



Office of the City Clerk

The City of Morgantown

Linda L. Tucker, CMC
389 Spruce Street, Room 10
Morgantown, West Virginia 26505
(304) 284-7439 Fax: (304) 284-7525
ltucker@morgantownwv.gov

AGENDA
MORGANTOWN CITY COUNCIL
COMMITTEE OF THE WHOLE
September 29, 2015
7:00 p.m.

NOTE: Committee of the Whole Meetings of the Morgantown City Council are intended to provide an opportunity for the Council to receive information, ask questions, and identify policy options in an informal setting. No official action is taken at these meetings. At this Committee of the Whole Meeting the following matters are scheduled:

PRESENTATIONS:

1. Morgantown Utility Board Infrastructure Campaign Presentation
2. Transportation Alternatives Grant

PUBLIC PORTION:

ITEMS FOR DISCUSSION:

1. Ordinance providing limited arrest powers to Fire Marshals
2. Ordinance annexing Property the WVU Board of Governors & West Virginia Department of Transportation
3. Ordinance annexing Property of Airpark in Morgan District
4. Ordinance establishing KLM agreement for Airport office listing
5. Ordinance establishing a user fee for street improvements and police protection
6. Resolution establishing a school resource officer for South Middle
7. Airport Updates

If you need an accommodation contact us at 284-7439

MEMORANDUM

TO: City Council
Jeff Mikorski, City Manager

FROM: Timothy L. Ball, General Manager, MUB

DATE: September 23, 2015

SUBJECT: **PRESENTATION TO COUNCIL**
September 29, 2015

This will serve as a read ahead to help you prepare for the meeting. If you have any questions please feel free to contact me.

MUB has, over the past 18 months, been planning two major improvements to our community's water and wastewater systems. One of those improvements is a new raw water reservoir to ensure our ability to provide uninterrupted water service in the event of a contamination of the Mon River. The other improvement is an update / expansion of the wastewater treatment plant (WWTP) to comply with increasingly stringent federal law. Perhaps most importantly, these improvements are necessary to ensure our continued ability to meet the demands of our growing community.

Those plans have recently progressed into detailed designs and we hope to begin construction of these improvements in July 2016. We currently estimate that the water reservoir project will cost about \$25 million, and the WWTP to cost about \$90 million.

We do not take lightly the fact that water and sewer rates will need to be adjusted to fund these critical community projects. For that reason, we will conduct extensive public outreach over the next two months.

My purpose in appearing before Council at this time is to preview the campaign. Through this public outreach, we intend to:

- Describe details of what is proposed
- Explain why it is needed
- Describe scope and costs of alternatives considered and selected
- Conduct Q&A
- Solicit and receive public comment

The outreach will include presentations and discussion at public meetings, according to the following schedule:

Sept 29	City Council Committee of Whole to announce and describe the campaign
Oct 22	Public meeting— presentation sponsored by MUB
Oct 29	Public meeting— presentation sponsored by Morgantown Green Team
Nov 2	Public meeting— presentation sponsored by MUB
Nov 9	Public meeting— presentation sponsored by Neighborhood Coordinating Council
Nov 10	Public presentation at MUB Board meeting
Nov 24	Public presentation at City Council Committee of Whole

We will supplement this meeting schedule with media interviews, talk radio appearances, press releases, and other appropriate outreach activities. Our goal is total transparency, so that the public will be fully educated and informed about the proposed projects.

Our Nov 24 presentation at the Committee of the Whole will include the final formal public presentation, and a summary of the comments that were received throughout the course of the campaign. We will also present to Council draft Bond and Rate Ordinances, with our request that they be moved to the December Council agendas.

This process will address significant infrastructure challenges facing our community. We look forward to continued success, working with you, to ensure that Morgantown remains one of the best places anywhere to live and work.

We appreciate the opportunity to provide this information. I look forward to the Council meeting, and in the meantime if you have any questions, please do not hesitate to contact us.

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

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

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

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

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

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

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

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

1505.01 OBEDIENCE TO ORDERS AT FIRES.

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

lawful orders, to hold him in custody until after the fire shall have been extinguished, and then to take the person before the ~~Police Judge~~ Municipal Court Judge or appropriate municipal court officer of the City to be dealt with according to law.

1511.02 CODE ENFORCEMENT.

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

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

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

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

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

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

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

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

This ordinance shall be effective upon the date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

RECORDED:

**AN ORDINANCE ANNEXING PROPERTY THE WEST VIRGINIA UNIVERSITY
BOARD OF GOVERNORS AND WEST VIRGINIA DEPARTMENT OF
TRANSPORTATION IN MORGAN DISTRICT INTO THE CORPORATE
BOUNDARIES OF THE CITY OF MORGANTOWN**

WHEREAS, West Virginia Code section 8-6-4 permits a municipality to order annexation of additional territory by ordinance without a vote if a majority of freeholders and qualified voters petition for such annexation; and

WHEREAS, a majority of freeholders in the territory subject of the attached "Petition for Annexation," which is incorporated in this Ordinance by reference, have petitioned for annexation and no qualified voters, as defined by *W. Va. Code* § 8-6-4, are present in the territory; and

WHEREAS, the City has enumerated and verified the total number of eligible petitioners in each category and is satisfied that the petition is sufficient in every respect and that the territory to be annexed is contiguous to the current municipal boundaries;

NOW, THEREFORE, the City of Morgantown hereby ordains as follows:

- (1) That the territory described in the Petition for Annexation, being Parcel 19, and part of Parcels 18.5 and 20, of Tax Map Number 4 in Morgan District, Monongalia County, West Virginia, and a parcel consisting of 2.12 acres, more or less, owned by the West Virginia Department of Transportation, Division of Highways, and not assigned a Map and Parcel designation, all as more fully described in the Petition for Annexation and exhibit thereto, shall be annexed into the City of Morgantown;
- (2) That the City Clerk is directed to enter upon the journal of the City the finding that the Petition for Annexation is sufficient in every respect and forward a certificate to that effect to the County Commission of Monongalia County, West Virginia, pursuant to *W. Va. Code* § 8-6-4(g), notifying the Commission that it shall enter an order as described in *W. Va. Code* § 8-6-3 describing the annexation of the additional territory to the corporate limits of the City of Morgantown.

FIRST READING:

Mayor

ADOPTED:

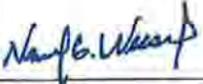
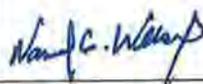
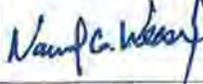
FILED:

City Clerk

RECORDED:

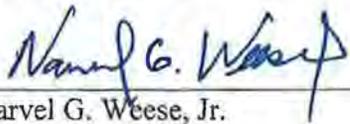
PETITION FOR ANNEXATION

The undersigned, being the freeholder of the identified property situated within the area of proposed annexation, and not being a qualified voter of the territory or a signator to a qualified voters' petition for annexation of the territory, hereby petitions the City Council of the City of Morgantown, West Virginia, to annex the territory described in this Petition and shown and described on the attached map or plat, as required by law, pursuant to West Virginia Code Chapter 8, Article 6, Section 4.

