



# The City of Morgantown

389 Spruce Street  
Morgantown, West Virginia 26505  
(304) 284-7439 Fax: (304) 284-7525  
www.morgantownwv.gov

Office of the City Clerk

## AGENDA REGULAR MEETING

June 15, 2021  
7:00 p.m.

To protect public health during the COVID-19 pandemic, personal attendance at the meeting is not permitted. This meeting will take place via WebEx at <https://cityofmorgantown.my.webex.com/meet/cityofmorgantown> using the meeting number 793 734 477. The meeting will be broadcast live on Morgantown 15 and live streamed via the City of Morgantown website at <https://morgantownwv.viebit.com/>. The public can also listen live by calling 415-655-0001 and using the access code 793 734 477. If members of the public wish to comment on a particular issue or public hearing, they should fill out the public comment sign-up form on our website, prior to the start of the meeting which can be found at: <http://bit.ly/MCC061521>. Additionally, the public can submit written comments via email to the City Clerk at [cwade@morgantownwv.gov](mailto:cwade@morgantownwv.gov).

1. **CALL TO ORDER:**
2. **ROLL CALL:**
3. **PLEDGE:**
4. **APPROVAL OF MINUTES:** May 18, 2021, Regular Meeting; June 1, 2021, Special Meeting minutes
5. **CORRESPONDENCE:** Proclamation recognizing outgoing council members
6. **PUBLIC HEARINGS:**
  - A. AN ORDINANCE TO APPROVE PERSONNEL RULES
  - B. AN ORDINANCE AUTHORIZING A LEASE AGREEMENT WITH PAUL KOONTZ AS XEROX SALES REPRESENTATIVE CONSULTANT AT THE AIRPORT
7. **UNFINISHED BUSINESS:**
  - A. Consideration of APPROVAL of (SECOND READING) of AN ORDINANCE TO APPROVE PERSONNEL RULES (*First reading 06/1/2021*)
  - B. Consideration of APPROVAL of (SECOND READING) of AN ORDINANCE AUTHORIZING A LEASE AGREEMENT WITH PAUL KOONTZ AS XEROX SALES REPRESENTATIVE CONSULTANT AT THE AIRPORT (*First reading 06/1/2021*)
  - C. BOARDS & COMMISSIONS:
8. **PUBLIC PORTION WHICH SHALL BE SUBJECT TO RULES ESTABLISHED BY COUNCIL AND ADOPTED BY RESOLUTION:**

**9. SPECIAL COMMITTEE REPORTS:**

- A. CIVILIAN POLICE REVIEW & ADVISORY BOARD** – *Deputy Mayor Fetty, Chair; Mayor Dulaney, Vice-Chair*
- B. SPECIAL COMMITTEE ON UNSHELTERED HOMELESSNESS** – *Mayor Dulaney, Chair; Deputy Mayor Fetty, Vice-Chair; Members; Councilor Selin, and Councilor Harshbarger.*

**10. CONSENT AGENDA:** *Reminder: Matters on the Consent Agenda are voted on collectively without any debate. If any member objects, an item is removed and considered under New Business.*

**11. NEW BUSINESS:**

- A. Consideration of APPROVAL of (FIRST READING) of AN ORDINANCE AUTHORIZING A LEASE AGREEMENT WITH THE SHACK NEIGHBORHOOD HOUSE AT THE FORMER WOODBURN SCHOOL**
- B. Consideration of APPROVAL of (FIRST READING) of AN ORDINANCE AUTHORIZING A LEASE AGREEMENT WITH THE MOUNTAINEER HOMESCHOOLERS HUB AT THE FORMER WOODBURN SCHOOL**
- C. Consideration of APPROVAL of (FIRST READING) of AN ORDINANCE AMENDING SECTION 1331.08 OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS IT RELATES TO A POOLHOUSE AND SWIMMING POOL BEING ONE ACCESSORY STRUCTURE**
- D. Consideration of APPROVAL of A RESOLUTION AUTHORIZING CERTAIN INDIVIDUALS OF THE CITY OF MORGANTOWN TO TRANSACT BUSINESS WITH THE CITY'S VARIOUS BANKING AND BROKERAGE INSTITUTIONS**
- E. Consideration of APPROVAL of A RESOLUTION APPROVING THE FY 2020-2021 BUDGET REVISION #2 FOR THE MORGANTOWN CAPITAL ESCROW FUND**
- F. Consideration of APPROVAL of A RESOLUTION APPROVING THE 2021-2022 BUDGET FOR THE MORGANTOWN MUNICIPAL AIRPORT AND THE AIRPORT IMPROVEMENT FUND**
- G. Consideration of APPROVAL of A FAIRS & FESTIVAL PERMIT FOR A JOHN LENNON TRIBUTE CONCERT AND FUNDRAISER FOR EMPTY BOWLS AT GENES BEER GARDEN.**
- H. Consideration of APPROVAL of A STREET PAVING PROJECT BID CALL 2021-13**

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

**13. REPORT FROM CITY CLERK:**

**14. REPORT FROM CITY ATTORNEY:**

**15. REPORT FROM COUNCIL MEMBERS:**

**16. EXECUTIVE SESSION:**

- A. Pursuant to West Virginia Code Section 6-9A-4(b)(12) to discuss potential or pending litigation

**17. ADJOURNMENT:**

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

**City of Morgantown**  
389 Spruce Street, Morgantown, WV 26505

**MINUTES**  
**REGULAR MEETING**  
**May 18, 2021**

The Regular Meeting of the Common Council of the City of Morgantown was held via Webex on Tuesday, May 18, 2021, at 7:05 p.m.

To protect public health during the COVID-19 pandemic, personal attendance at the meeting was not permitted. The meeting took place via WebEx at <https://cityofmorgantown.my.webex.com/meet/cityofmorgantown> using the meeting number 793 734 477. The meeting was broadcast live on Morgantown 15 and live streamed via the City of Morgantown website at <https://morgantownwv.viebit.com/>. The public could listen live by calling 415-655-0001 and using the access code 793 734 477. If members of the public wished to comment on a particular issue or public hearing, they were asked to complete a public comment sign-up form on our website, prior to the start of the meeting, which could be found at <http://bit.ly/MCC051821>. Additionally, the public could submit written comments via email to the City Clerk at [cwade@morgantownwv.gov](mailto:cwade@morgantownwv.gov).

**PRESENT:** Via Webex City Manager Kim Haws, Assistant City Manager Emily Muzzarelli, City Attorney Ryan Simonton, City Clerk Christine Wade, Mayor Ron Dulaney, Jr., Deputy Mayor Rachel Fetty, and Council Members Bill Kawecki, Deb Bergen, Jenny Selin, Dave Harshbarger, and Barry Wendell.

The meeting was called to order by Mayor Dulaney.

**APPROVAL OF MINUTES:** Motion by Councilor Wendell, second by Councilor Bergen, to approve the April 6, 2021, Regular Meeting minutes; April 20, 2021, Regular Meeting minutes; May 3, 2021, City Election Canvassing Meeting minutes; May 4, 2021, Special Meeting minutes as printed. Those not present at the Canvass did not vote.

**CORRESPONDENCE:** Mayor Dulaney presented a proclamation to proclaim June as Men's Health Month that raises awareness of men's health issues including heart disease, mental health, diabetes, prostate, testicular, and colon cancer. It is also meant to increase awareness of the importance of a healthy lifestyle, regular exercise, and medical check-ups. Mayor Dulaney presented and read a proclamation honoring the service of Retiring Fire Chief Mark Caravasos who began his career with the City of Morgantown in 1985.

**PUBLIC HEARING: AN ORDINANCE (REVISION #6) AMENDING THE FY 2020-2021 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**

Mayor Dulaney declared this Public Hearing open.

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

**PUBLIC HEARING: AN ORDINANCE ESTABLISHING A CIVILIAN POLICE REVIEW AND ADVISORY BOARD**

Mayor Dulaney declared this Public Hearing open.

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

**UNFINISHED BUSINESS:**

**AN ORDINANCE AMENDING THE FY 2020-2021 ANNUAL BUDGET:** The below entitled Ordinance was presented for approval.

AN ORDINANCE AMENDING THE FY 2020-2021 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET (Revision 06) ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND

City Manager Kim Haws explained. Interim Finance Director Lori Livengood explained. Motion by Councilor Kawecki,

# City of Morgantown

second by Deputy Mayor Fetty, to approve the above-entitled Ordinance. Motion carried 7-0.

**AN ORDINANCE ESTABLISHING A CIVILIAN POLICE REVIEW AND ADVISORY BOARD:** The below entitled Ordinance was presented for approval.

## AN ORDINANCE ESTABLISHING A CIVILIAN POLICE REVIEW AND ADVISORY BOARD

City Manager explained. Deputy Mayor Rachel Fetty explained. Mayor Dulaney explained. After discussion, motion by Deputy Mayor Fetty, second by Councilor Kawecki, to approve the above-entitled Ordinance. After further discussion, motion by Councilor Kawecki, second by Deputy Mayor Fetty, to amend the original motion to include today as the date in which the board is enacted, as well as replace the email address provided with an email to be established by the board. Motion on the amendment carried 7-0. Motion on original motion carried 7-0.

### **BOARDS & COMMISSIONS:**

Motion by Councilor Selin, second by Councilor Bergen, to appoint, by consensus, Brianna Linger to the Health & Wellness Commission.

Motion by Councilor Harshbarger, second by Deputy Mayor Fetty, to appoint, by consensus, Sharon Patrick, to the Traffic Commission as the 6<sup>th</sup> Ward Representative.

Motion by Councilor Wendell, second by Councilor Kawecki, to reappoint, by consensus, Martin Dombrowski to the Traffic Commission as the 7<sup>th</sup> Ward Representative.

### **PUBLIC PORTION:**

Mayor Dulaney declared the Public Portion open.

Those that spoke in favor of the Ordinance establishing a Civilian Police Review and Advisory Board:

- Bob Cohen
- Ash Orr
- Mollie Kennedy
- Rebekah Aranda
- Robb Livingood
- Sam Wilmoth
- Jerry Carr

Barbara Watkins, Executive Director of Mainstreet Morgantown, shared details related to the activities of this group.

There being no other individuals to speak, Mayor Dulaney declared the public portion closed.

### **SPECIAL COMMITTEE REPORTS:**

**Special Committee on Unsheltered Homelessness** – Mayor Dulaney shared that the next meeting is June 10, 2021, at 2:00 pm.

**CONSENT AGENDA:** None

### **NEW BUSINESS:**

#### **APPROVAL OF A SETTLEMENT AGREEMENT WITH FIREFIGHTERS ON CIVIL SERVICE COMMISSION**

#### **CLAIM**

City Manager Kim Haws explained. City Attorney Ryan Simonton explained. Motion by Deputy Mayor Fetty, second by Councilor Selin, to approve the above-entitled Resolution. Motion carried 7-0.

**AN ORDINANCE AMENDING THE FY 2020-2021 ANNUAL BUDGET GENERAL FUND:** The below entitled Ordinance was presented for first reading.

# City of Morgantown

AN ORDINANCE (FINAL REVISION #7) AMENDING THE FY 2020-2021 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 Kim Haws explained. Interim Finance Director Lori Livengood explained. After discussion, motion by Deputy Mayor Fetty, second by Councilor Harshbarger, to approve the above-entitled Ordinance to second reading. Motion carried 7-0.

**AN ORDINANCE AMENDING THE FY 2020-2021 ANNUAL BUDGET COAL SEVERANCE FUND:** The below entitled Ordinance was presented for first reading.

AN ORDINANCE (FINAL REVISION #2) AMENDING THE FY 2020-2021 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 Kim Haws explained. Motion by Councilor Selin, second by Councilor Harshbarger, to approve the above-entitled Ordinance to second reading. Motion carried 7-0.

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT A GRANT APPLICATION TO WEST VIRGINIA DEPARTMENT OF TRANSPORTATION DIVISION OF HIGHWAYS TRANSPORTATION ALTERNATIVES PROGRAM FOR GRANT FUNDING FOR THE PLEASANT STREET STREETScape PROJECT PHASE III:** The above-entitled Resolution was presented for first reading.

City Manager Kim Haws explained. Assistant City Manager Emily Muzzarelli explained. After discussion, motion by Deputy Mayor Fetty, second by Councilor Selin, to approve the above-entitled Resolution. Motion carried 7-0.

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT A GRANT APPLICATION TO WEST VIRGINIA DEPARTMENT OF TRANSPORTATION DIVISION OF HIGHWAYS TRANSPORTATION ALTERNATIVES PROGRAM FOR GRANT FUNDING FOR THE DORSEY AVENUE SIDEWALK PROJECT:** The above-entitled Resolution was presented for first reading.

Assistant City Manager Emily Muzzarelli explained. After discussion, motion by Deputy Mayor Fetty, second by Councilor Selin, to approve the above-entitled Resolution. Motion carried 7-0.

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT A GRANT APPLICATION TO WEST VIRGINIA DEPARTMENT OF TRANSPORTATION DIVISION OF HIGHWAYS TRANSPORTATION ALTERNATIVES PROGRAM FOR GRANT FUNDING FOR THE MORGANTOWN MUNICIPAL AIRPORT STREETScape PROJECT:** The above-entitled Resolution was presented for first reading.

Assistant City Manager Emily Muzzarelli explained. After discussion, motion by Councilor Harshbarger, second by Deputy Mayor Fetty, to approve the above-entitled Resolution. Motion carried 7-0.

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT A GRANT APPLICATION TO WEST VIRGINIA DEPARTMENT OF TRANSPORTATION DIVISION OF HIGHWAYS TRANSPORTATION ALTERNATIVES PROGRAM FOR GRANT FUNDING FOR THE DON KNOTTS BOULEVARD PEDESTRIAN/CYCLING BRIDGE PROJECT:** The above-entitled Resolution was presented for first reading.

Assistant City Manager Emily Muzzarelli explained. After discussion, motion by Councilor Selin, second by Councilor Wendell, to approve the above-entitled Resolution. Motion carried 7-0.

**APPROVAL OF A FAIRS & FESTIVAL PERMIT FOR MAIN STREET SATURDAY'S EVENTS ON JUNE 11, 2021, AND JULY 24, 2021.**

City Manager Kim Haws explained. After discussion, motion by Councilor Harshbarger, second by Councilor Selin, to approve the Fair & Festival Permit for Main Street Saturday's events. Motion carried 7-0.

**CITY MANAGER'S REPORT:** City Administration has been working over the last two or three weeks on a concept called the Morgantown Citizens Leadership Academy. One of the reasons that we had considered this idea was that what it does is over a six- or

# City of Morgantown

seven-month period, one day a month for about three hours, community members can be exposed to the city, Administration, City Council process, Law Enforcement, Fire Department, and basically how the city runs. One of the great benefits of this is that folks have an opportunity to learn about the city and can be part of a pool of folks who might be considered for various committees throughout the city, and maybe would be even interested in running for city council. It is another effort on our part to try to include citizen participation in our in local government. It will be hands on and we will be meeting at various locations throughout the city, whether it is at the Police Department or Public Works so that there can be a real hands-on sense of understanding the nuances of the city. He shared that tomorrow at noon, for about 2 or 3 hours that he would be meeting with all the administrative staff in a small retreat to discuss issues related to the current personnel policies which have content that has created inequities within the city organization. There are also issues regarding reporting and other things and as an ongoing process of developing an updated employee handbook the intent is to get input from administrative staff into these critical areas that there really needs some attention. Regarding the Parklet for 430 Spruce Street, the landscaping is being installed this week. He reminded council that several of them had asked about the idea of having administration tour some of the neighborhoods in the community with neighborhood leaders. Planning Director Rickie Yeager is working to set those tours up and he asked if any of council had any input as to how they think that should happen to please advise. He did state that the city has a sizable van that can transport everyone together to drive around the neighborhood and get input and actually see issues that are being heard at community meetings.

**REPORT FROM CITY CLERK:** shared information related to Fire Civil Service Commission promotional exams. Those exams for Chief, Lieutenant and Captain have been scheduled for July 26, 27, and 28. She also shared that the Police Civil Service Commission met and set a date for Entry-level Police Officer and that date was set for June 19, 2021. Applications are now being accepted for Entry-level Police Officer. Clerk Wade also brought forth information related to the upcoming vacant seat for the First Ward left by Patrick Hathaway, specifically how that occurred and how the seat will be filled. Upcoming in the Clerk's office is the development of a Proclamation Request database, board and commission overviews, and new city council orientation, to name a few.

**REPORT FROM CITY ATTORNEY:** the first administrative update has been prepared to the street design and classification manual which was put into place specifically to provide sidewalk specifications. The US Treasury Department issued guidance on the use of the American Rescue Plan funds that are granted as direct aid to local government entities and including Morgantown on May 10th. Morgantown's allotment under the formula will be 11.2 million dollars. 50% of the funds are available now directly upon request from Treasury and then the remaining 50% will be available 12 months after receipt of the first half. The funds should be obligated by the end of 2024 and then spent by the end of 2026. There are six categories in the law for which they may be used, and the treasury guidance includes a brief page fact sheet specifying how those funds may be used. It does include authority to use funds to replace lost revenue under certain circumstances and there is a calculation supplied for that. Senator Manchin and the State Auditor are holding some presentations on the state level with respect to what they're intended or planned uses for those funds are.

