. After discussion, question was called, Ordinance stays on the table with a 4 -3 vote with Ron Bane, Wes Nugent, Jay Redmond, and Nancy Ganz voting no.

BOARDS AND COMMISSIONS: City Clerk announced that there are openings for the following: Human Rights Commission has 5 vacancies; Museum Commission has 1 vacancy; Parking Authority has 1 vacancy; Sister Cities has 2 vacancies; and Traffic Commission has 4 vacancies.

PUBLIC PORTION:

Mayor Shamberger declared the Public Portion open.

James Giuliani, 256 Prairie Avenue, requested a few more seconds to speak once time limit was up. He then noted how upset that people are not prepared and now the Fifth Street annulment was placed on the agenda without a public hearing. He stated, the City is having a Planning Commission meeting this week and how can the City approve the Standard, if this project cannot be built across an annulled street.

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

SPECIAL COMMITTEE REPORTS: None

NEW BUSINESS:

AN ORDINANCE ESTABLISHING THE RATES OF COMPENSATION FOR THE FISCAL YEAR 2016-2017: The below entitled Ordinance was presented for first reading.

AN ORDINANCE ESTABLISHING THE RATES OF COMPENSATION FOR THE CITY OF MORGANTOWN EMPLOYEES FOR THE FISCAL YEAR 2016-2017.

After discussion, motion by Kaweck, second by Selin, to pass the above entitled Ordinance to second reading. Motion carried 6-1 with Wes Nugent voting no.

AN ORDINANCE AMENDING LONGEVITY PAY, SHIFT DIFFERENTIAL, HAZARDOUS DUTY, AND SPECIAL SUPERVISION PAY: The below entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING SECTIONS III-1(B) (LONGEVITY PAY), III-3(B) (SHIFT DIFFERENTIAL), III-4 (HAZARDOUS DUTY PAY), AND III-5 (SPECIAL SUPERVISION DIFFERENTIAL) OF THE PERSONNEL RULES OF THE CITY OF MORGANTOWN BY INCREASING THE MONETARY AMOUNTS WITHIN EACH.

City Manager explained, motion by Kaweck, second by Nugent, to pass the above entitled Ordinance to second reading. Motion carried 7-0.

AN ORDINANCE RELATING TO WALL SIGNS: The above entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING ARTICLES 1329.02, 1369.07, AND 1369.11 OF THE PLANNING AND ZONING CODE AS THEY RELATE TO WALL SIGNS.

City Manager explained, after discussion, motion by Ganz, second by Kaweck, to pass the above entitled Ordinance to second reading. Motion carried 4-3 with Ron Bane, Wes Nugent and Jay Redmond voting no.

AN ORDINANCE AUTHORIZING AN AGREEMENT WITH KLM PROPERTIES TO LIST RENTAL SPACE AT THE MMA: The above entitled Ordinance was presented for first reading.

AN ORDINANCE AUTHORIZING AN AGREEMENT WITH KLM PROPERTIES, INC. TO LIST RENTAL SPACE AT THE MORGANTOWN MUNICIPAL AIRPORT.

City Manager explained, motion by Selin, second by Ganz to pass the above entitled Ordinance to second reading. Motion carried 7-0.

AN ORDINANCE AMENDING CITY CODE OF THE PARKING AUTHORITY: The above entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING CITY CODE SECTION 155.03 PROVIDING FOR THE COMPOSITION AND MEMBERSHIP OF THE PARKING AUTHORITY.

City Manager explained, motion by Nugent, second by Selin, to pass the above entitled Ordinance to second reading. Motion carried 7-0.

A RESOLUTION AUTHORIZING AGREEMENT WITH D.O.H. FOR PLACEMENT OF NETWORK FACILITIES IN RIGHTS-OF WAY: The above entitled Resolution was presented for Council's approval.

City Manager explained, after discussion, motion by Ganz, second by Selin, to adopt the entitled Resolution. Motion carried 7-0.

A RESOLUTION THAT THE CITY WILL HEREBY SET FORTH A PUBLIC HEARING REGARDING CREATION OF THE CITY OF MORGANTOWN DEVELOPMENT FUND DISTRICT NO. 5 AND APPROVAL OF A PROJECT PLAN FOR UPPER FALLING RUN PROJECT NO. 1 AND ISSUANCE OF TAX INCREMENT FINANCING OBLIGATIONS: The above entitled Resolution was presented for Council's approval.

After discussion, motion by Selin, second by Kawecki, after discussion, motion to suspend the rules to have attorney Brian Helmick from the Housing Authority to answer questions. Question was called, motion carried 7-0 to adopt above entitled Resolution.

A RESOLUTION APPROVING THE BUDGET FOR THE AIRPORT FOR THE FISCAL YEAR 2016-17: The above entitled Resolution was presented for Council's approval.

Assistant City Manager and Airport Director explained, after discussion, motion by Selin, second by Bane to adopt the above entitled Resolution. Motion carried 7-0.

CITY MANAGERS REPORT:

New Business:

1. Match for Deckers Creek Rail-Trail Grant

Monongalia County Rail Trail Conservancy (MRTC) was awarded a grant to add lighting to the trail under pass below University Avenue, and one or two pole lights along the Deckers Creek Trail. It will also add trail amenity directional signage in the same location. The Department of highways grant of \$34,320 needs to be matched with \$8,580 to complete the project, and the original match funding is no longer available. City Manager Jeff Mikorski recommended that the City Council allocate \$8,580 from Capital Escrow contingency to complete this trail project.

The City has a long and successful history with MRTC and working with them to complete rail projects within the City. We are currently matching two other MRTC grants totaling \$60,000 that will be under construction soon.

After discussion, motion by Kawecki, second by Ganz to add \$8,580 from the Capital Escrow

contingency to complete the trail project. Motion carried 7-0.

2. Public Safety Building Plaza

City Manager updated City Council on the construction of the PSB Plaza and that the Zackquill Morgan Statue was put in place and will be covered until the dedication on June 20th, 2016 at 10:00 a.m.

REPORT FROM CITY CLERK: No Report

REPORT FROM CITY ATTORNEY: City Attorney Ryan Simonton reported that he has been working with the Parking Authority on updating ordinances and those ordinances will come to Council at a Committee of the Whole. He then briefly addressed the Cities annulment process, stating that the City's process follows state law. He stated that the ordinances provided to Council shows the history of relinquishing those property rights in various forms. He noted that when the City annuls a right-of-way without retaining an easement, the City does not have control over the future use of that piece of land. He stated in response to a question from Council, it was noted that the City does not specifically track whether structures are built over an annulled right-of-way and that any limitation on the property is only provided by an easement if one is retained.

REPORT FROM COUNCIL MEMBERS:

Councilor Bane:

Councilor Bane stated the 800-pound gorilla in the room today has to be addressed. He stated that we all started our journey on Council with the best intentions, but now we have become a force against each other. He commented there has been testimony, the Charter has clearly been violated and we all take an oath to follow that charter. He commented this evening Council had 6 to 7 7-0 votes, but there are times when it is 4-3 down the line. He noted that he received a call from a citizen stating that she is sick of watching the meetings and Council arguing all the time. He understood why Councilor Nugent spoke during the Public Portion at the COW, for he felt he would not be heard as a Councilor.

Deputy Mayor Kawecki:

Deputy Mayor Kawecki commented that he appreciates what Councilor Bane has said, and noted he has always been cooperative while sitting in this chair. He stated that is weary of the circumstances and knows the public is also tired of the bickering. He mentioned that the Ethics, Prosecuting Attorney, Secretary of State and now there are Lawyers fighting this

issue. He asked all of Council to simmer down and move forward with real City business.