<u>Owner</u>	<u>District</u>	<u>Tax Map No.</u>	<u>Parcel No.</u>	<u>Signature</u>
West Virginia University Board of Governors	Morgan	4	p/o 18.5	
West Virginia University Board of Governors	Morgan	4	p/o 20	
West Virginia University Board of Governors	Morgan	4	19	
WVDOH 2.12 ac.	Morgan	n/a	n/a	n/a

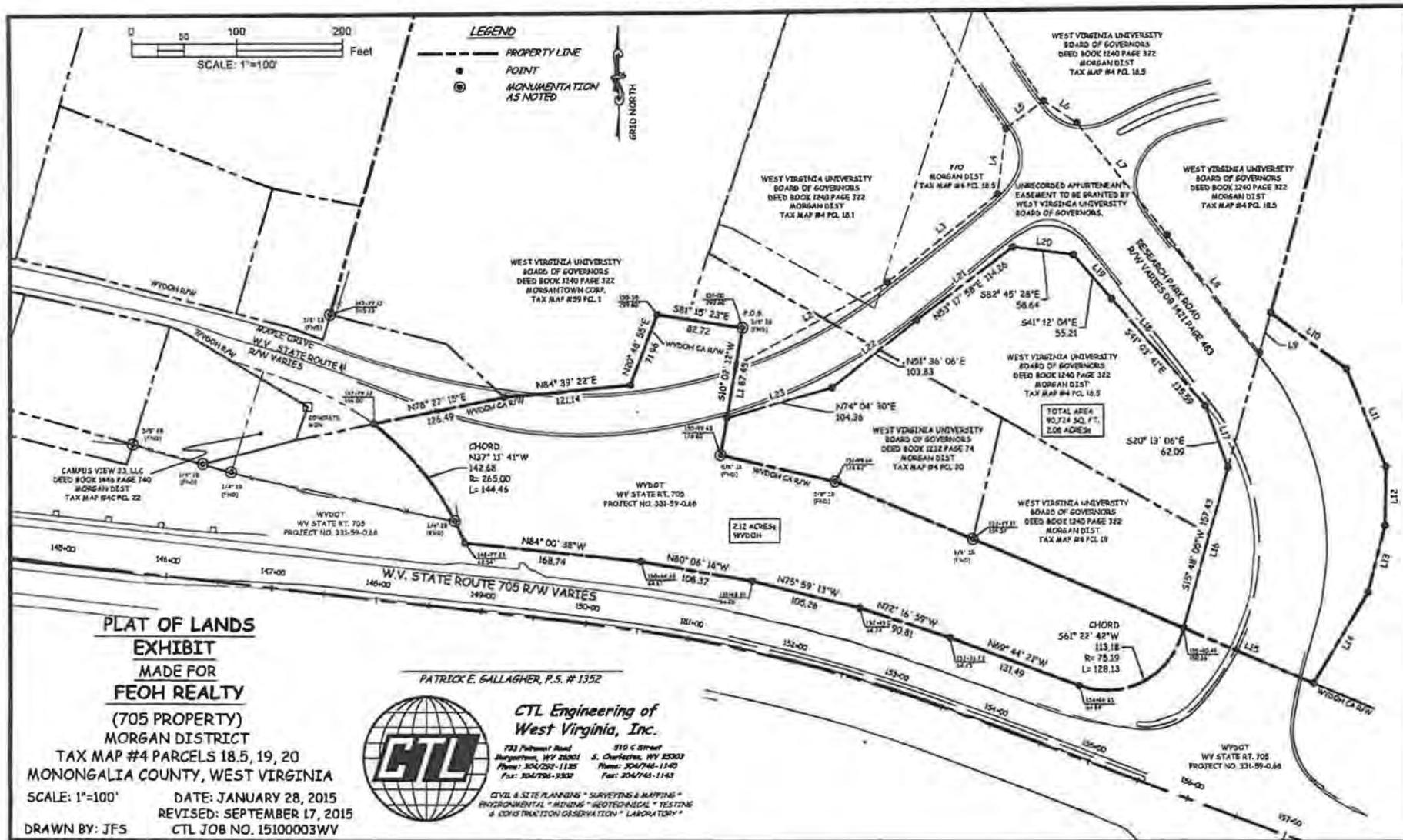
Narvel G. Weese, Jr., Vice President of Administration and Finance, on behalf of the West Virginia University Board of Governors on behalf of West Virginia University, the freeholder of the parcels identified as Morgan District Map 4, Parcels 18.5, 19, and 20 in the foregoing "Petition for Annexation," hereby petitions the City of Morgantown for annexation of the portions of the parcels identified in the table and situated within the area of proposed annexation as described on the attached exhibit.

West Virginia University Board of Governors on behalf of West Virginia University

By: 
 Narvel G. Weese, Jr.

Its: Vice President of Administration and Finance

EXHIBIT - ANNEXATION AREA



**PLAT OF LANDS
EXHIBIT
MADE FOR
FEOH REALTY
(705 PROPERTY)
MORGAN DISTRICT**

**TAX MAP #4 PARCELS 18.5, 19, 20
MONONGALIA COUNTY, WEST VIRGINIA**

SCALE: 1"=100' DATE: JANUARY 28, 2015
REVISED: SEPTEMBER 17, 2015
DRAWN BY: JFS CTL JOB NO. 1510003WV

PATRICK E. GALLAGHER, P.S. #1352



**CTL Engineering of
West Virginia, Inc.**

733 Putnam Road Morgantown, WV 26501 Phone: 304/252-1125 Fax: 304/296-3332
310 C Street S. Charleston, WV 25303 Phone: 304/746-1140 Fax: 304/746-1143
CIVIL & SITE PLANNING • SURVEYING & MAPPING •
ENVIRONMENTAL • MONITORING • GEOTECHNICAL • TESTING
& CONSTRUCTION OBSERVATION • LABORATORY

LEGAL DESCRIPTION
MAPLE DRIVE PROPERTY
4.20 ACRES

BEGINNING AT A 5/8" IRON BAR FOUND, SAID BAR BEING A SOUTHWESTERLY CORNER OF LAND NOW OR FORMERLY OWNED BY WEST VIRGINIA BOARD OF GOVERNORS, (DEED BOOK 1232 PAGE 74) AND BEING 299.80 FEET LEFT AND AT A RIGHT ANGLE TO WV STATE ROUTE 705 CENTERLINE AT STATION 151+00, PROJECT NO. 331-59-0.68, MONONGALIA COUNTY, WEST VIRGINIA;

THENCE WITH SAID WEST VIRGINIA BOARD OF GOVERNORS S 10° 02' 12" W 87.45 FEET TO A POINT;

THENCE N 74° 04' 30" E 104.36 FEET TO A POINT;

THENCE N 51° 36' 06" E 103.83 FEET TO A POINT;

THENCE N 53° 17' 58" E 114.26 FEET TO A POINT;

THENCE S 82° 45' 28" E 58.64 FEET TO A POINT;

THENCE S 41° 12' 04" E 55.21 FEET TO A POINT;

THENCE S 41° 03' 41" E 135.59 FEET TO A POINT;

THENCE S 20° 13' 06" E 62.09 FEET TO A POINT;

THENCE S 15° 48' 05" W 157.43 FEET TO A POINT, SAID POINT BEING THE SOUTH EAST CORNER OF LAND NOW OR FORMERLY OWNED BY WEST VIRGINIA BOARD OF GOVERNORS (DEED BOOK 1240 PAGE 322) AND BEING 150.36 FEET, LEFT OF AND AT A RIGHT ANGLE TO WV STATE ROUTE NO. 705 CENTERLINE AT STATION 155+40.49, PROJECT NO. 331-59-0.68, MONONGALIA COUNTY, WEST VIRGINIA;

THENCE THROUGH SAID STATE ROUTE 705 R/W WITH A CURVE TO THE RIGHT HAVING A RADIUS OF 75.19 FEET AND AN ARC LENGTH OF 128.13 FEET AND HAVING A CHORD BEARING S 61° 22' 42" W 113.18 FEET TO A POINT 64.84 FEET, LEFT OF AND AT A RIGHT ANGLE TO WV STATE ROUTE NO. 705 CENTERLINE AT STATION 155+66.35, PROJECT NO. 331-59-0.68, MONONGALIA COUNTY, WEST VIRGINIA;

THENCE N 69° 44' 21" W 131.49 FEET TO A POINT 64.75 FEET, LEFT OF AND AT A RIGHT ANGLE TO WV STATE ROUTE NO. 705 CENTERLINE AT STATION 153+36.23, PROJECT NO. 331-59-0.68, MONONGALIA COUNTY, WEST VIRGINIA;

THENCE N 72° 16' 59" W 90.81 FEET TO A POINT 64.74 FEET, LEFT OF AND AT A RIGHT ANGLE TO WV STATE ROUTE NO. 705 CENTERLINE AT STATION 152+49.04, PROJECT NO. 331-59-0.68, MONONGALIA COUNTY, WEST VIRGINIA;