## **REPORT FROM COUNCIL MEMBERS:**

**COUNCILOR HARSHBARGER:** shared that he and Councilor Kawecki had a chance last week to meet with some residents of Greenmont and tour the neighborhood with a couple code officers. It was very enlightening and helpful to get citizen input as they walked and looked at their concerns and heard their ideas. He shared that it was very valuable. He has heard from a couple of neighbors in South Hills on requests for signage. He suggested that they fill the form out on the Traffic Commission site to put that request through the formal process. There is a new establishment on Route 7 on Hogback turn called The Wicked Water Saloon. He has been working with the city to try to get the permitting necessary for this new business. The way that the store is configured reminded him of the cannabis shop where the city did not allow parking in the front of the old Sunnyside Superette because vehicles were parked perpendicular and had to back out into traffic. That building has been vacant for several years and he is hopeful that we can try to work out parking compromise with the individual so that he is able to successfully open this business. The volunteers that have been building a trail system in Marilla Park have pretty much completed it and Rick Landenberger has been leading that effort, and it's quite impressive. There is now a nice new trail network in Marilla Park connecting across the neighborhood area for folks to use now to get down to the rail trail from South Hills and Greenmont.

**COUNCILOR WENDELL:** provided the following.

“Congratulations to Fire Chief Mark Caravazos on his retirement. When many of us first came on Council in 2017, he explained to us how Morgantown desperately needed more firefighters. We were awarded a three year grant, called SAFER, to hire fifteen firefighters, but the grant was only for three years. At the end of the three years, the then City Manager recommended we lose the positions through attrition. Council agreed not to do that. He then recommended we increase the user fee to pay for the firefighters. We didn't do that either, but found a way to keep the firefighters without raising the user fee.

Some have said the Council is anti-police for voting for a civilian review commission. None of us are now, nor have we ever been anti-police. We have supported the Morgantown Police Department. This is not Minneapolis or New York. But there was an issue in Westover, just across the river. Police Chief Powell recommended changes to the proposed commission; they were accepted, and he signed off on our proposal. I am in awe of all the people who worked on this for

# City of Morgantown

months.

We are coming out of the pandemic after fourteen months of terror and uncertainty. Joe and I have been invited to visit and dine with friends for the first time in over a year, and I look forward to when we can change the city regulations about wearing masks. If you have not been vaccinated, I beg you to go do it.

I'm happy that we are asking for funding to improve the look and feel of our streets, and for a pedestrian and cycling bridge over Don Knotts Boulevard. We have been talking about these plans for the last four years, and hopefully, they will come to fruition.

This Sunday, at 7:30 P.M., Suncrest United Methodist Church is holding a candle-lighting ceremony in memory of those lost to COVID-19 in our community. They also want to honor public servants and first responders. The event will be outdoors and open to the public.

I'm teaching a class called "The Great Hits And Albums of 1970" at WVU's Osher Life-Long Learning Institute. My last class is this Friday. I was jealous of pop stars my age or younger. I wanted to be as handsome as David Cassidy, to sing as well as Karen Carpenter, and to be as charismatic as Michael Jackson. They all were unhappy in their lives, and are no longer with us. I've learned from this not to ever be jealous of anyone else.

I've been a heart patient for more than eighteen years. My cardiologist last week sent me for new blood tests to see how I was doing. I had them take my blood this morning, and I had the results by afternoon. Everything was in the normal range. I am grateful to my doctors at WVU Medicine, to my husband, who cooks nutritious meals, and to the Almighty for my continued health."

**DEPUTY MAYOR FETTY:** thanked everyone for passing the Civilian Review and Advisory Board ordinance. She thanked the members of the staff sharing that she believes there is a lot of confusion sometimes out in the public when they hear us thanking for example, Christine Wade or the Assistant City Manager Emily Muzzarelli, or the City Fire Chief for contributing when it's a policy decision that needs to be made by this separate city council body, and their position is not necessarily known always understood. She wanted to be clear that she is grateful for the consistent willingness to engage to do the work, of sitting with them listening and taking notes and giving advice. She is grateful for their work, their consistency, their professionalism, their willingness to bring their best selves to the table again and again no matter how repetitive their questions may be. She is grateful to our community members, and she thanked them. She attended the opening of The Hope Cafe up at the old Ramada Inn sharing that it was a wonderful time to be able to see how a vision can sometimes go through a lot of community conflict and questions and concerns but still come up with something that is good that will serve the community and serve an important purpose. They are offering meals between 4:00 and 6:00 p.m. and they are open to everyone. She is grateful to everyone who is involved in that project and making it come to fruition. She reminded folks to make sure your kids are wearing masks if they are in public places because they can't get vaccinated yet. Lastly, she congratulated the graduates of MHS and UHS.

**COUNCILOR KAWECKI:** shared that it is nice to see the results of what citizens in this community can do and do for this community at no cost, devoting their time performing on boards, coming up with initiatives that are for the betterment of the community and willing to work through it. He stated that he has never seen an Administration or heard of administration in the City of Morgantown even before this current Administration more willing to have that participation and benefit from it. He encouraged anyone who has any desire to see a better community to step forward and look at what can be done, as we certainly have enough organizations, groups, boards and commissions that certainly would benefit from their expertise. He also reminded folks to get their shots.

**COUNCILOR BERGEN:** shared that it is that time of year when there are turnover students, including grad students, stating that it feels like she is living in the middle of reverse gentrification where family homes are becoming rental properties that receive a lot less care. She stated that it was interesting to observe and participate in the University graduations and that it was a pleasure to see so many people celebrate generally with a lot of respect for mask-wearing suggestions. Councilor Bergen noted that it is such a trick to model and persuade public health measures, but she believes that we are going to have to keep doing that and keep working with WVU on policies over the summer and before more of the students return. She knows there is international presence in our wards, and it is good to see that folks are mindful of those who have family in India, and Palestine, and Columbia and some other places, noting that it has also been good to see people coming together and trying to maintain hope for a world beyond office.

**COUNCILOR SELIN:** shared that she would like to see how we can be innovative in our area as far as encouraging shots. She had a conversation with a spouse of someone in a hard to convince occupation about whether we need to bring shots to people where they work, or where they live, or where they worship. If folks have suggestions, she believes council should be funneling them to the Health Department or to City Hall, and then suggesting as a body how to get more segments of our population that are either reluctant, or without transportation, or somehow not getting their shot because it is those people who will not be able to participate fully and safely. Whatever council can do soon to get more people included she states they should work hard on that. She appreciates everyone's work that brought this evening's agenda before council and states that they will continue to help implement it because now the hard

# City of Morgantown

work and complete work begins with the Citizens Review and Advisory Board, with all the current projects, with further negotiations with the Fire Department to get everything all worked out as a city.

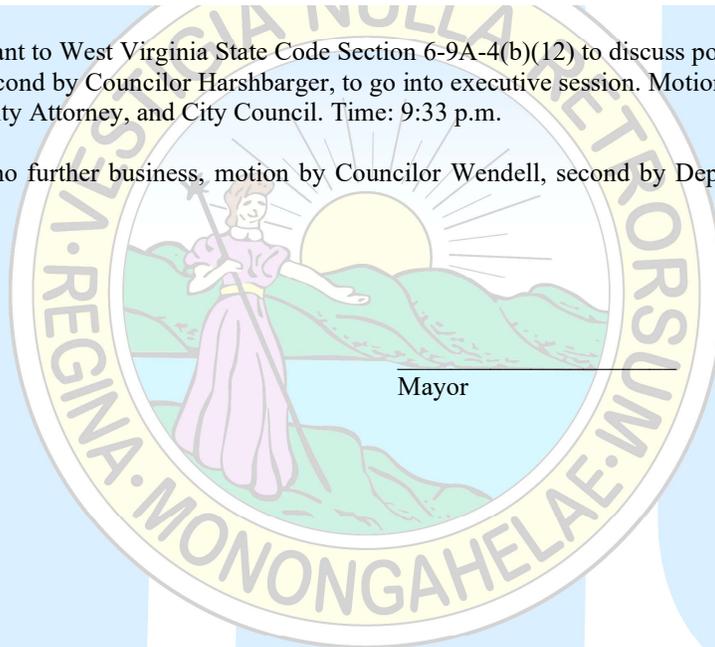
**MAYOR DULANEY:** expressed his appreciation to everyone that was involved over a long period of time in the development of the Civilian Police Review and Advisory Board. He was a guest on WAJR on this date where he answered questions related to this board. He is thankful for this opportunity because he feels the board has done their work on this. There is more work to do such as writing bylaws. There is action to be taken, but he feels the group has established a solid foundation. He thanked once again all who participated in that process. He also thanked Deputy Mayor Fetty who chaired that special committee. Since becoming the mayor, he has had the opportunity to serve as an ex-officio member on the Campus Neighborhoods Revitalization Corporation, also known as Sunny Side Up. What has impressed him about that organization is a conversation that is happening about assessing where that organization is, what remains to be done where it is, and what its potential roles might be beyond. He thanked the city staff, the planning department, and new Director of Development Services Rickie Yaeger, as well as the City Manager's office for supporting an informational meeting and discussion about lower Richwood with the Woodburn Association of Neighbors. This meeting happened quickly, and they met on Wednesday evening. The Woodburn Association of Neighbors did a great job of publicizing the meeting through multiple social media channels. That was a meeting where generally, the area of work, the parcels that are under the control of the Mon County Development Authority at this point are located, and generally informed people where they are in the process. He shared that he appreciated the willingness of Ricky and Ron Justice who participated, their willingness to listen to the concerns, and the hopes of folks in the neighborhood in terms of how that important large project will impact the neighborhood. He thanked our still new City Manager for his work as he knows that change is not always easy. He appreciates the kind of rigor that Manager Haws is bringing and trying to improve the way that our city provides services to its constituents, to its taxpayers, and trying to find ways to be more efficient and more effective.

**EXECUTIVE SESSION:** Pursuant to West Virginia State Code Section 6-9A-4(b)(12) to discuss potential or pending litigation. Motion by Councilor Kawecky, second by Councilor Harshbarger, to go into executive session. Motion carried by acclamation. Present: Interim City Manager, City Attorney, and City Council. Time: 9:33 p.m.

**ADJOURNMENT:** There being no further business, motion by Councilor Wendell, second by Deputy Mayor Fetty, to adjourn the meeting. Time: 9:55 p.m.

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor



# City of Morgantown

## SPECIAL MEETING

June 1, 2021

The Special Meeting of the Common Council of the City of Morgantown was held via Webex on Tuesday, June 1, 2021, at 6:05 p.m. To protect public health during the COVID-19 pandemic, personal attendance at the meeting was not permitted. This meeting took place via WebEx at <https://cityofmorgantown.my.webex.com/meet/cityofmorgantown> using the meeting number 793 734 477, or by calling 415-655-0001 and using the access code 793 734 477.

**PRESENT:** Via Webex Mayor Ron Dulaney, Deputy Mayor Rachel Fetty, Council Members Bill Kawecki, Deb Bergen, Jenny Selin, Dave Harshbarger, and Barry Wendell.

The meeting was called to order by Mayor Dulaney.

**EXECUTIVE SESSION:** Pursuant to West Virginia Code Section 6-9a-4(b)(2)(a) to discuss Personnel Matters in considering new appointments for Board and Commissions. Motion by Councilor Kawecki, second by Councilor Harshbarger, to go into executive session. Motion carried by acclamation. Present: City Council. Time: 6:07 p.m.

### **Library Board of Directors**

6:40 p.m. – Sue Carpenter

### **ADJOURNMENT:**

There being no further business, motion by Councilor Bergen, second by Councilor Wendell, to adjourn the meeting. Time: 7:04 p.m.

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

## **AN ORDINANCE ADOPTING PERSONNEL RULES**

The City of Morgantown hereby ordains, consistent with Section 4.05 of the Charter of The City of Morgantown, West Virginia, that the following Personnel Rules are adopted:

### Section 1: Purpose and Scope.

The purpose of these Personnel Rules is to establish a comprehensive Personnel System for The City of Morgantown, its officers, and employees, in accordance with the City Charter. The Personnel System, these Personnel Rules, and the employee handbooks, personnel policies, guidelines, and rules authorized by these rules will provide for: (1) The management of employee relations, personnel data systems, personnel records, employee classification, evaluation of performance and in-service training programs; (2) The formulation of plans, advice and action to conform to applicable State and federal employment laws; (3) The provision of a pay plan and guidelines for appointment, promotion, age of retirement and pension for City employees; (4) Policies and procedures regulating reduction in force and removal of employees; (5) The hours of work, attendance, regulations and provisions for sick and vacation leave; (6) Policies and procedures governing relationships with employee organizations; (7) Grievance procedures, including procedures for the hearing of grievances by the Personnel Board, which may render advisory opinions based on its findings to the City Manager with a copy to the employee; (8) Advice and guidance to all City officials, department heads and supervisors as necessary for the administration of the City Personnel System.

### Section 2: Administration.

The Personnel Rules recognize and reflect the duty of the City Manager to implement a sound Personnel System for the City (Charter § 4.05(a)) as a part of the City Manager's duties as the chief administrative officer for the City with the duty to appoint, suspend, and remove employees (Charter § 3.04(1)); to direct and supervise the administration of the departments, offices and agencies of the City (Charter § 3.04(1)); and to see that the laws, ordinances, and provisions of the City Charter and other acts of the City Council are faithfully executed and enforced (Charter § 3.04(4)).

The City Manager shall establish a system of classification and compensation designed to fairly and adequately compensate employees within the budget amounts adopted by the City Council from time to time. The City Manager will adopt and maintain an Employee Handbook that specifies the duties and responsibilities of the City and its employees with respect to the conditions of employment and provides clear procedures to ensure the City and its employees comply with those duties and responsibilities. In addition to the Employee Handbook, the City Manager may adopt and maintain additional policies, rules, and procedures, necessary and convenient to the administration of the Personnel System, within the authority granted by these Personnel Rules and other laws.

### Section 3: Rules adopted by City Council.

In addition to the Employee Handbook, personnel policies, guidance, and other materials adopted and published by the City Manager consistent with the administration duties imposed by the City Charter and by these Personnel Rules, the City Council may, from time to time, adopt such other or additional rules as it deems expedient for the interests of the City, provided that, if the rule under consideration by City Council would amend or modify any existing policies or procedures adopted by the administrative authority under the Personnel Rules, the rule will specify its impact on the policies or procedures affected. Should City Council elect to adopt rules under this Section 3, it will do so by ordinance.

The City Council recognizes that the administration of employees is committed to the City Manager, and that in order to effectively administer the Personnel System the City Manager must be able to respond promptly and effectively as issues arise with respect to the conditions of employment with the City, which will promote the attraction and retention of high quality employees necessary to serve the public interest, ensure prompt action is taken to correct any conditions adverse to City operations, and maintain a positive working environment that fosters a diverse, inclusive workforce able to proactively and effectively serve the community. In accordance with these principles, the City Council desires to set forth certain basic guidelines and conditions as Personnel Rules that will provide established policies upon which the City Manager may rely when administering the Personnel System, and accordingly the following rules are adopted:

#### **Establishment of Employee Positions and Compensation**

The City Council is responsible for establishing departments within the City administration, and the City Manager is responsible for establishing all employee positions, classification of those employees, and establishment of the employees' wages and compensation and pay ranges for certain positions. The City Manager will set employee positions, wages or salaries, pay ranges for positions, and any other pay for all employees on a Pay Plan, which will be updated no less than yearly as of July 1 each year. The Pay Plan shall at all times be designed to provide compensation in a total amount that does not exceed the amount of funds budgeted for such purposes by City Council.

#### **Grievances**

The City Council recognizes that in support of equality in employment conditions, it can be helpful to provide an established grievance process that includes, in certain instances, review and recommendation on employment actions by an independent Personnel Board. Employees may submit grievances regarding allegations of unlawful discriminatory practices; promotions or transfers; suspension without pay; and demotion, in accordance with such procedures as are established in the Employee Handbook, and the Personnel Board will hear grievances regarding these employment actions, and make recommendations for the disposition of such grievances to the City Manager. The Employee Handbook, and other administrative personnel policies, rules,

and procedures, may offer additional avenues to address grievances or complaints regarding the conditions of employment with the City.

### **Diversity, Equity, and Inclusion**

In accordance with its commitment to act as an equal opportunity employer and in pursuit of the goals established by City Council in Resolution No. 2020-05 adopting diversity, equity, and inclusion strategies recommended by the Morgantown Human Rights Commission, the City adopts the following policies:

**Equal Pay:** The City Council prohibits pay discrimination on the basis of sex. Employees in the same work location who perform substantially equal work will be paid at the same rate regardless of their sex, except where differences in pay are based on:

- A seniority, merit, or incentive system.
- Any factor other than an employee's sex.