Councilor Nugent:

Councilor Nugent reminded the City Manager Jeff Mikorski that the welcome sign by Cobun Creek is still defaced. City Manager Jeff Mikorski responded that the sign should be repaired by the end of this month. He reported a broken mirror at Protzman, Vangilder and Stewart. He noted concerns about streetlights and asked the City Manager Jeff Mikorski for an update on lights. City Manager Jeff Mikorski stated that he has been putting in for street light request to Mon Power, but he will contact Allen Staggers and report to Council. He questioned the 2% raise added to the base see where we are with additional revenues, respect what our employees do and supportive of longevity pay. He noted his concern on the Wall Sign and hoping this nor other signs would not affect the quality of life. He remarked that he has no regrets on his statements, but most of the time he is ruled out of order. He stated he ran for City Council to serve and we have challenges to overcome. He stated that every day when he gets up he kisses his wife and baby and looks himself in the mirror, and as a member of Council, the Charter is why he serves on this body. He commented that he is passionate about this, but this issue to have clarity; it is hard to find a bridge that can be built to resolve this issue. He noted his disappointment with the Dominion Post editorial by using talking points than stating the facts in the article in reference to Senate Bill 267. He noted that the Senate Bill has not changed much it requires more signature to the tune of around 110 voters. He stated that he does not believe this would deter a citizen from doing such a petition. He noted his concern was that Council placed this issue on the top of their Legislative Priorities for 2016 and Councilor Bane and I were concerned. He asked the City Manager Jeff Mikorski

the question that he works for all of Council correct. City Manager Jeff Mikorski responded yes I work for all of Council. He wants a timely resolution as to what the Charter states. He then referenced Roberts Rules of Order 11th Edition, pages 121, 653 and 660 and requested the City Manager and City Attorney to review and come back to Council with a clear understanding on how to move forward. He stated that he has respect for the judicial decision, but the City needs to come to a resolution on this matter.

Councilor Selin:

Councilor Selin stated that it is a choice on how we conduct ourselves, so each item that we bring up and we choose to deal with differences with lawsuits and then by putting our employees in the middle of the issues. She noted that all of Council earned their votes, by being voted into office and it is the voters we are responsible to, and voters that put us here. She wanted to remind everyone that State Law in reference to removal trumps everything on the City level process. She stated that Councilor Kawecki has remarked that nothing has been proven of any wrongdoing; let us move forward and work together for the betterment of the City and the community. She requested the City Manager, Jeff Mikorski check on the Brunch Bill through the Home Rule process and requested a report. She announced an event: Summer Stroll on the 25th of June by the Family Resource Network.

Councilor Redmond:

Councilor Redmond thanked Councilor Selin for mentioning the Brunch Bill. He mentioned and addressing the City Manager and City Attorney that Shepherdstown is already doing the Brunch Bill through Home Rule and the City of Charleston's Mayor is checking into doing the Brunch Bill by Home Rule. He noted that the support is there from CVB and Main Street at the Legislative level; and the B&O tax

collected from this could be substantial. He mentioned the Met Theatre agreement and is very excited about this and this is only a win/win situation and will be a benefit for the City and WVU. He commented about the annulment issue questioning why on the application it states, "no permanent structures can be built on the annulled area"; when the City has not been consistent in this process. He suggested that the City re-check themselves and move slowly with the annulment process. He noted that in reference to the 800-pound elephant in the room he is the new kid on the block and was not here when this alleged behavior took place. He stated the way he runs, his life principles are very important, and he has very instinct idea of what is right or wrong. He stated that when he took his Oath of Office he read the City Charter and at that, time swore to uphold the Charter. He noted he was approached to sign the petition and reviewed the Charter and felt it was the right thing to do and that an investigation was warranted. He stated that after the testimony by City Employees my belief is that nothing stands stronger than the City Charter.

Councilor Ganz:

Councilor Ganz stated she does understand the Charter that when a person wants to work with me they do not turn an Ethics Commission Violation about me, then taking such action to Prosecuting Attorney and them finding no problem; people that sign a petition to be heard by a 3 Judge panel tell me they want to work with me. She note I find it fascinating that by watching the news today that they want us removed from office. She commented there is a division on this Council she was elected by the voters to bring prosperity to this community. She noted that her constitutes have brought safety, fire services, fire protection, safe community fee, police on the streets, raised the budget and the retention of every employee. She noted that Councilor Bane

was reading the State Journal as she was doing her report. Mayor Shamberger stated to Councilor Ganz, "please direct your comments to the Chair". She commented that she would continue to work for the citizens: new art; livability for our town, improvements for MRTC, Airport and Urban Landscape changes. She made the following announcements: Sister Cities Day on June 8th; Suncrest Neighborhood meeting will be June 9th and this year's picnic will be at Krepps Park on July 7th. She then stated she is proud to be a Councilor.

Mayor Shamberger:

Mayor Shamberger made the following announcements: Farmers Market every Saturday from 8:30am to noon; Botanical Garden Essential Oils for Emotional Health on June 12th; Our Voice at the CAC on June 17th; Slide the City on June 18th; Mo-Town on June 18th; Ageless Friends at the Met on June 18th and Unveiling Ceremony of Zackquill Morgan Statue on June 20th. She asked for prayers for the King family, Fire Fighters and employees for the loss of Fire Fighter Vanden King. She reminded Council of the Heroin Epidemic Seminar on June 15th from 10 to noon. She asked Council to contact the City Clerk to sign up for the WVML Conference in August. She reported that the National League of Cities Conference will be in Pittsburgh in November and asked Council to look at their calendars for that event. She spoke to 5th graders at Eastwood at their Career Day about being the Mayor and about challenging yourself every day. She then explained she had a great challenge, she got a call from the White House and was invited to an all-day Conference reducing Gun Violence. She was very honored to have been chosen to attend and noted will be sharing this information with our local delegates before the next legislative session. She stated that their strategies for gun violence were procurement practices, public health, suicide rates,

gun safety and education. She stated that in reference to the 800-pound gorilla in the room it has affected all of Council and the Community. She noted that Senate Bill 267 was not only a League priority for 2016 but also other cities too. She commented that she had good intentions of being organized and being in touch with Council with a Calendar, and work together and move things forward. She stated that all of sudden personal things occurred, my tires were getting flat, she thought she should take a step back and not let people know where she is all the time. She then requested a workshop for all of Council be set up on the City Charter. Mayor Shamberger mentioned vacations and possibility of moving the July 5th meeting, after discussion Mayor will mention subject at the June 21st meeting. Mayor Shamberger mentioned evaluations for City Clerk and City Manager and noted that she found in her notes that Council was to review the Clerk in 6 months, and will e-mail Council with some dates.

ADJOURNMENT: There being no further business, motion by Kawecki, second by Ganz to adjourn by unanimous consent at 9:40 p.m.

City Clerk

Mayor

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

AN ORDINANCE ESTABLISHING THE RATES OF COMPENSATION FOR THE CITY OF MORGANTOWN EMPLOYEES FOR THE FISCAL YEAR 2016-2017.