THENCE N 75° 59' 13" W 105.26 FEET TO A POINT 64.75 FEET, LEFT OF AND AT A RIGHT ANGLE TO WV STATE ROUTE NO. 705 CENTERLINE AT STATION 151+48.31, PROJECT NO. 331-59-0.68, MONONGALIA COUNTY, WEST VIRGINIA;

THENCE N 80° 06' 16" W 108.37 FEET TO A POINT 64.67 FEET, LEFT OF AND AT A RIGHT ANGLE TO WV STATE ROUTE NO. 705 CENTERLINE AT STATION 150+44.42, PROJECT NO. 331-59-0.68, MONONGALIA COUNTY, WEST VIRGINIA;

THENCE N 84° 00' 38" W 168.74 FEET TO A POINT 62.54 FEET, LEFT OF AND AT A RIGHT ANGLE TO WV STATE ROUTE NO. 705 CENTERLINE AT STATION 148+77.85, PROJECT NO. 331-59-0.68, MONONGALIA COUNTY, WEST VIRGINIA;

THENCE WITH A CURVE TO THE LEFT HAVING A RADIUS OF 265.00 FEET AND AN ARC LENGTH OF 144.46 FEET AND HAVING A CHORD BEARING N 37° 11' 41" W 142.68 FEET TO A POINT 166.00 FEET, LEFT OF AND AT A RIGHT ANGLE TO WV STATE ROUTE NO. 705 CENTERLINE AT STATION 147+79.32, PROJECT NO. 331-59-0.68, MONONGALIA COUNTY, WEST VIRGINIA;

THENCE N 78° 27' 15" E 126.49 FEET TO A POINT;

THENCE N 84° 39' 22" E 121.14 FEET TO A POINT;

THENCE N 20° 48' 55" E 71.96 FEET TO A POINT 299.80 FEET, LEFT OF AND AT A RIGHT ANGLE TO WV STATE ROUTE NO. 705 CENTERLINE AT STATION 150+30, PROJECT NO. 331-59-0.68, MONONGALIA COUNTY, WEST VIRGINIA;

THENCE S 81° 15' 23" E 82.72 FEET TO THE POINT OF BEGINNING, CONTAINING 183,398 SQ. FT. OR 4.20 ACRES MORE OR LESS.

BEING PART OF PARCELS 18.5, 19 AND 20 OF TAX MAP 4 IN MORGAN DISTRICT MONONGALIA COUNTY WEST VIRGINIA.

AN ORDINANCE ANNEXING PROPERTY OF AIRPARK, LLC IN MORGAN DISTRICT INTO THE CORPORATE BOUNDARIES OF THE CITY OF MORGANTOWN

WHEREAS, West Virginia Code section 8-6-4 permits a municipality to order annexation of additional territory by ordinance without a vote if a majority of freeholders and qualified voters petition for such annexation; and

WHEREAS, all freeholders in the territory subject of the attached "Petition for Annexation," which is incorporated in this Ordinance by reference, have petitioned for annexation and no qualified voters, as defined by *W. Va. Code* § 8-6-4, are present in the territory; and

WHEREAS, the City has enumerated and verified the total number of eligible petitioners in each category and is satisfied that the petition is sufficient in every respect and that the territory to be annexed is contiguous to the current municipal boundaries;

NOW, THEREFORE, the City of Morgantown hereby ordains as follows:

- (1) That the territory described in the Petition for Annexation, being Parcels 19.4, 19.5, and 19.7 of Tax Map Number 7 in Morgan District, Monongalia County, West Virginia, as more fully described in the Petition for Annexation and exhibit thereto, shall be annexed into the City of Morgantown;
- (2) That the City Clerk is directed to enter upon the journal of the City the finding that the Petition for Annexation is sufficient in every respect and forward a certificate to that effect to the County Commission of Monongalia County, West Virginia, pursuant to *W. Va. Code* § 8-6-4(g), notifying the Commission that it shall enter an order as described in *W. Va. Code* § 8-6-3 describing the annexation of the additional territory to the corporate limits of the City of Morgantown.

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

RECORDED:

PETITION FOR ANNEXATION

The undersigned, being the freeholder of the property situated within the area of proposed annexation, and not being a qualified voter of the territory or a signator to a qualified voters' petition for annexation of the territory, hereby petitions the City Council of the City of Morgantown, West Virginia, to annex the territory described in this Petition and shown and described on the attached map or plat, as required by law, pursuant to West Virginia Code Chapter 8, Article 6, Section 4.

<u>Owner</u>	<u>District</u>	<u>Tax Map No.</u>	<u>Parcel No.</u>	<u>Signature</u>
Airpark, LLC	Morgan	7	19.4	
Airpark, LLC	Morgan	7	19.5	
Airpark, LLC	Morgan	7	19.7	

David H. Yoder, Manager of Airpark, LLC, the freeholder of the parcels identified in the foregoing "Petition for Annexation," hereby petitions the City of Morgantown for annexation of the parcels identified in the table and attached exhibit.

Airpark, LLC

By: 
David H. Yoder

Its: Manager

EXHIBIT – Annexation Territory

The territory to be annexed by this Petition is the following tract or parcel of real estate, situate, lying and being in Morgan District, Monongalia County, West Virginia, more particularly bounded and described as follows, to-wit:

Parcel One – 2.93 Acres:

BEGINNING at an iron rod an original corner between land now or formerly of Kramer Turner and Millard Mayhew, and in a line of land now or formerly of Darrell J. Hoskins, thence with original Turner line, N. 6° W. 300 feet to an iron rod; thence leaving original line, N. 68° 10' E. 386 feet to a point in a private road (iron rod set 25 feet west of corner); thence with center of said private road, S. 24° 15' E. 300 feet to a point in said road (iron rod set 30 feet west of corner); tence leaving said road, S. 69° 30' W. 480.61 feet to the beginning, containing 2.93 acres, being the same, more or less, as more fully shown on a plat dated March 11, 1976, prepared by Paul W. Guseman, LLS, a copy of which is recorded in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 772, at page 418.

And being the same property conveyed as “Parcel One: 2.93 acres” in a deed from East Park, LLC to Airpark, LLC of record in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1377, page 298.

Parcel Two – 10.16 Acres:

BEGINNING at a point on the Eastern side of the road, at a post in the fence line; thence S. 69° 43' W. 404.70 feet to an iron pin; thence along the dividing line with the City of Morgantown, N. 4° 38' W. 1162.26 feet to a point; thence S. 79° 38' E. 471.96 feet, along the dividing line with the City of Morgantown, to a point; thence S. 0° 34' E. 933.29 feet to the point and place of beginning, as more fully set forth on a plat of said property hereby conveyed, which plat is recorded in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 806, at page 98.

And being the same property conveyed as “Parcel Two: 10.16” acres in a deed from East Park, LLC to Airpark, LLC of record in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1377, page 298.

Parcel Three – 13.56 Acres:

BEGINNING at an iron pin on the east side of a private road leading approximately 1/3 mile to West Virginia County Route No. 62/2, said iron pin being the point of beginning from deed from Kramer Edward Turner and Hazel Turner, his wife, to Pineview Realty, Inc., dated May 22, 1978, recorded in the office of the Clerk of the County Court of Monongalia County, West Virginia, in

Deed Book No. 806, at page 96; thence along the dividing line with said tract and residue of Hazel Turner, N. 0° 34' W. 933.29 feet to a point from which a 38 inch black oak bears S. 0° 34' E. 11.00 feet; thence along the dividing line with the City of Morgantown, DBV 365/92, S. 79° 38' E. 713.60 feet to a point at the end of a stone fence; thence along the dividing line with the City of Morgantown, DBV 368/392, S. 26° 50' E. 79.49 feet to a corner fence post; thence along the dividing line with James L. and Beverly A. Laurita DBV 778/344, S. 5° 20' 10" W. 622.16 feet to a 34 inch white oak; thence through land of Hazel Turner, passing an iron pin line reference at 69.64 feet and other iron pin line reference at 672.96 feet and the centerline of aforesaid private road at 682.96 feet, a total of S. 75° 26' 50" W. 688.52 feet to a point in the west side of road; thence along the div[id]ing line with Pineview Realty, Inc. DBV 797/103, N. 22° 42' W. 56.47 feet to a point in line of Pineview Realty, Inc. DBV 806/96; thence re-crossing road and along the div[id]ing line with said Pineview Realty, Inc., N. 69° 43' E. 18.70 feet to the place of beginning, containing 13.56 acres, more or less, as shown on a plat of survey prepared by Blaine E. Miller, LLS, recorded in Deed Book 900, at page 431.