This policy covers jobs that require substantially equal skill, effort, and responsibility and are performed under similar working conditions.

**Outreach for posted vacant employment positions:** The City Council recognizes that using online and printed media to conduct outreach to inform neighborhood and special interest populations on externally posted city employment vacancies promotes a diverse and inclusive workforce. While the City Council recognizes that administrative needs may not allow all positions to be filled only after outreach, it is the intention of City Council to promote use of such outreach when reasonably possible to fill employment vacancies. Examples of outreach recipient organizations for personnel recruitment and annual reporting will include neighborhood associations and the Neighborhood Coordinating Council; minority liaison organizations; social justice and minority advocacy organizations; and interested service, education and religious organizations wishing to receive regular distribution of information. The Human Resources Director will establish and maintain a list of outreach recipient organizations and individuals who have expressed interest in receiving outreach notices. Individuals may request access to distributed information by submitting requests in writing to the Human Resources Director. The list for employment outreach will be reviewed annually by the Human Rights Commission and the City Manager's Office.

**Outreach and applications for authority, board, and commission appointments:** The City Council recognizes that using online and printed media to conduct outreach to inform neighborhood and special interest populations on externally posted city employment vacancies promotes a diverse and inclusive workforce. The City Clerk in coordination with the Communications department shall be responsible for conducting online and media outreach to City residents relating to city volunteer vacancies on authorities, boards, and commissions, to neighborhood associations as well as to other organizations representing or advocating for diversity interests in the community. Examples of outreach recipient organizations for personnel recruitment and annual reporting will include neighborhood associations and the Neighborhood Coordinating Council; minority liaison organizations; social justice and minority advocacy

organizations; and interested service, education and religious organizations wishing to receive regular distribution of information. The Human Resources Director will establish and maintain a list of outreach recipient organizations and individuals who have expressed interest in receiving outreach notices. Individuals may request access to distributed information by submitting requests in writing to the Human Resources Director. The list for outreach will be reviewed annually by the Human Rights Commission and the City Manager's Office. In addition to these outreach efforts, the City Council may, in conjunction with the City Clerk and members of authorities, boards, and commissions, conduct outreach to neighborhoods and other interested entities to provide information and discussion for members of the general public who may be interested in learning more about City volunteer advisory opportunities, and such outreach may be by means of a workshop open to the public or by other methods designed to provide opportunities for public participation.

To confirm and record interest in specific volunteer positions within the city governance in appointed positions to authorities, boards, and commissions, the City Clerk will administer a system for applications allowing each candidate to submit an application online, by postal delivery, or in person to the City Clerk, who will impartially administer interviews for such positions and record the selection outcomes. Applications will be considered active for 12 months, after which interested candidates must renew their applications.

**Review of Outreach communication and representation:** The Human Rights Commission will conduct periodic reviews, no less than annually, of the communication with outreach organizations established by these rules to evaluate their efficacy and the preferences of outreach organizations receiving the communications. The Human Rights Commission will provide reports of its reviews to the City Council. In connection with these efforts, during the first quarter of each fiscal year, the Human Rights Commission shall work with the Mayor, Deputy Mayor and City Clerk to review the diversity status in volunteer representation, to make recommendations, and to reinforce efforts to have City authorities, boards, and commissions represent a diversity of Morgantown residents. The Human Rights Commission shall review, and report to City Council, the length of service of members of authorities, boards, and commissions reapplying for reappointment and encourage the involvement of new members when deemed practicable. The City Council recognizes that new membership has the potential of increasing community involvement in City government.

**Appointments Not Biased by Race, Age, Gender or Gender Identity nor Other Human Rights Ordinance Classifications:** In appointing members to authorities, boards, and commissions, the City Council shall not discriminate. Neither shall there be discrimination on the basis of age, race, color, culture, abilities/disabilities, sexual orientation, family or veteran status as well as the technical needs specific to an authority, board, or commission.

**Annual Workforce Demographic Reports:** The City's Diversity, Equity, and Inclusion Plan (the "DEI Plan") focuses on the generation of annual reports at the end of the fiscal year under the direction of the City Manager to identify, profile, and track diversity in both City employment and in volunteer participation on authorities, boards, and commissions. These reports will key on data from each City Department and each authority, board, and commission pertaining to race, gender, age, and disability and the subcategories provided in the DEI Plan. Where practicable,

this data will be compared with the Census Data percentages for the City of Morgantown to determine comparative proportionality. The reports shall be transmitted to the Human Rights Commission for review, comment, and recommendations which will be submitted to the City Manager and then to the City Council for public review.

It is important that successes in achieving diversity be acknowledged publicly to encourage other organizations in the city to adopt standards of equity.

It must be noted, that in accordance with guidelines of the federal Office of Management and Budget, race and gender data collected by the Census Bureau and through the American Community Survey is based on self-identification. Accordingly, all employees are free to self-identify personal data or not to participate in the disclosure of personal information on age, gender, sexual orientation, disabilities, or any other classification. It is notable, however, that the purpose of the DEI Plan and its collective annual disclosure is to strengthen acceptance of representative diversity both within the City government and in the community as a whole.

These Personnel Rules supersede and replace any existing or previously adopted Personnel Rules and any and all other rules, policies, or actions respecting the subject matter hereof, including any separately adopted ordinances of the City Council establishing employees' wages or rates of pay, but excluding, to the extent these could be construed to embrace the subject matter of the ordinance, ordinances or resolutions establishing pension or retirement benefits for the City of Morgantown, as of the effective date of this ordinance.

This ordinance is effective as of June 30, 2021.

Adopted this \_\_\_ day of \_\_\_\_\_, 2021

FIRST READING: \_\_\_\_\_

\_\_\_\_\_  
Mayor

SECOND READING: \_\_\_\_\_

ADOPTED: \_\_\_\_\_

\_\_\_\_\_  
City Clerk

FILED: \_\_\_\_\_

**AN ORDINANCE AUTHORIZING A LEASE AGREEMENT  
WITH PAUL KOONTZ AS XEROX SALES REPRESENTATIVE CONSULTANT  
AT THE AIRPORT**

The City of Morgantown hereby ordains that the City Manager is authorized to execute the attached lease agreement with Paul Koontz, as Xerox Sales Representative Consultant, and such additional documents as necessary to effectuate the lease.

This ordinance is effective upon adoption.

FIRST READING: \_\_\_\_\_

\_\_\_\_\_  
Mayor

SECOND READING: \_\_\_\_\_

ADOPTED: \_\_\_\_\_

\_\_\_\_\_  
City Clerk

FILED: \_\_\_\_\_

**City of Morgantown**

**AND**

**Paul Koontz  
Xerox Sales Representative Consultant**

**Office Lease Agreement**

# Table of Contents

- ARTICLE 1 PREMISES .....2
  - Section 1.01 Demised Premises .....2
  - Section 1.02 Acceptance of Demised Premises .....2
  - Section 1.03 Use of Demised Premises.....2
  - Section 1.04 Prohibited Uses .....3
- ARTICLE 2 GENERAL REQUIREMENTS.....3
  - Section 2.01 Conduct of Operations on Demised Premises .....3
- ARTICLE 3 TERM AND COMPENSATION.....4
  - Section 3.01 Initial Term.....4
  - Section 3.02 Options to Renew.....4
  - Section 3.03 Termination .....4
  - Section 3.04 Rent.....4
  - Section 3.05 Future Adjustments of Rents and Fees .....4
  - Section 3.06 Late Charges.....5
  - Section 3.07 Surrender of Possession.....5
  - Section 3.08 Holding Over .....5
  - Section 3.09 Chronic Late Payment.....5
  - Section 3.10 Dishonored Checks.....5
  - Section 3.11 Application of Payment .....5
- ARTICLE 4 TENANT'S FUTURE CONSTRUCTION REQUIREMENTS .....5
  - Section 4.01 Requirements for Improvements on Demised Premises .....5
  - Section 4.02 Future Construction Dates .....6
  - Section 4.03 Approvals of Future Construction Plans .....6
  - Section 4.04 Future Extension of Utilities or Special Facilities .....6
  - Section 4.05 Alterations or Repairs to Premises .....6
  - Section 4.06 Lien Indemnification .....6
  - Section 4.07 Cost of Construction and Alterations .....6
  - Section 4.08 As-built Drawings .....7
  - Section 4.09 Security Interest on Leasehold Improvements for Construction .....7
  - Section 4.10 Ownership of Improvements .....7
  - Section 4.11 Performance Bonds .....7
- ARTICLE 5 OBLIGATION OF TENANT .....7
  - Section 5.01 Net Lease .....7
  - Section 5.02 Maintenance and Operation.....7
  - Section 5.03 Utilities.....8
  - Section 5.04 Signs .....8
  - Section 5.05 Nondiscrimination.....8
  - Section 5.06 Observance of Statutes and Regulations .....8
  - Section 5.07 Airport Security.....8
- ARTICLE 6 OBLIGATIONS OF THE CITY .....8
  - Section 6.01 Operation as a Public Airport .....8
  - Section 6.02 Ingress and Egress .....8
- ARTICLE 7 CITY'S RESERVATIONS .....9
  - Section 7.01 Improvement, Relocation or Removal of Structure.....9
  - Section 7.02 Inspection of Demised Premises.....9
- ARTICLE 8 INDEMNITY AND INSURANCE .....9
  - Section 8.01 Indemnification .....9
  - Section 8.02 Insurance.....9

Section 8.03 Environmental Impairment .....	10
Section 8.04 Fire and Extended Coverage Insurance .....	10
Section 8.05 Application of Insurance Proceeds .....	10
Section 8.06 Performance Bonds .....	10
Section 8.07 Destruction of Premises (Uninsured Cause).....	10
ARTICLE 9 CANCELLATION BY THE CITY .....	10
Section 9.01 Events of Default by Tenants .....	10
Section 9.02 Remedies for Tenants' Default.....	11
ARTICLE 10 CANCELLATION BY TENANT FOR EVENTS OF DEFAULT BY CITY .....	12
Section 10.01 Event of Default by City.....	12
Section 10.02 Remedies for City's Defaults .....	13
ARTICLE 11 RIGHTS UNDER TERMINATION.....	13
Section 11.01 Fixed Improvements.....	13
Section 11.02 Personal Property .....	13
ARTICLE 12 ASSIGNMENT AND SUBLETTING .....	13
ARTICLE 13 QUIET ENJOYMENT.....	13
ARTICLE 14 GENERAL PROVISIONS .....	14
Section 14.01 Non-Interference with Operations of Airport .....	14
Section 14.02 Attorney's Fees .....	14
Section 14.03 Taxes and Special Assessments .....	14
Section 14.04 Right to Contest .....	14
Section 14.05 License Fees and Permits.....	14
Section 14.06 Non Exclusive Rights .....	14
Section 14.07 Paragraph Headings .....	14
Section 14.08 Interpretations .....	14
Section 14.09 Non-Waiver .....	14
Section 14.10 Severability.....	15
Section 14.11 Binding Effect .....	15
Section 14.12 No Partnership .....	15
Section 14.13 Duty to be Reasonable.....	15
Section 14.14 Notices .....	15
Section 14.15 Entire Agreement .....	15
Section 14.16 No Construction Against Drafting Party .....	16
Section 14.17 Third Party Beneficiaries .....	16
Section 14.18 Authorization and Execution .....	16

**City of Morgantown  
and  
Paul Koontz  
Xerox Company**

**Office Lease Summary**

<b>TYPE OF AGREEMENT</b>	Office Space
<b>TENANT</b>	Paul Koontz, Xerox Sales Representative Consultant
<b>REPRESENTATIVE(S)</b>	Paul Koontz
<b>NOTICE ADDRESS</b>	714 Venture Drive #134 Morgantown, WV 26508 Paul.Koontz@xerox.com
<b>COMMENCEMENT DATE</b>	June 1, 2021
<b>TERM</b>	Three (3) years
<b>RENEWAL OPTIONS</b>	Two (2) – One (1) year options
<b>TERMINATION DATE</b>	May 31, 2024
<b>LEASEHOLD/ASSIGNED PREMISES</b>	Office Space, South end of Terminal (See Exhibit A)
<b>INITIAL RENTAL RATE</b>	\$2,580 annually or \$215 monthly for 172ft <sup>2</sup> @ \$15/ft <sup>2</sup>
<b>RENTAL ADJUSTMENT</b>	CPI-U
<b>OTHER FEES, RATES AND CHARGES</b>	None
<b>AUTHORIZED USE(S)</b>	Office Equipment Sales/Leasing Services

Note: This summary is presented as a reference of the agreement information at the time of execution. If there is a discrepancy between the information contained in this summary and the requirements contained in the remainder of the Lease, the requirements as stated in the remainder of the Lease will prevail.

**City of Morgantown  
Morgantown Municipal Airport**

**AND**

**Paul Koontz  
Xerox Sales Representative**

**Office Space Lease Agreement**

THIS LEASE AGREEMENT for office space (hereinafter referred to as the "Lease", is entered into this **1<sup>st</sup> day of June , A.D., 2021** , by and between the **CITY OF MORGANTOWN**, c/o Morgantown Municipal Airport, Morgantown, West Virginia (hereinafter referred to as the "City"), and **Paul Koontz** (hereinafter referred to as the "Tenant").

**WITNESSETH:**

In consideration of the lease of certain real property and the covenants and agreements contained herein, the parties agree as follows:

**ARTICLE 1  
PREMISES**

The City hereby leases to Tenant, for its exclusive use as specifically authorized herein, and for no other use except as agreed to, and authorized herein, that space in the building commonly known as the Morgantown Municipal Airport Terminal Building [hereinafter the "**Terminal**"], described below and as shown on **Exhibit A** attached hereto and incorporated herein by reference [hereinafter the "**demised premises**"].

**Section 1.01 Demised Premises**

1. Office Space: Office Space of Approximately 172 square feet of space.

**Section 1.02 Acceptance of Demised Premises**

Tenant accepts the office space "AS IS" in its present condition. Tenant has had the right to inspect the space for suitability for the purposes it intends. Tenant acknowledges that neither the City nor its agents have made any representation or warranty as to the condition and/or suitability of the premises.

**Section 1.03 Use of Demised Premises**

1. The Tenant's use of the demised premises, is limited to the general operation of a professional insurance firm. Any future expansion, or change in use, of the demised premises will require the prior written approval of the City.
2. The Tenant, in addition to the use of the demised premises, shall be entitled to the general use, in common with others, of all non-aviation airport facilities made available for use to the general public except as otherwise hereinafter provided.
3. For the purpose of this Agreement, "airport facilities" available to the Tenant and its employees shall include automobile parking areas, roadways, sidewalks, or other areas of the Airport, that have been constructed at City expense for the benefit of Airport tenants and the general public.
4. The use of the above-mentioned airport facilities by Tenant shall be subject to their full compliance with such rules and regulations as now exist or may hereafter be enacted by the City. Approved uses of airport facilities are also subject to the payment of such fees and charges, as may be non-discriminatorily established from time to time by the City for the maintenance, operation or replacement of these facilities.

**Section 1.04 Prohibited Uses**

The following activities are expressly prohibited.

1. The Tenant may not use any part of the demised premises for any activity or purpose, other than as expressly set forth and authorized in Section 1.03, unless such use is approved, in writing, by the City.
2. The Tenant, and its employees, is prohibited access to, or use of, areas and facilities in the Air Operations Areas of the Airport.
3. Tenant is prohibited from using or permitting the demised premises to be used for the sale to its employees, or to the public, of any goods or services not directly related to those activities authorized in this Agreement.

**ARTICLE 2  
GENERAL REQUIREMENTS**

**Section 2.01 Conduct of Operations on Demised Premises**

In its exercise and carrying out of the rights, privileges, duties, and obligations granted herein, and in its use of the demised premises, Tenant hereby obligates itself, and agrees to obligate all of its sub-lessees and/or occupants, to the following requirements and regulations:

1. Tenant shall not consent to any unlawful use of the demised premises, nor permit any such unlawful use thereof.
2. Tenant agrees that all local, federal, and state ordinances and laws will be observed in its use and occupancy of the demised premises, including the rules and regulations of the federal and state aeronautical authorities and the local governing authorities.
3. Tenant shall comply with all City rules, regulations, and ordinances as they now exist or may hereafter be amended or adopted.
4. The operations of Tenant, its sub-lessees, employees, invitees, and those doing business with it, shall conduct all activities in an orderly and proper manner so as not to annoy, disturb or to be offensive to others at the Morgantown Municipal Airport. The City shall have the right to complain to Tenant as to the demeanor, conduct and appearance of Tenant's employees, sub-lessees, invitees and those doing business with it, and as to its and/or their failure to utilize said facilities at times, and in the manner, and according to the standards, mandated by the City, whereupon Tenant will take all steps reasonably necessary to remove the cause of the complaint and bring the operations and services into compliance with such standards.
5. The Tenant shall comply with all rules and regulations of the State Fire Marshall in the conduct of its operations on the demised premises.
6. Tenant shall not cause or permit the use, generation, storage, or disposal in or about the demised premises or elsewhere at the Airport of any Hazardous Materials except in strict compliance with State and Federal environmental laws and regulations.
7. Tenant agrees to return the demised premises to the City at the expiration of this Agreement in the same condition as when taken, reasonable wear and tear excepted unless other arrangements are made with the City.