WHEREAS, the City of Morgantown is of the opinion it should increase the rates of compensation for City of Morgantown employees for the fiscal year 2016-2017 by 2%, as reflected on the attached exhibit:

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF MORGANTOWN THAT:

1. Employees of the City of Morgantown designated by title or position in the attached exhibit shall receive the base salary or compensation for fiscal year 2016-2017, as set forth in the attached exhibit.
2. That the attached exhibit shall be considered as the Pay Plan for the City of Morgantown and shall replace Appendix A of the City's Personnel Rules in its entirety.
3. That where there may be errors, omissions, or other irregularities of pay for a given position, the City Manager shall be authorized and directed to correct such errors.

This ordinance for said wages and salaries shall be for fiscal year 2016-2017 and thereafter until amended or repealed and its effective date of operation shall be on and after July 1, 2016.

Any ordinance or the provisions of any ordinance heretofore passed by City of Morgantown and now in effect which is in conflict with the provisions of this ordinance is hereby repealed insofar as it conflicts with the provisions hereof.

This Ordinance shall be effective July 1, 2016.

FIRST READING:

ADOPTED:

FILED:

RECORDED:

MAYOR

CITY CLERK

**APPENDIX A
CITY PAY PLAN**

TITLE	Base Annual Salary	Base Hourly Rate
FLSA Exempt Employees:		
City Manager		62.22
Assistant City Manager of Operations		47.29
Police Chief		44.10
Finance Director		43.15
City Attorney		42.01
Airport Director		40.19
Fire Chief		40.19
City Engineer		40.19
Public Works Director		40.19
Director of Development Services		40.19
Chief Code Enforcement Officer		40.19
Assistant City Attorney		33.71
City Clerk		30.47
Human Resource Manager		29.43
Community Development Administrator		29.05
Assistant Public Works Director		28.63
Budget & Accounting Manager		27.46
Principal Planner		27.37
Assistant City Engineer		27.34
Staff Engineer		24.63
Financial Analyst & Exec Assistant		24.04
Municipal Court Clerk		19.82
Communications Manager		19.01
Municipal Court Judge - Part Time	22,752.12	
FLSA Non-Exempt Employees:		
Superintendent II		21.96
Airport Deputy Director		21.96
Information Technology Specialist II		20.68
Commercial Building Inspector I		20.09
Commercial Building Inspector II		20.09
Commercial Building Inspector III		20.09
Electrical Inspector I		20.09
Electrical Inspector II		20.09
Technician III		20.09

Grant Writer	19.82
Equipment Operator	19.30
Superintendent I	19.30
Urban Landscape Superintendent	19.30
Master Mechanic	18.25
Executive Assistant for City Manager	17.53
FBO Manager	17.28
Accountant	17.28
Tax Auditor/Specialist	17.28
Accounting Clerk IV	17.28
Truck Driver	17.28
Technician II/Maintenance	17.28
Executive Secretary	17.28
Personnel Specialist	17.28
Information Technology Specialist I	16.94
Residential Building Inspector I	16.43
Residential Building Inspector II	16.43
Residential Building Inspector III	16.43
Housing Inspector	16.43
Property Maintenance Inspector	16.43
Mechanic	16.43
Secretary III	15.70
Building Permit Technician	15.70
Rental Housing Technician	15.70
Accounting Clerk III	15.70
Technician II	15.70
Records Supervisor	15.70
Deputy Clerk	15.70
Accounting Clerk II	14.94
Secretary II	14.94
Skilled Laborer	14.94
Accounting Clerk I	14.26
Secretary I	14.26
Laborer	14.26
Clerk	11.18

Fire Department (based on 2912 Hours/Year)

Captain	16.22
Lieutenant	15.09
FFFC	13.40
FF	12.68
Apprentice FFII	12.35
Apprentice FFI	12.17
Recruit	11.92
Probationary FF	11.79

Fire Department (based on 2080 Hours/Year)

Captain	25.98
Lieutenant	24.13
FFFC	21.45

Police Department

Captain	31.02
Lieutenant	27.01
First Sergeant	25.05
Sergeant	23.36
Police Officer First Class	21.41
Police Officer	20.34
Probationary Police Officer	18.46

In addition to the above rates, all employees as of December 1st, whether active or on leave, will receive a \$60.00 gross enhancement paycheck (approximately \$50.00 after required deductions).

AN ORDINANCE AMENDING SECTIONS III-1(B) (LONGEVITY PAY), III-3(B) (SHIFT DIFFERENTIAL), III-4 (HAZARDOUS DUTY PAY), AND III-5 (SPECIAL SUPERVISION DIFFERENTIAL) OF THE PERSONNEL RULES OF THE CITY OF MORGANTOWN BY INCREASING THE MONETARY AMOUNTS WITHIN EACH

WHEREAS, the City of Morgantown has previously adopted a 2016-2017 which includes monies to increase the longevity pay, shift differential, and hazardous duty pay, effective July 1, 2016.

THE CITY OF MORGANTOWN HEREBY ORDAINS that Sections III-1(B), III-3(B), and III-4 of the Personnel Rules of the City of Morgantown are amended as follows (new matter underlined, deleted matter struck through):

Section III-1: LONGEVITY PAY

- (B) Longevity pay will be granted to regular full-time employees according to the following schedule. One half the longevity pay will be granted to regular part-time employees.

Continuous Years of Service	Yearly Amount
3	<u>189.81</u>
5	<u>474.07</u>
7	<u>758.31</u>
9	<u>1,124.67</u>
11	<u>1,431.19</u>
13	<u>1,942.47</u>
15	<u>2,453.72</u>
17	<u>2,760.64</u>
19	<u>3,067.14</u>
21	<u>3,373.67</u>
23	<u>3,680.54</u>
25	<u>3,987.08</u>
27	<u>4,293.98</u>
29+	<u>4,600.52</u>

Section III-3: Shift Differential

(B) Establishment of Rate.

For each hour worked by a City employee on the afternoon shift as defined hereinabove, the employee shall be paid, in addition to the other compensation for work performed, the amount of sixty-four (64) cents.

For each hour worked by a City employee on the evening shift as defined hereinabove, the employee shall be paid, in addition to all other compensation for work performed, the amount of one dollar and four cents (\$1.04).

Section III-4: Hazardous Duty Pay

There is hereby established a hazardous duty pay differential for all fire and police civil service employees, as well as the Police Chief. In addition to their regular hourly rates of pay, which are set forth in Appendix B of these Personnel Rules, all fire civil service employees (excluding those who work standard 8 hour shifts, five days per week) shall receive an additional 75 cents per hour; those fire civil service employees who work standard eight hour shifts five days a week shall receive an additional \$1.10 per hour; and all police civil service employees and the Police Chief shall receive an additional \$1.10 per hour.

Section III-5: Special Supervision Differential

There is hereby established a supervision pay differential of \$1.02 per hour for employees where the primary duty is the supervision of prisoners from the Federal Correction Institute or other like entity for a full 8 hour shift. Supervisors will authorize employees to receive the additional pay for the supervision of the prisoners, but lunch periods remain unpaid.

This Ordinance shall be effective July 1, 2016.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

**AN ORDINANCE AUTHORIZING AN AGREEMENT WITH KLM PROPERTIES, INC.
TO LIST RENTAL SPACE AT THE MORGANTOWN MUNICIPAL AIRPORT**

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, to provide listing of rental space at the Morgantown Municipal Airport by KLM Properties, Inc.

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

RECORDED:

**LISTING FOR RENT CONTRACT
EXCLUSIVE RIGHT TO RENT REAL PROPERTY**

BROKER (Company): KLM Properties., Inc.