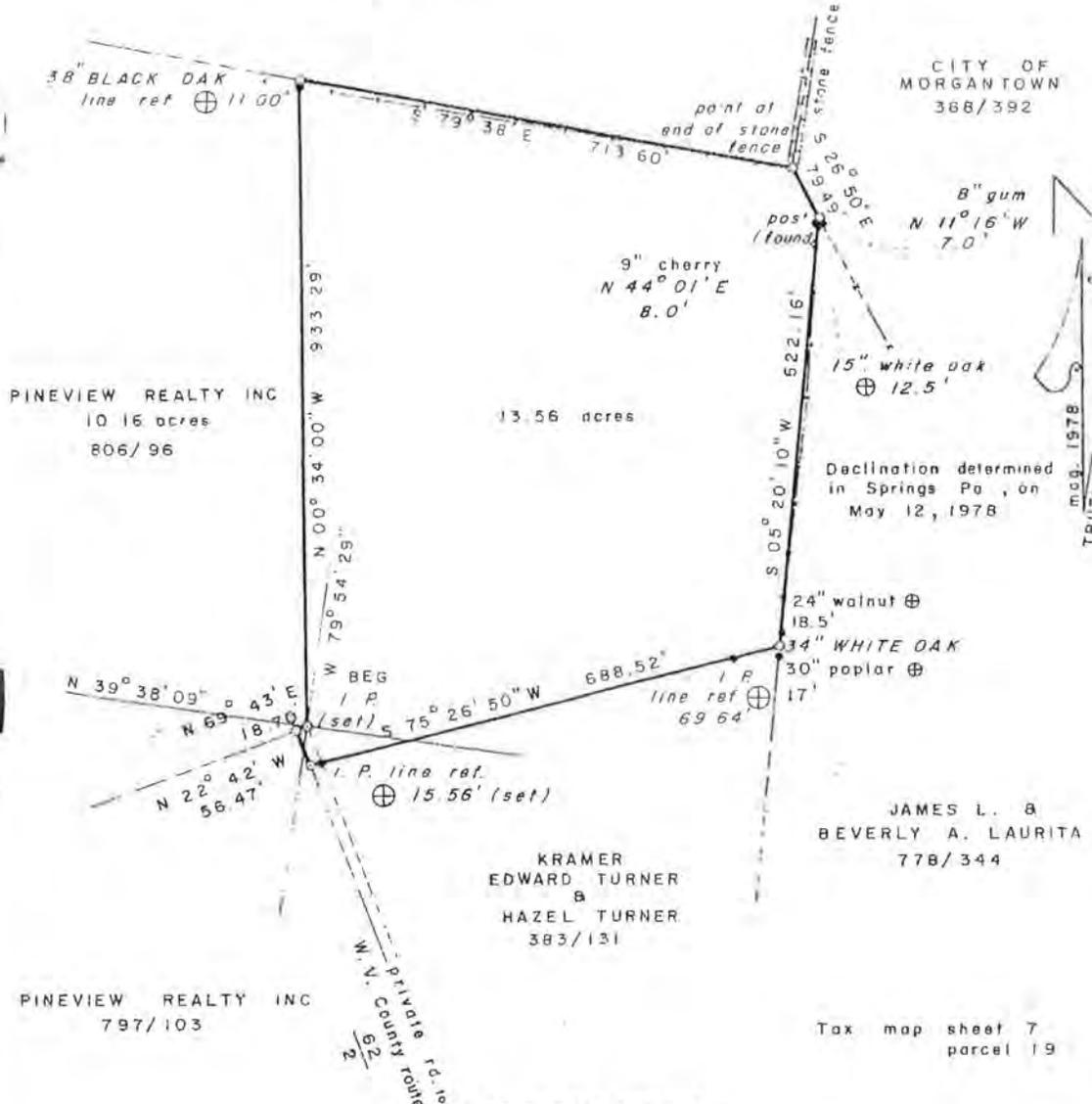
And being the same property conveyed as "Parcel Three 13.56 acres" in a deed from East Park, LLC to Airpark, LLC of record in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1377, page 298.

All of which real estate being the same as conveyed to East Park, LLC, a West Virginia limited liability company, from The Allegheny Development Corporation, Inc., a West Virginia corporation, by deed dated April 11, 2007, and recorded in Deed Book 1338, at page 545.

Exhibit – Annexation Map

CITY OF MORGANTOWN
365/92

CITY OF MORGANTOWN
368/392



Declination determined
in Springs Pa, on
May 12, 1978

JAMES L. &
BEVERLY A. LAURITA
778/344

Tax map sheet 7
parcel 19

PLAN OF PROPERTY

LOCATION — MORGAN DISTRICT, MONONGALIA CO, WEST VIRGINIA

CONTAINING — 13.56 acres

TITLE — KRAMER EDWARD TURNER & HAZEL TURNER to
PINEVIEW REALTY INC.

DATE — sur. 09/01/83 B. E. M. SCALE — 1" = 200'
dwg. 03/02/84 M. J. M.