The City reserves the right to further develop its building structures and to lease the same for any lawful purpose whatsoever or to provide any services it deems necessary or desirable in its sole and absolute discretion, for the public, regardless of the desires or views of Tenant, and without interference or hindrance.

**ARTICLE 3  
TERM AND COMPENSATION**

**Section 3.01 Initial Term**

The initial term of this Agreement shall be for a three-year period, commencing June 1, **2021, A.D.**(Commencement Date) and terminating on May 31, **2024 A.D.**

**Section 3.02 Options to Renew**

At the end of the initial three year term of this Lease, the Tenant shall have the first option to renew this Agreement for the Premises, referred to in Article 1; **Provided**, that Tenant is not then in default.

1. Tenant shall have the option to renew this Agreement for two (2) additional one (1) year periods.
2. Prior to the conclusion of the initial and all renewal terms, The Tenant and City may initiate discussions regarding a new lease. The Tenant may declare its intention to begin negotiations on a new lease Agreement, in writing, on or before, the 180th day prior to the expiration of this Agreement. Such 180-day period shall expire at midnight of the last day of the Agreement.
3. During said 180-day period, all of the terms and conditions including the amount of rent and other fees to be paid under a new Agreement shall be negotiated in good faith by both parties and reduced to writing and executed. If a written lease Agreement is not executed by the Tenant prior to the end of this negotiation period, this Agreement shall terminate in accordance with Article 11.

**Section 3.03 Termination**

This agreement shall be considered terminated by the Tenant on the terminating of the agreement unless the Tenant provides the City written notice of Tenant's intent to renew the lease one hundred eighty (180) days prior to the expiration of the then current term.

**Section 3.04 Rent**

1. **Office Rent.** The Tenant shall pay an annual office rent of **\$2,580.00**, which is equal to **\$15.00** per square foot for **172** square feet of office space. Said agreed rent shall be paid in advance monthly in twelve (12) equal installments of **\$215.00** due in advance the first day of each month.
2. **Payments:** All payments are to be made at the administrative office of the Morgantown Municipal Airport, 100 Hart Field Road, Morgantown, West Virginia 26505.
3. **Security Deposit:** N/A
4. **Lease Guarantee:** In the absence of a good business credit history of at least five (5) years prior to the commencement of this Agreement, Operator agrees to arrange for a Lease Guaranty (personal or established business) that shall remain in full force and effect until all monthly installments of rent and charges due during the first 60 months of the Term of the Agreement have been paid, without regard to the security deposit noted above, construction bonds or other collateral held by or for the City for the performance of the terms or conditions of the Agreement, or the receipt, disposition, application, or release of any security deposit, construction bonds or other collateral, now or hereafter held by or for the City.

**Section 3.05 Future Adjustments of Rents and Fees**

*The City reserves the right to adjust, or modify existing Airport fees and charges, or to establish additional fees and charges as necessary to maintain the financial integrity of the Airport through cost recovery and to make the Airport as self-sustaining as possible. Except for CPI adjustment of the annual ground site rent as noted below, all fees, rents and charges are subject to adjustment as a part of the City's annual budget approval process. Airport Tenants and the general public are provided the opportunity to comment on proposed fees, rents and charges changes during the budget approval process.*

Commencing on the first anniversary date of this agreement, and for each one (1) year period thereafter, the annual rental payment shall be adjusted by dividing the initial rental rate by the U.S. City Average of the

Consumer Price Index for All Urban Consumers (CPI-U) published immediately preceding the Effective Date of this Lease, **June 1, 2021**, and multiplying the quotient thereof by the last Index (CPI-U) published immediately preceding each such one (1) year lease period  $\left(\frac{\text{initial rental rate}}{\text{initial CPI-U}}\right) \times (\text{current CPI} - U) = \text{new rental rate}$ ). At no time, however, shall said rental be less than the rental paid during the previous year period of this Agreement.

For purposes of this Agreement, the Consumers Price Index means the Index for "All Goods and Services" for Urban areas for the U.S. City Average as determined by the United States Department of Labor, Bureau of Statistics.

Should the United States Government revise its price index at any time, the parties hereto will follow such suggestions as the Government may issue for making an arithmetical changeover from one Index to another. Should the price index be wholly discontinued, then its successor or the most nearly comparable successor index thereof, adjusted back to the anniversary date, shall be used.

### **Section 3.06 Late Charges**

The Tenant shall pay to the City a late charge equal to 1.5% per month on all rent and fee charges which are 30 days past due. Said late charge shall commence on the past due amount from the date said payment was due and shall be computed to the date the past due amount is paid. This shall be in addition to, and in no way alters, any other rights reserved to the City, or existing in the City by virtue of the laws of the State of West Virginia, or by the terms of the Agreement.

### **Section 3.07 Surrender of Possession**

At the expiration of the term of this Agreement, including any renewal term(s), whether by lapse of time or otherwise, Tenant shall promptly and peacefully surrender the demised premises to the City.

### **Section 3.08 Holding Over**

If Tenant shall, with the written consent of the City, hold over after the expiration of the term of this Agreement, including any renewal term(s), tenancy shall be on a month-to-month basis, which may be terminated as provided for by the laws of the State of West Virginia.

### **Section 3.09 Chronic Late Payment**

City may also terminate this Agreement for the reason that Tenant is chronically late with rental payments. Chronic late payments are defined as making a rental payment more than five (5) days after the due date on three (3) or more occasions during any consecutive 12-month period during the term of this Agreement.

### **Section 3.10 Returned/Dishonored Checks**

If Tenant makes a payment due under this Agreement with a check that has been returned/dishonored by the bank, pursuant to West Virginia law, Tenant shall pay a \$25.00 service fee in addition to the amount of the returned/dishonored check, payable within ten (10) days of receipt of City's written demand for such payment. If not paid in full within ten (10) days, it will be sent to Magistrate Court for collection. This amount is in addition to the late fee incurred.

### **Section 3.11 Application of Payment**

Money paid by Tenant to City for late fees and/or litigation settlements shall be applied first to interest, second to Court Costs legally chargeable to Tenant, third to attorney fees chargeable to Tenant, fourth to outstanding repair bills that are the responsibility of the Tenant, and fifth toward rent.

## **ARTICLE 4 TENANT'S FUTURE CONSTRUCTION REQUIREMENTS**

### **Section 4.01 Requirements for Improvements on Demised Premises**

The Tenant shall, at its sole expense, construct on the demised premises, as provided in Sections of this Article 4, additions, and improvements as necessary in furtherance of the purposes set forth in Article 2, and the Tenant shall install herein and thereon such equipment and facilities as the Tenant or the City may deem necessary or desirable. Provided, however, that no improvement of any nature shall be made or installed by the Tenant without the prior written consent of the City as herein provided. The Tenant may also be required to provide the City with proof that funds necessary to complete construction of the

improvements have been irrevocably dedicated to such construction. All improvements constructed under this Agreement shall be in accordance with the Airport's Tenant Improvement Manual as well as all other applicable laws, rules, regulations and ordinance.

#### **Section 4.02 Future Construction Dates**

1. **Additional Construction:** The construction of any additional improvement, occurring during the remaining term of this agreement, shall be substantially completed within 12 months of the date of the City's written approval of the Plans therefore in accordance with the construction schedule approved by the City. In the event of a failure to complete the additional construction within the 12 month period, the City shall have the right to terminate this Agreement pursuant to Article 9 hereof, and make appropriate claims against required performance bonds to complete construction, unless it is determined at sole discretion of the City that there were delays beyond the control of the Tenant.
2. **Construction Period Extensions:** The Tenant may request an extension of the construction period for causes or conditions of delay that are beyond the control of the Tenant (hereinafter referred to as "Force Majeure"). Such conditions of delay may be, by way of example, but not limited to, strikes, acts of God, inability to obtain labor or materials, governmental restrictions, enemy action, civil commotion, fire or other casualty, or failure of the City to carry out its obligations. Accordingly, at the sole discretion of the City, the period for completion of construction shall be extended by the number of days of delay resulting from the Force Majeure.

#### **Section 4.03 Approvals of Future Construction Plans**

The Tenant covenants and agrees that prior to the preparation of detailed construction plans, specifications and architectural renderings of any such addition or improvement, it shall first submit plans showing the general site plan, design and character of improvements and their locations, to the City for approval. The City agrees to review such plans within 30 days of receipt from the Tenant. The Tenant covenants and agrees that prior to the installation or construction of any present and future addition or improvement on the demised premises, it shall first submit to the City for approval, final detailed construction plans and specifications and architectural renderings prepared by registered architects and engineers, and that all construction will be in accordance with such plans and specifications and the Tenant Improvement Manual and all other applicable rules, regulations, laws and ordinances.

#### **Section 4.04 Future Extension of Utilities or Special Facilities**

The Tenant shall contract, and extend, at its sole expense, all necessary utility, electrical, communication lines needed to service any improvements constructed in the future by the Tenant on the demised premises. All utility extensions and other construction shall be in accordance with all applicable Codes, ordinances and the Tenant Improvement Manual.

#### **Section 4.05 Alterations or Repairs to Premises**

The Tenant shall not construct, install, remove and/or modify internal, external or structural portions of the buildings constructed upon the demised premises without the prior written approval of the City. The Tenant shall submit for approval by the City, its plans and specifications for any proposed project as well as complying with all applicable code requirements and such other conditions considered by the City to be necessary.

#### **Section 4.06 Lien Indemnification**

Tenant shall keep the premises free from liens arising out of any work performed and/or materials ordered, or from any obligations incurred by Tenant. In the event any person or corporation shall, as a result of construction work being performed by or for the Tenant, attempt to assess a lien against the demised premises, the Tenant shall hold the City harmless from such claim, including the cost of defense.

#### **Section 4.07 Cost of Construction and Alterations**

Within thirty (30) days of completion of the construction or alterations, the Tenant shall present to the City for examination and approval a sworn statement of the construction and/or alteration costs. Construction and/or alteration costs for the purpose of this Section are hereby defined as all money paid by the Tenant for actual site preparation, construction or alteration, including architectural and engineering costs plus pertinent fees in connection therewith. In the event that the Tenant makes further improvements or alterations on the demised premises, the use thereof shall be enjoyed by the Tenant during the term hereof without the additional rental therefore.

**Section 4.08 As-built Drawings**

Within ninety (90) days following completion of any future construction by the Tenant and any subsequent additions, alterations or improvements, the Tenant shall present to the City a complete set of "as-built" drawings including, but not limited to, architectural renderings, specifications, plumbing, and electrical plans.

**Section 4.09 Security Interest on Leasehold Improvements for Construction**

Tenant shall have no right to place a security interest, or "mortgage", upon demised premises, for improvements financed by the Tenant.

**Section 4.10 Ownership of Improvements**

The building and associated site improvements constructed and paid for by the City, as well as any approved improvements to demised premises, constructed during the term of this agreement, whether paid for by the Tenant or the City, excluding Tenant's personal property, shall remain the property of the City.

**Section 4.11 Performance Bonds**

Tenant shall cause a surety bond to be issued in the amount of 100% of the building(s) and site development construction costs, prior to the beginning of any construction financed by Tenant, or another form of security acceptable to the City that assures that the funds to cover the cost of the project are irrevocably set aside and available to the City to complete the improvement to City owned property should the Tenant fail to do so.

**ARTICLE 5  
OBLIGATION OF TENANT**

**Section 5.01 Net Lease**

The use and occupancy of the demised premises by the Tenant will be without cost or expense to the City. It shall be the sole responsibility of the Tenant to maintain, repair and operate the entirety of the demised premises, and any approved improvements and facilities constructed thereon, at the Tenant's sole cost and expense.

**Section 5.02 Maintenance and Operation**

The Tenant shall maintain the demised premises at all times in a safe, neat and clean condition free of weeds, rubbish, or any unsightly accumulations of any nature whatsoever. The Tenant shall repair all damage to the demised premises caused by its employees, patrons, or its operation thereon.

1. The City remains responsible for the structural integrity of the building structure.
2. Upon occupancy, the Tenant shall be responsible for and perform all maintenance, including but not limited to:
  - a. Janitorial services, providing janitorial supplies, window washing, rubbish, and trash removal.
  - b. Supply and replacement of light bulbs and replacement of all glass in building, including plate glass.
  - c. Replacement of floor coverings.
  - d. Building interior maintenance, including painting, repairing and replacement.
  - e. Repair or replacement of equipment and utilities to include electrical, mechanical and plumbing. All repairs to electrical and mechanical equipment are to be made by licensed personnel. Other repairs are to be made by craftsmen skilled in work done and performing such work regularly as trade.
  - f. The Tenant shall advise the City and obtain City's consent in writing before making changes involving structural changes to the premises, modifications or additions to plumbing, electrical or other utilities
  - g. The Tenant is responsible for maintaining electric loads within the designed capacity of the system. Prior to any change desired by the Tenant in the electrical loading which would exceed such capacity, written consent shall be obtained from the City.
  - h. The Tenant shall provide and maintain hand fire extinguishers for the demised premises in accordance with applicable fire and safety codes.

3. The City's Airport Director, at his discretion, shall be the sole judge of the quality of maintenance; and the Tenant, upon written notice by the City to the Tenant, shall be required to perform whatever maintenance the City deems necessary. If said maintenance is not undertaken by the Tenant within fifteen (15) days after receipt of written notice, the City shall have the right to enter upon the demised premises and improvements constructed thereon, and perform the necessary maintenance, the cost of which shall be borne by the Tenant as additional rent which shall be paid by the Tenant to the City in full within ten (10) days after the same has been billed.

#### **Section 5.03 Utilities**

The Tenant shall assume and pay for all costs or charges for utility services, including electrical, gas, telephone, and other such utilities furnished to the Tenant during the term hereof.

#### **Section 5.04 Signs**

The Tenant shall not erect, maintain, or display upon the outside of any improvements on the demised premises any billboards or advertising signs without prior written approval by the City.

#### **Section 5.05 Nondiscrimination**

The Tenant, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that (A) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the demised premises; (B) that in the construction of any improvements on, over, or under such land and the furnishing of services thereof no persons the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination; (C) that the Tenant shall use the demised premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and Transportation, and said Regulations may be amended, to the extent that said requirements are applicable, as a matter of law, to the Tenant.

With respect to the demised premises, the Tenant agrees to furnish services on a fair, equal, and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service; PROVIDED, that the Tenant may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

#### **Section 5.06 Observance of Statutes and Regulations**

The granting of this Agreement and its acceptance by the Tenant is conditioned upon the right to use the Airport facilities in common with others authorized to do so, provided however, that the Tenant shall observe and comply with any and all requirements of the constituted public authorities and with all federal, state, or local statutes, ordinances, regulations and standards applicable to the Tenant for its use of the demised premises, including but not limited to, rules and regulations or standards promulgated from time to time by the City for the administration of the Airport.

#### **Section 5.07 Airport Security**

The Tenant recognizes the City's required compliance with Federal Aviation Regulations concerning airport security and agrees to comply with the Airport's Security Plan as it relates to its use of the demised premises and the Airport's public facilities.

### **ARTICLE 6 OBLIGATIONS OF THE CITY**

#### **Section 6.01 Operation as a Public Airport**

The City covenants and agrees that at all times it will operate and maintain the Airport facilities, as a public airport consistent with, and pursuant to, the "Sponsor's Assurances" given by the City to the United States Government under Federal Airport Act.

#### **Section 6.02 Ingress and Egress**

Upon paying the rental prescribed herein, and performing the covenants of this Agreement, the Tenant shall have the right of ingress to, and egress from, the demised premises for the Tenant, its officers,

employees, agents, servants, customers, vendors, suppliers, patrons, and invitee over the roadway serving the area of the demised premises. Airport roadways shall be used jointly with other tenants of the Airport, and the Tenant shall not interfere with the rights and privileges of other persons or firms using said facilities and shall be subject to such weight and type use restrictions as the City deems necessary.

## **ARTICLE 7 CITY'S RESERVATIONS**

### **Section 7.01 Improvement, Relocation, or Removal of Structure**

In the event the City requires the demised premises for expansion, improvements, development of the airport, the City reserves the right, on a twelve (12) month notice, at no cost to the Tenant, to relocate or replace the Tenant's improvements, in substantially similar form at another generally comparable location on the Airport. All other Agreement terms shall remain in full force and effect. In the event of such relocation or replacement, the City agrees to suspend rental during any period such improvements are unusable.

### **Section 7.02 Inspection of Demised Premises**

The City, through its duly authorized agent, shall have at any reasonable time with prior notice, the full and unrestricted right to enter the demised premises for the purpose of periodic inspection for fire protection, maintenance and to investigate compliance with the terms of this Agreement.