LICENSEE (S): Kathy L. Martin & Randy W. Neal

OWNER: City of Morgantown, c/o Jeff Mikorski

Does Owner have a Listing Contract with another Broker? Yes No

If yes, explain: N/A

1. PROPERTY

Address: 100 Hart Field Road, Suite #247 (+/- 300 sf of 2nd level space)

Municipality (city, borough and township): Morgantown, WV 26505

County: Monongalia School District: Morgantown Corporation

Zoning and Present Use: Industrial/Airport Vacant Space

Identification Number (For example, tax identification number, parcel number, deed book, page, recording date):
Morgantown Corporation, Tax Map 32A, p/o Parcels 1-9, 10-12, 13 & 14-24

2. MONTHLY RENTAL \$900 SECURITY DEPOSIT \$ First Month Rent

3. STARTING & ENDING DATES OF THIS CONTRACT (also called "Term")

A. No Association of REALTORS has set or recommended the term of this contract. Owner and Broker have discussed and agreed upon the length of term of this contract.

B. **Starting Date:** This contract starts when signed by Owner and Broker, unless otherwise stated here: N/A

C. **Ending Date:** This contract ends on May 10, 2017

4. BROKER'S FEE

A. No Association of Realtors has set or recommended the Broker's Fee. Owner and Broker have negotiated the fee that Owner will pay Broker.

B. The Broker's Fee for finding tenant and contract negotiation is 6% of aggregate lease amount

Owner agrees to pay the same fee to Broker for renewals, extensions or additional leases where the original resulted from Broker's services or any other Broker's services during the term of this contract.

C. The Broker's Sales Fee if Tenant buys Property is 8% off/from the sale price and paid by Owner.

5. BROKER'S DUTY

Owner is hiring a Broker to find a Tenant for the Property. Owner allows Broker to use print and/or electronic advertising.

Broker is acting as Owner's Agent. Broker's rental agents, salespeople, employees, officers or partners are acting as agents only and will not be legally responsible for damages or repairs to the Property or for a tenant's failure to meet the terms of a lease.

X Owner Initials: _____

Page 1 of 4

Broker/Licensee Initials: RWN

6. COOPERATION WITH OTHER BROKERS

Licensee has explained Broker's company policies about cooperating with other brokers. Broker and Owner agree that Broker will pay from Broker's Fee a fee to another Broker who procures the buyer/tenant, and is a member of a Multiple Listing Service, and who:

A. Represents a buyer/tenant (BUYER'S AGENT). A Buyer's Agent, even if compensated by Broker or Owner, will represent the interests of the buyer/tenant.

No Yes

B. Does not represent either the Owner or a buyer/tenant (TRANSACTION LICENSEE).

No Yes If yes, amount: TBD

7. PAYMENT OF BROKER'S FEE

A. Owner will pay Broker's Fee if Property, or any ownership interest in it, is rented, sold or exchanged during the term of this Contract by Broker, Broker's agents, Owner, or by any other person or broker at a price acceptable to Owner.

B. Owner will pay Broker's Fee if negotiations that are pending at the Ending Date of this contract result in a sale, lease or other tenancy.

C. Owner will pay Broker's Fee after Ending Date of this contract IF:

(1) Property is rented or sold within 90 days of the Ending of this Contract, or the Ending Date of the lease (or any renewals or extensions). AND

(2) The buyer/tenant was shown, made an offer on or negotiated to rent or buy the Property during the term of this contract.

8. DUAL AGENCY

Owner agrees that Broker may also represent the buyer/tenant(s) of the Property. Broker is DUAL AGENT when representing both Owner and buyer/tenant in the lease or purchase of a property.

9. OTHER PROPERTIES

Owner agrees that Broker may list other properties for rent and that Broker may show other properties to prospective tenants.

10. CONFLICT OF INTEREST

A conflict of interest is when Broker has a financial or personal interest where Broker cannot put Owner's interest before any other. If Broker, or any of Broker's salespeople, has a conflict of interest, Broker will notify Owner in a timely manner.

11. COPYRIGHT

In consideration of Broker's efforts to market Owner's Property as stated in this Contract, Owner grants Broker a non-exclusive, worldwide license (the "License") to use any potentially copyrightable materials (the "Materials") which are related to the Property and provided by Owner to Broker or Broker's representative(s). The Materials may include, but are not limited to: photographs, images, video recordings, virtual tours, drawings, written descriptions, remarks, and pricing information related to Owner's Property. This License permits Broker to submit the Materials to one or more multiple listing services, to include the Materials in compilations of listings, and to otherwise distribute, publicly display, reproduce, publish and produce derivative works from the Materials for the purpose of marketing the Property during the Contract term. The License may not be revoked by Owner except for violation of the terms of this License and shall survive the ending of the Contract for a period of six (6) months. Owner also grants Broker the right to sublicense to others any of these rights granted to Broker by Owner. Owner represents and warrants to Broker that the License granted to Broker for the Material does not violate or infringe upon the rights, including any copyrights, of any person or entity. Owner understands that the terms of the License do not grant Owner any legal right to any works that Broker may produce using the Materials.

X Owner Initials: _____

Broker/Licensee Initials: RWN

12. BROKER AUTHORIZATIONS

A. Owner (check one) does does not authorize Broker to contract for any repairs, at Owner's expense, that believes are necessary to Property. Broker is not required to do this, and this does not create a property management agreement between Owner and Broker.

B. Sign and Keys: Owner allows, where permitted

- | | | |
|---|--|---------------|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | For Rent Sign |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | Key in Office |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | Lock Box |
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | _____ |
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | _____ |

13. TRANSFER OF THIS CONTRACT

- A. Broker will notify Owner immediately in writing if Broker transfer this Contract to another broker when:
1. Broker stops doing business, OR
 2. Broker forms a new real estate business, OR
 3. Broker joins business with another.
- Owner agrees that Broker may transfer this Contract to another broker upon the written consent of Owner, which shall not be unreasonably withheld. Broker will notify Owner immediately in writing when a transfer occurs or Broker will lose the right to transfer this Contract. Owner will follow all requirements of this Contract with the new broker.
- B. Should Owner transfer the Property, or an ownership interest in it, to anyone, or should ownership change during the term of this contract, all succeeding owners must follow the requirements of this Contract.

14. NOTICE TO PERSONS OFFERING TO SELL OR RENT HOUSING IN WEST VIRGINIA

Federal and state laws make it illegal for Owner, Broker, or anyone to use RACE, COLOR, RELIGION or RELIGIOUS CREED, SEX, DISABILITY (physical or mental), FAMILIAL STATUS (children under 18 years old age), AGE (40 or older), NATIONAL ORIGIN, USE OR HANDLING/TRAINING OF SUPPORT OR GUIDE ANIMALS, or the FACT OR RELATIONSHIP OR ASSOCIATION TO AN INDIVIDUAL KNOWN TO HAVE A DISABILITY as reasons for refusing to sell, show, or rent properties, loan money, or set deposits, or as reasons for any decision relating to the sale of property.

15. IF PROPERTY WAS BUILT BEFORE 1978

The Lead-Based Paint Hazard Reduction Act says that any Landlord of property built before 1978 must give the Tenant an EPA pamphlet titled *Protect Your Family from Lead in Your Home*. The Landlord also must tell the Tenant and the Broker what the Landlord knows about lead-based paint and lead-based paint hazards that are in or on the property being rented. Landlord must tell the Tenant how the Landlord knows that lead-based paint and lead-based paint hazards are on the property, where the lead-based paint and lead-based paint hazards are, the conditions of the painted surfaces, and any other information Landlord knows about lead-based paint and lead-based paint hazards on the property. Any Landlord of a pre-1978 structure must also give the Tenant any records and reports that the Landlord has or can get about lead-based paint or lead-based paint hazards in or around the property being rented, the common areas, or other dwellings in multi-family housing. The Act does not require the Landlord to inspect for lead paint hazards or to correct lead paint hazards on the property. The Act does not apply to housing built in 1978 or later.