BLAINE E. MILLER, SURVEYOR
SPRINGS, PA. 15562

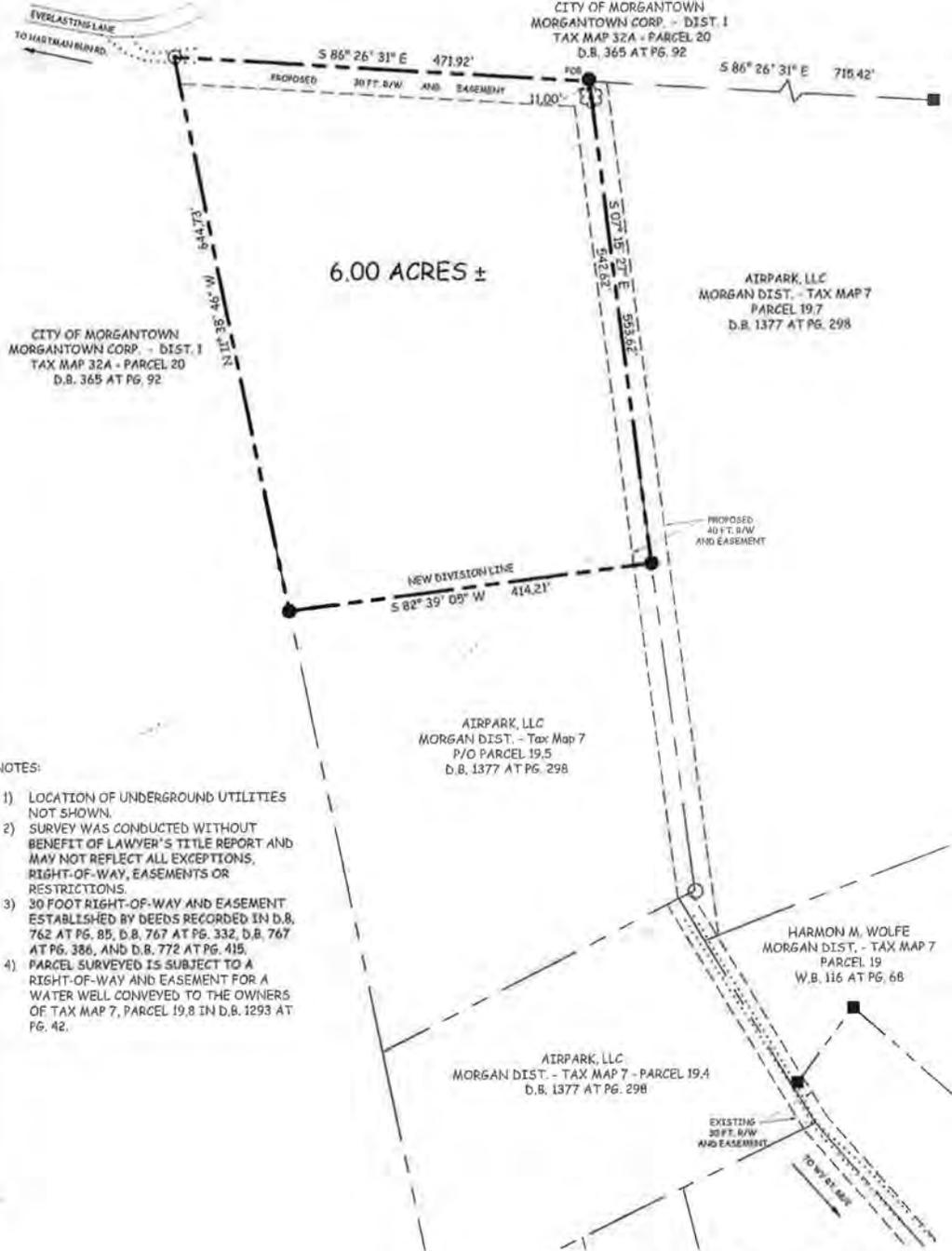


LEGEND

- | | | | |
|-------|------------------------|---|------------------------|
| ----- | PROPERTY LINE | ○ | 5/8" REBAR (FND) |
| ----- | ADJACENT PROPERTY LINE | ○ | 5/8" REBAR W/CAP (FND) |
| ----- | RIGHT OF WAY | ○ | TREE - 55" BLACK OAK |
| ----- | EDGE OF ROAD | ○ | POINT |
| ----- | APPROX. DIRT ROAD | ○ | FENCE POST (FND) |
| ----- | REFERENCE LINE | | |

Exhibit A

Being a part of the same real estate as conveyed to Airpark, LLC, from East Park, LLC, by deed dated the 3rd day of December, 2008, of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1377, at Page 298.



NOTES:

- 1) LOCATION OF UNDERGROUND UTILITIES NOT SHOWN.
- 2) SURVEY WAS CONDUCTED WITHOUT BENEFIT OF LAWYER'S TITLE REPORT AND MAY NOT REFLECT ALL EXCEPTIONS, RIGHT-OF-WAY, EASEMENTS OR RESTRICTIONS.
- 3) 30 FOOT RIGHT-OF-WAY AND EASEMENT ESTABLISHED BY DEEDS RECORDED IN D.B. 762 AT PG. 85, D.B. 767 AT PG. 332, D.B. 767 AT PG. 386, AND D.B. 772 AT PG. 415.
- 4) PARCEL SURVEYED IS SUBJECT TO A RIGHT-OF-WAY AND EASEMENT FOR A WATER WELL CONVEYED TO THE OWNERS OF TAX MAP 7, PARCEL 19.8 IN D.B. 1293 AT PG. 42.

**PLAT OF SURVEY
MADE FOR
AIRPARK, LLC**

6.00 ACRES ±
MORGAN DISTRICT - MONONGALIA CO.
TAX MAP 7 P/O PARCEL 19.5
MORGANTOWN, WV

PATRICK E. GALLAGHER, P.S. 1352

PREPARED BY:

CTL ENGINEERING OF WEST VIRGINIA, INC.
 1091 Chaplin Hill Road Morgantown, WV 26505 Phone: 304/292-1100 Fax: 304/298-9392
 510 C STREET South Charleston, WV 25309 Phone: 304/746-1140 Fax: 304/746-1142
 CONSULTING ENGINEERS * TESTING * INSPECTION SERVICES * ANALYTICAL LABORATORIES

DATE: AUGUST 27, 2015 SCALE: 1" = 150'
 DRAWN BY: JEF APPROVED BY: JBC
 JOB #: J5100053MOR
 DWG NAME: AIRPARK PROPERTY

**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 #208 (+/- 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 \$600 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 June 2, 2016

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.

Owner Initials: _____

Page 1 of 4

Broker/Licensee Initials: _____

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.

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.

Owner Initials: _____

Broker/Licensee Initials: _____

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:** _____

OWNER: _____ **DATE** _____

OWNER: _____ **DATE** _____

OWNER: _____ **DATE** _____

BROKER (Company Name) _____

ACCEPTED BY _____ **DATE** _____



LIMITED DUAL AGENCY DISCLOSURE

In reference to the PURCHASE AGREEMENT, LEASE, covering the real property commonly known as 100 Hart Field Road (+/- 774 sf of 2nd level space) and owned by City of Morgantown, 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.

Seller Date

Buyer Date

Seller Date

Buyer Date

Agent Date

Agent Date

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

Property Address: 100 Hart Field Road, Morgantown, WV 26505 (+/- 7,000 sf of lower level space)

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 or purchasing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the housing. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

Disclosure

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. 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.

Acknowledgment (initial)

Lessee has received copies of all information listed above.

Lessee has received the pamphlet *Protect Your Family from Lead in Your Home*.

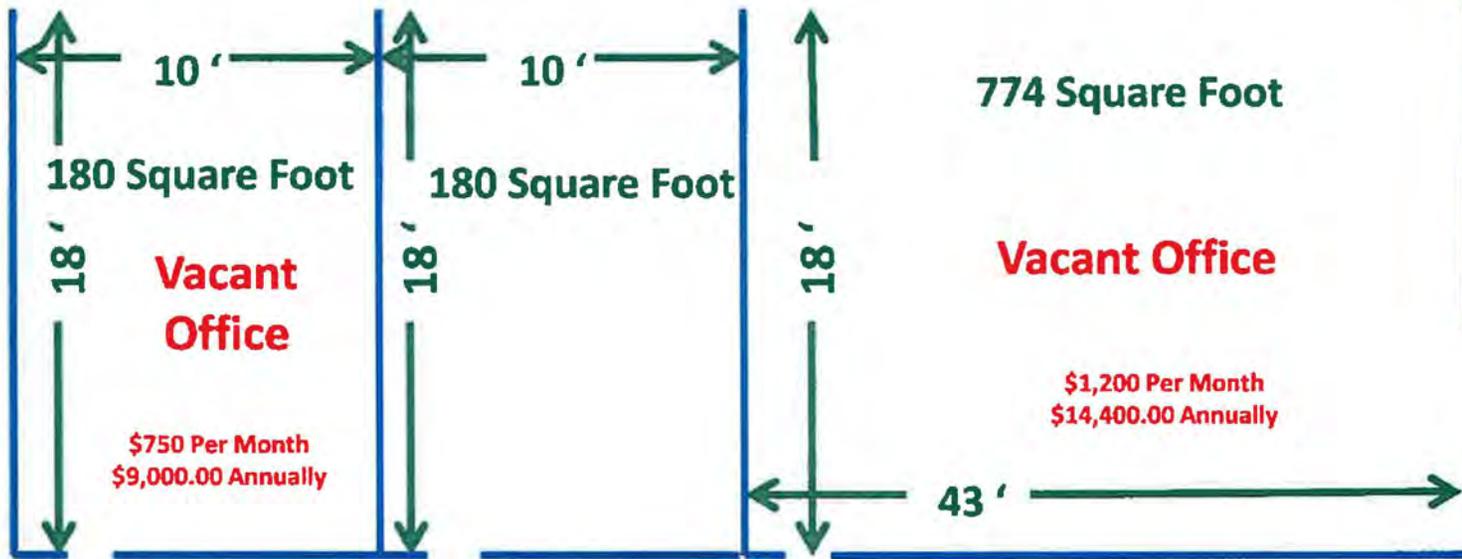
Acknowledgment (initial)