## **ARTICLE 8 INDEMNITY AND INSURANCE**

### **Section 8.01 Indemnification**

1. The Tenant agrees to indemnify, save, hold harmless and defend the City, its agents and employees, its successors and assigns, individually or collectively, from and against all liability for any claims and actions and all reasonable expenses incidental to the investigation and defense thereof, in any way arising out of or resulting from any acts, omissions or negligence of the Tenant, its agents, employees, licensees, successors and assigns, or those under its control; in, on or about demised premises or upon demised premises; or in connection with its use and occupancy of demised premises or use of Airport; PROVIDED, HOWEVER, that the Tenant shall not be liable for any injury, damage, or loss to the extent occasioned by the negligence or willful misconduct of the City, its agents or employees. When knowledge of any action becomes known by the Tenant or the City, they shall give prompt written notice to the other party.
2. The Tenant shall indemnify, save, hold harmless, and defend the City, its agents and employees, its successors and assigns, individually or collectively, from and against all liability for any claims and actions and all expenses or fines incidental to the investigation and defense thereof, in any way arising from or based upon the violation of any federal, state, or municipal laws, statutes, ordinances or regulations by the Tenant's agents, employees, licensees, successors and assigns, or those under its control. The Tenant shall not be liable for any claims, actions and expenses or fines, incidental to the investigation and defense thereof, in any way arising from or based upon violation of any federal, state, or municipal laws, statutes, ordinances, or regulations by the City, its agents, employees, licensees, successors and assigns, or those under its control.

### **Section 8.02 Insurance**

1. Without limiting the Tenant's obligation to indemnify the City, the Tenant shall provide, pay for, and maintain in force at all times during the term of this Agreement a policy of comprehensive general liability insurance to protect against bodily injury liability and property damage in an aggregate amount of not less than \$1,000,000.00 per occurrence; a policy of comprehensive automobile liability insurance in a combined single limit of not less than \$1,000,000.00; and statutory Workman's Compensation insurance.

The Tenant shall furnish the City, as evidence that such insurance is in force, a certified copy of the insurance Certificate including the City as an additional insured within thirty (30) days after the policy(s) is issued. Said policies shall be in a form and content satisfactory to the City and shall provide for thirty (30) days written notice to the City prior to the cancellation of or any material change in such policies.

2. Neither the City nor its agents shall be responsible for the theft of or damage to any personal property of Tenant or its guests or invitees, for damage, loss, or destruction of personal property of Tenant or of Tenant's guests or invitees because of fire, water, acts, or omissions of third parties or any cause whatsoever unless caused by the negligent acts of City of its agents.

Tenant shall procure and maintain, at its own expense, insurance covering Tenant's personal property and to the fullest extent possible without violating any such insurance coverage, Tenant waives all claims and subrogation rights against City arising out of any loss of or damage to any personal property owned by or in the possession or control of Tenant.

Each party also releases the other party from any other liability for loss, damage or injury caused by fire or other casualty for which insurance is carried by the insured party to the extent of any recovery by the insured policy under such insurance policy, other than as set forth in Section 8.04 and 8.05 below.

### **Section 8.03 Environmental Impairment**

The Tenant will comply with any environmental regulations affecting its operations throughout the term of this Agreement.

### **Section 8.04 Fire and Extended Coverage Insurance**

The Tenant shall, at its expense, procure and keep in force at all times during the term of this Agreement with a company suitable to the City, insurance on the demised property, including all improvements, against loss and damage by fire, and extended coverage perils. The Tenant shall furnish evidence of insurance. Insurance shall name the City as an additional insured.

### **Section 8.05 Application of Insurance Proceeds**

If the demised premises shall be partially or totally destroyed or damaged, the Tenant and the City, within thirty (30) days of the damage shall decide whether or not to proceed with restoration. If the City and the Tenant elect not to restore the same to their previous condition, the proceeds of insurance payable by reason of such loss the City shall be entitled to receive and apply the entire proceeds of any insurance covering such loss to the cleanup of the leased site, except those proceeds identified to cover the loss of Tenants personal property contained within demised premises. The Agreement shall then be canceled. If the damage results from an insurable cause and if the City elects to have the Tenant restore demised premises with reasonable promptness, the Tenant shall be entitled to receive and apply the entire proceeds of any insurance covering such loss to said restoration, including applicable site clean-up, in which event this Agreement shall be appropriately amended as necessary and continue in full force and effect.

### **Section 8.06 Performance Bonds**

The Tenant shall cause a surety bond to be issued in the amount of 100% of the demised premises restoration costs, prior to the beginning of any construction financed by the Tenant or for the restoration of demised premises that is over and above insurance proceeds, in accordance with Section 8.05 above, or another form of security acceptable to the City that assures that the funds to cover the cost of the project are irrevocably set aside and available to the City to complete the improvement to City owned property should the Tenant fail to do so.

### **Section 8.07 Destruction of Premises (Uninsured Cause)**

In the event of damage to or destruction of the demised property by an uninsured cause, Tenant and the City shall decide, within thirty (30) days of the event, whether it will repair, restore, or rebuild the demised premises. Within sixty (60) days of the event, Tenant shall initiate restoration or raising activities and complete those activities within one hundred twenty (120) days of the event unless otherwise agreed by the City. In the event Tenant fails to take action as noted above, City shall have the right to restore the premises to its original condition. Tenant shall be liable for reimbursing the City for all costs incurred.

## **ARTICLE 9 CANCELLATION BY THE CITY**

### **Section 9.01 Events of Default by Tenants**

Each of the following events shall constitute an "Event of Default by Tenant":

1. Tenant fails to pay rentals, fees, and charges when due, and such default continues for a period of ten (10) days after receipt of written notice from the City that such non-payment constitutes an event of default.

2. Tenant fails after receipt of written notice from the City to keep, perform or observe any term, covenant or condition of this Agreement, other than as set forth in paragraph 1 (above) and such failure continues for thirty (30) days after such receipt, or if by its nature such event of default by Tenants cannot be cured within such thirty (30) day period, Tenant fails to commence to cure or remove such event of default by the Tenant within said thirty (30) days and to cure or remove same as promptly as reasonably practicable.
3. Tenant abandons the premises. Tenant's intent not to re-occupy the premises may be presumed upon expiration of ten (10) days after receipt of written notice from the City that it believes in good faith that Tenant has abandoned the premises.
4. Tenant shall become insolvent, shall take the benefit of any present or future insolvency statute, shall make a general assignment for the benefit of creditors, shall file a voluntary petition in bankruptcy or a petition or answer seeking a reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under and other law or statute of the United States or of any state thereof, or shall consent to the appointment of a receiver, trustee, or liquidation of all or substantially all of its property.
5. An Order for Relief shall be entered at the request of Tenant or any of its creditors under the federal bankruptcy or reorganization laws or under any law or statute of the United States or any state thereof.
6. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Tenant and shall not be dismissed within thirty (30) days after the filing thereof. Tenant shall pay to the City all reasonable costs and fees, including attorney and accounting fees and expenses, incurred by the City in the exercise of any remedy in the event of any default by the Tenant.
7. By or pursuant to, or under, any legislative act, resolution or rule, or any order of decree of any court or governmental board or agency, an officer, receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of Tenant and such possession or control shall continue in effect for a period of fifteen (15) days.
8. Tenant shall become a corporation in dissolution, or voluntarily or involuntarily forfeit their corporate charter, other than through merger with a successor corporation.
9. The rights of the Tenant hereunder shall be transferred to, pass to, or devolve upon, by operation of law or otherwise, any other person, firm, corporation or other entity, as a result of any bankruptcy, insolvency, trusteeship, liquidation or other proceedings or occurrence described in Paragraphs 3 through 7 above.

#### **Section 9.02 Remedies for Tenants' Default**

1. Upon the occurrence of an "Event of Default by the Tenant", Tenant shall remain liable to the City for all arrearages of rentals, fees or charges payable hereunder and for all preceding breach (es) of any covenant herein contained. The City, in addition to the right of termination, and to any other rights or remedies it may have at law or in equity, shall have the right of re-entry and may remove all Tenant's persons and property from the demised premises. Upon any such removal, Tenant's property may be stored in a public warehouse or elsewhere at the cost of, and for the account of, the Tenant. Should the City elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided by law, it may, at any time subsequent to an "Event of Default by the Tenant", either terminate this Agreement or re-let the demised premises and any improvements thereon, or any part thereof, for such term or terms (which may be for a term extending beyond the term of this Agreement) at such rentals, fees and charges, and upon such other terms and conditions, as the City, in its sole discretion, may deem advisable, with the right to make alterations repairs or improvements on said demised premises. No re-entry or re-letting of the demised premises by the City shall be construed as an election on the City's part to terminate this Agreement, unless a written notice of such intention is given to the Tenant. In re-letting the demised premises, the City shall make a good faith effort to obtain terms

and conditions no less favorable to itself than those contained herein and otherwise seek to mitigate any damage it may suffer as a result of the "Event of Default by the Tenant".

2. Unless the City elects to terminate this Agreement, the Tenant shall remain liable for and promptly pay all rentals, fees and charges accruing hereunder until termination of this Agreement at the expiration date set forth herein.
3. In the event that the City re-lets the demised premises, rentals, fees and charges received by the City from such re-letting shall be applied: first, to the payment of any indebtedness other than rentals, fees and charges due hereunder from the Tenant to the City; second, to the payment of any cost of such re-letting; third, to the payment of rentals, fees and charges due and unpaid hereunder; and, the residue, if any, shall be held by the City and applied in payment of future rentals, fees and charges as the same may become due and payable hereunder. Should that portion of such rentals, fees and charges received from such re-letting applied to the payment of rentals, fees and charges due hereunder be less than the rentals, fees and charges payable during the applicable period, Tenant shall pay such deficiency to the City. The Tenant shall also pay to the City, as soon as ascertained, any costs and expenses incurred by such re-letting not covered by the rentals, fees and charges received from such re-letting.
4. Notwithstanding anything to the contrary in this Agreement, if a dispute arises between the City and Tenant with respect to any obligation or alleged obligation of the Tenant to make payment(s) to the City, the payment(s) under protest by the Tenant of the amount claimed by the Tenant to be due shall not waive any of the Tenants' rights, and if any court or other body having jurisdiction determines all, or any part, of the protested payment was not due, then the City shall as promptly as reasonably practicable reimburse the Tenant any amount determined as not due plus interest on such amount at the highest rate allowable under West Virginia law.
5. Tenant shall pay to the City all reasonable costs, fees (including attorneys and accountants) and expenses incurred by the City in the exercise of any remedy upon an event of default by the Tenant.

**ARTICLE 10  
CANCELLATION BY TENANT FOR  
EVENTS OF DEFAULT BY CITY**

**Section 10.01 Event of Default by City**

Each of the following events shall constitute an "Event of Default by City":

1. The City fails, after receipt of written notice from Tenant, to keep, perform or observe any term, covenant or condition herein contained to be kept, performed or observed by the City and such failure continues for thirty (30) days; or, if, by its nature, such "Event of Default by City" cannot be cured within such thirty (30) day period, the City fails to commence to cure or remove such "Event of Default by City" within said thirty (30) days and to cure or remove the same as promptly as reasonably practicable.
2. The City closes the Airport to flights in general or to the flights of the Tenant, for reasons other than weather, acts of God or other reasons beyond its control, and fails to reopen the Airport to such flights within sixty (60) days of such closure, and such closure negatively affects the Tenant's use of demised premises.
3. The Airport is permanently closed by act of any federal, state or local government agency having competent jurisdiction.
4. The City is unable to use the Airport for a period of at least sixty (60) days due to any law or any order, rule or regulation of any appropriate governmental authority having jurisdiction over the operations of the airport, or any court of competent jurisdiction issues an injunction in any way preventing or restraining the use of the Airport, or any part thereof, for airport purposes, and such injunction remains in force for a period of at least sixty (60) days and such situation negatively affects the Tenant's use of demised premises.
5. The United States Government or any authorized agency of the same (by executive order or otherwise) assumes the operation, control or use of the Airport and its facilities in such a manner

as to substantially restrict Tenant from conducting its operations, and such restrictions shall continue for a period of at least sixty (60) days.

**Section 10.02 Remedies for City's Defaults**

Upon the occurrence of an "Event of Default by City", the Tenant shall have the right to suspend or terminate this Agreement and all rentals, fees and charges payable by Tenant under this Agreement shall abate during a period of suspension or shall terminate, as the case may be. In the event that Tenant's operations at Airport should be substantially restricted by action of any governmental agency having jurisdiction thereof, then Tenant shall, in addition to the rights of termination herein granted, have the right to a suspension of this Agreement, or part thereof, and abatement of an equitable proportion of the payments due hereunder, from the time of giving written notice of such election until such restrictions shall have been remedied and normal operations restored. In addition to its remedy of termination, the Tenant shall be entitled to all other remedies available to it by law or equity.

**ARTICLE 11  
RIGHTS UNDER TERMINATION**

**Section 11.01 Fixed Improvements**

It is the intent of this Agreement that the leasehold improvements, alterations and items affixed thereto shall be and remain the property of the City during the entire term of this Agreement. Upon termination of this Agreement, the Tenant shall have no further rights under this Agreement nor shall it have any interest in the demised premises, buildings or improvements, constructed thereon.

**Section 11.02 Personal Property**

Upon termination of this Agreement, the Tenant shall remove all personal property, and items not affixed, from the demised premises within sixty (60) days after said termination and restore the demised premises to its original condition. If the Tenant fails to remove said personal property, said property shall revert to City ownership and may thereafter be removed by the City at Tenant's expense.

**ARTICLE 12  
ASSIGNMENT AND SUBLETTING**

The Tenant shall not assign this Agreement or sublease, or any part hereof, in any manner whatsoever, or assign any of the privileges recited herein without the prior written consent of the City. Provided however:

1. Tenant may assign privileges of this agreement, and/or sublease space, in the Demised Premises directly to a parent, subsidiary or affiliate of Tenant, in the furtherance of its approved use of City / Airport facilities as detailed in 2.01, without City approval. However, Tenant remains obligated to notify City in writing of such assignment or sublease. Under such assignment or sublease, the Tenant remains fully responsible for the payment of all rents, fees and charges in accordance with the Agreement.
2. Any assignment of the privileges in this agreement, or sublease of Demised Premises, wherein the assignee/sub-lessee is responsible for the payment of rents, fees and charges directly to the City, must receive the prior approval of the City. In such assignment or sublease, Tenant shall remain liable to the City for the remainder of the term of this Agreement to pay to the City any portion of the rental and fees provided for herein upon failure of the assignee or sub-lessee to pay the same when due.
3. Said assignee or sub-lessee in either case above, shall not further assign or sublease said Agreement or leased space except with the prior written approval of the City and the Tenant herein, and any assignment or sublease agreement initiated by the Tenant to any third party shall contain a clause to this effect.

**ARTICLE 13  
QUIET ENJOYMENT**

The City covenants that the Tenant, upon payment of the rentals reserved herein and the performance of each and every one of the covenants, agreements and conditions on the part of the Tenant to be observed and performed, shall and may, peaceably and quietly, have, hold and enjoy the demised premises for the term of this Agreement, free from molestation, or disturbance.

## **ARTICLE 14 GENERAL PROVISIONS**

### **Section 14.01 Non-Interference with Operations of Airport**

The Tenant, by accepting this Agreement, expressly agrees for itself, its successors and assigns, that it will not make use of the demised premises in any manner which might interfere with the operations of the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the City reserves the right to enter upon the premises hereby leased and cause the abatement of such interference at the expense of the Tenant.

### **Section 14.02 Attorney's Fees**

In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover interest and its reasonable attorney's fees.

### **Section 14.03 Taxes and Special Assessments**

The Tenant shall pay any and all leasehold interest tax assessed on said demised premises and all personal property taxes which may be assessed against equipment, merchandise, or other personal property belonging to the Tenant located on the demised premises, or other permitted portions of the Airport. The Tenant shall pay all real estate taxes attributed to the Tenant's leasehold interest and all other real estate taxes which may be levied and assessed which are attributed to the Tenant's leasehold interest in the demised premises. The Tenant shall pay all sales or use taxes and assessments, license fees or other charges of any kind or nature, without exception, levied or assessed, arising out of the activities conducted on, and/or the occupancy of, the demised premises.

### **Section 14.04 Right to Contest**

The Tenant shall have the right to contest the validity or amount of any tax, assessment or charge, lien or claim of any kind in with respect to the demised premises. Tenant shall, if the City requires the same in writing and if the taxes or other assessments have not been paid under protest or otherwise escrowed or provided for, furnish reasonable security for the payment of all liability, costs and expenses at the end of the litigation, and Tenant, so long as the matter shall remain undetermined by final judgment, shall not be considered in default hereunder by the nonpayment thereof; provided however, that Tenant shall not, under these provisions, permit the premises or any buildings or improvements situated thereon, to be sold or forfeited, and failure by the Tenant to do what is necessary to prevent any such sale or forfeiture within ten (10) days from the publication or receipt of notice for sale or forfeiture, shall be deemed to be a default hereunder, and the City may, at its option, pay any such sum as may be required to avoid the sale or forfeiture and seek reimbursement for its cost from the Tenant or ownership of the buildings or improvements involved.