16. NO OTHER CONTRACTS

During the length or term of the Contract, Owner will not hire any other Broker to rent or sell the property. Owner will not enter into another listing agreement with another broker that begins before the Ending Date of the Contract. Owner will refer all offers and inquiries to Broker.

X Owner Initials: _____

Broker/Licensee Initials: RWN

17. ENTIRE CONTRACT

This Contract is the entire agreement between Broker and Owner. Any verbal or written agreements that were made before are not a part of this Contract.

18. CHANGES TO THIS CONTRACT

All changes to this contract must be in writing and signed by Broker and Owner.

Return to by facsimile (Fax) constitutes acceptance of this Contract. Owner gives permission for Broker to send information about this transaction to the fax number(s) and/or e-mail address(s) listed below. Owner has read the entire Contract before signing. All Owners must sign this Contract.

NOTICE BEFORE SIGNING: IF OWNERS HAS LEGAL QUESTIONS, OWNER IS ADVISED TO CONSULT AN ATTORNEY.

OWNER'S MAILING ADDRESS: _____

PHONE: _____ FAX: _____ E-MAIL: _____

X OWNER: _____ DATE _____

OWNER: _____ DATE _____

OWNER: _____ DATE _____

BROKER (Company Name) KLM Properties, Inc.

ACCEPTED BY [Signature] DATE 5-10-16

NOTICE OF AGENCY RELATIONSHIP

When working with a real estate agent in buying or selling real estate West Virginia Law requires that you be informed of whom the agent is representing in the transaction.

The agent may represent the Lessor, the Lessee, or both. The party represented by the agent is known as the agent's principal and as such, the agent owes the principal the duty of utmost care, integrity, honesty and loyalty.

Regardless of whom they represent, the agent has the following duties to both the Lessee and the Lessor in any transaction:

- * Diligent exercise of reasonable skill and care in the performance of the agent's duties.
- * A duty of honest and fair dealing and good faith.
- * Must offer all property without regard to race, color, religion, sex, ancestry, physical or mental handicap, national origin or familial status.
- * Must promptly present all written offers to the owner.
- * Provide a true legible copy of every contract to each person signing the contract.

The agent is not obligated to reveal to either party any confidential information obtained from the other party which does not involve the affirmative duties set forth above.

Should you desire to have a real estate agent represent you as your agent, you should enter into a written contract that clearly establishes the obligations of both parties. If you have any questions about the roles and responsibilities of a real estate agent, they can provide information upon your request.

In compliance with the West Virginia Real Estate License Act, all parties are hereby notified that:

(printed name of agent) Kathy L. Martin & Randy W. Neal, affiliated with

(firm name) KLM Properties, Inc., is acting as agent of:

Yes The Lessor, as listing agent or subagent.

No The Lessee, as the lessee's agent.

No Both the Lessor and Lessee, with the full knowledge and consent of both parties.

CERTIFICATION

By signing below, the parties certify that they have read and understand the information contained in this disclosure and have been provided with signed copies prior to signing any contract.

X

_____ Lessor	_____ Date	_____ Lessee	_____ Date
_____ Lessor	_____ Date	_____ Lessee	_____ Date
_____ Lessor	_____ Date	_____ Lessee	_____ Date

I hereby certify that I have provided the above named individuals with a copy of this form prior to signing any contract.

Agent's Signature Randy Neal

Date 5-10-16

WV Real Estate Commission
300 Capitol Street, Suite 400
Charleston, WV 25301
304.558.3555
<www.wvrec.org>



Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Property Address: 100 Hart Field Road, Suite 247, Morgantown, WV 26505

Lead Warning Statement

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

Lessor's Disclosure

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

(ii) Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the lessor (check (i) or (ii) below):

(i) Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

(ii) Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Lessee's Acknowledgment (initial)

(c) _____ Lessee has received copies of all information listed above.

(d) _____ Lessee has received the pamphlet *Protect Your Family from Lead in Your Home*.

Agent's Acknowledgment (initial)

(e) RWW Agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

Lessor Date

Lessee Date

Lessor Date

Lessee Date

RWW _____
Agent Date 5-10-16

Agent Date



LIMITED DUAL AGENCY DISCLOSURE

In reference to the [] PURCHASE AGREEMENT, [X] LEASE, covering the real property commonly known as 100 Hart Field Road, Suite 247, Morgantown, WV and owned by City of Morgantown (c/o Jeff Mikorski) hereinafter referred to as Seller, and, hereinafter referred to as Buyer, the undersigned parties hereby agree as follows:

The Broker in this transaction, KLM Properties, Inc., together with associated salesperson, hereinafter collectively referred to as Broker, is hereby authorized by Seller and Buyer to assist both of them in this transaction in limited dual agency capacity, as set forth below.

Seller and Buyer understand that this limited dual agency relationship may create certain conflicts of interest, and that Broker will act as facilitator or intermediary and will endeavor to be impartial between Seller and Buyer. Except as expressly provided below, Broker in their capacity as a limited dual agent, shall disclose to both Seller and Buyer all known latent defects in the property, any matter that must be disclosed by law, and information which Broker believes may be material or might affect Seller's or Buyer's decisions with respect to this transaction.

- The parties acknowledge that Broker has not disclosed and Broker agrees not to disclose:
A. To Buyer, information about what price or terms Seller will accept other than the listed price or terms, without the express written permission of the Seller.
B. To Seller, information about what price or terms Buyer will offer other than those offered in writing by Buyer, without the express written permission of the Buyer.
C. Any information of a confidential nature which could harm one party's bargaining position or benefit the other's.

Both parties understand and agree that Broker has the right to receive commission as compensation, agreed upon in the Exclusive Right to Sell Agreement between Seller and Broker, and that Broker shall not receive any compensation from Buyer unless this is disclosed and consented to by Seller. In view of Broker's limited dual agency relationship, the parties understand they have the responsibility of making their own decisions with respect to the terms to be included in their agreement. The parties understand the implication of Broker's limited dual agency role as facilitator or intermediary, rather than that of advocate and exclusive representative, and have determined the benefits of entering into this transaction with Broker acting as a limited dual agent outweigh said implications.

Therefore, Seller and Buyer both, each of them individually, consent to Broker's limited dual agency capacity and hereby waive any claims now and hereafter arising out of any conflicts of interest, or for breach of fiduciary duty arising from said agency role.

Seller and Buyer understand this document does not replace prior agreements entered into with Broker, such as a Buyer/Broker Representation Agreement or Exclusive Right to Sell Listing Agreement. However, in any areas where this document contradicts or conflicts with those documents, this LIMITED DUAL AGENCY DISCLOSURE shall supersede.

The undersigned parties acknowledge that they have thoroughly read and approved this document and acknowledge receipt of a copy hereof.

X

Seller Date
Seller Date
Agent Date
[Handwritten signatures and date 5-10-16]

Buyer Date
Buyer Date
Agent Date



PRIVACY POLICY OF KLM PROPERTIES, INC.