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

Declaration of Accuracy

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

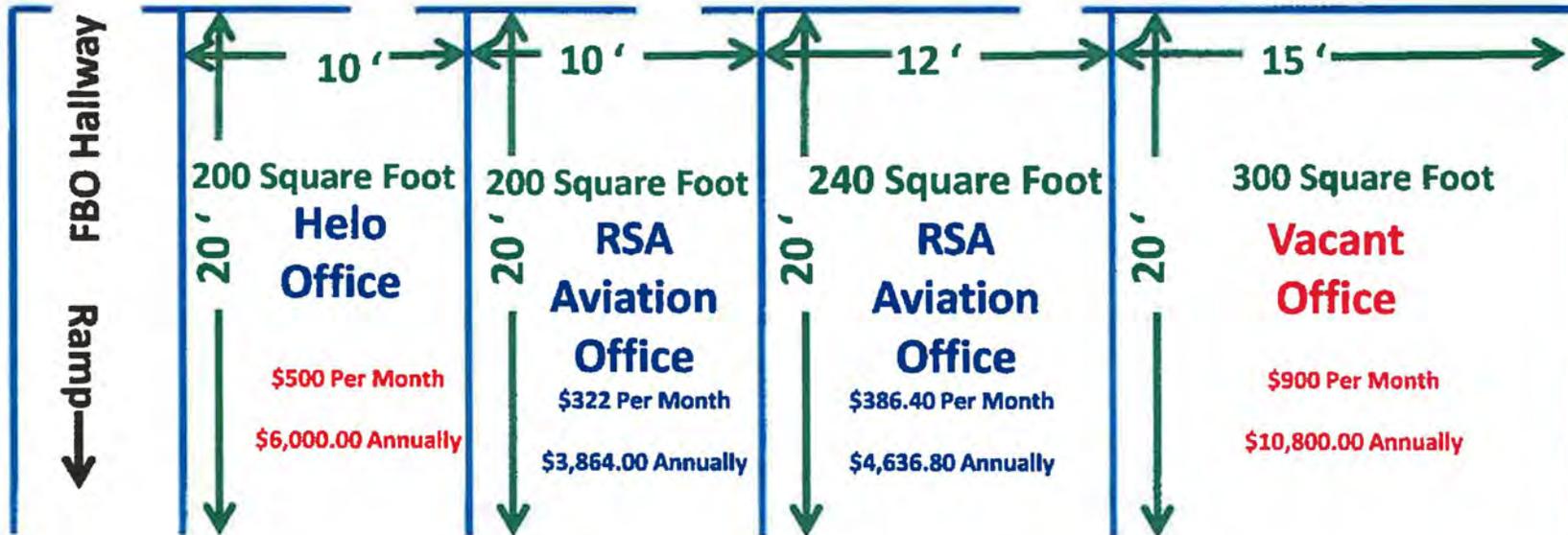
_____	Date	_____	Lessee	_____	Date
_____	Date	_____	Lessee	_____	Date
_____	Date	_____	Agent	_____	Date



Terminal Hallway

(Restaurant →)

South Terminal Upstairs Offices





The City of Morgantown

Jeff Mikorski, ICMA-CM
City Manager
389 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505
(304) 284-7405 FAX: (304) 284-7430

Office of the City Manager

www.morgantownwv.gov

Friday, September 25, 2015

Street and Police Protection Service Fee Plan

This plan is in accordance with the Morgantown City Council's direction to discuss and review a plan of action for the implementation of a user fee. The goal of the Service Fee is to improve the maintenance level of City streets and improve the level of police protection in residential areas, business districts, and throughout the City.

Background

W.V. Code 8-13-13 provides that every municipality has the plenary power and authority to provide by ordinance for the installation, continuance, maintenance or improvement of services, to make reasonable regulations with respect thereto, and to impose by ordinance upon the users of such services reasonable rates, fees, and charges to be collected in the manner prescribed in the ordinance.

Based on recent census information (2010) regarding the commuting population, Morgantown's estimated population is 29,076. Of that population, Census figures suggest that 12,160 also work in the City. In addition, it was estimated that another 20,487 people work in the City that do not live in the City. Based on those numbers, the Census Bureau estimates the daytime population to be 49,563 in the City of Morgantown. Their numbers do not include students, visitors, or tourists. It is estimated that the daytime population increases by approximately 70% just due to commuters from outside the city. All residents, workers employed, and visitors within the City of Morgantown expect to be provided city services for well-maintained streets and adequate necessary police protection.

Street Maintenance

The City has nearly 100 miles of streets that it maintains which has an estimated resurfacing value of 33 million dollar (asphalt and concrete). In order to get the resurfacing cycle back to 10-15 years for each street to be resurfaced, we would need to set aside nearly 2 million dollars each year. A portion of this amount could also be used for improving streets and right-of-ways (for instance, widening streets, improving street function, right-of-ways, and improving public alleys).

Maintenance of streets also includes cleaning and winter treatment. Employees and residents rely on getting to places of employment during any weather situation. Improvement of winter treatment of City streets will include purchasing new equipment to the fleet and replacing aged fleet. In addition, an increase in personnel will improve the number of treatment vehicles on the street after a winter event. Additional personnel will also help improve other public works activities outside of winter months, such as maintenance and cleaning of streets and right-of-ways. Equipment needed to improve maintenance of City streets includes trucks, plows, sweepers, vacuum trucks, and other vehicles to support street maintenance.

Police Protection

The Police Department is currently responding to 49,470 calls for service (2014) with 65 officers, more calls than all other police agencies in the County added together. As calls for service increase without the number of officers increasing, the less preventative services, traffic enforcement, or community policing can occur (whether it is in the Downtown or neighborhoods). Based on the current staffing levels and calls for service, the Police Department's primary focus is the response to calls for service with very little opportunity for proactive, preventative and community policing activities.

We enjoy the City of Morgantown to be the place for different events and activities as a quality of life indicator. The City is expected to cover and provide traffic control for special events such as parades, runs, walks, festivals, university activities, holiday events like 4th of July, and some major events like the Morgantown Marathon. Current staffing levels necessitate the use of overtime in order to meet the regular demands of the department such as WVU Sporting events, Downtown Nightlife as well as the majority of special events hosted within the City.

We have seen from the Downtown Retail study that even the perception of crime or lack of police protection in a business district can cause people to stay away from the downtown or other business districts.

Additional officers would allow an increase from 3 patrol areas per shift to 5 patrol areas with the patrol areas reducing in size. This improvement would provide an opportunity for better community policing and enforcement strategy.

Estimated Revenue from Service Fee

- Service fee based on employment in the City of Morgantown. A conservative number of workers, based on the census information, is 30,000.
- A fee of \$3/week or \$156 annually, would equal an estimated \$4,680,000.00

Estimated Expenditure of Service Fees

Funded Activity	Percentage	(Estimated amount on \$4,680,000)
• Street Resurfacing and Improvement	35-45%	\$1,638,000 - \$2,106,000
• Public Works Personnel	07-10%	\$ 327,600 - \$ 468,000
• Street Maintenance Equipment	07-10%	\$ 327,600 - \$ 468,000
• Police Protection Personnel / Retention	25-30%	\$1,170,000 - \$1,404,000
• Police Equipment	06-10%	\$ 280,800 - \$ 468,000

**AN ORDINANCE CREATING A NEW ARTICLE 745 IN THE CITY CODE TO
ESTABLISH A SERVICE FEE FOR PUBLIC RIGHTS-OF-WAY AND POLICE
SERVICES**

The City of Morgantown hereby ordains that a new Article 745 is established within City Code as follows:

SECTION 745.1. PURPOSE

The City Council of the City of Morgantown finds and concludes as follows with respect to the service fee established by this Article:

- (a) The improvement and maintenance of the public rights-of-way is an essential municipal service provided by the City which is necessary to ensure public health, safety, and welfare;
- (b) The provision of police protection services is likewise an essential municipal service provided by the City which is necessary to promote ensure public health, safety, and welfare;
- (c) These services are enjoyed by both residents and nonresidents of the City who travel within the City due to their use of the public rights-of-way for transportation and their reliance on municipal police services to respond to and prevent criminal activity;
- (d) These services are essential to the conduct of business, educational, and nonprofit institutions with the City, and to the safe travel of the employees, customers, and attendees of such institutions;
- (e) The cost of funding these essential services should be supported, so far as reasonably possible, by the users of the services;
- (f) West Virginia Code section 8-13-13 grants municipalities that furnish essential services, including the maintenance and improvement of the public rights-of-way and the provision of police protection services, the plenary power and authority to provide for the installation, continuance, maintenance or improvement of the services, to make reasonable regulations of the services, and to impose by ordinance upon the users of the services reasonable rates, fees and charges to be collected in the manner specified in the ordinance;
- (g) This ordinance creating Article 745 of the City Code and establishing a service fee for the service identified in this Section is designed to place upon users of the services a fee reasonably related to the use of the services;
- (h) A substantial portion of the users of these services are nonresidents of the City who are employed within the City, and employers within the City are in possession of important employment information essential to the efficient and effective collection of the service fee;

- (i) The reasonable regulations to be established under this ordinance for employer withholding and remittance of the service fee are central to the effective collection of the service fee from all service users, which promotes equity in the funding of these essential services;
- (j) It is in the best interest of the City, its residents, and the users of these essential services to impose the service fee to appropriately fund the services;
- (k) The fee established by this ordinance is designed to bear a direct and reasonable relationship to the actual services provided in exchange for the fee;
- (l) The fee is warranted based on the anticipated use of these essential services by the defined class of users due to their regular travel within the City, and the fee will not impose an unfair or burdensome collection upon the users based on their use of the services.

SECTION 745.2. DEFINITIONS

The following definitions apply to this Article 745:

- (a) “City” shall mean the City of Morgantown
- (b) “Employee” shall mean any individual who is employed at or physically reports to any location within the City and is paid by an employer, on a full-time or part-time basis, in exchange for salary, wages or other compensation.
- (c) “Employed” shall include an employee working for an employer so as to be subject to any federal or state employment or wage withholding requirement and a self-employed individual working as a sole proprietor or member of a firm so as to be subject to self-employment tax. An employee shall be considered employed in a calendar week so long as the employee remains on the current payroll of an employer deriving compensation for such week and the employee has not been permanently assigned to an office or place of business outside the city. A self-employed individual shall be considered employed in a calendar week so long as such individual has not permanently discontinued employment within the city.
- (d) “Employer” shall mean any person, partnership, limited partnership, limited liability company, association (unincorporated or otherwise), corporation, institution, trust, governmental body or unit or agency, or any other entity (whether its principal activity is for-profit or not-for-profit) situated, doing business, or conducting its principal activity in the city and who employs an employee, as defined herein.
- (e) “Fee” shall mean the city service fee imposed by this article.
- (f) “Municipal Service” or “Municipal Services” shall mean the maintenance and improvement of Public Rights-of-Way and Police protection services.

(g) "Self-employed individual" shall mean an individual who maintains an office or place of business for conducting any livelihood, job, trade, profession, occupation, business or enterprise of any kind within the City boundaries.

SECTION 745.3. SERVICE FEE

Each Employee and Self-Employed Individual shall pay a fee for Municipal Services in the total amount of \$3.00 for each calendar week the individual is Employed in the City. This fee is in addition to any licenses, taxes, or fees required by other provisions of this Code.

SECTION 745.4. COLLECTION OF SERVICE FEE

(a) Every Employer shall deduct and withhold from any compensation paid to an Employee an amount equal to the fee imposed herein upon the Employee; provided, that the Employer shall not deduct or withhold the fee from the compensation of any Employee who executes and delivers a proper form prescribed by the City evidencing prior payment of the fee either directly or by collection through another Employer in the City.

(b) Each Employer shall maintain adequate records concerning the fees deducted and withheld and the Employees exempt from withholding.

(c) Any Employer who fails to deduct the fee as required by this section, or who fails to pay the trust funds to the City in accord with this Article and any related regulations shall be liable for such fee, along with any penalties or interest accrued thereon, as though the fee had originally been assessed against the Employer, subject to the following provisions:

(1) this Section shall not be applied to make the State of West Virginia liable for the debts of its employees, nor shall it preclude the State of West Virginia from voluntarily withholding or paying the service fee;

(2) this Section shall not permit the City to collect a total amount, as to any Employee, greater than the amount of the service fee owed and any penalties or interest accrued.

(d) Every Self-employed individual who is not Employed by an Employer and who has not had the fee deducted or withheld by an Employer shall file a form prescribed by the City and pay to the City all amounts due pursuant to this Article.

(e) The failure of any Employer to deduct the fee shall not relieve an Employee from the duty to pay the fee. The obligation to pay the service fee shall be a personal obligation of each individual subject to the service fee, and the City may take any action necessary, including the institution of legal proceedings, to collect the fee; provided that the City shall not collect a total amount, as to any Employee, greater than the amount of the service fee owed and any penalties or interest accrued.

(f) Fees not received by the City as of the applicable due date shall be considered delinquent. The city collector shall assess each delinquent account a penalty of five percent of the balance thereof. If the delinquency exceeds a month, an additional penalty of two percent shall be added to the total outstanding delinquent fee at the end of each additional month or part thereof. Without

limiting the generality of the foregoing, the delinquency penalty may be assessed against any Employer responsible for withholding and remitting the fee of any Employee subject to the fee imposed in this article. The Finance Director may waive or abate the penalty established by this subsection for reasonable cause.

SECTION 745.5. REGULATIONS AND ADMINISTRATION

(a) The Finance Director shall prescribe regulations providing for the collection of amounts due pursuant to this Article, including the due date(s) for remittance of fees; guidelines for collection and payment of fees by Employers, Employees, and Self-employed individuals; requirements for withholding, collection, and remittance of fees by Employers; requirements for submission of additional information necessary or helpful in identifying all service fees owed, including employees' dates of employment and personal identification information. The rules, regulations, and procedures established shall be reduced to writing and shall take effect upon being filed in the office of the City Clerk.

(b) The administration of this article is vested in and shall be exercised by the Finance Director, who shall prescribe forms and reasonable rules of procedure in conformity with this Article for the making of returns, and for ascertaining, assessment and collection of fees imposed hereunder.

(c) In order to determine the correctness or adequacy of any remittance or information submitted to the City pursuant to this article:

(1) The Finance Director shall have the power to examine or cause to be examined any books, papers, records, memoranda, documents and any other payroll data and information, and may take testimony and require material proof with power to administer oaths to any person or persons from whom testimony may be taken.

(2) The Finance Director shall have the power to issue subpoenas and subpoenas duces tecum in the name of the City to compel the attendance of witnesses and the production of books, papers, records, memoranda, documents and testimony at the time and place specified.

(3) The Finance Director may enforce the provisions of this article by instituting a civil action in any court of competent jurisdiction pursuant to *W. Va. Code* § 8-13-15.

SECTION 745.6. ADMINISTRATIVE REVIEW AND RIGHT OF APPEAL

(a) Any person who has paid the fee imposed by this Article shall, in order to challenge the validity of the fee, file a claim for refund no later than 30 days after the fee is paid to the City by written notice of such claim on a form prescribed by the Finance Director setting forth with particularity all objections thereto. The burden of proof shall be upon the aggrieved party to show that the fee was paid and is incorrect and contrary to law, in whole or in part. The Finance Director shall review the refund claim and provide for any necessary hearing, render a decision on the claim and promptly either notify the protesting party of such decision in writing or direct that a refund be issued, all within a reasonable time. Any written decision shall be issued by certified mail, return receipt requested.

(b) If aggrieved by the decision of the Finance Director, the protesting party may appeal the decision of the Finance Director to the Circuit Court of Monongalia County within 30 days after service of the decision.