### **Section 14.05 License Fees and Permits**

The Tenant shall obtain and pay for all licenses, permits, fees or other authorization or charges as required under federal, state or local laws and regulations insofar as they are necessary to comply with the requirements of this Agreement and the privileges extended hereunder.

### **Section 14.06 Non Exclusive Rights**

It is hereby specifically understood and agreed between the parties that nothing herein contained shall be construed as granting or authorizing the granting of exclusive rights to the Tenant or others, as defined in Section 308 of the Federal Aviation Act of 1958, as amended.

### **Section 14.07 Paragraph Headings**

The Section paragraph headings contained herein are for convenience in reference only and are not intended to define or limit the scope of any of the provision of this Agreement.

### **Section 14.08 Interpretations**

This Agreement shall be interpreted in accordance with the laws of the State of West Virginia.

### **Section 14.09 Non-Waiver**

No waiver by City of any agreement, condition or provision contained in this Agreement will be valid or binding unless expressed in writing and signed by the City. The waiver by City of any agreement, condition or provision contained in this Agreement will not be deemed to be a waiver of any subsequent breach of

the same or any other agreement, condition or provision contained in this Agreement, nor will any custom or practice that may grow up between the parties in the administration of the terms of this Agreement be construed to waive or to lessen the right of City to insist upon the performance by Tenant in strict accordance with the terms of this Agreement. The subsequent acceptance of rent by City will not be needed to be a waiver of any preceding breach by Tenant of any agreement, condition or provision of this Agreement, other than the failure of Tenant to pay the particular rent so accepted, regardless of City's knowledge of such preceding breach at the time of acceptance of such rent.

**Section 14.10 Severability**

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

**Section 14.11 Binding Effect**

This Agreement, including all of its covenants, terms, provisions and conditions, shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, successors and assigns.

**Section 14.12 No Partnership**

Nothing contained in this Agreement shall be deemed to create the relationship of principal and agent or of a partnership or joint venture or any relationship between the City and Tenant other than the relationship of the City and Tenant.

**Section 14.13 Duty to be Reasonable**

Wherever in this Agreement the City is to give its consent, approval or otherwise exercise discretion in judgment, such consent, approval or judgment discretion shall not be unreasonably exercised or unreasonably withheld. When the City is called upon to give its consent or approval, or otherwise exercise its discretion and judgment as to financial matters which affect the City and the continuing operations of the Airport, the exercise of its judgment as to any such matters shall be solely and completely within the discretion of the City.

**Section 14.14 Notices**

Whenever any notice or payment is required by this Agreement to be made, given or transmitted to the parties hereto, such notices or payments shall be enclosed in an envelope with sufficient postage attached to insure delivery and deposited in the United States Mail, addressed to:

**Airport Director  
City of Morgantown  
Morgantown Municipal Airport  
100 Hart Field Road  
Morgantown, West Virginia 26505**

And notices, consents and approvals to the Tenant addressed to:

Paul Koontz Xerox Sales Representative Consultant 714 Venture Drive #134 Morgantown, WV 26508
--

Or such other place as either party shall, by written directive, designate in the manner herein provided.

**Section 14.15 Entire Agreement**

This Office Lease Agreement constitutes the entire agreement between the parties. There are no verbal or written agreements between the parties that are to be considered a part of this Agreement unless they have been specifically enumerated herein and this Agreement supersedes all prior or other agreements, understandings, and representations. This Agreement may be amended solely by a written instrument, signed by all parties.

**Section 14.16 No Construction Against Drafting Party**

City and Tenant acknowledge that each of them and their counsel have had an opportunity to review this Agreement and that this Agreement will not be construed against City merely because City has prepared it.

**Section 14.17 Third Party Beneficiaries**

It is specifically understood and agreed that no person shall be a third party beneficiary hereunder, and that none of the provisions of this Agreement shall be for the benefit of, or be enforceable by, anyone other than the parties hereto, and that only the parties hereto and their permitted assignees shall have rights hereunder.

**Section 14.18 Authorization and Execution**

By its execution hereof, Tenant and the City warrant that all necessary corporate action has been taken with regard to the authorization and execution of this Agreement and that the individual(s) executing this Lease Agreement on behalf of Tenant is/are duly authorized to do so. Whoever signs this Agreement on behalf of Tenant and the City hereby confirms that they have the appropriate authority and have been so authorized to execute this Agreement on behalf of Tenant and City, respectively.

**IN WITNESS WHEREOF**, the parties have caused this **Office Lease Agreement** to be executed on their behalf by their duly authorized officers.

**CITY OF MORGANTOWN**

**PAUL KOONTZ**

By: \_\_\_\_\_  
A. Kim Haws  
City Manager

By: \_\_\_\_\_  
**Paul Koontz**  
Xerox Sales Representative Consultant

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Witness:

Witness:

By: \_\_\_\_\_  
**Name, Title**

By: \_\_\_\_\_  
**Name, Title**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**AN ORDINANCE AUTHORIZING A LEASE WITH THE SHACK NEIGHBORHOOD HOUSE AT THE FORMER WOODBURN SCHOOL**

The City of Morgantown hereby ordains that the City Manager is authorized to execute the attached lease with The Shack Neighborhood House, Inc., and to execute such additional documents and take such additional actions as are necessary and helpful to executing and implementing the terms of the lease agreement.

FIRST READING: \_\_\_\_\_

\_\_\_\_\_  
Mayor

SECOND READING: \_\_\_\_\_

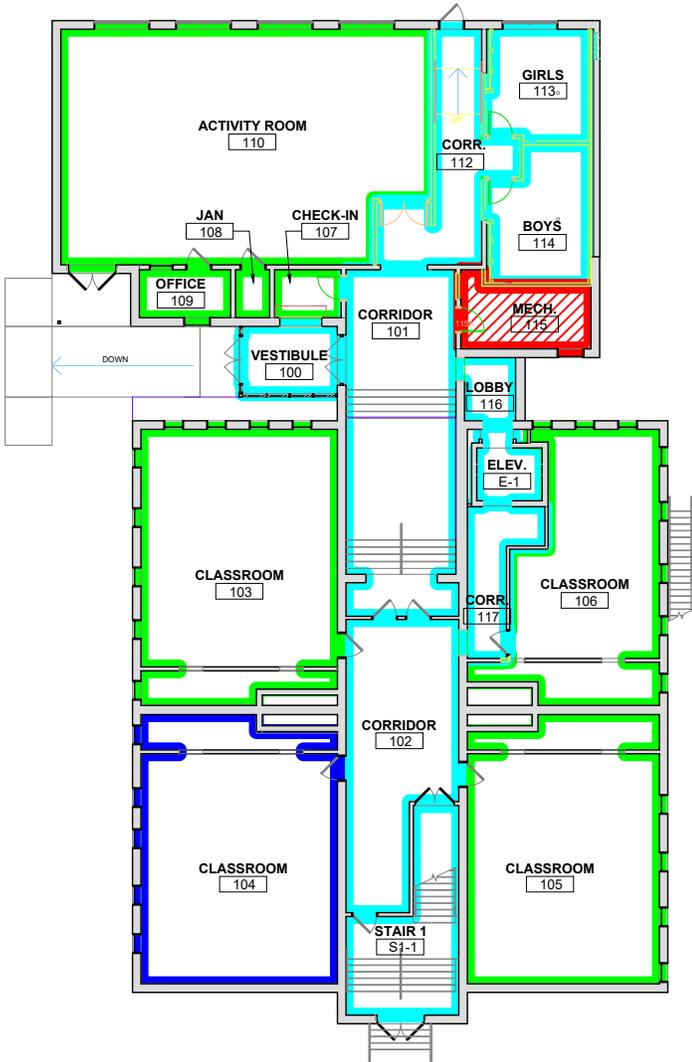
ADOPTED: \_\_\_\_\_

\_\_\_\_\_  
City Clerk

FILED: \_\_\_\_\_

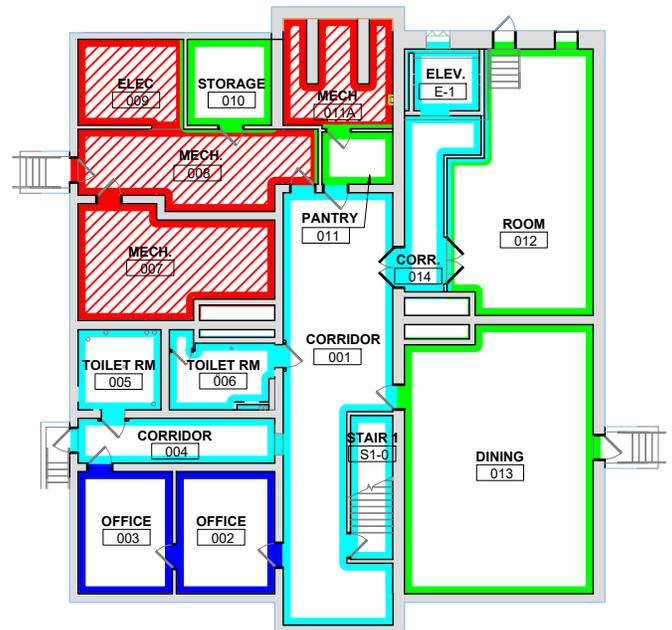
# EXHIBIT 1

## Area Leased to "The Shack"



### 1st Floor Level

Classroom	103	-	855.60	sqft
Classroom	105	-	815.90	sqft
Classroom	106	-	601.20	sqft
Check-In	107	-	51.80	sqft
Janitors	108	-	26.50	sqft
Office	109	-	71.10	sqft
Activity Room	110	-	1355.3	sqft
<b>Sub-Total</b>			<b>3,777.40</b>	<b>sqft</b>



### Basement Floor Level

Storage	010	-	117.40	sqft
Pantry	011	-	60.10	sqft
Room	012	-	556.00	sqft
Dining	013	-	802.20	sqft
<b>Sub-Total</b>			<b>1,535.70</b>	<b>sqft</b>
<b>Total</b>			<b>5,313.10</b>	<b>sqft</b>

- █ Areas Leased by The Shack
- █ Common Areas
- █ Areas Leased by Others
- █ Areas Off-Limits

## LEASE AGREEMENT

This agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021 by and between **THE CITY OF MORGANTOWN**, a municipal corporation and political subdivision of the State of West Virginia (“Lessor”), and **THE SHACK NEIGHBORHOOD HOUSE, INC.**, a West Virginia non-profit corporation with its principal office address at 537 Blue Horizon Drive, Pursglove, West Virginia 26546 (“Lessee”), upon the following terms:

### RECITALS

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

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

### SECTION ONE. DESCRIPTION OF PREMISES

- A. Lessor leases to lessee that certain space consisting of the **ground floor activity room including offices/closets off of that room, 3 classrooms on 1st floor (northern, eastern, and southern classroom) including closets off of those room, 1 classroom in basement, kitchen, freezer room, pantry, and use of shared space including restrooms and hallways in basement, ground floor, and 1st floor** located at the former Woodburn Elementary School, consisting of **5,313.10 square feet**, more or less, situated in Morgantown, Monongalia County, West Virginia, and shown on the attached “Exhibit 1,” which is incorporated herein by reference (the “Premises”).
- B. The premises shall be used for the following purpose and for no other purpose: to provide programs for the low-moderate income families in the community, including but not limited to after school programming, summer camps and individualized tutoring.
- C. In addition to the demised premises, the Lessee shall have the right to use all driveways, parking areas, and sidewalks (collectively, “Common Areas”), if any, in or about the Woodburn School building, jointly with other tenants and their respective representatives, agents, customers, guests and invitees. The Lessor will be responsible for routine maintenance of the Common Areas.

### SECTION TWO. TERM OF LEASE

- A. This lease agreement shall cover a term commencing **July 7, 2021** and extending until midnight on the day preceding the **first** anniversary of such date, provided that either of parties to this lease gives to the other, three months before the latter date, notice in writing of the party’s intention to terminate this lease on that date. Otherwise this lease will continue in force for another term of one year, and in the same manner from year to year (“Term”), including all terms and conditions in this lease, until one of parties terminates this lease by notice in writing in some ensuing year in the manner described above, which notice terminates this lease at the end of year for which premises are then held.

B. Lessee shall surrender the premises to lessor immediately on termination of the lease.

### **SECTION THREE. DELIVERY OF POSSESSION**

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

### **SECTION FOUR. RENTAL**

A. Lessee shall pay a total of **\$34,535.16** per year, resulting in a monthly rate of **\$2,877.93** per month, due on the **1st** day of each month for the succeeding month's rental. This sum reflects annual rate of **\$6.50** per square foot of space. Payments shall be made to lessor at the address specified herein, and a payment shall be delinquent if not paid by the fifth day after which it is due. In any month not entirely covered by the term of this lease, the monthly rental fee shall be prorated according to the number of days of that month covered by the lease term, resulting in a fee for that fractional month equal to (Number of days of month in lease term / number of days in calendar month) x \$2,877.93.

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

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

### **SECTION FIVE. RESTRICTIONS ON USE**

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

### **SECTION SIX. ABANDONING PREMISES OR PERSONAL PROPERTY**

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

### **SECTION SEVEN. UTILITIES AND SERVICES**

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

- (i) Custodial services in the common areas used by other tenants.
- (ii) Ground maintenance, including mowing, landscaping, and parking lot maintenance.
- (iii) Snow removal in front of the Activity Center, including only the front of the modular building constituting the Leased Premises and the walkway adjacent thereto, to be paid by the Lessor if third-party services are required, who shall be entitled to reimbursement as Additional Rent from the Lessee upon Lessor's delivery of a separate invoice, providing evidence of payment made.
- (iv) Utilities including natural gas, electric, and water.
- (v) Trash service

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

- (i) Custodial Services in the demised premises, excluding common areas.
- (ii) Telephone and internet connectivity services, as desired by Lessee.
- (iii) The Lessee shall have the right to rekey locks, install a key card access system, or provide any other security system for the demised premises, using such security services provider as the Lessee may choose in its sole discretion, provided that Lessee shall ensure Lessor is able to access the premises through such locks or system. The Lessee may remove said system at any time during the term of this lease, provided that Lessee, at its sole expense, shall repair any damage resulting from such removal and ensure that an adequate method for securing the demised premises is in place.

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

## **SECTION EIGHT. ALTERATIONS AND MODIFICATION; REPAIRS**

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

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

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

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

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

F. Lessor shall be responsible for making all routine repairs and for performing routine maintenance in the demised premises except the services and maintenance for which Lessee is responsible pursuant to **Section 7.B.** of this Agreement. Lessee shall permit lessor and lessor's agents to enter the demised premises at all reasonable times to inspect them, clean windows, perform other janitorial services, maintain the building and demised premises, make repairs, alterations, or additions to the demised premises, or any portion of the building, including the erection of scaffolding, props, or other mechanical devices, to post notices of nonliability for alterations, additions, or repairs, or to place on the premises any usual or ordinary "For Sale" signs, without any rebate of rent to lessee or damages for any loss of occupation or quiet enjoyment of the demised premises. Lessor may, at any time within ninety days prior to the expiration of this lease agreement, place on the windows and doors of the premises any usual or ordinary "To Let" or "To Lease" signs. Lessor and lessor's agents may, during the last-mentioned period, enter on the demised premises at reasonable hours and exhibit them to prospective tenants.

**SECTION NINE. LIMITATION OF LIABILITY; INDEMNIFICATION**

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

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

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

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

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

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

Bodily Injury .....\$1,000,000 per occurrence  
Property Damage.....\$ 100,000 per occurrence

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

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

## **SECTION TEN. DESTRUCTION OF PREMISES**

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

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

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

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

## **SECTION ELEVEN. CONDEMNATION**

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

## **SECTION TWELVE. ASSIGNMENT AND SUBLEASE**

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

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

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

## **SECTION THIRTEEN. BREACH OR DEFAULT**

Lessee shall have breached this lease agreement and shall be considered in default under this lease agreement if: (1) lessee fails to pay any rent when due and does not make the delinquent payment within five days after receipt of notice from lessor; or (2)

lessee fails to perform or comply with any of the covenants or conditions of this lease agreement and such failure continues for a period of ten days after receipt of notice from lessor in the fashion described in Section 21 below.

#### **SECTION FOURTEEN. LESSOR'S REMEDIES**

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

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

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

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

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

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

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

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

D. After reentry, lessor may procure the appointment of a receiver to take possession and collect rents and profits of the business of lessee, and, if necessary to collect the rents and profits the receiver may carry on the business of lessee and take possession of the personal property used in the business of lessee, including inventory, trade fixtures, and furnishings, and use them in the business without compensating lessee.