What this Privacy Policy Covers

This Privacy Policy covers KLM Properties, Inc., its Owners, Broker, Independent Contractors and Staff, our treatment of nonpublic personally identifiable information that we collect when you, the "customer/client" use our services. This policy also covers our treatment of any nonpublic personally identifiable information that business associates share with us or that you provide to us.

This policy does not apply to the practices of non-affiliates of KLM Properties, Inc..

Information Collection and Use

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates, or others; and
- Information we receive from a consumer reporting agency.

Information Sharing and Disclosure

We do not disclose any nonpublic personal information about our customers/clients or former customers/clients to anyone, except as permitted by law.

Confidentiality and Security

We restrict access to nonpublic personal information about you to those employees, independent contractors and lending institutions who need to know that information to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal standards to guard your nonpublic personal information.

By signing below, I acknowledge that KLM Properties, Inc., provided me with a copy of its Privacy Policy.

Acknowledge my signature as:

X _____ DATE BUYER DATE

SELLER DATE BUYER DATE

SELLER DATE BUYER DATE

**AN ORDINANCE AMENDING CITY CODE SECTION 155.03 PROVIDING FOR THE
COMPOSITION AND MEMBERSHIP OF THE PARKING AUTHORITY**

WHEREAS, West Virginia Code Chapter 8, Article 16 provides for the establishment of public works including motor vehicle parking facilities and provides for the operation of such facilities by a board established by the governing body of the City; and

WHEREAS, West Virginia Code section 8-16-4 provides that the board shall be composed of all or a portion of the governing body and otherwise permits the governing body to define the number of members and their manner of selection and appointment by ordinance; and

WHEREAS, the City of Morgantown has established the Morgantown Parking Authority in Article 155 of the City Code and intends to revise the membership of the Parking Authority;

NOW, THEREFORE, the City of Morgantown hereby ordains that City Code section 155.03 is amended as follows:

155.03 COMPOSITION AND MEMBERSHIP; VACANCIES.

The Parking Authority shall consist of five persons, each of whom shall be a resident of the City. ~~Two~~ One members of such authority shall also be a members of the governing body of the City, ~~one of which is to be appointed by the Mayor, and one of which is to~~ shall be elected by Council. The term of these ~~two~~ members of the governing body shall be coextensive with the term of office to which ~~he~~ the member has been elected or appointed. The remaining members of the Commission shall be appointed by Council for a term of three years, such terms to begin on the first day of July of any year; provided, however, that the three members of the Parking Authority heretofore appointed and in office when this article becomes effective shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and qualified. In the event of a vacancy in the membership of the Parking Authority a successor shall be appointed by Council for the unexpired term only. Members other than those appointed from the governing body shall serve until their successors have been appointed and qualified.

Any member of the Parking Authority not also a member of the governing body of the City shall be eligible for reappointment upon expiration of his term, and any member who is also a member of the governing body shall be eligible for reappointment; provided, that he is continuing as a member of the governing body. Members of the Parking Authority shall receive no compensation or salary for their services but shall be reimbursed out of the funds of such Authority for any expenses incurred in their duties as such. Any member of the Parking Authority shall be removed for just cause by Council upon written charges and by the vote of a majority thereof after a public hearing thereon.

This ordinance shall be effective upon the date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

RECORDED:

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 _____.

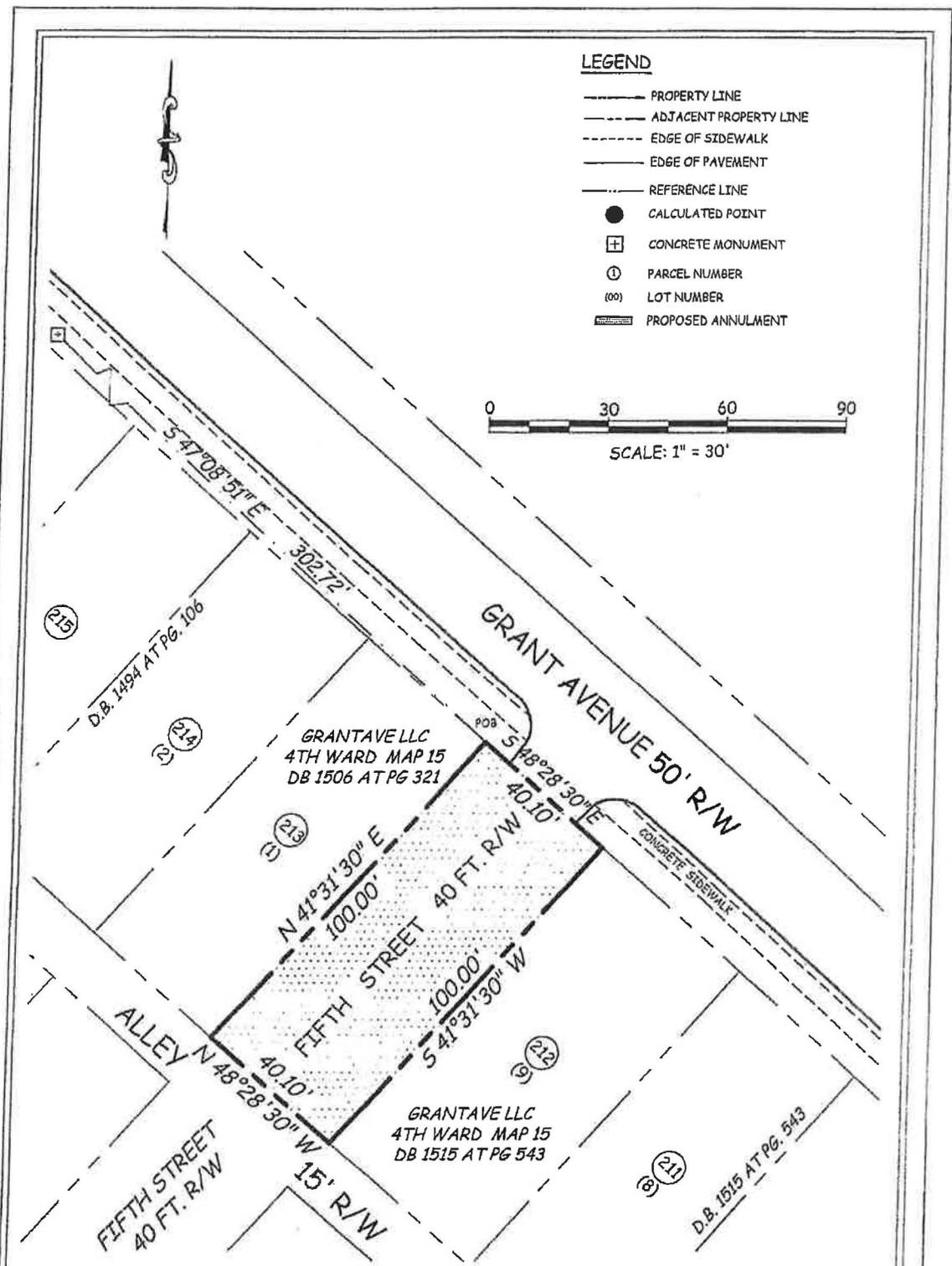
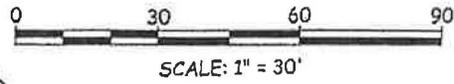
{SEAL}

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

Signature of Patrick E. Gallagher
PATRICK E. GALLAGHER, P.S. 1352
PREPARED BY:

GTL CTL ENGINEERING OF WEST VIRGINIA, INC.
731 Fairmont Road Morgantown, WV 26501 Phone: 204/292-1133 Fax: 204/292-1225
310 C STREET South Charleston, WV 25303 Phone: 204/748-1140 Fax: 204/748-1141
CONSULTING ENGINEERS • TESTING • INSPECTION SERVICES • ANALYTICAL LABORATORIES

DATE: 03-21-16 SCALE: 1" = 30'
DRAWN BY: JEF APPROVED BY: JBC
JOB #: 1310023MOR
DWG NAME: FIFTH ST ANNULMENT 03-21-16.DWG

EXHIBIT NO. 2 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

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: _____

**A RESOLUTION AUTHORIZING AN AGREEMENT WITH WEST VIRGINIA
UNIVERSITY FOR PARTNERSHIP IN OPERATION OF THE METROPOLITAN
THEATRE**

WHEREAS, the City is the owner of the real estate and building known as the Metropolitan Theatre; and

WHEREAS, the Metropolitan Theatre is a historic and central venue for the performing arts in Morgantown; and

WHEREAS, The City of Morgantown will benefit by establishing a cooperative relationship with the College of Creative Arts to improve services at the Metropolitan Theatre, and

WHEREAS, West Virginia University and its College of Creative Arts support programs in art, music, theatre, and dance that will benefit from use of the Metropolitan Theatre and support its continued use in the community; and

WHEREAS, the City and WVU intend to work together to support the continued operation of the Metropolitan Theatre by entering into the attached agreement;

NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown that the City Manager is authorized to execute the attached agreement, which is incorporated into this Resolution by reference.

Adopted this ____ day of June, 2016.

Marti Shamberger, Mayor
City of Morgantown

**THE METROPOLITAN THEATRE
COLLABORATION AND PARTNERSHIP AGREEMENT**

THIS AGREEMENT, made on this _____ day of June, 2016, by and between the CITY OF MORGANTOWN (“CITY”), a municipal corporation organized and existing under the laws of the State of West Virginia, and West Virginia University Board of Governors on behalf of West Virginia University (“WVU”) by and through its College of Creative Arts (“CCA”), an institution of higher education and agency of the State of West Virginia.

WHEREAS, the CITY is the owner of a theatre, known as the Metropolitan Theatre “Theatre”);

WHEREAS, CCA offers extensive academic programs in art, music, theatre and dance;

WHEREAS, the CITY desires for CCA to manage and operate the Theatre;

WHEREAS, WVU and CCA, desires to provide such services; and

THEREFORE, in furtherance of the above-referenced goals and objectives, CCA and the City agree to the following:

1. RATIONALE AND PURPOSE.

- a. By collaborating with CCA to make use of the variety of expertise among its staff and faculty the CITY is taking affirmative steps to increase the quantity and maintain the quality of productions at the Theatre. Likewise, by collaborating with the CITY to manage the Theatre, CCA can have access to additional local theatre opportunities for faculty, staff, and students. Further, CCA in association with the CITY, can contribute to the economic and cultural development of the community and region.
- b. Notwithstanding the foregoing, CCA is first and foremost an academic entity that offers extensive academic programs in art, music, theatre and dance; therefore, in order to ensure a successful implementation of this Agreement, it is expected that the CITY in cooperation with the Metropolitan Theatre Commission will remain an active participant in funding certain aspects of the operation of the Theatre.

2. EXCLUSIVE RIGHTS GRANTED.

- a. In furtherance of the rationale stated above and subject to the terms and conditions of this Agreement, the CITY grants to WVU and CCA the exclusive right to provide the following services with respect to the Theatre (sometimes referred to as the “Premises”):

- (1) Promoting theater arts;

- (2) Producing theatrical plays, improvisations and related performances arts;
 - (3) Scheduling events;
 - (4) Staffing the Theatre, including the box office ;
 - (5) Conducting certain workshops and classes in theater and related performance arts.
- b. The CITY shall give CCA, its employees, agents, independent contractors, invitees, licensees, clients, patrons, students and attendees, access in and to the premises from available access ways and shall also give access to the loading dock area.
- c. Further, CCA desires to utilize the below grade mid-level of the Theatre for the following purposes:
- (1) Training of student workers and student management staff to help run the Theatre;
 - (2) Conduct classes and establish "lab space" for student to explore the music industry and arts management programs; and
 - (3) Establish a recording facility for academic and professional purposes.

To the extent that the basement space described in this Subparagraph c. is currently occupied, the CITY agrees to grant CCA the possession of the space, provided that the parties mutually agree upon the rental terms, and make it available to CCA as soon as such terms are approved. Further, the CITY will cooperate with and support CCA's efforts to negotiate with the current occupants.

3. LICENSE GRANTED; NO LEASE. This Agreement is a license to the WVU and CCA to provide certain services on the terms and conditions provided herein and shall not be construed as a lease, sublease or rental agreement.
4. HOURS OF OPERATION; TICKET SALES. CCA shall establish reasonable hours of operation for the box office and for scheduling of events. For the avoidance of doubt, CCA commits to having staff present on the Premises before, during, and after each performance or scheduled use of the Theatre. With respect to ticket sales, the Theatre box office will be open one hour prior to any event. The box office will also sell tickets for events that are scheduled at the Theatre; CCA events held at other venues, including the WVU Creative Arts Center; and other events that are promoted by WVU Arts & Entertainment. Furthermore, all users/renters of the Theatre may elect to sell tickets via Ticketmaster and the WVU Box Office system, thereby making tickets available for sale online via Ticketmaster, by calling 304-293-SHOW, at the Creative Arts Center box office, and at the Mountainlair box office. Users/renters of the Theatre who choose to use the Ticketmaster and WVU Box Office, must opt in and pay the standard costs associated with the Ticketmaster system.

5. TERM. The initial term of this Agreement shall be twelve (12) months; provided that by mutual agreement of the parties the term may be extended from time to time. Either party may initiate the termination of this Agreement upon thirty (30) days written notice to the other party. Following the delivery of such notice, the CITY and CCA will meet and confer to determine the most efficient means of winding down the agreement in light of previously scheduled events and/or performances.
6. FINANCIAL CONSIDERATION. In exchange for and as consideration of the rights granted to and the services to be provided by WVU and CCA pursuant to this Agreement, CCA shall collect all rental and box office revenues and, out of such revenues, CCA shall remit all applicable municipal amusement taxes. The remaining revenues shall be used to cover CCA's costs and expenses associated with the commitments stated in this Agreement; thereafter, all remaining revenues shall be reinvested back into the Morgantown Theatres.
7. UTILITIES; SNOW REMOVAL; CUSTODIAL SERVICES; TRASH REMOVAL. CITY shall provide CCA with all utilities (electricity, water, and gas and sewer services); ice and snow removal from sidewalks, driveways and parking areas; and trash removal services. CCA agrees to provide all custodial services at the Theatre.
8. STAFFING TO BE PROVIDED BY CITY.
 - a. Except as otherwise noted in this Agreement, during the pilot year of this Agreement, CCA may call upon the CITY to provide its existing Theatre staff to assist with technical work within the Theatre. In exchange for the use of the CITY's existing Theatre staff, CCA shall remit to the CITY \$50,000 for one (1) FTE payable to the City in two equal payments. The City shall submit separate invoices to CCA in December 2016 and again in May 2017.
 - b. The CCA will provide to the City and its staff a list of duties and expectations upon which staff will be evaluated. In the performance of such duties, staff will report directly to the CCA and work according to a schedule determined by CCA. Representatives from CCA and CITY shall meet quarterly to discuss and evaluate the performance of CITY staff and to discuss changes (if any) to protocols related to the staffing provided by CITY.
 - c. As the pilot year of this Agreement ends, the CCA and the CITY shall determine whether the staffing arrangement described above is to continue or modified in future years (in the event that the Agreement is extended).
9. RESERVED RESPONSIBILITIES AND OBLIGATIONS OF THE CITY.
 - a. The CITY agrees to retain responsibility for all major structural repairs to the Premises, and CCA agrees to give written notice of its observation of the need for repairs to be made; accordingly, the CITY shall take reasonable efforts to effect necessary repairs and replacements to the facilities and its equipment.