(c) The administrative remedies set forth in this section are exclusive. Failure to timely file a refund claim in accordance with this section shall preclude any right to refund with respect to any fee paid to the city prior to the claim. If no appeal is taken pursuant to this section within 30 days after service of the decision, the decision shall become final and conclusive and not subject to administrative or judicial review. The amount of the fee and accumulated penalties, if any, due the City under such decision shall be due and payable on the day following the date upon which such decision becomes final.

SECTION 745.7. DEDICATION OF REVENUE

All revenues generated by the city service fee imposed by this Article are hereby dedicated to and shall be exclusively utilized for the maintenance and improvement of Public Rights-of-Way and Police protection services.

SECTION 745.8. SEVERABILITY

If any portion of this Article is determined by a court of competent jurisdiction to be invalid or unconstitutional, such determination shall not affect the validity, constitutionality, legality, or application of any other portion of this Article.

SECTION 745.99. PENALTY

(a) It shall be unlawful for any person to refuse to pay, collect or remit the service fee herein provided to be paid, collected and remitted or to refuse to make any filings required by this article, or to make any false or fraudulent filing or false statement in any filing with the intent to defraud the City, or to evade the payment of the street maintenance and improvement fee or any part thereof; or for any person to aid or abet another in any attempt to evade the payment of the fee, or for any officer or partner or principal of any entity to make any false filing or any false statement in any filing with the intent to evade the payment of the fee.

(b) Whoever willfully violates any provisions of this article shall upon conviction thereof, be guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500.00).

**RESOLUTION APPROVING AGREEMENT WITH THE MONONGALIA COUNTY
BOARD OF EDUCATION PROVIDING A SCHOOL RESOURCE OFFICER AT
SOUTH MIDDLE SCHOOL**

The City of Morgantown hereby resolves that the City Manager is authorized to execute the attached "Agreement" providing for a School Resource Officer at South Middle School on behalf of the City.

Adopted this ___ day of October, 2015.

Marti Shamberger, Mayor
City of Morgantown

AGREEMENT

This Agreement, made and entered into this ___ day of _____, 2015 by and between the City of Morgantown, West Virginia (hereafter referred to as "City") and the Monongalia County Board of Education, West Virginia (hereafter referred to as "Board").

WITNESSETH:

WHEREAS, the Board has established a School Resources Officer Program (hereafter referred to as "SRO Program"); and

WHEREAS, the Board agrees that the City have one police Officer serve as a School Resources Officer in the Monongalia County School System; and

WHEREAS, the City and the Board understand that the program is established for the purpose of assistance in the prevention of juvenile delinquency through programs specifically developed to respond to those factors and conditions which rise to delinquency; and

WHEREAS, the City and the Board realize, the SRO Program is a great benefit to school administration, students and the community as a whole.

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

SECTION 1: DUTIES AND RESPONSIBILITIES OF CITY

- 1.01** The City will provide one (1) police officer as a School Resource Officer, to the Board for assignment at South Middle School.
- 1.02** The SRO will abide by County School Board Policies and Laws, as they relate to the SRO. The SRO will consult and coordinate instructional activities through the Principal. Educational activities conducted by the SRO, which are part of the regular instruction program of the school, will be at the direction of and supervised by the Principal or his/her designated representative. On-site supervision of the daily activities of the SRO will be performed by the Principal. Professional supervision, evaluation and discipline of the SRO will at all times be performed by the Chief of Police of the City, with input from the Principal as may be requested by the Chief.
- 1.03** The SRO will provide to students' instruction in various aspects of law enforcement, public safety, and education as directed and supervised by the Principal.
- 1.04** On-site supervision of the police officer assigned to the SRO Programs will be performed by the Principal. City, through the Chief of Police, will be responsible for the control, direction, and professional supervision of the police officer assigned to the SRO Programs. City's Chief of Police will be granted site access to perform supervisory requirements as necessary.

- 1.05** The City will ensure that the exercise of the law enforcement powers by the SRO is in compliance with the authority granted by the law.
- 1.06** The SRO will not function as a school disciplinarian or safety officer. It is not the responsibility of the SRO to intervene with the normal disciplinary procedures in the school. The SRO will perform the following duties:
- To perform law enforcement functions within the school setting.
 - To identify and prevent, through counseling and referral, delinquent behavior, including substance abuse.
 - To foster a better understanding of the law enforcement function.
 - To develop a better appreciation of citizens' rights, obligations and responsibilities.
 - To provide information about crime prevention.
 - To provide assistance and support for crime victims identified within the school setting.
 - To promote positive relations between the students and the law enforcement officer.
 - To enhance knowledge of the fundamental concepts and structure of the law.
 - To be familiar with confidentiality requirements.
 - Any records generated by the Officer as part of his/her SRO Program duties shall be considered a school record subject to the Family Educational Rights and Privacy Act and related regulations (34 CFR 99.30 and 99.31).
- 1.07** The SRO will be on duty at the school during regular school hours when students are required to attend and when the required SRO Training Programs are conducted, unless police department emergency needs or law enforcement requirements prohibit.
- 1.08** The SRO will not be required to attend extracurricular activities which are held beyond his/her regular workday or require the SRO to leave his/her jurisdiction, but the SRO will have the option to attend if they choose to do so.

SECTION 2: DUTIES AND RESPONSIBILITIES OF THE BOARD

- 2.01** The Principal at South Middle will be the on-site contact person for the SRO. The Superintendent of the Board will designate the School Resource Officer Coordinator to serve as the county liaison for the program.
- 2.02** A performance review will be performed at the end of the school year by the Principal and submitted in writing to the Police Chief.
- 2.03** The Board will furnish the City funds in the total sum of _____ (2/3rd total cost) to offset the cost of salary and related benefits for the employee of the City, who will provide the contracted service and act as SRO to the schools pursuant to the terms expressed in this Agreement.

SECTION 3: TERMS OF AGREEMENT

- 3.01** This Agreement is made for an Eight month term beginning the 1st day of October, 2015 and ending the 30th day of June, 2016.
- 3.02** This Agreement will continue in effect until the expiration of the term described in paragraph 3.01 or until terminated by either of the parties in accordance with the terms listed in Section four (4) below.

SECTION 4: TERMINATION

- 4.01** Either party may terminate this agreement by serving written notice upon the other party at least thirty (30) days in advance of such termination.,

SECTION 5: SEVERABILITY

- 5.01** Should any part of this Agreement be declared invalid by a court of law or administrative body, such decision will not affect the remaining provisions of the Agreement and this Agreement shall be interpreted as if the invalid portion was never a part of this Agreement. If such determination of invalidity will materially affect any other rights or obligations of the parties hereunder, the parties hereto will negotiate in good faith to amend this Agreement in a manner satisfactory to the parties.

SECTION 6: ASSIGNMENT

- 6.01** No Party to the Agreement will, directly nor indirectly, assign or purport to assign this Agreement or any of the rights or obligations provided in the Agreement in whole or in part to any third party without the prior written consent of the other party.

SECTION 7: NO WAIVER

- 7.01** The failure of either party to exercise any of its rights herein contained will not preclude or prejudice it from exercising the same or any other right it may have under this Agreement, irrespective of any previous action or proceeding taken by it hereunder.

SECTION 8: COMPLETE AGREEMENT

- 8.01** This Agreement is the complete Agreement of the parties; may be amended or modified only in writing; and supersedes, cancels, and terminates any and all prior agreements or understanding of the parties, whether written or oral, concerning the subject matter hereof.

SECTION 9: CHOICE OF LAW

- 9.01** This Agreement will be governed by and interpreted according to the laws of the State of West Virginia. It will be binding upon and inure to the benefit of the successors of the City and the Board.

SECTION 10: NOTICES

10.01 All notices or other communications required or permitted by the Agreement will be in writing and deemed effectively delivered upon mailing by certified mail, return receipt requested, or personal delivery to the following persons and addresses unless otherwise specified herein:

**Jeff Mikorski, City Manager
City of Mogantown, WV**

Date

**Dr. Frank Devono, Superintendent
Monongalia County Board of Education**

Date