#### **SECTION FIFTEEN. UNLAWFUL DETAINER AND ATTORNEYS' FEES**

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

#### **SECTION SIXTEEN. REMEDIES OF LESSOR CUMULATIVE**

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

#### **SECTION SEVENTEEN. GOVERNING LAW**

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

#### **SECTION EIGHTEEN. NO WAIVER**

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

#### **SECTION NINETEEN. ENTIRE AGREEMENT**

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

#### **SECTION TWENTY. MODIFICATION OF AGREEMENT**

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

#### **SECTION TWENTY-ONE. NOTICES**

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

If to lessor: City of Morgantown  
c/o City Manager  
430 Spruce Street  
Morgantown, WV 26505  
With a copy to [rsimonton@morgantownwv.gov](mailto:rsimonton@morgantownwv.gov)

If to lessee: The Shack Neighborhood House, Inc.  
c/o Shawnda Cook, Executive Director  
P.O. Box 600  
Pursglove, WV 26546  
With a copy to \_\_\_\_\_

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

#### **SECTION TWENTY-TWO. COUNTERPARTS**

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

#### **SECTION TWENTY-THREE. SECTION HEADINGS**

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

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

[Signature page follows]

**LESSOR:** City of Morgantown

By: \_\_\_\_\_  
A. Kim Haws  
City Manager

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by A. Kim Haws, City Manager of the City of Morgantown, West Virginia.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for  
said State and County

**LESSEE:**

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by Shawnda Cook, as Executive Director of The Shack Neighborhood House, Inc..

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for  
said State and County

Schedule 1 – Lessee Identification of Defects

**AN ORDINANCE AUTHORIZING A LEASE WITH MOUNTAINEER HOMESCHOOL HUB AT THE FORMER WOODBURN SCHOOL**

The City of Morgantown hereby ordains that the City Manager is authorized to execute the attached lease with Mountaineer Homeschool Hub, Inc., and to execute such additional documents and take such additional actions as are necessary and helpful to executing and implementing the terms of the lease agreement.

FIRST READING: \_\_\_\_\_

\_\_\_\_\_  
Mayor

SECOND READING: \_\_\_\_\_

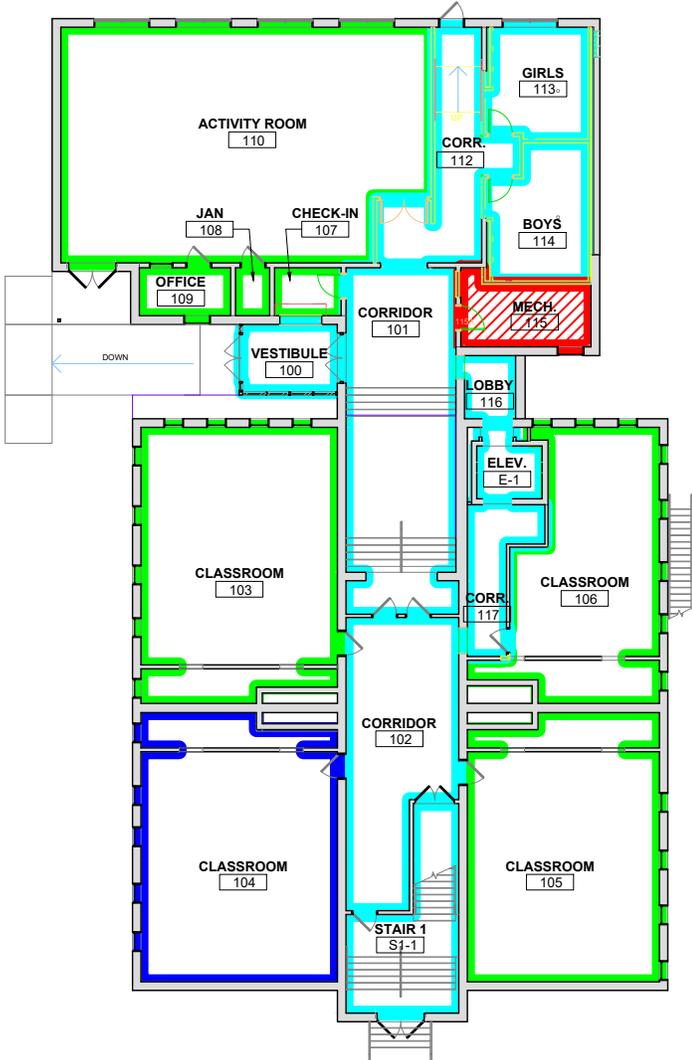
ADOPTED: \_\_\_\_\_

\_\_\_\_\_  
City Clerk

FILED: \_\_\_\_\_

# EXHIBIT 1

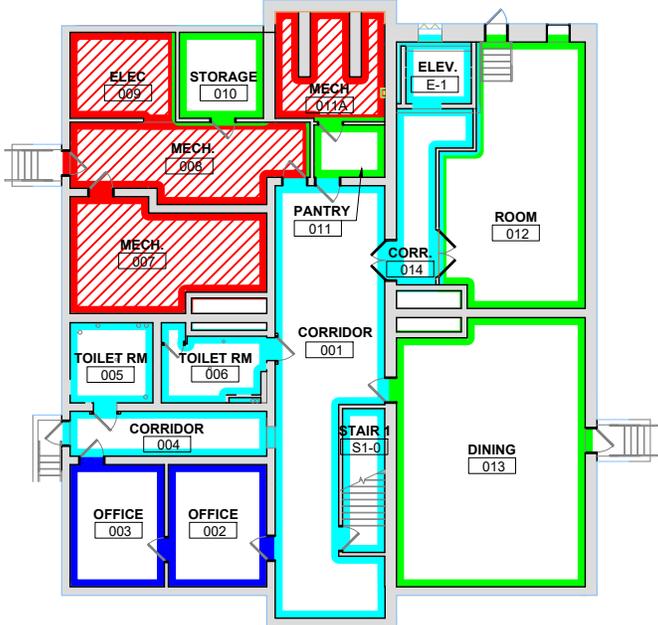
## Area Leased to "Mountaineer Homeschool Hub"



**1st Floor Level**

Classroom	104	-	832.30	sqft
Sub-Total			832.30	sqft

Total 1,214.70 sqft



**Basement Floor Level**

Office	002	-	195.4	sqft
Office	003	-	187	sqft
Sub-Total			382.40	sqft

- █ Areas Leased by MHH
- █ Common Areas
- █ Areas Leased by Others
- █ Areas Off-Limits

## LEASE AGREEMENT

This agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021 by and between **THE CITY OF MORGANTOWN**, a municipal corporation and political subdivision of the State of West Virginia (“Lessor”), and **MOUNTAINEER HOMESCHOOL HUB, INC.**, a West Virginia non-profit corporation with its principal office address at 219 Hartman Run Road, Morgantown, West Virginia 26505 (“Lessee”), upon the following terms:

### RECITALS

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

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

### SECTION ONE. DESCRIPTION OF PREMISES

- A. Lessor leases to lessee that certain space consisting of the **1 classroom on 1<sup>st</sup> floor (western classroom) including closet off of that room, two offices in basement, and nonexclusive use of shared space including restrooms and hallways in basement, ground floor, and 1<sup>st</sup> floor** located at the former Woodburn Elementary School, consisting of **1,214.70 square feet**, more or less, situated in Morgantown, Monongalia County, West Virginia, and shown on the attached “Exhibit 1,” which is incorporated herein by reference (the “Premises”).
- B. The premises shall be used for the following purpose and for no other purpose: to provide educational needs of homeschoolers and their families, as well as other community members, by offering classes, activities, special events, and resources.
- C. In addition to the demised premises, the Lessee shall have the right to use all driveways, parking areas, and sidewalks (collectively, “Common Areas”), if any, in or about the Woodburn School building, jointly with other tenants and their respective representatives, agents, customers, guests and invitees. The Lessor will be responsible for routine maintenance of the Common Areas.

### SECTION TWO. TERM OF LEASE

- A. This lease agreement shall cover a term commencing **July 7, 2021** and extending until midnight on the day preceding the **first** anniversary of such date, provided that either of parties to this lease gives to the other, three months before the latter date, notice in writing of the party’s intention to terminate this lease on that date. Otherwise this lease will continue in force for another term of one year, and in the same manner from year to year (“Term”), including all terms and conditions in this lease, until one of parties terminates this lease by notice in writing in some ensuing year in the manner described above, which notice terminates this lease at the end of year for which premises are then held.

B. Lessee shall surrender the premises to lessor immediately on termination of the lease.

### **SECTION THREE. DELIVERY OF POSSESSION**

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

### **SECTION FOUR. RENTAL**

A. Lessee shall pay a total of **\$5,769.84** per year, resulting in a monthly rate of **\$480.82** per month, due on the **1st** day of each month for the succeeding month's rental. This sum reflects annual rate of **\$4.75** per square foot of space. Payments shall be made to lessor at the address specified herein, and a payment shall be delinquent if not paid by the fifth day after which it is due. In any month not entirely covered by the term of this lease, the monthly rental fee shall be prorated according to the number of days of that month covered by the lease term, resulting in a fee for that fractional month equal to (Number of days of month in lease term / number of days in calendar month) x \$657.96.

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

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

### **SECTION FIVE. RESTRICTIONS ON USE**

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

### **SECTION SIX. ABANDONING PREMISES OR PERSONAL PROPERTY**

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

### **SECTION SEVEN. UTILITIES AND SERVICES**

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

- (i) Custodial services in the common areas used by other tenants.
- (ii) Ground maintenance, including mowing, landscaping, and parking lot maintenance.
- (iii) Snow removal in front of the Activity Center, including only the front of the modular building constituting the Leased Premises and the walkway adjacent thereto, to be paid by the Lessor if third-party services are required, who shall be entitled to reimbursement as Additional Rent from the Lessee upon Lessor's delivery of a separate invoice, providing evidence of payment made.
- (iv) Utilities including natural gas, electric, and water.
- (v) Trash service

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

- (i) Custodial Services in the demised premises, excluding common areas.
- (ii) Telephone and internet connectivity services, as desired by Lessee.
- (iii) The Lessee shall have the right to rekey locks, install a key card access system, or provide any other security system for the demised premises, using such security services provider as the Lessee may choose in its sole discretion, provided that Lessee shall ensure Lessor is able to access the premises through such locks or system. The Lessee may remove said system at any time during the term of this lease, provided that Lessee, at its sole expense, shall repair any damage resulting from such removal and ensure that an adequate method for securing the demised premises is in place.

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

## **SECTION EIGHT. ALTERATIONS AND MODIFICATION; REPAIRS**

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

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

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

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

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

F. Lessor shall be responsible for making all routine repairs and for performing routine maintenance in the demised premises except the services and maintenance for which Lessee is responsible pursuant to **Section 7.B.** of this Agreement. Lessee shall permit lessor and lessor's agents to enter the demised premises at all reasonable times to inspect them, clean windows, perform other janitorial services, maintain the building and demised premises, make repairs, alterations, or additions to the demised premises, or any portion of the building, including the erection of scaffolding, props, or other mechanical devices, to post notices of nonliability for alterations, additions, or repairs, or to place on the premises any usual or ordinary "For Sale" signs, without any rebate of rent to lessee or damages for any loss of occupation or quiet enjoyment of the demised premises. Lessor may, at any time within ninety days prior to the expiration of this lease agreement, place on the windows and doors of the premises any usual or ordinary "To Let" or "To Lease" signs. Lessor and lessor's agents may, during the last-mentioned period, enter on the demised premises at reasonable hours and exhibit them to prospective tenants.

**SECTION NINE. LIMITATION OF LIABILITY; INDEMNIFICATION**

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

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

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

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

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

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

Bodily Injury .....\$1,000,000 per occurrence  
Property Damage.....\$ 100,000 per occurrence

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

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

## **SECTION TEN. DESTRUCTION OF PREMISES**

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

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

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

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

## **SECTION ELEVEN. CONDEMNATION**

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

## **SECTION TWELVE. ASSIGNMENT AND SUBLEASE**

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

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

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

## **SECTION THIRTEEN. BREACH OR DEFAULT**

Lessee shall have breached this lease agreement and shall be considered in default under this lease agreement if: (1) lessee fails to pay any rent when due and does not make the delinquent payment within five days after receipt of notice from lessor; or (2)

lessee fails to perform or comply with any of the covenants or conditions of this lease agreement and such failure continues for a period of ten days after receipt of notice from lessor in the fashion described in Section 21 below.

#### **SECTION FOURTEEN. LESSOR'S REMEDIES**

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

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

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

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

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

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

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

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

D. After reentry, lessor may procure the appointment of a receiver to take possession and collect rents and profits of the business of lessee, and, if necessary to collect the rents and profits the receiver may carry on the business of lessee and take possession of the personal property used in the business of lessee, including inventory, trade fixtures, and furnishings, and use them in the business without compensating lessee.

#### **SECTION FIFTEEN. UNLAWFUL DETAINER AND ATTORNEYS' FEES**

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

#### **SECTION SIXTEEN. REMEDIES OF LESSOR CUMULATIVE**

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

#### **SECTION SEVENTEEN. GOVERNING LAW**

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

#### **SECTION EIGHTEEN. NO WAIVER**

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

#### **SECTION NINETEEN. ENTIRE AGREEMENT**

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

#### **SECTION TWENTY. MODIFICATION OF AGREEMENT**

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

#### **SECTION TWENTY-ONE. NOTICES**

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

If to lessor: City of Morgantown  
c/o City Manager  
430 Spruce Street  
Morgantown, WV 26505  
With a copy to [rsimonton@morgantownwv.gov](mailto:rsimonton@morgantownwv.gov)

If to lessee: Mountaineer Homeschool Hub, Inc.  
c/o Angela Channell, President  
219 Hartman Run Road  
Morgantown, WV 26505  
With a copy to \_\_\_\_\_

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

#### **SECTION TWENTY-TWO. COUNTERPARTS**

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

#### **SECTION TWENTY-THREE. SECTION HEADINGS**

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

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

[Signature page follows]

**LESSOR:** City of Morgantown

By: \_\_\_\_\_  
A. Kim Haws  
City Manager

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by A. Kim Haws, City Manager of the City of Morgantown, West Virginia.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for  
said State and County

**LESSEE:**

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by Angela Channell, as President of Mountaineer Homeschool Hub, Inc.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for  
said State and County

Schedule 1 – Lessee Identification of Defects



## MEMORANDUM

---

Date: June 9, 2021  
To: Kim Haws, City Manager..... *via email*  
cc: Christine Wade, City Clerk ..... *via email*  
Heather Carl, Deputy City Clerk ..... *via email*  
Ryan Simonton, City Attorney ..... *via email*  
RE: City Council Agenda – June 9, 2021  
TX21-01 | Summers | Swimming Pool

During its May 13, 2021 meeting, the Planning Commission voted unanimously (7-0-0) to forward a recommendation to City Council to approve the following text amendment to Section 1331.08 in the City of Morgantown’s Planning and Zoning Code regarding poolhouses and swimming pools as one accessory structure. Please note, deleted matters are struck-through; new matters are underlined.

**1331.08. – Accessory structures and uses in residential districts.**

- (a) Customary and incidental accessory buildings and uses are allowed in all residential districts, as specifically regulated in that zoning district, provided that:
  - (12) Any accessory structure designed as a poolhouse shall be constructed in accordance with applicable building and zoning codes. ~~located no farther than ten feet from the swimming pool to which it shall be accessory.~~ A swimming pool and poolhouse shall constitute one accessory structure.

Attached herewith are the Staff Report presented to the Planning Commission, TX21-01 application materials, and the draft ordinance. The following dates will keep to standard Planning and Zoning Code Amendment protocol:

**City Council Meetings**

- 1<sup>st</sup> Reading..... June 9, 2021 at 7:00 p.m.
- Public Hearing and 2<sup>nd</sup> Reading ..... July 20, 2021 at 7:00 p.m.

Since the case was not presented to City Council at the Committee of Whole meeting on May 27, 2021, please feel free to include this communication with Council’s agenda packet, as well as the application and staff report attached hereto.

If you have any questions regarding this matter, please let me know.

Thank you.

**AN ORDINANCE AMENDING SECTION 1331.08 OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS IT RELATES TO A POOLHOUSE AND SWIMMING POOL BEING ONE ACCESSORY STRUCTURE**

The City of Morgantown hereby ordains Section 1331.08 and Chapter 1331 of the Planning and Zoning Code are amended (deleted matter struck-through; new matter underlined) as follows:

**Sec. 1331.08 - Accessory structures and uses in residential districts.**

(a) Customary and incidental accessory buildings and uses are allowed in all residential districts, as specifically regulated in that zoning district, provided that:

(12) Any accessory structure designed as a poolhouse shall be constructed in accordance with applicable building and zoning codes. ~~located no farther than ten feet from the swimming pool to which it shall be accessory.~~ A swimming pool and poolhouse shall constitute one accessory structure.



# MORGANTOWN PLANNING COMMISSION

May 13, 2021  
6:30 p.m.  
By Electronic Means

**President:**

Peter DeMasters, 6<sup>th</sup> Ward

**Vice-President:**

Carol Pyles, 7<sup>th</sup> Ward

**Planning Commissioners:**

Sam Loretta, 1<sup>st</sup> Ward

Tim Stranko, 2<sup>nd</sup> Ward

William Blosser, 3<sup>rd</sup> Ward

Bill Petros, 4<sup>th</sup> Ward

Michael Shuman, 5<sup>th</sup> Ward

Ronald Dulaney, City Council

AJ Hammond, City Admin.