Notwithstanding the foregoing, the CITY will also be responsible to remedy unforeseen major facility issues as they occur.

- b. The CITY agrees to receive and review any deferred maintenance plan prepared by, or on behalf of, CCA pursuant to Section 10.c. below; further, the CITY agrees to take affirmative steps to fund, where possible, such plan or, in the alternatives, work with CCA to identify funding sources for such plan.
- c. The CITY agrees to provide to CCA leases or reservation agreements that are currently in effect for the upcoming year(s); any and all documentation relating to, or identifying, events that were regularly scheduled to occur within the Premises; user names, passwords, or other information necessary to login and control social media accounts that are currently associated with the Theatre. The CITY also agrees that, to the extent necessary, CCA may create new social media accounts to be associated with the Theatre.
- d. The CITY reserves for the Metropolitan Theatre Commission the right to manage the sale of concessions at the Theatre; any and all proceeds will be used to fund a deferred maintenance fund.
- e. The CITY, with assistance from CCA, agrees to prepare an inventory of all existing equipment, including sound and stage, within the Theatre.

10. SPECIFIC ADDITIONAL RESPONSIBILITIES OF CCA.

- a. Upon execution of this Agreement, CCA will assist the City with the preparation of an inventory of all existing equipment, including sound and stage, within the Theatre.
- b. During the term of this Agreement, CCA will be responsible for repairing or holding users of the Theatre responsible for the repairs of the CITY's equipment that may become damaged or no longer in working order. Notwithstanding the foregoing, all equipment that is currently in the Theatre or is repaired or replaced will remain the property of the CITY.
- c. Within the first year of this Agreement, CCA, with cooperation from the Metropolitan Theatre Commission, will assess the Theatre and present the City with a reasonable deferred maintenance plan for the facility; thereafter, should this Agreement be extended and to the extent that the City does not provide funding for the plan, CCA will collectively work the City to identify funding sources for such plan.
- d. CCA agrees to immediately notify the CITY in writing of any major structural repairs that must be performed on the Premises during the term of this Agreement and any extensions granted hereto. "Major structural repairs" shall include, but

not be limited to: Boiler repair and or replacement; HVAC repair and or replacement; structural repairs to the buildings (including roof repair).

- e. CCA agrees to obtain written permission from the CITY before changing or altering the premises or any part thereof. This shall include, but not be limited to painting of interior or exterior surfaces.
- f. CCA agrees to work with the Morgantown Parking Authority in order to reserve metered spaces in front of and adjacent to the Premises.
- g. The Premises shall at all times be open to inspection of the CITY and its agents. The Premises shall be open to the CITY and its agents to show for purchase, mortgage or lease.
- h. CCA shall make a reasonable effort to establish a standard set of rates that apply to the price venue rental for theatrical productions and the rates charged for the use of the Premises by third parties. The established rates shall apply to one-night concerts, short-term ventures of one weekend or less, parties and fund-raising events. Discount performances shall be provided to senior citizens and students. The charges for fund-raising performances by non-profit organizations may be at rates decided between any such organization and CCA; provided that rates applicable to community organizations (i.e., organizations based out of Monongalia County) will be subject to review and approval by the Metropolitan Theatre Commission.
- i. CCA will develop a marketing and advertising plan for the Metropolitan Theatre; such plan will include a social media campaign. When appropriate, CCA shall note the CITY's support of community based theater by using the phrase "In cooperation with the City of Morgantown" in all of its advertising and notices concerning activities, workshops, and other functions at the Premises. Said notation shall be approved in advance by the CITY's designee. Further, data collected (user contact information, etc.) during ticket sales shall be provided to Metropolitan Theatre Commission on an annual basis.
- j. At least once per year, CCA will produce a fundraising event to benefit the Theatre.
- k. CCA shall give reasonable advanced written notice to the CITY's designee of all productions, shows, and other functions occurring at the Premises.
- l. CCA shall give quarterly written evaluation reports on presented workshops, productions, classes, etc., to the CITY's designee.

11. IMPLEMENTATION, COOPERATION, AND COMMUNICATIONS.

- a. During the initial term of this Agreement, the existing per seat charge will remain unchanged; thereafter, should this Agreement be extended, representatives of the City and CCA will meet and agree on per seat charges that may be applied to some or all events that once collected will be allocated to specific expenses (such as necessary repairs and the replacement of equipment).
- b. As appropriate, the CITY and CCA will work together to create and conduct special fund-raising events to benefit the Theatre.
- c. CCA and the CITY mutually agree and acknowledge that the implementation of this Agreement will likely impact other agencies or authorities within Monongalia County. Accordingly, this Agreement will be implemented as a pilot program during which time representatives of WVU, CCA, and the CITY shall meet and confer at least biannually to evaluate the continued benefit of the Agreement and determine whether any modifications should be considered.

12. MISCELLANEOUS PROVISIONS.

- a. The City and WVU will maintain appropriate liability insurance and take other prudent budgetary actions to foster this Agreement and maintain the Premises. For the avoidance of doubt, each party shall be solely responsible for any and all claims and liability for loss, damage or injury or death of third parties caused by or attributable to its own employees engaged in activities in support of this Agreement.
- b. The financial obligations outlined within this Agreement that are payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and or otherwise made available.
- c. WVU and CCA shall not assign this Agreement, nor lease, sublease or license the use of the Premises or any part thereof, nor make alterations therein, or use the same for any purpose but that hereinbefore authorize, without prior written permission from CITY, but will deliver up the same at the expiration or sooner termination of this Agreement in as good a condition as it is now, ordinary wear and tear excepted.
- d. Any improvements or alterations to the Premises shall be considered a fixture when attached to the Premises and shall become the property of the CITY upon the termination of this Agreement unless CITY requires CCA to remove any fixture. All improvements or alterations, including but not limited to directional and advertising signs, must be approved by CITY in advance and in writing.

e. The parties shall mutually discuss and agree upon the provision of any additional security that is above and beyond that which is currently being provided by the CITY for the Premises.

13. HEADINGS. The title of this Agreement and the section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

14. GOVERNING LAW. This Agreement shall be construed according to the laws of the State of West Virginia.

15. ENTIRE AGREEMENT AND MODIFICATION; NO WAIVER. This Agreement constitutes the entire agreement between the parties and may not be modified, altered, changed or extended unless made in writing and signed by all parties. The failure of the parties to insist upon a strict adherence to the covenants of this Agreement shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.

16. SUCCESSORS. This Agreement shall be a binding obligation upon and inure to the benefit of the respective parties, their successors and assigns, trustees and legal representatives.

IN WITNESS WHEREOF, the parties have caused this document to be executed as of the date of the signatures of their duly authorized representatives.

West Virginia University Board of
Governors, on behalf of West Virginia
University by and through its College
of Creative Arts

City of Morgantown

By _____
Its:

By _____
Its:

Date

Date