## STAFF REPORT

**CASE NO:** TX21-01 / Summers / Swimming Pools

**REQUEST and LOCATION:**

Request by Dolores John on behalf of Kevin and Audrie Summers to amend Section 1331.08 of the Planning and Zoning Code as it relates to swimming pools as an accessory structure.

**BACKGROUND:**

The petitioner seeks to develop a swimming pool at their residence located at 1101 Windsor Avenue. The petitioner's swimming pool design includes a pool house, which per Section 1331.08(a)(12) is permitted to be no further than ten (10) feet from the swimming pool. The applicant seeks to develop the pool house fifteen (15) feet from the swimming pool. The proposed text amendment would change this physical distance provision to accommodate the additional space.

**ANALYSIS:**

Swimming pools are defined in Section 1329.02 of the Planning and Zoning Code as follows:

*Swimming pool* means a pool or tub constructed either above or below grade and having a capacity of 1,000 or more gallons.

Swimming pools are also considered accessory structures as a result of Section 1331.08(a)(12) as provided below:

(12) Any accessory structure designed as a poolhouse shall be located no farther than ten feet from the swimming pool to which it shall be accessory. A swimming pool and poolhouse shall constitute one accessory structure.

As shown above, the swimming pool and pool house constitute one accessory structure for zoning purposes.

**STAFF RECOMMENDATION:**

Staff appreciates the petitioner's application as it does allow for the consideration of the City of Morgantown's regulation of swimming pools as accessory structures. Staff however feels that the associated space between a swimming pool and a pool house is arbitrarily sought, as fifteen (15) only functionally provides an additional five (5) feet of space

**Development Services**

Rickie Yeager, AICP  
Director

**Planning Division**

John Whitmore, AICP  
Senior Planner

389 Spruce Street  
Morgantown, WV 26505  
304.284.7431



# MORGANTOWN PLANNING COMMISSION

May 13, 2021  
6:30 p.m.  
By Electronic Means

**President:**

Peter DeMasters, 6<sup>th</sup> Ward

**Vice-President:**

Carol Pyles, 7<sup>th</sup> Ward

**Planning Commissioners:**

Sam Loretta, 1<sup>st</sup> Ward

Tim Stranko, 2<sup>nd</sup> Ward

William Blosser, 3<sup>rd</sup> Ward

Bill Petros, 4<sup>th</sup> Ward

Michael Shuman, 5<sup>th</sup> Ward

Ronald Dulaney, City Council

AJ Hammond, City Admin.

between a physical building and a swimming pool. Instead, staff recommends the Planning Commission revise the accessory structure provisions of the Planning and Zoning Code for Section 1331.08(a)(12) to provide some flexibility in the zoning code in accordance with applicable building codes regarding the placement, construction and operation of swimming pools.

Staff recommends one of the following two (2) zoning text amendment recommendations be affirmatively submitted to City Council under Case No. TX21-01. Staff recommended text amendments are presented as the Recommendation 1 below and the petitioner's requested text amendment is presented as Recommendation 2 below.

*Recommendation 1 – Staff Preferred Text Amendment*

Revise Section 1331.08 (a)(12) to read as follows:

(a) Customary and incidental accessory buildings and uses are allowed in all residential districts, as specifically regulated in that zoning district, provided that:

(12) Any accessory structure designed as a poolhouse shall be located ~~no farther than ten feet~~ a safe and reasonable distance from the swimming pool, to which it shall be accessory, in accordance with applicable building and zoning codes. A swimming pool and poolhouse shall constitute one accessory structure.

*Recommendation 2 – Petitioner's Requested Text Amendment*

Change the spatial distance requirements of a pool house to be located no more than fifteen (15) feet from the swimming pool.

1331.08 ACCESSORY STRUCTURES AND USES IN RESIDENTIAL DISTRICTS.

(a) Customary and incidental accessory buildings and uses are allowed in all residential districts, as specifically regulated in that zoning district, provided that:

(12) Any accessory structure designed as a poolhouse shall be located no farther than ~~ten~~ fifteen feet from the swimming pool to which it shall be accessory. A swimming pool and poolhouse shall constitute one accessory structure.

**Development Services**

Rickie Yeager, AICP  
Director

**Planning Division**

John Whitmore, AICP  
Senior Planner

389 Spruce Street  
Morgantown, WV 26505  
304.284.7431



<b>OFFICE USE</b>
CASE NO. _____

## APPLICATION FOR ZONING TEXT AMENDMENT

(PLEASE TYPE OR PRINT IN INK)

**Fee: \$250.00 [Z-TX]**

<b>I. APPLICANT</b>			
Name:	Dolores John, AIA	Phone:	304-692-5959
Mailing Address:	344 Jackson Avenue	Mobile:	304-692-5959
	Street    Morgantown    WV    26501	Email: djohn@djohnarchitect.com	
	City                                  State                                  Zip		
<b>II. PROPOSED TEXT AMENDMENT</b>			
Section of the Zoning Code to be Amended:	1331.08 (A)(12)		
Summary of Proposed Text Amendment (an additional sheet may be attached hereto):			
<p>Any accessory structure designed as a poolhouse shall be located no farther than fifteen feet from the swimming pool to which it shall be accessory. A swimming pool and poolhouse shall constitute one accessory structure.</p>			
<b>III. ATTEST</b>			
<p>I hereby certify that I have read and examined this document and know the same to be true and correct. All provisions of laws and ordinances governing this type of application will be complied with whether specified herein or not. The granting of an approval does not presume to give authority to violate or cancel the provisions of any other federal, state, or local law regulating same. This application has not been requested within the past year.</p>			
<p style="text-align: center;"><u>Dolores John</u></p>			
Type/Print Name of Applicant/Agent	Signature of Applicant/Agent		
	<p><u>03/31/2021</u></p>		
	<p>Date</p>		

# ***City of Morgantown***

## ***Finance Department***

***389 Spruce Street***

***Morgantown, WV 26505***

***Phone (304) 284-7407/Fax 7418***

***jgoff@morgantownwv.gov***

# **MEMO**

**DATE:** 6/7/2021

**TO:** A. Kim Haws  
City Manager

**FROM:** Lori Livengood  
Financial Reporting Manager

**RE:** Authorized Signers

---

Please find attached a resolution authorizing certain individuals of the City of Morgantown to transact business with the City's various banking and brokerage institutions. I am requesting this resolution be forwarded to City Council for approval at the next regular City Council meeting. This resolution is required to add Kevin Tennant as authorized signer and to remove Amy Cobasky as authorized signers. All checks and other withdrawal methods require two authorized signatures or approvals before payment may be made.

Please let me know if you have any questions.

**RESOLUTION**

**WHEREAS, the City of Morgantown utilizes various banking facilities as depositories for City funds;**

**WHEREAS, City Council is of the opinion that a record should be made of the specific individuals authorized as agents of the City.**

**BE IT HEREBY RESOLVED that the following are authorized agents of the City of Morgantown for the transacting of funds in the designated banking and financial institutions:**

- 1. A. Kim Haws, City Manager**
- 2. Kevin Tennant, Finance Director**
- 3. Lori Livengood, Financial Reporting Manager**
- 4. Denise Stefanizzi, Compliance Manager**

**This Resolution shall be effective from this \_\_\_\_\_ day of \_\_\_\_\_, 2021.**

\_\_\_\_\_  
**MAYOR**

\_\_\_\_\_  
**CITY CLERK**

*City of Morgantown*  
*Finance Department*  
*389 Spruce Street*  
*Morgantown, WV 26505*  
*Phone (304) 284-7407/Fax 7418*  
*Kevin.tennant@morgantownwv.gov*

# Memo

**DATE:** June 8, 2021  
**TO:** A. Kim Haws, City Manager  
**FROM:** Kevin Tennant, Finance Director  
**RE:** FY21 Capital Escrow Budget Revision

---

The following revision allocates \$71,790 in funding from the Capital Escrow Contingency fund to the City Hall for utility relocation and window design of \$56,790 and to Woodburn for building improvements of \$15,000.

If you are in agreement, please include this budget revision request for the June 15<sup>th</sup> Council meeting.

Thank you.

**RESOLUTION**

*WHEREAS, City Administration has presented to Morgantown City Council a 2020-2021 budget revision #2 for the Morgantown Capital Escrow Fund and has requested that City Council review and approve the same;*

*WHEREAS, the budget revision #2 in question, a copy of which is hereto attached, appear to not only be in proper form, but also, acceptable as to income and expenditures set forth therein;*

*WHEREAS, City Council is of the opinion that it should approve said budget revision #2.*

*NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown this \_\_\_\_\_ day of \_\_\_\_\_, 2021, that the 2020-2021 Budget Revision #2 for the Morgantown Capital Escrow Fund Budget hereto attached is approved.*

\_\_\_\_\_  
*Mayor*

\_\_\_\_\_  
*City Clerk*

**CITY OF MORGANTOWN  
 CAPITAL ESCROW FUND - REVISION 02  
 FY 2020-2021**

<b>REVENUES</b>	<b>BUDGET FY21</b>	<b>PROPOSED REV 02</b>	<b>PROPOSED AMENDED BUDGET</b>	<b>EXPLANATION</b>
		-		
		-		
		-		
<b>EXPENDITURES</b>	<b>BUDGET FY21</b>	<b>PROPOSED REV 02</b>	<b>PROPOSED AMENDED BUDGET</b>	<b>EXPLANATION OF EXPENDITURES</b>
City Hall Building Renovations	-	23,990	23,990	To cover cost of utility relocation
City Hall Maintenance & Repairs	-	32,800	32,800	Window design
Woodburn Building Improvements	-	15,000	15,000	Repairs to lighting, plaster & painting
Contingencies	582,472	(71,790)	510,682	
		-		

**RESOLUTION**

*WHEREAS, City Administration has presented to Morgantown City Council 2021-2022 budget for the Morgantown Municipal Airport, the Airport Improvement Fund and has requested that City Council review and approve the same;*

*WHEREAS, the budgets in question, copies of which are hereto attached, appear to not only be in proper form, but also, acceptable as to income and expenditures set forth therein;*

*WHEREAS, City Council is of the opinion that it should approve said budgets.*

*NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown this \_\_\_\_\_ day of \_\_\_\_\_, 2021, that the 2021-2022 budget for the Morgantown Municipal Airport, the Airport Improvement Fund hereto attached are approved.*

\_\_\_\_\_  
*Mayor*

\_\_\_\_\_  
*City Clerk*

**City of Morgantown**  
**Airport Improvement Fund**  
**Budget Year 2022**

Account Description	FY20 Actuals at 6/30/2020	FY21 Amended Budget	FY21 Actuals at 5/31/2021	2022 Department Requested
<b>Revenue</b>				
<b>Grants</b>				
Federal Grants FAA Grant 37/15 Construct Apron	\$ 513,572	\$ -	\$ -	\$ -
Federal Grants FAA Grant 40/18 EA Reimbursement	14,340	-	-	-
Federal Grants FAA Grant 41/19 Misc Airfield Upgrade	104,838	907,302	814,081	93,221
Federal Grants FAA Grant 42/20 Runway Ext Design	-	1,861,245	895,982	366,517
Federal Grants FAA Grant 43/20 CARES Act	-	69,000	69,000	-
Federal Grants FAA Grant 44/20 Land Acquisition	-	1,000,000	528,916	345,120
Federal Grants FAA Grant 45/21 Phase 1 Construction	-	7,777,778	99,823	7,518,975
Federal Grants FAA Grant 46/21 CRRSA	-	57,612	-	57,612
State Grants - State Grant Share 40/18	797	-	-	-
State Grants - State Grant Share 41/19	5,824	51,007	45,227	5,178
Contrib Other Funds Capital Escrow Match	-	54,401	-	5,179
<b>Total Grants</b>	<b>639,371</b>	<b>11,778,345</b>	<b>2,453,029</b>	<b>8,391,802</b>
<b>Other Financial Sources</b>				
Contrib Other Entities Capital Escrow - Runway Protect.	1,000,000	1,000,000	-	1,000,000
Contrib Other Entities Capital Escrow - Land Acquisition	-	500,000	-	484,050
Contrib Other Funds Capital Escrow Fund	-	73,172	4,750	68,422
Carryover	-	40,898	-	45,000
Interest Earned - Investments (AIP & PFC)	5,763	500	898	500
Airport Revenues - PFC Revenue	31,645	26,500	11,362	26,500
Contrib Other Entities MCDA	-	700,000	-	700,000
<b>Total Other Financial Sources</b>	<b>1,037,408</b>	<b>2,341,070</b>	<b>17,010</b>	<b>2,324,472</b>
<b>Total AIP Revenue</b>	<b>1,676,779</b>	<b>14,119,415</b>	<b>2,470,038</b>	<b>10,716,274</b>
<b>Expenditures</b>				
<b>Grant Expenditures</b>				
Capital Outlay FAA 37/15 Grant	537,654	432,996	-	-
Capital Outlay FAA 40/18 Grant	-	35,153	-	-
Capital Outlay FAA 41/19 Grant	116,487	1,008,113	904,535	103,578
Capital Outlay FAA 42/20 Grant	-	1,886,761	636,564	366,517
Contrib to Airport FAA 43/20 Grant (CARES ACT)	-	69,000	69,000	-
Capital Outlay FAA 44/20 Grant	-	874,036	528,916	345,120
Capital Outlay FAA 45/21	-	77,777,778	177,912	7,518,975
Capital Outlay FAA 46/21 (CRRSA)	-	57,612	-	57,612
<b>Total Grant Expenditures</b>	<b>654,141</b>	<b>82,141,449</b>	<b>2,316,926</b>	<b>8,391,802</b>
<b>Other Expenditures</b>				
Capital Outlay Runway Ext-Env Assessment	-	50,000	-	-
Capital Outlay Runway Extension Protection Zone	-	1,000,000	-	1,000,000
Capital Outlay Runway Extension Land Acquisition	5,950	494,050	10,000	484,050
Capital Outlay Runway Extension Design	477,371	77	-	-
Capital Outlay Runway Extension BCA	-	131,000	-	-
Capital Outlay Hangar Construction	107,221	-	-	-
Capital Outlay Equip - Equipment (PFC Funds)	-	-	-	26,500
Contingency	-	1,103,276	-	813,922
<b>Total Other Expenditures</b>	<b>590,542</b>	<b>2,778,403</b>	<b>10,000</b>	<b>2,324,472</b>
<b>Total AIP Expenditures</b>	<b>\$ 1,244,683</b>	<b>\$ 84,919,852</b>	<b>\$ 2,326,926</b>	<b>\$ 10,716,274</b>

Mark Downs is assisting Al Bonner with an event planned for 7/3/2021 and is requesting approval for controlled alcohol sales at Parcel 10-36-280 on the agenda for City Council approval. The parcel is located behind Genes Beer Garden (Parcel 10-36-281) at 461 Wilson Ave...it is the Gene's Beer Garden parking lot.

The event is a John Lennon Tribute concert and fundraiser for Empty Bowls (a local nonprofit which provides assistance to individuals and families threatened by food insecurity). The event will feature live music, local food vendors and beer sales to raise money. Activity would be from ~1:00pm – 7:00pm.



**The City of Morgantown**  
*Office of Engineering and Public Works*

## Memorandum

**To:** Kim Haws  
City Manager

**From:** Bill Ashby, Deputy Director 

**Date:** June 8, 2021

**Re:** Street Paving Project – Bid Call 2021-13

---

Bids were opened at 2:00pm on June 7, 2021. The results are as follows:

<b>CONTRACTOR</b>	<b>BASE BID</b>	<b>WITH ADD ALTERNATE</b>
Anderson Excavating, LLC	\$689,221.10	\$854,162.00
Parrotta Paving Co.	\$753,662.52	\$1,002,645.44
Mountaineer Contractors, Inc.	\$1,016,900.76	\$1,298,843.76
Bear Contracting	\$1,077,718.25	\$1,293,462.25

Engineering has reviewed the submitted bids for completeness and adherence to the Bid Call requirement. Engineering recommends award to Anderson Excavating, LLC.

DAYTON STREET (Union Ave. to Richwood Ave.)  
EASTERN AVENUE (Burroughs Street. to Aspen Street.)  
FENWICK STREET (Junior Ave. to Mansfield St.)  
GREENDALE STREET (Collins Ferry Rd to Woodland Dr.)  
MADIGAN AVENUE (Barrickman St. to Mississippi St.)  
MAPLE AVENUE (Dormont St. to Buckhannon Ave.)  
MCLANE AVENUE (Eighth St. to Dead End.)  
PARK STREET (Cobun Ave. to Dead End)  
PRAIRIE AVENUE (Wagner Rd. to Wilson Ave.)  
PROSPECT STREET (North High St. to University Ave.)  
PROSPECT STREET (Willey St. to Price St.)  
SOUTH HILLS DRIVE (Buckhannon Ave. to Vandalia Rd.)  
WHITE AVENUE (Deckers Creek Blvd. to Vandalia rd.)  
WILSON AVENUE (Jefferson St. to Jefferson St.)  
WOODLAND DRIVE (Eastern Ave. to Valley Rd.)